permissible regulations made for the purpose of safeguarding the right of the staff of a privately managed recognised school. The provisions contained in sub-section (1) of Section 4 of the Punjab Act impinge upon the right of minorities under Art. 30(1) of the Constitution. This provision is inapplicable to the unaided minority institutions. Provision of sub-section (3) of Section 4 of the Punjab Act is rendered redundant for the reason that sub-section (1) of Section 4 has been held to be *ultra vires* of Article 30(1) of the Constitution.

(30) The challenge in the writ petition is to the order of the School Tribunal holding that the appeal before it was incompetent. The order of the Tribunal cannot be sustained on any ground. Even if it is held that the school is a religious minority institution within the meaning of Article 30(1) of the Constitution, the right of appeal ensured under sub-section (2) of Section 4 has been safeguarded. The validity of this provision has been upheld. The Tribunal was in error in holding that the appeal was incompetent. If the school is a privately managed recognised school receiving grant-in-aid from the State, the petitioner has got a statutory remedy of appeal under sub-section (2) of Section 4 of the Punjab Act. Looking into the matter from any angle, the petitioner's right of appeal against termination of his services is maintainable. We accordingly set aside the order of the School Tribunal dated September 8, 1987 and direct the Tribunal to dispose of the appeal afresh in accordance with law. The petitioner through his counsel is directed to appear before the School Tribunal on October 16, 1992. The Tribunal shall thereafter dispose of the appeal expeditiously and not later than November 6, 1992. In the circumstances of the case, we make no order as to costs.

R.N.R.

Before : G. C. Gara & A. L. Bahri, JJ.

SATYA PAL SIKKA.—*Petitioner.*

versus

STATE OF HARYANA AND ANOTHER.—*Respondent.*
C.W.P. 2280 of 1993.

April 7, 1993

Constitution of India, 1950—Article 226—Prevention of Corruption Act—Section 13(1) (d)—Haryana Civil Services Punishment and Appeal Rules, 1987—Compulsory retirement—Departmental

Inquiry—Government servant exonerated of all charges by Inquiry Officer—Inquiry Officer however, observing that certain purchases were made contrary to government instructions though action was in the interest of Bank—Punishing Authority awarding warning—Government instructions not making warning a hurdle for promotion—F.I.R. registered u/s 13(1) (d) *of the Prevention of Corruption Act on the same charges enquired into—Service record found to be good with no report of integrity doubtful—After completion of enquiry no adverse remarks communicated—Report of Inquiry Officer exonerating government servant not considered by government while ordering compulsory retirement—Compulsory retirement held illegal—Registration of a mere F.I.R. cannot form basis for compulsory retirement—Order liable to be quashed.*

(Para 5)

Held, that it would have been just and fair for the authorities to place the report of the Inquiry Officer before the Officers' Committee before it took a decision to compulsorily retire the petitioner by serving a three months' notice, especially in a situation like the present where the inquiry report was already available. Even otherwise, when the charges levelled against the petitioner in the charge-sheet had not been substantiated could it be said that the petitioner was a dead wood which needed to be chopped of. The answer has to be in the negative. It seems apparent that notice of compulsory retirement has been served on the petitioner without taking into consideration the conclusions of the Inquiry Officer and the punishing authority, in the already concluded departmental proceedings, where only a warning had been issued to the government servant.

Held, that the pendency of the criminal case under the Prevention of Corruption Act is of no assistance to the State for sustaining the impugned order. These very charges were under investigation in the departmental inquiry wherein the petitioner had been exonerated. Simply on the ground that an F.I.R. has been registered against the petitioner, he cannot be compulsorily retired from service by serving three months' notice. This in other words, as already notices, would amount to punishment even in the absence of proof of guilt on the part of the officer. Premature retirement is not a punishment.

Civil Writ Petition under Article 226 *of the Constitution of India praying that* :

(*i*) *the records of the case may be called for;*

(*ii*) *service of prior notices on the respondents be dispensed with;*

(*iii*) *filing of certified copies of annexures be dispensed with;*

(*iv*) *a writ in the nature* of certiorari *be issued to quash the impugned orders annexures P/1 and P/2;*

(*v*) *a further direction be issued that if during the pendency of this writ petition the petitioner is retired then he is entitled full salary and allowances and other consequential benefits upto the age of superannuation i.e. 58 years;*

(*vi*) *this Hon'ble Court may also pass any order which this Hon'ble Court may deem fit and proper in the peculiar facts and circumstances of this case;*

(*vii*) *costs of this petition be awarded to the petitioner;*

It is further prayed that during the pendency of this writ petition operation of the impugned orders annexures P/1 and P/2 be stayed in the interest of justice.

