

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4784 OF 2007

Punjab State Power Corporation Ltd. & Ors. ... Appellants

Versus

Hari Kishan Verma

...Respondent

J U D G M E N T

Dipak Misra, J.

The singular question that arises for consideration in this appeal is whether the order passed by the Punjab State Power Corporation Ltd. [erstwhile, the Punjab State Electricity Board (PSEB)], the first appellant herein, compulsorily retiring the respondent on attaining the age of 55 years is in accordance with Punjab State Electricity Board Service (Premature Retirement) Regulation 1982 (for short “the Regulation”) is

sustainable in law or is it vulnerable being *ex facie* stigmatic.

2. The factual score as depicted is that the respondent joined the services of the PSEB as a lineman on 6.2.1969. He was promoted to the post of Junior Engineer on 4.12.1973 and while holding the post of Junior Engineer in a disciplinary proceeding he was censured on 29.2.1988. In the year 1992 another disciplinary proceeding was initiated against him and he was visited with the punishment of stoppage of two annual increments without cumulative effect under Regulation 5(4) of Punjab State Electricity Board (Punishment & Appeal) Regulation, 1971. He was also visited with stoppage of two increments with cumulative effect on 5.8.1993 in another disciplinary proceeding.

3. As the factual matrix would unroll the respondent attained the age of 55 years on 19.4.2003, his date of birth being 20.04.1948. A High Empowered Integrity Committee (HEIC) was set up for screening the case of respondent for his retention in service beyond the age of 55 years. As per the regulations his case was considered by HEIC on 17.02.2004 and the committee after taking note of entire service record, the disciplinary proceedings initiated against him and the punishment imposed,

his inefficiency in service and the confidential reports from 1992-2003, recommended his case for premature retirement and accordingly an order dated 19.02.2004 was passed by the Chief Engineer.

4. Being dissatisfied with the aforesaid order the respondent filed Civil Writ Petition No.12902/2004 in the High Court of Punjab and Haryana at Chandigarh assailing the same on the fundamental ground that the order is punitive and stigmatic in character as it entails penal consequences and, hence, it was legally non-substantiable. The High Court reproduced the order of compulsory retirement, placed reliance on the order passed in Civil Appeal No. 3048 of 2000 titled ***R.K. Panjetha v. Haryana Vidyut Prasaran Nigam Ltd. & Another***¹ and after quoting a passage from the said order opined that the case of the respondent is covered by the order passed by this Court, eventually treated the order to be stigmatic and quashed it.

5. We have heard Ms. Jayshree Anand, learned counsel for the appellants and Ms. Rekha Palli, learned counsel for the respondent. It is submitted by the learned counsel for the appellants that HEIC had perused all relevant records, mentioned the disciplinary proceedings and the punishment

¹ (2002) 10 SCC 590

imposed on the officials and appreciating the entire service record had recommended for passing of an order of compulsory retirement and there is nothing to suggest that the order is punitive or stigmatic and the High Court has erroneously placed reliance on the order passed by this Court in ***R.K. Panjetha's case*** and set aside the order of compulsory retirement which really cannot withstand scrutiny. It is her further submission that when such an order is passed in accordance with regulations it is purely a simple compulsory retirement on the basis of assessment after attaining the requisite age by an employee and in the absence of anything stated in the order, the High Court could not have treated the same as stained.

6. Ms. Palli, learned counsel appearing for the respondent, in her turn, would contend that when the order expressly uses certain kind of language from which it becomes clear that it is stigmatic and hence, it loses the flavour of compulsory retirement which is passed under the regulations and, therefore, the High Court is justified in treating the same as punitive. It is also argued that despite the imposition of punishment he had been promoted to the post of Additional Assistant Engineer on 4.11.1999 and hence, his post prior to the said date should be

regarded to have been washed off. Additionally, it is canvassed by her, as one of the punishments has been taken into consideration wherein the respondent has been exonerated and, therefore, the order of compulsory retirement is otherwise flawed or faulted.

7. To appreciate the contending proponentes, it is necessary to reproduce the order of compulsory retirement passed by the PSEB. It reads as follows:-

“PUNJAB STATE ELECTRICITY BOARD

Office of Chief Engineer (South) Punjab State
Electricity Board, Patiala

Office Order No. 166

Dated 19.02.2004

Whereas Sh. Hari Krishan Verma JE-1 presently posted under Nabha Division Punjab State Electricity Board Nabha under Patiala has attained the age of 55 years on 19.04.2003 because his date of birth is 20.04.1948.

