
(2009) 12 MP CK 0044

In the Madhya Pradesh High Court

Case No : Writ Petition No. 13328 of 2003

Bhagvant Singh Parihar

APPELLANT

Vs

The State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 01-12-2009

Acts Referred:

Constitution of India, 1950 — Article 311

Madhya Pradesh Civil Services (Pension) Rules, 1976 — Rule 42(1)

Citation : (2010) ILR (MP) 199 : (2010) 4 MPHT 495

Hon'ble Judges : Prakash Shrivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Shrivastava, J.—This writ has been filed by the Petitioner challenging the order of compulsory retirement dated 8-1-99.

2. Brief facts are that the Petitioner was working as mechanic with the Respondent. The Respondent passed the impugned order dated 8-1-99 under Rule 42 (1) (b) of the M.P. Civil Service (Pension) Rules, 1976 (for short "the Rules") on the ground that the Petitioner had completed 25 years of Government service on 3-2-97. The Petitioner represented the matter before the State Government against the order of compulsory retirement. The State Government rejected the representation by order dated 15-6-99.

3. Learned Counsel appearing for the Petitioner submitted that out of his previous 24 years annual confidential reports, the Petitioner has earned 12-B, 11-C and 1-D in the confidential reports. He further submitted that 1-D is in respect of the one adverse remark for the year 1992-93, which was communicated to the Petitioner in 1998 against which the Petitioner had submitted the representation, which was pending, therefore, on the basis of such an ACR alone, he could not be compulsorily retired. He further submitted that as per the judgment of this Court in the matter of Chandra Shekhar Shrivastava Vs. State of Madhya Pradesh and Another, and in the matter of Mori Lal Verma v. State of M.P. and Ors. dated

17-2-2009 in W.P. No. 13445 of 2003, the order of compulsory retirement cannot be sustained.

4. As against this, learned Counsel appearing for the Respondents submitted that no error has been committed by the Respondent in passing the order of compulsory retirement on the basis of the service record of the Petitioner.

5. I have heard the learned Counsel for the parties and perused the record.

6. Rule 42 (1) (b) of the Rules provides that the Appointing Authority may retire a Government servant from service on completion of 25 years of qualifying service in the public interest.

7. The Petitioner has placed reliance upon the circular dated 13th January, 1997, which relates to the scrutiny of service record for the purpose of compulsory retirement under the rule. In the circular, the criteria has been laid down for the purpose of scrutiny and as per the said criteria, the committee is required to see firstly honesty "and integrity of the employee, secondly, the decrease in physical efficiency and thirdly, the assessment of performance of the employee on the basis of his complete service record.

8. The Supreme Court also in the matter of State of Gujarat Vs. Umedbhai M. Patel, , has crystallized the principles relating to compulsory retirement as under:

11. The law relating to compulsory retirement has now crystallised into definite principles, which could be broadly summarised thus:

(i) Whenever the service of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid Departmental Enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as punitive measure.

9. This Court in the matter of Chandra Shekhar Shrivastava (supra), has taken a view that if the integrity is not in doubt and the record is average, there cannot be any compulsory retirement. This Court in the matter of Chandra Shekhar Shrivastava (supra), held that:

Thus, on the touchstone of the norms fixed by the Apex Court in the case of Umedbhai M. Patel (supra) the facts of the present case are to be considered. Since the integrity of the Petitioner has not been found to be doubtful and his record is "average" there can not be any compulsory retirement. In that context, I may profitably rely the decision of the Supreme Court in the case of R.C. Mishra (supra) wherein the Apex Court held that merely service record of an employee was found unsatisfactory but his integrity was not questioned, therefore, the order of compulsory retirement could not have been passed. On the same line the decision of Shree Baboo (supra) is there and it can also be relied. The Supreme Court in the case of Brij Mohan Singh Chopra (supra) has held that recent record is to be given more importance while taking decision of compulsory retirement. In the present case there is nothing adverse to the Petitioner and his assessment is overall "average" in the recent years before the impugned order was passed. On the same ground the decision of Sukhdeo (supra) can be placed reliance as well as the decision of Narasingh Patnaik (supra).

