

CASE NO.:
Appeal (civil) 3059 of 2000

PETITIONER:
PARBODH SAGAR

RESPONDENT:
PUNJAB STATE ELECTRICITY BOARD AND ORS.

DATE OF JUDGMENT: 01/05/2000

BENCH:
S.B. MAJMUDAR & UMESH C. BANERJEE

JUDGMENT:
JUDGMENT

2000 (3) SCR 866

The Judgment of the Court was delivered by BANERJEE, J. Leave granted.

The challenge in this appeal is a judgment of the Punjab & Haryana High Court rejecting a writ petition against an order of pre mature retirement on the attainment of the age of 50 years.

The challenge, however, is based on two principle counts - on the first it is the issue of malafides and on the second it is the uncommunicated adverse reports: undoubtedly both these counts are rather serious in nature and success in regard to any one of the counts would entitle the appellant herein to appropriate relief. Before, however, embarking on to a detail discussion pertaining to the above-noted twin issues the factual backdrop ought to be adverted at this juncture.

The petitioner being a Chartered Accountant joined the Respondent Electricity Board as an Accounts Officer on 15th April, 1988 and was promoted to the post of Senior Accounts Officer retrospectively with effect from 29th January, 1989 in pursuance of an order passed on 21st August, 1990. The Respondent No. 3 happens to be the Member, Finance and Accounts while the Respondent No. 4 the Chief Auditor of the Board. It is, however, on record that both the above named two respondents have retired from the services of the Board. Whereas it is the grievance of the appellant that the appellant petitioner has been discriminated against Shri V.K. Verma under the machination of Shri T.S. Gujral being the Respondent No. 3 herein, the respondents contended that by reason of systematic failure to discharge his duties in a manner as was expected of the petitioner and there being no sign of any improvement at any stage later, question of any machination on the part of either of the Respondents named above, does not arise. A specific case as made out by the Appellant is that the petitioner has been regularly and successively victimised by Respondent-Board at the behest of Shri T.S. Gujral-Respondent No.3 and Shri V.K. Verma-Respondent No. 4 herein. The petitioner contended that he has been ignored for promotion first as a Deputy Chief Accounts Officer and thereafter as Chief Accounts Officer despite categorical directions issued by courts while proceeding to allow the writ petition instituted by the petitioner and it is this state of affairs which cannot but, as contended by the learned Advocate for the petitioner, be ascribed to be malafide on the part of the respondents which culminated in an order of premature retirement in April, 1988. The respondent, however, disputed any victimisation or discrimination and in this perspective placed strong reliance on the Annual Confidential Roll of the appellant herein. For convenience sake, however, the Confidential Roll in a tabular form is set out herein below:

Year	Remarks	Integrity
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01.04.87 to 31.12.87	Good	Honest
01.01.88 to 31.03.88	Average	Honest
01.04.88 to 19.08.88	Average	Honest 22.08.88
to 27.12.88	Average	Honest
28.12.88 to 05.05.89 on earned leave		
08.05.89 to 06.10.89	Average	Good
12.10.89 to 31.03.90	Good	Honest
30.04.90 to 31.03.91	Average	Honest
01.04.91 to 31.03.92	Average	Honest
01.04.91 to 31.03.92	Average	Honest
01.04.92 to 31.03.93	Average	Honest
Two increments ordered to be stopped with Future effect vide 0/0 No.61/DSI/D-664 dt. 21.1.94		
01.04.93 to 07.07.93	Average	Honest
13.07.93 to 31.03.94	Period of Reporting Officers less than three months/on earned leave.	
01.04.94 to 02.10.94	Average	Honest 03.10.94
to 31.03.95	Just Average	Honest
26.06.95 to 31.12.95	Poor with adverse	As he is not
remarks (copy of work, 20.3.96 Enclosed). work/duty	taking interest in memo No. 3653 dt. he cannot be Said to be honest to His	the office
01.01.96 to 31.03.96	Period of Reporting Officer is less than three months.	
The Officer was 'Censured' vide 0/0 No. 85/DS. ln./D-31 dt. 27.11.96.		
01.04.96 to 31.03.97	Average	Honest.
01.04.97 to 31.03.98	ACR not yet received.	