Whereas as per Punjab State Electricity Board service premature regulation the case Sh. Hari Krishan Verma JE-I was considered in the meeting held on 17.02.2004 by the HEIC which has been set up for screening the cases of Sh. Hari Krishan Verma JE-I for retention's in service beyond the age of 55 years. The committee took note of disciplinary cases personal records and his reputation. The reports of disciplinary cases indicates the Sh. Hari Krishan Verma JE-I was served with the sheet/SCN, where in his three annual increments with future effect vide office order no. 27 dated 11.01.1983 two AGI without

future effect vide office order no. 151 dated 09.03.1992, two AGI without future effect vide office order no. 697 dated 05.08.1993, two AGI without future effect vide office order no. 858 dated 01.10.1999 two times censured vide office order no. 154 dated 29.02.1988, office order no. 566 dated 08.08.2003.

The ACR as well as disciplinary cases clearly shows that Sh. Hari Krishan Verma JE-I has a poor record as well as poor performances and inefficient and not fit for retention in the service in Punjab State Electricity Board.

HEIC recommended that the official Sh. Hari Krishan Verma JE-I might be premature retired. The Chairman of HEIC in its meeting held on 17.02.2004 approved the recommendations.

The matter was further considered by the competent authority as per instruction circulated by the Punjab State Electricity Board, took the note of recommendation of HEIC, service record general reputation as well as inefficiency of the official Sh. Hari Krishan Verma JE-I and decided to prematurely retire Sh. Hari Krishan Verma JE-I from the Punjab State Electricity Board service w.e.f 19.02.2004 without prejudice to the outcome of the pending disciplinary cases against him. The necessity for the personal hearing was not felt necessary because of his record available was sufficient for this decision.

And as such Sh. Hari Krishan Verma JE-I is required to be prematurely retired from the service from the Punjab State Electricity Board w.e.f. 19.02.2004 as per Punjab State Electricity Board service (Premature) regulation to be read with amendments issued from time to time.

And whereas it is not feasible in the public interest to give three month notice in terms of regulations Punjab State Electricity Board service

(Premature retirement) regulation 1982 and it has been decided by the competent authority to pay three months pay and allowances in advance in lieu of notice period.

Accordingly a cheque no. 499574 dated 19.02.2004 amounting to Rs. 62288.00 in favour of office Sh. Hari Krishan Verma JE-I is hereby sent to official in lieu of pay and allowances of three months notice period.

Now therefore, the competent authority in exercise of powers to order that Sh. Hari Krishan Verma JE-I is hereby prematurely retired from the service of board w.e.f. 19.02.2004 in terms of Punjab State Electricity Board (premature retirement) regulation to be read with amendments issued from time to time without prejudice to the outcome of pending disciplinary cases.

Chief Engineer (South)
Punjab State Electricity Board Patiala,

Endst no. 2025

Dated 19.02.2004

A copy of the above is forwarded to senior Xen Nabha Div Punjab State Electricity Board Patiala to relieve Sh. Hari Krishan Verma JE-I w.e.f. 19.02.2004. A cheque no. 499574 dated 19.02.2004 amounting to Rs.62283.00 in lieu of pay and allowances for three months notice period and office order no. 166 dated 19.02.2004 be delivered to the official Sh. Hari Krishan Verma JE-I and dated acknowledgement duly signed by him on full-scape paper be sent to this office for record.

Chief Engineer (South)
Punjab State Electricity Board Patiala,

Endst no. 2025

Dated 19.02.2004

A copy of the above is forwarded to Sh. Hari Krishan Verma JE-I office of SDO Punjab State Electricity Board Sub Division for information. He should treat him self relieved from service w.e.f. 19.02.2004.

Chief Engineer (South)
Punjab State Electricity Board Patiala”

8. As stated earlier the High Court has placed reliance on ***R.K. Panjetha's case***. We are disposed to think that first we must reproduce the paragraph in which the High Court has stated how the order is stigmatic:-

“On careful consideration of the facts of the case, we are of the view that the impugned order Annexure P-1 is stigmatic and punitive in nature and therefore, it deserves to be quashed in the light of the observations made by the Apex Court in *R.K. Panjeta's case* (Supra). We are thus, satisfied that case of the present petitioner is squarely covered by the aforesaid judgment of the Apex Court.”

9. Keeping in view what has been stated in the aforesaid paragraph, it becomes imperative to refer to the decision in ***R.K. Panjetha's*** case. In the said case, while passing the order of compulsory retirement, PSEB took note of the disciplinary proceedings initiated against the appellant therein, various punishment imposed and pendency of chargesheet and thereafter stated thus:-

“The Committee also noted that Charge-sheet No.