10. The same view has been taken in the matter of Motilal Verma v. State of M.P. and Ors. (supra), by holding that:

7. Accordingly, this is a case where the service record of the Petitioner is average, he has earned promotions and there is nothing adverse in his entire service carrier on the basis of which he can be termed as a "dead wood" in the department. Even in the Circular (Annexure A-3) the evaluation is to be made after taking note of the integrity. As far as integrity of the Petitioner is concerned, there is nothing adverse to him. The only adverse factor that has weighed with the Respondents is the average entries, which is treated to be adverse and action taken. This was not permissible as the average entries cannot be treated as adverse for the purpose of compulsorily retiring the Petitioner and treating him to be dead wood.

11. Thus, the consistent view of this Court is that the average entries cannot be treated as adverse for the purpose of compulsorily retiring an employee and treating him to be-dead wood.

12. In the present case, it is undisputed that in the previous 24 years, the Petitioner had earned 12-B (Good), 11-C (average) and 1-D (below average). So far as, the one adverse confidential report, i.e., below average is concerned, it relates to period 1992-93. It was communicated to the Petitioner on 6-7-98, vide Annexure A-1, against which, the Petitioner had preferred the representation which undisputedly was pending at the time, when his case for compulsory retirement was considered. A perusal of the confidential report for the year 1992-93, indicates that in this report, under columns 1 to 12, either "good" or

"average" was recorded, but at the end in the column No. 13 relating to general note "below average" was recorded. Therefore, the general note in 13 does not tally with the performance of the Petitioner recorded under different heads in earlier columns.

13. Even otherwise, one solitary adverse entry cannot form the basis of compulsory retirement, in view of the Supreme Court judgment in the matter of S. Ramachandra Raju Vs. State of Orissa, . The case of the Petitioner stands on better footing, since even the adverse entry for the year 1992-93 was not communicated immediately and it was communicated almost after five years in the year 1998 and against the said entry the representation was pending.

14. So far as the other ACR's are concerned, they are either good or average. The record also indicates that during the service tenure no charge-sheet was issued to the Petitioner, no enquiry was conducted and no penalty was imposed. The integrity and honesty of the Petitioner is also not in doubt and there is no material to show that there is decrease in physical efficiency of the Petitioner.

15. In view of the judgment of the Supreme Court and this Court, it is found that out of the previous 24 years for 23 years the confidential report entries are either good or average, therefore, these entries for 23 years cannot form the basis for compulsory retiring the Petitioner. There is only one entry for period 1992-93, which is adverse entry, but order of compulsory retirement cannot be solely based on that entry in view of the reasons given above.

16. The Respondents have failed to bring on record any material, which could justify treating the Petitioner as dead wood. If the entire record of the Petitioner for previous 24 years is considered, it cannot be ascertained as to how and on what basis he is declared as dead wood. Even as per the circular (Annexure A-4), evaluation is to be made after taking note of integrity, honesty and decrease in physical efficiency of the Petitioner, but these factors are not shown to be adverse to the Petitioner.

17. It is also worth noting that the impugned order even does not state that the Respondents have taken the decision to compulsory retire the Petitioner in the public interest, which is the only ground on which an employee can be compulsory retired under Rule 42 (1) (b).

18. Accordingly, this Court is of the considered view that the action of compulsory retirement of the Petitioner has not been taken by the Respondents on proper screening of service record and the Petitioner has wrongly been retired. Thus, action of the Respondents is not sustainable.

19. Accordingly, the order dated 8-1-99, compulsorily retiring the Petitioner and the order dated 15-6-99, rejecting the Petitioner's representation are quashed. The Petitioner shall be deemed to have continued in service till attainment of the age of superannuation and thereafter retired. Treating him to be in service the benefit of salary, pay fixation; shall be granted to the Petitioner and other

consequential benefits arising thereof.

20. The petition stands allowed and disposed of without any order as to costs.