The performance of the petitioner as would appear from Annual Confidential Reports as above, though originally 'Good' from the year 1987 to 1990 but it subsequently deteriorated to only 'Average' and 'Just Average' and lastly in 1995 the petitioner was given the rank of 'Poor': the Petitioner's counterpart, however, by reason of the factum of securing better percentages and by reason of their sincere devotion to duty have been able to obtain the rating as 'Good' and 'Very good' and resultantly thus, persons having 'Good' and 'Very good' remarks were promoted at the lime of placement: Question of there being any discrimination, the respondents contended, thus does not and cannot arise.

Be it place on record that during the course of hearing strenuous submissions have been made as regards the authority of the person passing the order of compulsory retirement. It is useful to note that the Punjab State Electricity Board Services (Pre-mature Retirement) Regulations, 1982

has been taken recourse by the Board in support of the order impugned before the High Court since the order itself records that the competent authority has decided in public interest to order pre-mature retirement in pursuance of Regulation 3 (i) of the Regulations of 1982. It is on this count, however, the learned Advocate appearing in support of the Appeal contended that the Member/Finance & Accounts had no authority whatsoever to act as the competent authority and to pass the order on the date of the issuance of the order. Strong reliance was placed on the Office Order dated 19th August, 1997, wherein the Chairman of the State Electricity Board in exercise of power in terms of Rule 14 of the Punjab State Electricity Board (Chairman's Powers) Rules 1959 prescribed the functions and duties amongst the whole time members of the Board including Shri T.S. Gujral. For convenience sake, the allocation of business of Shri T.S. Gujral, being the Member/Finance & Accounts be noted hereinbelow:

"Shri T.S. Gujral, Member/Finance & Accounts.

- (1) Finance & Budget
- (2) Revenue & Expenditure
- (3) Accounts & Audit
- (4) Banking arrangements.
- (5) Loans/borrowings, investments and reserves
- (6) Disciplinary Cases of Dy. CAs, Dy. FAs, Senior AOs and AOs.
- (7) Appeals of Non-gazetted Estt. i.e. ARAs/IAs/Divisional Accountants/Revenue Superintendent/SAS Accountants etc. whose appointing & punishing authority is CAO/CA.
- (8) Matters relating to Chief Engineer/TA& OI.

Relying on the aforesaid allocation it has been contended in support of the Appeal that item No. 7 provides for Appeal of Non-Gazetted officers whose appointing and functioning authority is CAO/CA and since the Appellant is a Deputy Chief Auditor, question of the Member/Finance & Accounts, passing an order of premature retirement does not arise. It is needless to note, however, that the petitioner being at the relevant time, the Deputy Chief Auditors and since in terms of paragraph 6 of the allocation (as above), all disciplinary cases of Dy. Chief Auditors, Dy. Finance Advisors, Senior AOs and AOs ought to be considered by the Member/Finance & Accounts and Shri T.S. Gujral being the Member/Finance & Accounts, question of any unauthorised exercise of power does not and cannot arise. It is pertinent to note that the order itself records, the consideration of the petitioner's case by the High Empowered Integrity Committee and the observations of the Committee are somewhat significant, as such the same are set out herein below :

"It is observed that during the last 10 years, his ACRs for a short period of little more than a year viz. 1.4.87 to 31.12.87 (9 months) and 12.10.89 to 31.3.90 (five and half months) are Good and rest are average, or poor. During the period 26.6.95 to 31.12.95 when his over all rating is poor with adverse remarks there is another remark in the honesty column "that he is not taking interest in the office work and as such he cannot be said to be honest to his work/duty. The officer has not shown any improvement and instead his confidential record is on the decline.

In addition to above for the serious omissions and commissions made by the officer in the performance of his duties, he was issued charge-sheet and or its finalisation, he was given a punishment of stoppage of two annual increments with cumulative effect vide office order No. 61/DSS-I/D-664 dated 21.1.94. This punishment has been upheld even by the Punjab & Haryana

High Court. In another case of misconduct of using derogatory remarks against his controlling officer, he was issued a letter of advice on 2.1.96. Still in another case of absence from duty without sanction of leave, he was issued a show cause notice and was censured vide O/O No. 85/DS-1/D-31, dated 27.11.96.

Keeping in view the over all service record/ACR record of the officer which does not show any improvement during the last 10 years, the HEIC concludes that it is not in public interest to keep such type of officers in the service of the Board. The Committee, therefore recommends to prematurely retire the officer as per PSEB Service (Premature Retirement) Regulations, 1982 as amended from time to time by paying him salary for 3 months in lieu of the notice period required."