105/Conf.2902 dated 5-9-1997 is pending relating to the period while he remained posted as Executive Engineer (OP), Division Bahadurgarh for the reasons that he has violated the instructions and issued 217 works orders amounting to Rs.20,28,243 for maintenance of work at Bahadurgarh such as dismantlement of distribution line, re-erection of lines, resagging of conductor and relaying of service cables. Whereas private labour was to be engaged only after fully deploying the departmental labour and in no case the maintenance was to be entrusted to the contractor labour, whereas the officer engaged the private contractor amounting to Rs.1606 against 23 works orders for construction works by taking excessive measurement through technical subordinates.

And found that Shri R.K. Panjetha is unfit to be allowed extension beyond the age of 50 years.”

10. On a close scrutiny of the aforesaid order it is quite clear that it has a different contour. First, it refers to the chargesheet pending against the incumbent and second, there is also reference putting responsibility on him for making excess payment to the private contractors and also taking excess measurement through technical subordinates. The allegations graphically reveal violation of instructions. There can be no shadow of doubt such an order has been held by a two-Judge Bench to be stigmatic.

11. Coming to the case at hand, as we find from the order it has reflected on the order passed in the past, taken note of the ACRs and opined that the respondent was unfit and accordingly

the order of compulsory retirement came to be issued. In this backdrop the question that has emerged for consideration whether such an order can be treated as stigmatic. It is well settled in law that the order of compulsory retirement is not a punishment. It also does not cast a stigma. But when by any incorporation or some reference or otherwise some stigma is attached to the order of compulsory retirement, it would be treated as an order of punishment, falling in a different compartment altogether losing its features of order of compulsory retirement under the Rules or Regulations under which he is not allowed to continue after attaining a particular age.

12. Prior to dwelling upon the issue whether the order passed in this case is stigmatic or not, we think it appropriate to deal with the contention whether the past entries prior the conferment of benefit of promotion have lost their significance and hence, the competent authority could not have relied upon the same while passing an order of compulsory retirement. There is no cavil over the fact that the respondent was extended the benefit of promotion to the higher post. The issue that has been raised by the learned counsel for the respondent is that

after the promotion the earlier adverse entries totally lost their signification.

13. To appreciate the said submission, we think it appropriate to refer to certain authorities in the field.

14. In ***State of Orissa v. Ram Chandra Das***² a three-Judge Bench has emphatically held that object behind compulsory retirement is public interest and, therefore, even if an employee has been subsequently promoted, the previous entries do not melt into insignificance. To quote:-

“7. ... Merely because a promotion has been given even after adverse entries were made, cannot be a ground to note that compulsory retirement of the government servant could not be ordered. The evidence does not become inadmissible or irrelevant as opined by the Tribunal. What would be relevant is whether upon that state of record as a reasonable prudent man would the Government or competent officer reach that decision. We find that selfsame material after promotion may not be taken into consideration only to deny him further promotion, if any. But that material undoubtedly would be available to the Government to consider the overall expediency or necessity to continue the government servant in service after he attained the required length of service or qualified period of service for pension.”

15. The aforesaid dictum has been approved and followed in ***State of Gujarat v. Umedbhai M. Patel***³, wherein emphasis has been laid on the factum that entire service record of the

2 (1996) 5 SCC 331

3 (2001) 3 SCC 314

government servant is to be examined. Same principle has also been followed in another three-Judge Bench decision in ***Pyare Mohan Lal v. State of Jharkhand and Others***⁴. Slightly recently, a Division Bench in ***Rajasthan SRTC v. Babulal Jangir***⁵, after discussing number of authorities, has held thus:-

“22. It clearly follows from the above that the clarification given by a two-Judge Bench judgment in *Badrinath v. State of Tamil Nadu*⁶ is not correct and the observations of this Court in *State of Punjab v. Gurdas Singh*⁷ to the effect that the adverse entries prior to the promotion or crossing of efficiency bar or picking up higher rank are not wiped off and can be taken into account while considering the overall performance of the employee when it comes to the consideration of case of that employee for premature retirement.

23. The principle of law which is clarified and stands crystallised after the judgment in *Pyare Mohan Lal v. State of Jharkhand* is that after the promotion of an employee the adverse entries prior thereto would have no relevance and can be treated as wiped off when the case of the government employee is to be considered for further promotion. However, this “washed-off theory” will have no application when the case of an employee is being assessed to determine whether he is fit to be retained in service or requires to be given compulsory retirement. The rationale given is that since such an assessment is based on “entire service record”, there is no question of not taking into consideration the earlier old adverse entries or record of the old period. We may hasten to add that while such a record can be taken into consideration, at the same time, the service record of the immediate past period will have to be given due credence and

4 (2010) 10 SCC 693

5 (2013) 10 SCC 551

6 (2000) 8 SCC 395

7 (1998) 4 SCC 92

weightage. For example, as against some very old adverse entries where the immediate past record shows exemplary performance, ignoring such a record of recent past and acting only on the basis of old adverse entries, to retire a person will be a clear example of arbitrary exercise of power. However, if old record pertains to integrity of a person then that may be sufficient to justify the order of premature retirement of the government servant.”

