

If an appeal had been filed, the appropriate authority would have determined facts after considering relevant material and come to a positive conclusion. The petitioner has chosen to avoid that course of action for no justifiable reason.

(24) Mr. Sawhney, however, submits that after the admission of the writ petition, the petition should not be relegated to the alternative remedy. The plea is untenable. In a case like the present one which requires determination of facts, the remedy of writ petition is wholly misconceived. In fact the one remedy provided under the Statute by way of appeal etc. is the only appropriate remedy. Consequently, mere admission of the petition cannot mean that this Court has to record evidence and record findings of fact. In the circumstances of this case, the plea cannot be sustained. It is not the function of the High Court to decide as to whether the petitioner is using Bars and strips and flats. It is for the appropriate authority under the Act.

(25) No other point was urged.

(26) Accordingly, there is no merit in these petitions, which are consequently, dismissed. The parties are, however, left to bear their own costs.

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R.N.R.

Before Hon'ble G. R. Majithia & N. K. Sodhi, JJ.

EX. HEAD CONSTABLE JAGAN NATH,—Petitioner.

versus

THE STATE OF PUNJAB & ANOTHER,—Respondents.

Civil Writ Petition No. 15126 of 1990

20th December, 1993

*Constitution of India 1950—Arts. 226/227—Punjab Civil Services (Pre-mature Retirement) Rules 1975—3(1) (a)—Whether forfeited service can be taken into account for the purpose of determination of qualifying service for prematurely retiring an officer from service—Held that disciplinary authority rightly counted forfeited approved service for determining qualifying service.*

*Held*, that we accordingly overrule the judgment of the learned Single Judge in Gurdial Singh case (supra) to the extent to which

the learned Judge has held that the forfeited approved service cannot be counted towards qualifying service.

(Para 8)

*Held*, that the disciplinary authority rightly counted the forfeited approved service for determining the qualifying service under Rule 3(1) (a) of the Rules. The petitioner has been given the pensionary benefits after counting the forfeited approved service for grant of pension. The compulsory retirement from service is not by way of punishment but it has been ordered in public interest on fulfilment of conditions mentioned in the rule.

(Para 9)

H. S. Mann, Advocate, *for the Petitioner*.

G. S. Cheema, A.A.G. Punjab, *for the Respondents*.

#### JUDGMENT

*G. R. Majithia, J.*

(1) The petitioner, who is a Head Constable in Punjab Police, has challenged his premature retirement from service with effect from January 18, 1989, in this petition under Articles 226/227 of the Constitution of India.

The petitioner joined the Police Force as a Constable on March 26, 1963. He passed the Lower School Course in 1967-68 and was brought on promotion list 'C' on April 1, 1968. He was promoted as Head Constable on October 7, 1970. His conduct was under two departmental enquiries. The disciplinary authority, on each occasion, ordered his dismissal from service, but the appellate authority reduced the punishment of dismissal from service to forfeiture of five years and three years of approved service respectively. On completion of 25 years of qualifying service, the competent authority ordered his premature retirement under the Punjab Civil Services (Pre-mature Retirement) Rules, 1975, (for short, the Rules). The forfeited service was counted towards qualifying service for the purpose of pension.

(2) The only question which requires determination is :

Whether in case service is forfeited, the same can be taken into account for the purpose of determination of qualifying service for prematurely retiring a police officer from service ?

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Rules 9.18 (2) of the Punjab Police Rules, 1934 (for short, the Police Rules) deals with compulsory retirement of a police officer. It reads as under :—

“The Inspector-General of Police may, with the previous approval of the State Government, compulsorily retire any Police Officer, other than an officer belonging to Indian Police Service or Haryana State Police Service who has completed twenty-five years’ qualifying service, without giving any reasons. An officer who is so compulsorily retired will not be entitled to claim any special compensation for his retirement.”

The Inspector-General of Police has absolute right to retire a police officer from service on his completing twenty-five years of qualifying service.

(3) Almost identical provisions are contained in Rule 3(1) (a) of the Rules, which reads as under :—

“The appropriate Authority shall, if it is of the opinion that it is in public interest to do so, have the absolute right, by giving an employee prior notice in writing, to retire that employee on the date on which he completes twenty five years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice.”

The appropriate authority has an absolute right under this rule to retire a Government employee on completion of twenty-five years of qualifying service or on his attaining the age of fifty years or on any date thereafter in public interest. In the instant case, the order under challenge has been passed under this provision of the Rules.

(4) The learned counsel for the petitioner says that the forfeited approved service cannot be counted for determining the qualifying service for the purposes of pension, gratuity, etc. if the forfeited approved service is excluded from the petitioner’s total length of service, he does not have twenty-five years of qualifying service to his credit and the order of compulsory retirement from service could not be passed.