Be it noted that it is on the recommendations of the HCIC that the appellant was retired pre-maturely in terms of the Regulations of the Prema-ture Retirement.

On the wake of the aforesaid, question of acting beyond the jurisdiction or without jurisdiction in so far as the issuance of the order by Shri T.S. Gujral does not and cannot arise. Paragraph 6 of the allocation amply authorises Shri Gujral to exercise his powers thereunder and to pass appropriate orders in regard thereto on the basis of the recommendations of the High Power Committee. We do not see any infraction of law neither there is any exercise of power in contravention of rules or regulation or authorisation and in that view of the matter we are unable to record our concurrence with the submissions of the Appellant.

Having dealt with the issue of authority as above, it would be convenient to advert to the two specific counts of challenge as noticed above. The basis of this charge is malice which in common acceptation, means and implies spite or ill will and the same is a question of fact.

On the score malafides, the High Court has the following to observe:

"Overall record of the petitioner has been considered where it has been found that almost the entire record of the petitioner for the last ten years was average and there was adverse remarks contained in the confidential report for the year 1995. Not only that the petitioner was issued a charge sheet and was given a punishment of stoppage of two increments with cumulative effect, the said order was contested by the petitioner in the High Court but without any success. In another case of misconduct of using derogatory remarks against the controlling officer, the petitioner was issued letter of advice and yet in another case of absence from duty without sanction of leave, the petitioner after issuing a show cause notice was censured. The impugned order has been passed on 6.4.1998 as even as per the showing of the petitioner only three reports from 1987 to 1996 are good. Thereafter it is a steady decline in the work and conduct of the petitioner. Right from 1991 upto 1996-97, he has been shown just average or below average. In so far as adverse remarks recorded in the confidential report of the year 1995 are concerned, we would like to mention here that the petitioner challenged the said remarks by way of writ petition which earlier came up for disposal before this Court and the same was withdrawn so as to approach the department. It is clear that the Court had not found any substance in the contentions raised by the petitioner in the writ petition and, therefore, the writ petition was withdrawn. The order passed in the aforesaid writ petition runs thus :-

"Learned counsel for the petitioner states that this writ petition may be dismissed as withdrawn with liberty to the petitioner to approach the authority on administrative side. Permitted to do so. Writ Petition is dismissed as withdrawn."

The petitioner thereafter filed representation/appeal but the same were rejected by the Board on 12.8.1997 (Annexure P-8). A reading of order of

rejection of the representation would make it out that the petitioner had even earlier filed representation on 12.4.1996 against the adverse remarks contained in the annual confidential report for the year 1995 and the same was considered and rejected vide orders dated 19.11.1996. It appears that the petitioner had concealed this fact while withdrawing the earlier writ petition seeking permission to file a representation. Had he disclosed this fact to the Court, in all probability his writ petition would have been decided and not permitted to be withdrawn. Be that as it may, the fact remains that the representation of the petitioner against adverse remarks contained in his confidential report for the year 1995 stood rejected on 19.11.1996. After he sought permission to move on the administrative side and file yet another representation, the same was also rejected vide Annexure P-8 dated 12.8.1997. The petitioner has also alleged malafides but considering the fact that his reports for the last ten years as per the impugned order Annexure P-18 are all average but for one year and as per his own showing at page 4 his record is only good for three years and thereafter there is decline in his work and conduct throughout upto the date when the impugned order was passed, this Court cannot even prima facie come to a conclusion that average reports given to the petitioner right from 1990-91 uptill date were actuated on account of malafides." (Emphasis supplied)

The narration above, though longish in nature, has been reproduced for the sake of brevity, as otherwise, this Court would have to deal with rather longish submission appropriately. The factum of initiation of the Writ Petitions is well pronounced in the narration above, but one other factor which the High Court has thought it fit to omit, but in our view ought to be noted with certain amount of detail by reason of the specific conduct of the Writ Petitioner-Appellant. Not only there has been a steady decline in progress as would be appearing from the Annual Confidential Report but the Petitioner has indulged in litigation against the Company one after the other, as detailed hereinbelow, without any hesitation whatsoever though, however, without any success in order to bring home the charge of malafides against the Respondent-Corporation.

