

Before Jawahar Lal Gupta & N.C. Khichi, JJ

MOHAN LAL BANSAL,—*Petitioner*

*versus*

STATE OF HARYANA & ANOTHER,—*Respondents*

*CWP 1880 of 1997*

10th March, 1998

*Constitution of India, 1950—Art. 226—Premature retirement of Judicial Officer at the age of 50 years—Opinion of the successive Inspecting Judges recorded in the A.C.Rs forming basis of impugned action in recommending to State Govt. pre-mature retirement—Representations against adverse remarks rejected—Decision is not arbitrary and is in public interest & therefore, upheld—Premature notice falling short of three months required under the rules—Judicial Officer is entitled to salary for the period the notice fell short.*

*Held that*, the petitioner's representations against the aforesaid remarks had been periodically rejected. Furthermore, a perusal of his personal file shows that the petitioner had joined service in July, 1984. In the reports for the year 1984-85 to 1987-88, his performance was graded as average/satisfactory. For four years viz. 1988-89 to 1991-92 he was graded as Good. Therefore, came the fall. For the years 1992-93 and 1996-97, he was found to be 'below average' and 'average-C' respectively. During the years 1993-94 to 1995-96 his overall assessment was average/satisfactory. Thus, it is clear that the petitioner's performance during the five years immediately preceding the order of his premature retirement has not been good. Five different Hon'ble Judges had separately assessed his performance and found one or the other defect. He has been found wanting. He has not lived upto the standards expected of a Judicial Officer. In some of the reports, his integrity has been adversely commented upon. He still complains that the impugned order is arbitrary. it is an unfair complaint. It cannot be sustained. It is true that initially, the remarks as recorded by the Hon'ble Judges were conveyed to the petitioner—vide letter dated 26th July, 1994. Subsequently,—vide letter dated 23rd August, 1995, the petitioner was informed that the Court had adjudged his work and conduct and graded him as 'C-integrity doubtful'. Thus, the assessment as made by the Full Court had been conveyed to the petitioner. He had represented against it. The representation has been rejected. Thus, the petitioner's complaint is untenable.

(Para 9)

Vijay K. Jindal Advocate, *for the Petitioner.*

Madan Dev Adocate for AG Haryana, *for the Respondent.*

---

### JUDGMENT

(1) The petitioner, a Member of the Haryana Civil Service (Judicial Branch) was conveyed adverse remarks during the years 1992-93 to 1996-97. The judicial work was withdrawn from him,—vide orders dated 9th September, 1997. He was retired on attaining the age of 50 years with effect from 7th December, 1997. He alleges that the action is arbitrary and prays that the orders be quashed. The petitioner's claims has been controverted by the counsel for the respondents.

(2) Mr. V.K. Jindal, learned counsel for the petitioner has contended that the impugned order is arbitrary. According to the learned counsel, the very foundation of the order was non-existent. He submitted that in the report for the year 1992-93, the Inspecting Judge has recorded that the petitioners' integrity was "not above board". However, the full Court has proceeded on the assumption that the integrity was doubtful'. Secondly, there was two complaints against the petitioner which had been dropped by the Full Court. Thirdly, for the year 1994-95, the petitioner's performance had been adjudged as satisfactory'. On representation, the Inspecting Judge had raised it to 'Good'. However, the Full Court had proceeded on the assumption that the report was only 'Satisfactory'. On this basis, it is contended that the order was wholly arbitrary. Learned counsel further urged that the petitioner had not been given three months' notice and thus, the impugned order was vitiated. The claim made on behalf of the petitioner was controverted by the counsel for the respondents.

(3) The two questions that arise for consideration are:—

- (i) Is the action of the respondents in retiring the petitioner on his attaining the age of 50 years arbitrary ?
- (ii) Is the action not in conformity with the provisions of the rule ?

Reg: (i)

(4) A perusal of the pleadings of the parties shows that the following remarks have been conveyed to the petitioner during the proceeding five years:—

1. Vide letter dated 26th July, 1994, the following remarks were conveyed to the petitioner for the year 1992-93:—

“Hon'ble Mr. Justice H.S. Brar has been pleased to record the following adverse remarks on your work and conduct while posted as such in Jhajjar for the year 1992-93:—

5. Is he an efficient Judicial Officer ? No. There are many complaints by the members of the Bar, its President and the general public about his honesty and integrity.