(5) The penalties which can be imposed on a police officer are prescribed under Rule 16.1 of the Police Rules. Rule 16.5 provides

for punishment of stoppage of increment or forfeiture of approved service for increment. The rule reads thus :—

“16.5. *Stoppage of increment or forfeiture of approved service for increment.*—

- (1) The increment of a police officer on a time-scale may be withheld as punishment. The order must state definitely the period for which the increment is withheld, and whether the postponement shall have the effect of postponing future increments. The detailed orders regarding the grant and stoppage of increments are contained in rule 13.2.
- (2) Approved service for increment may be forfeited, either temporarily or permanently, and such forfeiture may entail either deferment of an increment or increments or a reduction in pay. The order must state whether the forfeiture of approved service is to be permanent; or, if not, the period for which it has been forfeited.
- (3) Reinstatement on the expiry of a period fixed under sub-rule (1) or (2) above shall be conditional upon good conduct in the interval, but, if it is desired under the rule not to reinstate an officer, a separate order shall be recorded after the concerned officer has been given opportunity to show cause why his reinstatement should not be deferred, and the period for which such order shall have effect, shall be stated. Rules regarding the method of recording punishments under this rule in seniority rolls are contained in Chapter X.”

A reading of this rule suggests that forfeiture of service is for the purpose of increments only and not for any other purpose. The effect of punishment of forfeiture of approved service for the purpose of increment or increments is that it cannot be counted for grant of increments. Forfeiture of approved service for increments is a penalty for the mis-deeds committed by a police official/officer.

(6) Thus, the entire service can be counted for the purpose of qualifying service for ordering premature retirement of an employee.

(7) In fairness to the learned counsel for the petitioner, a brief reference to the judgment of this Court in *Gurdial Singh v. The State*

of *Punjab and others* (1), is necessary. The petitioner in that case was a police constable. His premature retirement from service was ordered in public interest on completion of 27 years of service. He was awarded punishment of forfeiture of three years' approved service. He challenged the order of compulsory retirement on the ground that he did not have 25 years of qualifying service on the date of his compulsory retirement. The learned Single Judge implicitly held that the forfeited approved service could not be counted towards the qualifying service. This inference is deducible from the following observations in para 4 of the judgment :—

“After hearing the learned counsel for the parties and examining their pleadings, I am of the considered view that the impugned order of premature retirement is wholly illegal and arbitrary on the face of it. It is an admitted fact that the date of birth of the petitioner is 1st January, 1942, and he was only 45½ years of age when he was prematurely retired from service. Further, as he had been appointed as a Constable on 18th January, 1960, his total service on the date of retirement was 27½ years. Since three years' approved service of the petitioner had been forfeited by the respondent on 29th November, 1985, his remaining service qualifying for pension was only 24½ years, that is, less than 26 years, on the date of his retirement. Rule 3(1) (a) of the Punjab Civil Services (Premature Retirement) Rules, 1975 reads as under :—

‘The appropriate authority shall, if it is of the opinion that it is in public interest to do so, have the absolute right, by giving an employee prior notice in writing, to retire that employee on the date on which he completes twenty five years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice.’

The expression ‘qualifying service’ has been defined in Rule 2(3) of the said Rules to mean ‘service qualifying for pension.’ Therefore, on 2nd September, 1987, when the petitioner was prematurely retired from service he had neither attained the age of 50 years nor had he completed 25 years of qualifying service. Consequently, the impugned order

of premature retirement is illegal, without jurisdiction and contrary to the provisions contained in the Punjab Civil Services (Premature Retirement) Rules, 1975.”

(8) The learned Judge did not refer to the statutory rules under which the punishment of forfeiture of approved service was awarded to the petitioner in that case. He also did not give any reasons for coming to the conclusion that the forfeited approved service could not be counted towards qualifying service. He did not appreciate that the forfeiture of approved service is a major penalty under rule 16.1 (3) of the Police Rules. The terms “forfeit” in common parlance only implies penalty. After the penalty of forfeiture of approved service has been imposed, it is to be treated as detrimental to the interest of the delinquent. These observations of the learned Judge are in negation to the statutory rules. We accordingly overrule the judgment of the learned Single Judge in *Gurdial Singh case* (supra) to the extent to which the learned Judge has held that the forfeited approved service cannot be counted towards qualifying service.

(9) The disciplinary authority rightly counted the forfeited approved service for determining the qualifying service under Rule 3(1) (a) of the Rules. The petitioner has been given the pensionary benefits after counting the forfeited approved service for grant of pension. The compulsory retirement from service is not by way of punishment but it has been ordered in public interest on fulfilment of conditions mentioned in the rule.

(10) The learned counsel for the petitioner did not challenge the order of premature retirement on any other ground except the one dealt with supra. The order of premature retirement from service is upheld.

(11) For the reasons stated above, the writ petition fails and is dismissed, but with no order as to costs.

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J.S.T.

Before Hon'ble Ashok Bhan, J.

EMPLOYEES' STATE INSURANCE CORPORATION,—Petitioners.

versus

JALANDHAR GYMKHANA CLUB,—Respondent.

Civil Revision No. 873 of 1990

27th February, 1992

*Employees' State Insurance Act (34 of 1948) S. 1(5)—Club—  
Whether a club would be covered under the provisions of the  
Employees' State Insurance Act.*