R. K. Malik, Advocate, *for the Petitioner.*

Arun Nehra, Addl. A.G. Haryana, *for the Respondent.*

JUDGMENT

G. C. Garg, J.

(1) The petitioner is aggrieved by notice Annexure P-2 whereby he was informed that he shall stand retired from service on the expiry of three months from the date of receipt thereof.

(2) The petitioner joined service as Sub-Inspector, Cooperative Societies on October 2, 1956. He was promoted as Inspector on October 13, 1969 and crossed the efficiency bar on April 1, 1981. The Government by letter dated December 11, 1992, directed respondent No. 2 to retire the petitioner after giving him three months notice or three months pay in lieu thereof. The petitioner was consequently served with a notice dated January 5, 1993, Annexure P-2. It was stated therein that the petitioner, Satya Pal Sikka, Inspector Co-operative Societies shall stand retired from service under the Haryana Government on the expiry of three months from the date of receipt of the notice.

(3) On notice of motion having been issued, written statement has been filed justifying the notice of retirement. Compulsory retirement of the petitioner is sought to be justified on the grounds that a criminal case under Section 13(1) of the Prevention of Corruption Act has been registered against him,—*vide* F.I.R. No. 21, dated September 21, 1992 at the instance of the Vigilance Department

for certain acts of omission and commission while on deputation with the Co-operative Bank, Panchkula during the period April 25, 1984 to October 7, 1985 and that disciplinary proceedings under Rule 7 of the Punishment and Appeal Rules were pending against him. A committee of Officers considered whether the petitioner should be allowed to continue in service beyond the age of 55 years and it was thereafter the petitioner was served with notice Annexure P-2.

(4) After hearing the learned counsel for the parties, we are of the view that this petition deserves to succeed. The petitioner would have retired on November 30, 1994 in the normal course on attaining the age of superannuation. His tenure of service has been cut short by the notice Annexure P-2 by about one-and-a-half years. During the period 1977-78 to 1990-91, he earned eleven very good and three good reports, whereas during the last 10 years, the petitioner earned eight very good and two good reports. There is no report of integrity doubtful during the period of his service. As per instructions issued by the Haryana Government, an employee is required to earn 70 per cent good reports during the last 10 years with nil report of integrity doubtful so as to enable him to continue upto the date of superannuation. The petitioner was no doubt served with charge sheet under Rule 7 of the Punishment and Appeal Rules on January 30, 1992, to which he submitted his reply on June 16, 1992. An Inquiry Officer was appointed on July 6, 1992 who submitted his report on October 1, 1992. The Inquiry Officer exonerated the petitioner of all the charges but observed that he made some purchases contrary to the government instructions though the said action was in the interest of the Bank. The punishing authority agreed with the findings of the Inquiry Officer but awarded a punishment of warning as the petitioner had violated the government instructions though such violation was in the interest of the Bank. The Government has itself issued instructions, Annexure P-5, that minor punishment such as warning/censure will not be a hurdle in considering the case of the employees for promotion.

(5) The Officers' Committee which happened to consider the case of the petitioner, whether he was fit to be retained in service beyond the age of 55 years in view of the defaults committed by him in the management of cooperative funds, recommended that the petitioner be retired by serving three months' notice. As already noted, the Inquiry Officer submitted his report on October 1, 1992 and the decision of the Committee was conveyed by the Government to the appointing authority,—*vide* letter dated December 11, 1992. During the course of arguments, it could not be brought out that the report of

