

A

## GIAN SINGH MANN

v.

THE HIGH COURT OF PUNJAB AND HARYANA AND ANR.

B

August 22, 1980

[V. R. KRISHNA IYER, R. S. PATHAK, JJ.]

*Promotion—Belated claim after eleven years without valid explanation for delay cannot be entertained—Article 32 of the Constitution—Punjab Civil Service (Premature Retirement) Rules, 1975 do apply to the judicial service—Words and Phrases “public interest”—Whether the expression is vague in the context of Premature Retirement Rules of 1965—Withdrawal of judicial work as a policy decision of the High Court cannot be challenged—The concept of premature retirement does not fall within the scope of Article 311.*

C

The petitioner after holding a number of minor posts in the Punjab Government, was appointed to the Punjab Civil Service (Executive Branch) and subsequently in April 1965 to the Punjab Civil Service (Judicial Branch). From the post of Senior Subordinate-Judge he was reverted as Subordinate-Judge. Later, on 4th November, 1978, the High Court ordered withdrawal of all judicial work from the petitioner and on 8th November, 1978 a Judicial Officer was posted in his place. Subsequently he was prematurely retired with effect from 30th December, 1978 on which date he completed 25 years qualifying service for the purposes of Punjab Civil Service (Premature Retirement) Rules, 1975. The petitioner then filed a writ petition under Article 32 of the Constitution in the Supreme Court for the quashing of the orders dated 4th November, 1978 and 8th November, 1978, for his reappointment as Senior Subordinate-Judge and, thereafter, his promotion to the Selection Grade post of the Punjab Civil Service (Judicial Branch) with effect from 1st November, 1966 and his promotion to the Punjab Superior Judicial Service with effect from 1st November, 1967. He also claimed an injunction against his premature retirement from service, which relief was refused.

D

E

F

Dismissing the petition, the Court.

**HELD:** (1) Inordinate delay without valid explanation therefor to the claim for promotion itself is a valid ground for refusal of relief to a petitioner. Successive representations made by the petitioner during the period can hardly justify the delay. [509 F]

G

(2) The High Court was justified, as borne out by the records, not promoting the petitioner to a post in the Punjab Superior Judicial Service. The view of the High Court was neither unreasonable nor arbitrary. [510 A-B]

(3) The Punjab Civil Service (Premature Retirement) Rules, 1975 are applicable to judicial officers as well. These rules were finalised after consultation with the High Court and therefore, must be regarded as complying with Article 234 of the Constitution. Further, there is nothing in the Punjab Civil Service (Judicial Branch) which excludes the operation of the Retirement Rules. [510 E]

H

**A** (4) As a policy decision was taken by the High Court that all the work pending in the court of the Judicial Officers, in respect of whom a recommendation for premature retirement had been made to the Governor, should be withdrawn immediately pending a decision by the Government on such recommendation, it cannot be said that the withdrawal of judicial powers in the case of the petitioner was wrong. Even his premature retirement had been properly recommended as a policy matter under the Premature Retirement Rules. [510 G-H]

**B** (5) The expression "public interest" in the context of premature retirement has a well settled meaning. It refers to cases where the interest of public administration requires the retirement of a Government servant, who with the passage of years, has prematurely ceased to possess the standard of efficiency, competence and utility called for by the Government service to which he belongs. No stigma or implication of misbehaviour is intended and punishment is not the objective. [511 A-B]

**C** (6) There is no discrimination or violation of Articles 14, 16, 17 and 46 of the Constitution in view of the fact, as borne out by the records, that no other judicial officer whose record of service was inferior or equivalent to that of the petitioner had not been prematurely retired. [511 F, D]

**D** (7) The concept of premature retirement which has found expression in the Punjab Civil Service (Premature Retirement) Rules, 1975, does not fall within the scope of Article 311. No element of punishment is involved in premature retirement and Article 311 therefore is not attracted. [511 E]

ORIGINAL JURISDICTION: Writ Petition No. 4659 of 1979.

**E** (Under Article 32 of the Constitution.)

*G. S. Mann* for the Petitioner.

*Har Dev Singh* for the Respondents.

The Judgment of the Court was delivered by

**F** PATHAK, J.—The petitioner applies for relief under Article 32 of the Constitution against the orders of the High Court of Punjab and Haryana withdrawing judicial work assigned to him and thereafter prematurely retiring him from service.

**G** The petitioner, after holding a number of minor posts in the Punjab Government, was appointed to the Punjab Civil Service (Executive Branch) and subsequently in April, 1965 migrated to the Punjab Civil Service (Judicial Branch). He remained a Judicial Officer thereafter. The petitioner claims that he was entitled to promotion to a Selection Grade post in the Punjab Civil Service (Judicial Branch) and subsequently to a post in the Punjab Superior Judicial Service. The claim was based in both cases on the footing that a post had been reserved in the two services for a member of the Scheduled Castes. It was also asserted that the petitioner was entitled to the posts even

**H**

without reference to such reservation. The petitioner's case is that his service record was uniformly good, but as the High Court was actuated by *mala fides* it refused him promotion. He cites some instances to support the allegation of *mala fides*, including the circumstance that having been appointed to the post of Senior Subordinate Judge he was "reverted" as Subordinate Judge. On 4th November, 1978 the High Court ordered withdrawal of all judicial work from the petitioner and on 8th November, 1978 a Judicial Officer was posted in his place. The petitioner then filed the present writ petition for the quashing of the orders dated 4th November, 1978 and 8th November, 1978, for his reappointment as Senior Subordinate Judge and, thereafter, his promotion to the Selection Grade post of the Punjab Civil Service (Judicial Branch) with effect from 1st November, 1966 and his promotion to the Punjab Superior Judicial Service with effect from 1st November, 1967. He also claimed an injunction against his premature retirement from service. This Court entertained the writ petition but declined to grant interim relief. On 29th December, 1978 the Punjab Government, accepting the recommendation of the High Court, sanctioned the premature retirement of the petitioner from the Punjab Civil Service (Judicial Branch) with effect from 30th December, 1978 on which date the petitioner completed twenty five years qualifying service for the purposes of the Punjab Civil Service (Premature Retirement) Rules, 1965.