(a) The Civil Writ Petition No. 12733 of 1989 was filed immediately after issuance of the charges as regards the making of forge entry relating to misappropriation of a sum of Rs. 58,500 on 15th September, 1989. The statement of allegation was challenged by the Petitioner (during the pendency of the Civil Writ Petition under discussion). A preliminary inquiry was completed and upon consideration of the reply, the competent authority ordered a regular inquiry and accordingly an Enquiry Officer was appointed and a regular Enquiry was conducted. Enquiry Officer, as appears from the records, duly submitted his report on 1st March, 1993 and a copy of which was given to the Petitioner-appellant herein. The Petitioner, however, did not take any further step against the enquiry Report, by reason wherefor the competent authority upon consideration of all the aspects of the case ordered stoppage of two annual increments of the Petitioner-appellant with future effect. The order as passed by the competent authority was subject to the final decision of the pending writ petition and during the course of hearing of the writ petition, however, before the Court, the petitioner-appellant withdrew the petition with liberty to file a fresh writ petition.

(b) The Writ Petition being Writ Petition No. 9940 of 1995 was filed by the petitioner-appellant challenging the Enquiry Report, as above, however, was dismissed by the High Court vide its order dated 31st March, 1997.

(c) The petitioner-appellant also filed the Writ Petition being No. 16227 of 1989 challenging the selection and appointment of Shri T.S. Gujral being the Respondent No. 3 herein, as the Financial Advisor by the Board through direct recruitment. The High Court, however, was pleased to dismiss the same vide its order dated 9th January, 1991.

(d) By the other writ petition being Writ Petition No.8215 of 1993 the

Petitioner-appellant herein prayed for a direction that the Respondent-Board ought to consider him for promotion as Financial Advisor, which post had fallen vacant on appointment of Shri T.S. Gujral as Member/F & A on 22.6.1993. The aforesaid Writ Petition was also dismissed by the High Court vide its order dated 8.9.93.

(e) By another writ petition being No. 528 of 1994, the Petitioner challenged the action of the Board for re-advertising the post of Financial Advisor, be it noted that the petitioner had applied for the post of Financial Advisor, the High Court, however, was pleased to dismiss the writ petition vide its order dated. 31.3.1997.

(f) The other writ petition filed by petitioner being No. 3367 of 1989 contained a challenge in regard to the promotion of Shri K.S. Bahri and Shri Gajender Singh. The High Court, however, by an order dated 31.3.1997 allowed the writ petition with a direction that the petitioner's claim for promotion to the post of Deputy Chief Accounts Officer, be considered with effect from the date Respondent Nos. 4 and 5 therein were promoted i.e. December 27, 1988 and in the event, the petitioner being found suitable for promotion, consequential relief shall follow.

Incidentally, be it noted that the Board vide its order dated 23.5.1997 and 7.10.1997 granted a deemed date of promotion to the post of Deputy Chief Accounts Officer with effect from 27th December, 1988 - obviously this grant of promotion runs counter to the petitioner's submission pertaining to malafides or a deliberate attempt to whittle down the capacity of the petitioner to work.

(g) The petitioner moved yet another writ petition being Writ Petition No. 8638 of 1995 wherein the petitioner-appellant challenged the promotion of Shri K.R. Rabra as Chief Accounts Officer (Revenue) on the ground that Shri Rabra was junior to the petitioner-appellant herein both as an Accounts Officer or as the Deputy Chief Accounts Officer. Upon hearing the matter, the High Court, however, allowed the petition and directed the respondents to consider the petitioner's claim for promotion with effect from the date the persons junior to him were promoted. The Board, however, considered the matter in terms of the direction of the High Court and it was observed :

"that the post of Chief Accounts Officer/F.A. & C.A.O. are selection posts and as such these are filled up only on merit. The service and ACR records of Shri Prabodh Sagar who is senior to Shri K.R. Rabra and Shri S.C. Seth as Deputy C.A.O. was considered and it was found that even if the effect of punishment to stoppage two increments with cumulative effect ordered vide Office Order No. 61/DSI-D-664 dated 21.1.94 is not taken cognizance of as per High Court judgment, he can still not be promoted as his ACR record for the last many years is only Average and is not upto the required standard for a selection post. On the other hand, the ACR record of other officers is Good/ Very Good and is distinctly better than that of Shri Prabodh Sagar. Even subsequently Shri Prabodh Sagar has not shown any improvement as his next year ACR of 1995-96 is of 'Poor' rating. Accordingly, Shri Prabodh Sagar is not found fit for promotion to the selection post of Chief Accounts Officer (Revenue)/FA & CAO."

(h) The petitioner thereafter moved another writ petition (No. 8638 of 1995) but since the same are pending, we do not wish to record any observations pertaining thereto and the issues therein are left open.

