

**SUPREME COURT OF INDIA**

Mani Ram

Vs.

State of Haryana

C.A.No.5446 of 2005

(G.P.Mathur and P.K.Balasubramanyan JJ.)

01.09.2005

**JUDGMENT**

**G.P. Mathur, J.**

1. Leave granted.

2. This appeal, by special leave, has been preferred against the judgment and order dated 5.9.2002 of the High Court of Punjab and Haryana, by which the writ petition preferred by the appellant for quashing the order dated 6.11.1995 compulsorily retiring the appellant from service, was dismissed.

3. The appellant, who was a Sub Inspector of Police, was served a notice dated 8.6.1989 by the Commandant, 3rd Battalion, Haryana Armed Police, by which he was informed that he had attained the age of 55 years on 9.6.1989 and as he was not considered fit to be retained in service beyond the said age, he was being given notice of three months as required under the provisions of Punjab Police Rules 18(1)(c) read with note below therein and Rule 5.32 of C.S.R. Vol. II and accordingly he will be deemed to have retired from service after the expiry of period of notice i.e. on 7.9.1989. The appellant challenged the aforesaid notice of compulsory retirement by filing Civil Writ Petition No. 9623 of 1989, which was allowed by a learned Single Judge on 5.5.1995 and the operative part of the order reads as under:

"In the result, the writ petition is allowed only on the ground that the competent authority did not apply its mind to the record of the petitioner but acted under the dictates of his superior officer while issuing the impugned notice and, therefore, the impugned notice is quashed. However, it is left open to the competent authority to independently examine the record of the petitioner and take a fresh decision as to whether the petitioner should have been retained in service beyond 55 years of age. Such decision should be taken by the competent authority within three months of the receipt of a copy of this order. The competent authority shall take a decision without being influenced by any observation made in this order. If the competent authority once again comes to the conclusion that the petitioner did not deserve to continue

beyond 55 years of age, the petitioner shall not get any other relief. On the other hand, if it is held that the petitioner had a right to continue in service beyond 55 years, the petitioner shall be deemed to have continued in service till the age of superannuation and he shall in that event get all monetary benefits. Parties are left to bear their own costs."

The letters patent appeal preferred by the appellant against the aforesaid judgment and order of the learned Single Judge was dismissed by a Division Bench on 20.11.1997 and review petition was also dismissed on 20.3.1998. Thereafter, Special Leave Petition (Civil) Nos. 11428-11429 of 1998 were preferred in this Court challenging the orders passed in letters patent appeal and in the review petition and the same were dismissed on 5.11.1999.

4. In compliance of the orders passed on 5.5.1995 in Civil Writ Petition No. 9623 of 1989, the Commandant, 3rd Battalion, Haryana Armed Police, considered the matter again and after detailed examination of the service record of the appellant passed a fresh order on 6.11.1995 holding that the appellant did not deserve to continue in service beyond the age of 55 years and that he was rightly retired at the said age. The appellant then challenged the order dated 6.11.1995 by filing Civil Writ Petition No. 6353 of 2000 before the High Court of Punjab and Haryana, which was dismissed by the impugned order dated 5.9.2002 by a Division Bench of the High Court.

5. Learned counsel for the appellant has submitted that the impugned order of compulsory retirement having been passed on 6.11.1995, it should take effect from the said date and not with retrospective effect from 7.9.1989. It is urged that even though the order was passed by the Commandant on a much later date i.e. on 6.11.1995, but the appellant is being treated to have retired on 7.9.1989. According to learned counsel, the appellant would get some pensionary benefits in case the order of compulsory retirement is treated to have been passed on 6.11.1995 and not on 7.9.1989. He has made a statement that the appellant would not claim any salary for the past period. Taking note of this contention, while issuing notice on the special leave petition, this Court had passed the following order on 3.2.2003:

"The learned counsel for the petitioner states that the impugned departmental order Annexure-P/3 (Pg. 34 of the paper book) should not have been made operative from a back date and if made prospective, the advantage to the petitioner would be in the calculation of pensionary benefits. The learned counsel further states that the petitioner shall not claim any back wages. In view of that statement, issue notice to the respondents to show cause why the impugned order dated 6.11.1995 be not suitably modified."

6. In our opinion, the contention raised by the learned counsel for the appellant in wholly misconceived and cannot at all be accepted. In the judgment and order dated 5.5.1995 passed in Civil Writ Petition No. 9623 of 1989, the learned Single Judge had clearly directed that if the competent authority once again comes to the conclusion that the petitioner did not deserve to continue in service beyond 55 years of age, the petitioner shall not get any other

relief. As already mentioned, this order attained finality as the letters patent appeal, review petition and also the special leave petition preferred against the said order were dismissed. Therefore, in terms of the said order, the appellant is not entitled to any other relief as the competent authority (Commandant, 3rd Battalion, Haryana Armed Police) again held that the appellant had been rightly retired at the age of 55 years.

7. There is another fallacy in the contention raised by the learned counsel for the appellant. The normal age of retirement at the relevant time was 58 years. The appellant attained the age of 55 years on 9.6.1989 and was then served with a notice of compulsory retirement. The subsequent order of the competent authority has been passed on 6.11.1995 by which time the appellant was more than 61 years of age. If the order of compulsory retirement is treated to have been passed on the said date i.e. 6.11.1995, it would mean that the appellant continued in service even beyond his normal age of retirement, which was 58 years. This would not only obliterate the order of compulsory retirement but would also give him extension in service.

8. For the reasons discussed above, there is no merit in the appeal, which is hereby dismissed with costs.