In regard to the petitioner's claim for promotion to the Selection Grade post in the Punjab Civil Service (Judicial Branch) with effect from 1st November, 1966, and to a post in the Punjab Superior Judicial Service with effect from 1st May, 1967 on the basis that a post had been reserved in each of the services for a member of the Scheduled Castes, it seems to us that the claim is grossly belated. The writ petition was filed in this Court in 1978, about eleven years after the dates from which the promotions are claimed. There is no valid explanation for the delay. That the petitioner was making successive representations during this period can hardly justify our overlooking the inordinate delay. Relief must be refused on that ground. It is not necessary, in the circumstances, to consider the further submission of the respondents that the provision on which the petitioner relies as the basis of his claim is concerned with the appointment only of members of the Scheduled Castes to posts in the Punjab Superior Judicial Service and not to recruitment by promotion to that service.

The petitioner has also claimed that even without the advantage of reservation he is entitled to promotion to a Selection Grade post in the Punjab Civil Service (Judicial Branch) and to a post in the Punjab

A

B

C

D

E

F

G

H

- A** Superior Judicial Service, and that the High Court should have promoted him accordingly. The position taken in reply by the High Court is that the character and quality of the petitioner's work and conduct, as evidenced by confidential reports pertaining to him, did not justify his promotion having regard to the guidelines laid down by the High Court. We have personally examined the records in respect of the petitioner, and we are unable to say that the view taken by the High Court is unreasonable or arbitrary.

- B**
- C** We may now examine the contention of the petitioner that the order of premature retirement is invalid. He has assailed the application of the Punjab Civil Service (Premature Retirement) Rules, 1975. He urges that as a Judicial Officer in the Punjab Civil Service (Judicial Branch) he is not governed by these rules. It is true that originally rule 7 of those Rules provided that they would not apply to persons belonging to any judicial service of the State. But by notification dated 18th August, 1975, \* \* \* in exercise of the powers under Article 234 of the Constitution besides other provisions, Rule 7 was substituted by another rule which did not exempt members of the judicial service from the operation of the Premature Retirement Rules. The Premature Retirement Rules were finalised after consultation with the High Court and, therefore, must be regarded as complying with Article 234 of the Constitution. There is nothing in the Punjab Civil Service (Judicial Branch) Rules which excludes the operation of the Retirement Rules. We are therefore, not satisfied that the Premature Retirement Rules cannot be applied to the case of the petitioner.

- D**
- E**
- F** It is urged by the petitioner that the High Court, when it applied the Premature Retirement Rules, did not consider the case of the petitioner on its facts. We have, however, the affidavit of the Registrar of the High Court which states that the case of the petitioner was considered by the High Court on 26th October, 1978, and having regard to the policy laid down by the High Court it was decided to recommend to the Government that the petitioner should be retired from service in the public interest with effect from 30th December, 1978, the date on which he completed twenty five years of qualifying service. At the same time it was decided as a matter of policy by the High Court that all the work pending in the court of a Judicial Officer, in respect of whom a recommendation for premature retirement had been made to the Government, should be withdrawn immediately pending a decision by the Government on such recommendation. It was in implementation of that policy that the order directing withdrawal of judicial work from the petitioner was made.

**G**

**H**

It is next contended by the petitioner that the expression "public interest" in the Premature Retirement Rules is vague and the rule is for that reason *ultra vires*. In our opinion, the expression in the context of premature retirement has a well settled meaning. It refers to cases where the interests of public administration require the retirement of a government servant who with the passage of years has prematurely ceased to possess the standard of efficiency, competence and utility called for by the government service to which he belongs. No stigma or implication of misbehaviour is intended, and punishment is not the objective. It appears to us to be beyond dispute that the decision of the High Court to recommend the premature retirement of the petitioner in the light of his record of service must be regarded as falling within the scope of the expression "public interest".

The petitioner also asserted that Judicial Officers whose record of service was inferior or equivalent to that of the petitioner have not been prematurely retired, and have been retained in service. The High Court, however, has stated that no such Subordinate Judge has been retained in service. We see no reason why the High Court should not be believed.

Another point raised by the petitioner is that Article 311 of the Constitution has been violated by the Premature Retirement Rules. We think that the concept of premature retirement which has found expression in the Rules does not fall within the scope of Article 311. As we have observed, no element of punishment is involved in premature retirement and it is not possible to say that Article 311 is attracted.

The petitioner has justified the filing of this writ petition under Article 32 of the Constitution on the plea that his fundamental rights under Articles 14, 16, 17 and 46 are violated. We find no substance at all in that plea.

The petitioner alleges *mala fides* on the part of the High Court. It is a reckless allegation, and impossible to countenance. There is nothing whatever to indicate that the High Court, as a body, was motivated by *mala fides* against the petitioner. The instances alleged by the petitioner in support of his allegation of *mala fides* fail to prove his case. The High Court has offered a perfectly valid explanation in respect of each instance. The petitioner points out that the High Court has refused to permit encashment of unutilised earned leave. On

**A** the material before us, we are not satisfied that a case of *mala fides* has been made out.

These are the only points raised by the petitioner which deserve consideration. There is no force in them.

**B** The petition fails and is dismissed, but in the circumstances there is no order as to costs.

V.D.K.

*Petition dismissed.*

---