(i) Subsequently, the petitioner moved another Writ Petition being No. 1280 of 1997 wherein the challenge was in regard to adverse remarks in the Annual Confidential Roll for the periods From June, 1985 to December, 1985. The Writ Petition, however, met the same fate and was dismissed by the High Court on 20th January, 1997.

(j) There is yet another writ petition filed being Writ Petition No. 3935 of 1998 wherein the petitioner again challenged the promotion of Shri K.R.

Rabra as Chief Accounts Officer/Revenue and the promotion of Shri S.C. Seth as Financial Advisor and Chief Accounts Officer, the same is still now, however, is pending.

As noted above, the High Court has not highlighted this aspect of the matter, though the same were brought to the notice of the High Court, we do not know for that reasons, neither we intend to delve into it but the fact remains that the comment of the learned Advocate appearing for the Board during the course of hearing before his Court that the litigious spirit of the petitioner has, in fact, brought into effect the exercise of jurisdiction of the writ court to a ludicrous extent. We do find some justification in the criticism of the learned Advocate for the Board vis-a-vis the conduct of the Petitioner/ Appellant herein. The Petitioner has been, as noted above, from 1989 onwards engaged himself in the law courts rather than exerting himself in an effort to improve his capability as the employee of the Board so that the Board and the State obtain maximum benefit from out of the services of the petitioner-appellant but unfortunately his litigious spirit prevailed upon him and as noticed above we do find some justification as regards the comment made by the learned Advocate appearing for the Board. Malafides have been alleged against the statutory Board (Punjab State Electricity Board) but the contextual facts negates such an allegation. Incidentally, be it noted that the expression 'malafide' is not a meaningless Jargon and it has its proper connotation. Malice or malafides can only be appreciated from the records of the case in the facts of each case. There cannot possibly be any set guidelines in regard to the proof of malafides. Malafides, where it is alleged, depends upon its own facts and circumstances. We ourselves feel it expedient to record that the petitioner has become more a liability than an asset and in the event of there being such a situation vis-a-vis an employee, the employer will be within its liberty to take appropriate steps including the cessation of relationship between the employer and the employee. The service conditions of the Board's employees also provides for Voluntary Retirement, a person of the nature of the petitioner, as more fully detailed herein before, cannot possibly be given any redress against the order of the Board for Voluntary Retirement. There must be factual support pertaining to the allegations of malafides, unfortunately there is none. Mere user of the word 'malafide' by the petitioner would not by itself make the petition entertainable. The Court must scan the factual aspect and come to its own conclusion i.e. exactly what the High Court has done and that is the reason why the narration have been noted in this judgment in extenso. Tampering of the Annual Confidential Rolls have been alleged but there is. no evidence in regard thereto or even to link up the two private respondents therewith. While it is true that the earlier relationship between an employer and employee or between the employees was that of mutual trust, confidence or welfare, presently the situation in general stands polluted and may be even one degree higher than the pollution of the environment, but that does not, however, clothe the court to come to a conclusion of malafide without there being any basic evidence being made available to the court.

Punjab State Electricity Board Services (Premature Retirement) Regulations, 1982, has been taken recourse to by the Board and in particular, regulation 3(i)(e) which, in fact, provides an authority to the Board with an absolute right to retire an employee on the date on which he completes 25 years of service or attains 50 years of age upon, however, proper notice to that effect. The Board has, thus, an absolute power to retire an employee pre-maturely though, however, upon following the procedure set out in the rules and the same having been done, can it be said that the legal right of the petitioner stands violated - the answer cannot but be in the negative. The next question that automatically crops up is as to whether the formation of opinion has been, in accordance with public interest or not - the facts noted above depict evidence galore as regards the justification of formation of such an opinion.

On the facts narrated above, no reasonable man can come to a conclusion,

which may even be remotely different from that of the appropriate authority of the Board. A right has been conferred on to the Board to take steps in public interest and in the event the Court comes to a conclusion that a right has not been properly exercised, there would not have been any hesitation to strike down the action of the State Electricity Board, but in the contextual facts, we do not find any. There is available on record reasonings to the issue or the formation of opinion and the same cannot but in the contextual facts is in accordance with the need of the situation.

In that view of the matter, we are unable to accept the contentions in support of the Appeal. The Appeal, therefore, fails and is dismissed. No order as to costs.

JUDIS