- 
- |    |                                                                      |                                          |
|----|----------------------------------------------------------------------|------------------------------------------|
| 6. | has he maintained Judicial reputation for honesty and impartiality ? | No. As stated before column No. 5 above. |
| 8. | Behaviour towards members of the Bar and the public.                 | Unbecoming of a Judicial Officer.        |
| 9. | Net result                                                           | C-Integrity not above board.”            |

Subsequently,—vide letter dated 23rd August, 1995, the petitioner was informed that in the report for the year 1992-93, his integrity had been described as doubtful’.

2. Vide letter dated 20th July, 1994, the petitioner was conveyed the following remarks for the year 1993-94:—

“Hon’blr Mr. Justice A.L. Bahri has been pleased to record the following adverse remarks on your work and conduct for the year 1993-94:—

- |    |                                                                      |                                                      |
|----|----------------------------------------------------------------------|------------------------------------------------------|
| 6. | Has he maintained judicial reputation for honesty and impartiality ? | not impartial-complaints                             |
| 7. | Behaviour towards members of the Bar and the Public.                 | Needs improvement in behaviour towards Bar members.” |

3. Vide letter dated 3rd June, 1996, the petitioner was conveyed the following remarks for the years 1994-95:—

“Hon’ble Mr. Justice Sat Pal has been pleased to record the following advisory remarks on your work and conduct while posted as such in Gohana for the year 1994-95:—

- |    |                                                                                                                  |                                                         |
|----|------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|
| 2. | Is the industrious and prompt and prompt in the disposal of cases and has he coped effectively with heavy work ? | Needs some improvement in disposal of substantive work” |
|----|------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|

4. Vide letter dated 14th January, 1997, the petitioner was conveyed the following remarks for the year 1995-96:—

“Honble Mr. Justice N.C. Jain has been pleased to record the following advisory remarks against column Nos. 2 and 5 on your work and conduct for the year ending 31.3.1996 (1995-96):—

- |    |                            |                |
|----|----------------------------|----------------|
| 2. | Is he industrious & prompt | Must work hard |
|----|----------------------------|----------------|

in the disposal of cases and  
has he coped effectually with  
heavy work ?

5. Is he an efficient Judicial Officer ?                      He should acquire more efficiency.

He is also informed that he has been graded "Satisfactory-B" remarks as overall assessment for the period mentioned above."

5. On July 11, 1997, the petitioner was conveyed the following adverse remarks for the year 1996-97;—

"Hon'ble Mr. Justice P.K. Jain has been pleased to record the following adverse remarks on your work and conduct for the year ending 31.3.1997 (1996-97):—

6. Has he maintained Judicial reputation for honesty and impartiality ?                      Serious complaints for misuse of judicial powers in criminal cases.
9. Net result Average-C.

(5) It is also established on the record that the petitioner's representations against the aforesaid remarks had been periodically rejected. Furthermore, a perusal of his personal file shows that the petitioner had joined service in July 1984. In the reports for the year 1984-85 to 1987-88, his performance was graded as average/satisfactory. For four years viz. 1988-89 to 1991-92, he was graded as 'Good'. Thereafter, came the fall. For the years 1992-93 and 1996-97, he was found to be 'below average' and Average-C respectively. During the years 1993-94 to 1995-96, his overall assessment was average/satisfactory.

(6) Thus, it is clear that the petitioner's performance during the five years immediately preceding the order of his premature retirement has not been good. Five different Hon'ble Judges had separately assessed his performance and found one or the other defect. He has been found wanting. He has not lived up to the standards expected of a Judicial Officer. In some of the reports, his integrity has been adversely commented upon. He still complains that the impugned order is arbitrary. It is an unfair complaint. It cannot be sustained.

