

there is likelihood of conflict of opinion between officers of co-ordinate jurisdiction and in law such a course would be avoided as far as possible.

(8) For the reasons recorded above, the notices annexures P-1 and P-2 issued by Shri M. S. Hooda, Excise and Taxation Officer-AES) are hereby quashed. However, the Excise and Taxation Officer-cum-Assessing Authority, Faridabad, would have jurisdiction to frame the assessment and can continue the proceedings until the same are got transferred under rule 7 to Shri M. S. Hooda or some other officers competent to frame the assessment. The writ petition stands disposed of accordingly.

S.C.K.

*Before Hon'ble Jawahar Lal Gupta, J.*

MOHAN LAL VOHRA,—*Petitioner.*

*versus*

STATE OF HARYANA & ANOTHER,—*Respondents.*

C.W.P. No. 10391 of 1990

14th November, 1991

*Constitution of India, 1950—Arts. 226/227—Teacher graded 'B'—Grading reduced to Below Average—Down grading of the reports—Pre-mature retirement on the basis of such report— Validity of.*

*Held,* that once the petitioner's performance was assessed as 'Good' or 'Very Good', it cannot be down graded merely on the basis of the results. The overall results of a school depend not only on the performance of the other teachers, but also on the calibre of the students. Surely, a teacher alone much less than a headmaster cannot be made to suffer even if the results of the school are not upto the expected standards. On an overall consideration of the matter, the petitioner cannot be described as 'dead wood' which may need to be chopped off.

(Para 6)

S. P. Laler, Advocate, for the Petitioner.

Jaswant Singh, Advocate, for State of Haryana (Respondent).

JUDGMENT

*Jawahar Lal Gupta, J. (oral)*

(1) The petitioner herein is aggrieved by the order of his premature retirement. He was born on August 5, 1933. He joined service as a Master on November 23, 1959. He was promoted as a Lecturer in the year 1964 and thereafter as Headmaster in November, 1970. On September 30, 1988, he was served with three months' notice of retirement at the age of 55 years. Aggrieved by this order, he submitted a representation to the Director of School Education. It is averred that without deciding his representation, the petitioner was relieved of his duties on December 29, 1988. Consequently this petition.

(2) It has been averred in the petition that during his entire tenure the petitioner had been granted all promotions on the due date/s. During his tenure of about 18 years as Headmaster, there was not even a single complaint against him. He was allowed to cross the efficiency bar in time. In spite of these facts, he has been arbitrarily retired from service.

(3) A written statement has been filed on behalf of the respondents. In the written statement, the summary of the petitioner's record of service has been produced. This reads as under :—

S. No.	Year	Grading	Results	Overall Grading
1.	1977-78	B	Two Minus One Plus.	Below average.
2.	1978-79	+B	Two Plus Two minus.	Good
3.	1979-80	+B	Three Plus One minus.	Good
4.	1980-81	+B	Two Minus One Plus.	Average
5.	1981-82	+B	Three Minus One Plus.	Below average
6.	1982-83	+B	All Minus	Below average
7.	1983-84	+B	All Minus	Below average
8.	1984-85	A	All Minus	Very good
9.	1985-86	A	All Plus	Very good
10.	1986-87	A	Two Plus One minus.	Very good

(4) A perusal of the above would show that the petitioner had been graded as 'B' for the year 1977-78. He had been graded as +B for the period from 1978-79 to 1983-84. He had been graded as 'A' for the period from 1984-85 to 1986-87. His overall grading has been brought down in view of the results of the School. Consequently, his overall grading was reduced to 'below average' for 1977-78 and 1981-82 to 1983-84. He has been given grading of 'good' in 1978-79 and 1979-80. Further his performance has been graded as 'very Good' for the years from 1984-85 to 1986-87. In the written statement it has been further mentioned that the petitioner had been conveyed an adverse report for the year 1978-79 to the following effect :—

"Need to improve personal and general remarks."

It has also been averred that the petitioner's representation had been examined and rejected.

(5) Mr. Shish Pal Laler, learned counsel for the petitioner has raised a two-fold contention. He submits that the action of the respondents in reducing the overall grading of the petitioner on the basis of results of the school is wholly arbitrary. He has further submitted that even on the basis of his record of service, the petitioner cannot be described as 'dead wood' and as such the order of premature retirement was wholly arbitrary and unfair.

(6) On an examination of the summary sheet of the petitioner's record of service, as produced by the respondents, I find that his performance was found in the range from 'good' to 'very good'. It was down graded only on the basis of the results of the school. It has not been averred or shown from record that the petitioner was informed about the down grading of his reports. Further, I am also of the view that once the petitioner's performance was assessed as 'good' or 'very good', it cannot be down graded merely on the basis of the results. The overall results of a school depend not only on the performance of the other teachers, but also on the calibre of the students. Surely, a teacher alone much less a headmaster cannot be made to suffer even if the results of the school are not upto the expected standards. On an overall consideration of the matter, I am of the view that the petitioner cannot be described as 'dead wood' which may need to be chopped off.

(7) Accordingly, I accept this writ petition and quash the impugned order. The petitioner shall be deemed to have continued in service and shall be entitled to all consequential reliefs that may

ensue. Since the petitioner has already crossed the age of 58 years in August 1991, no order of reinstatement can be passed. The petitioner shall also be entitled to his costs, which are assessed at Rs. 2,000.

---

S.C.K.

*Before Hon'ble Jawahar Lal Gupta, J.*

TARA CHAND,—*Petitioner.*

*versus*

DIRECTOR GENERAL OF POLICE, HARYANA,—*Respondent.*

C.W.P. No. 11127 of 1988

4th March, 1992

*Constitution of India, 1950—Arts. 226/227—Compulsory Retirement—Adverse record prior to crossing of efficiency bar—Consideration of such record—Stale and obsolete material—Reliance on such material whether permissible.*

*Held*, that the petitioner had been permitted to cross the efficiency bar, the record prior to the crossing of efficiency bar could not have been taken into consideration. The record from the year 1969 onwards has been taken into consideration. Reliance on such old and stale entries is contrary to the rule of law pronounced by the Apex Court.

(Para 7)

*Further held*, that while considering the negative aspect of the petitioner's case, the fact that the petitioner has been promoted, confirmed, deputed for the courses and also allowed to cross the efficiency bar, was also relevant. It is the cumulative effect of the positive and negative aspects that has to be taken into account while deciding the matter. While the negative aspect is clearly considered, the positive aspect was clearly ignored and consideration was thus not proper.

(Para 9)

K. S. Keer, Advocate, for the Petitioner.

Jaswant Singh, Advocate, for the Respondent.