the Inquiry Officer was placed before the Committee which considered the case of the petitioner for compulsory retirement, rather it had to be conceded that the report was not before the Officers' Committee when it took the decision in the case of the petitioner. The petitioner was exonerated of all the charges and he was only awarded a warning. It may also be noticed that the F.I.R. registered against the petitioner under Section 13(1) (d) of the Prevention of Corruption Act also relates to the very charges which were inquired into by the Inquiry Officer and of which charges the petitioner had been exonerated and only a warning has been given. It appears that the Officers' Committee formed an opinion to compulsory retire the petitioner on the basis of the material which was yet under investigation. The decision of the Government to compulsorily retire the petitioner was conveyed to respondent No. 2 after the Inquiry Officer submitted his report exonerating the petitioner. After the completion of the inquiry, no adverse remarks had been conveyed to the petitioner. It was just and fair for the authorities to place the report of the Inquiry Officer before the Officers' Committee before it took a decision to compulsorily retire the petitioner by serving a three months' notice, especially in a situation like the present where the inquiry report was already available. Even otherwise, when the charges levelled against the petitioner in the charge sheet had not been substantiated, could it be said that the petitioner was a dead wood which needed to be chopped of. The answer has to be in the negative. It seems apparent that notice Annexure P-2 has been served on the petitioner without taking into consideration the conclusions of the Inquiry Officer and the punishing authority, in the already concluded departmental proceedings. Notice was served by taking the unsubstantiated allegations as proved and by taking that the disciplinary proceedings were pending, which is other-wise not so. The petitioner's performance was consistently good and very good. The inquiry related to the period when he was on deputation during the year 1984-85 and none of these charges has been proved, rather the petitioner was exonerated and only a warning was issued. In the circumstances, compulsory retirement could not be ordered as it would be nothing but a punishment to an officer having good record, without establishing the charges against him. Even the pendency of the original case is of no assistance to the respondents for sustaining the impugned order. These very charges were under investigation in the departmental inquiry wherein the petitioner had been exonerated. Simply on the ground that an F.I.R. has been registered against the petitioner, he cannot be compulsorily retired from service by serving a three months' notice. This in other words, as already noticed, would

amount to punishment even in the absence of proof of guilt on the part of the officer. Premature retirement is not a punishment. It is ordered by having regard to the entire service record of the employee, latest being more relevant. It is not even a stigma. However, premature retirement cannot be used as a handle to punish an officer without proving the charges. In *Shri Baikuntha Nath Das and another* v. *Chief District Medical Officer, Baripada and another* (1), the apex Court happened to consider the matter relating to compulsory retirement and after elaborately discussing the matter detailed the principles that emerged from the discussion in para 34 of the judgment. One of these principles relevant for our purpose may be noticed thus :—

> "Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) *mala fide* or (b) that it is based on no evidence or (c) that it is arbitrary—in the sence that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order."

(6) From what has been noticed above, it is evident that there is no material available on record to sustain the order Annexure P-1 or notice Annexure P-2. The only material that was available with the Government for forming the opinion was the pendency of the departmental inquiry and the registration of the criminal case on the very facts which were being inquired into in the departmental inquiry. The petitioner was exonerated of all the charges in the departmental inquiry before he was served with the notice, Annexure P-2 and the criminal case relates to the very charges as were investigated in a departmental inquiry. The present thus, is a case of no evidence and in any case of a nature where no reasonable person could form a opinion on the material noticed above to pass an order of compulsory retirement. The petitioner could not be compulsorily retired merely because a warning was administered to him as a result of the departmental proceedings as according to the instructions issued by the respondents themselves, minor punishment of warning/censure is not a hurdle in considering the case of an employee for promotion. Order Annexure P-1 and notice

(1) 1992 (2) R.S.J. 308.

Annexure P-2 deserve to be quashed being arbitrary and based on no evidence.

(7) It is not necessary to consider in detail the other contention of the learned counsel for the petitioner, namely, that it was for the appointing authority to decide whether the petitioner was to be compulsorily retired or not and that he could not act on the directions issued by the Government in that behalf. Reliance in that behalf was placed on *Roshan Lal Gogla* v. *Financial Commissioner, Haryana and others* (2), and *Bhim Chand Clerk* v. *The Deputy Commissioner, District Rohtak and others* (3). Suffice it to say that the Government constituted an Officers' Committee to consider the case of the petitioner for his retention in service beyond the age of 55 years on a request made by the appointing authority and it was in these circumstances, the Officers' Committee took a decision which was conveyed by the Government to the appointing authority.

(8) For the reasons recorded above, this writ petition is allowed. Order Annexure P-1 and notice Annexure P-2 are quashed. The petitioner shall have his costs which are assessed at Rs. 1,000.

R.N.R.

Before : S. D. Agarwala, C.J., N. K. Kapoor & H. S. Bedi, JJ.

AMARDEEP SINGH SAHOTA,—*Petitioner.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

C.W.P. 12079 of 1992

May 20, 1993

Constitution of India, 1950—Articles 226 & 227—Admission to M.B.B.S. course—Reservation for sports category—Criteria for such reservation—Requirement for obtaining minimum marks in entrance examination—Waiving of such condition—Validity of—Qualification for admission given in prospectus—Subsequent change in qualification prescribed—Such change invalid.

(Para 19, 20 & 22)

Held, that students pursuing courses in medical or engineering colleges, which are technical subjects, require an academic mind, as ultimately after obtaining degrees from these professional

(2) 1968 S.L.R. 650.

(3) 1968 S.L.R. 798.