(7) Mr. Jindal pointed out that there were two complaints against the petitioner. The Full Court had decided to drop these complaints. Yet, his performance was adversely commented upon. Learned counsel is rightly to the extent that a decision had been taken to drop the complaints. This was so because

---

the High Court did not wish to punish the petitioner. No disciplinary action was intended to be taken against him. Thus, the complaints were dropped. It was not considered necessary to initiate any disciplinary action against the petitioner. However, his performance was otherwise assessed. It was felt that it would be in public interest to prematurely retire the petitioner. Consequently, the recommendation was made to the State Government in pursuance of which the impugned order was passed.

(8) Mr. Jindal also submitted that according to the remarks recorded by Hon'ble Mr. Justice H.S. Brar, the petitioner's integrity was "not above board". However, it has been taken as "doubtful" while passing the impugned order. Since the Hon'ble Inspecting Judge had not described the petitioner's integrity as "doubtful", the Full Court could not have proceeded on that basis.

(9) Even this complaint is not tenable. It is true that initially, the remarks as recorded by the Hon'ble Judge were conveyed to the petitioner,—vide letter dated July 26, 1994. Subsequently,—vide letter dated August 23, 1995, the petitioner was informed that the court had adjudged his work and conduct and graded him as "C-integrity doubtful". Thus, the assessment as made by the Full Court had been conveyed to the petitioner. He had represented against it. The representation had been rejected. Thus, the petitioner's complaint is untenable.

(10) Mr. Jindal also contended that for the year 1994-95, the petitioner's performance had been initially graded as satisfactory by Hon'ble the Inspecting Judge. Later on, the representation was accepted and he had assessed his performance as 'Good'. Yet, the Full Court had examined the case on the hypothesis that the petitioner's performance was satisfactory.

(11) The position in this behalf has been explained in the written statement filed by Mr. K.K. Garg, the Registrar of the High Court. It has been pointed out that Hon'ble the Inspecting Judge had upgraded the petitioner's assessment as B+(Good). However, the matter was placed before "the Hon'ble Judges constituting the Administration Committee for recording the annual confidential remarks. The Administration Committee graded him B(Satisfactory) remarks for the year 1994-95 which were approved by the Hon'ble Judges in Full Court meeting." It is thus clear that the petitioner's performance was finally assessed as only satisfactory and not Good. Thus, there was no error which may vitiate the final decision.

(12) In view of the above, the first question is answered against the petitioner. It is held that the action in retiring him at the age of 50 years is not arbitrary or unfair. It is based on a proper consideration of his record. In view of the fact that the petitioner's performance during the last five years was found to

---

be wanting, it cannot be said that the respondents had acted unfairly or arbitrarily.

Reg: (ii)

(13) Mr. Jindal contended that in accordance with the provisions of the rules, an employee can be retired only by giving him three months' notice. In the present case, the petitioner was informed,—vide letter dated September 18, 1997 that he would be retired w.e.f. December 7, 1997. The notice was thus less than three months. It was thus not in conformity with the rules.

(14) A copy of the notice is at Annexure P.1 with the writ petition. It has been categorically observed in the notice that the petitioner shall retire "with effect from 7-12-97 (AN) on payment of three months' pay and allowances in lieu of the period of notice by which it falls short of three months". It is, thus, clear that the petitioner would be entitled to the salary for the period by which the notice falls short of three months. The purpose of the notice is only to give the employee a chance to organise his affairs. Same purpose is achieved by the payment of the salary for the requisite period. Thus, the petitioner has no justifiable cause for grievance on this account.

(15) Mr. Jindal referred to the decision in *Mohan Singh v. State of Haryana* (1) to support his argument.

(16) The decision in *Mohan Singh's* case cannot be considered as good law in view of the subsequent decision of the Full Bench in *Punjab State vs. Mohan Singh Malhi*, (2) which was ultimately affirmed by the Apex Court in *Shri Mohan Singh Malhi v. State of Punjab* (3).

(17) Thus, even the second question is answered against the petitioner.

(18) In the petition, a challenge has been made even to the adverse remarks which had been conveyed to the petitioner. However, at the hearing, no argument was addressed in this behalf.

(19) No other point was raised.

(20) In view of the above, both the questions are answered against the petitioner. There is no merit in the petition. It is, consequently, dismissed. However, we make no order as to costs.

---

**R.N.R.**

---

(1) 1968 S.L.R. 461

(2) 1970 S.L.R. 194

(3) 1976 (2) S.L.R. 12