16. In view of the aforesaid statement of law, there can be no iota of doubt that the entire record can be scrutinised by the employer to adjudge the justification of continuance of the employee after reaching a particular age as contemplated in the Regulations. This being the position of law, we have no hesitation in holding that the submission of Ms. Rekha Palli is sans substance.

17. The next issue, which is the core one, whether the order passed by the employer is stigmatic so as to lose the flavour of compulsory retirement which does not have the attributes of punishment. Learned counsel for the appellants would contend that whatever has been stated in the order, by no stretch of imagination, can be said that it would constitute *ex facie* stigmatic. Per contra, learned counsel for the respondent would give emphasis on the words “reputation”, “general reputation”, “inefficiency” and “not fit”. To bolster her submission, she has

drawn inspiration from the pronouncement in ***Jaswantsingh Pratapsingh Jadeja v. Rajkot Municipal Corporation***⁸. In the said case, the appellant, while on probation had got extensions in respect of probation and he was served a show cause notice to explain on the alleged misconduct of remaining absent from duty without leave. After the cause was shown by him, the inquiry that was initiated against him was not brought to its logical end and his period of probation was extended and after some time, he was discharged. This Court reproduced the order of discharge and after analysing many an aspect, came to hold as follows:-

“If the satisfaction of the employer rested on the unsatisfactory performance on the part of the appellant, the matter might have been different, but in that case, from the impugned order it is evident that it was not the unsatisfactory nature and character of his performance only which was taken into consideration but series of his acts as well, misconduct on his part had also been taken into consideration therefor. It is one thing to say that he was found unsuitable for a job but it is another thing to say that he was said to have committed some misconduct.”

Thus, it is limpid that the language employed in the said case is quite different and hence, the decision is distinguishable.

18. In the present case, on an anxious and careful scrutiny of the words used in the order, there can be no quarrel over the fact

that previous misconduct and the punishment visited to the respondent have been stated. The decision-making process of the Committee has been reflected in the order. It includes the disciplinary proceedings, personal records and the reputation. The reputation here has insegregable nexus, as is seen, with his ACRs and poor performance. The use of words like “inefficiency” and “not fit” cannot be put on a pedestal to confer on them such status so that they convey the meaning of “stigmatic”. It cannot be remotely so. On the contrary, the order in **R.K. Panjetha** (supra) was *ex facie* stigmatic. It is worth noting that the learned Single Judge has drawn a parity solely on the ground that the relationship between an employer and employee is common and the employer PSEB has passed the order on two different occasions in respect of two different employees. Their status is absolutely irrelevant for the purpose of determination of the controversy in question. It is the nature of order which will judge its character, namely, simpliciter or stigmatic. The learned counsel for the respondent has canvassed with immense enthusiasm that one of the punishment has been set aside. Be that as it may, in such a case it will not make any difference. It cannot be said there is non application of mind. The entire

record has been scrutinized, valid punishments have been taken into consideration and the ACRs have been critically scrutinized. The order, according to us, dwells totally in a different realm than the order passed in ***R.K. Panjetha's*** case. The distinction is obvious and same has been obviously missed by the High Court, which makes its order fallacious.

19. Resultantly, the appeal is allowed and the order passed by the High Court in Civil Writ Petition No. 12902/2004 is set aside. The respondent shall reap all the benefits of compulsory retirement and be paid all his dues, if not paid, within four weeks hence. There shall be no order as to costs.

.....J.
[Dipak Misra]

....., J.
[Prafulla C. Pant]

New Delhi
March 27, 2015

ITEM NO.1A
(For Judgment)

COURT NO.5

SECTION IV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.4784 of 2007

PUNJAB STATE POWER CORPN. LTD.
& ORS.

Appellant(s)

VERSUS

HARI KISHAN VERMA

Respondent(s)

Date : 27/03/2015 This appeal was called on for pronouncement of
Judgment today.

For Appellant(s)

Mr. Kuldip Singh, AOR

For Respondent(s)

Mrs. Rekha Palli, AOR

Hon'ble Mr. Justice Dipak Misra, pronounced the
judgment of the Bench comprising His Lordship and Hon'ble
Mr. Justice Prafulla C. Pant.

The appeal is allowed in terms of the signed
reportable judgment.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Court Master

(Signed reportable judgment is placed on the file)