
(2022) 05 MP CK 0016
In the Madhya Pradesh High Court
Case No : Writ Appeal No.294 Of 2006

Bharat Lal Dubey

APPELLANT

Vs

District And Sessions Judge Damoh And Others

RESPONDENT

Date of Decision : 02-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 16, 311, 311(2)
Madhya Pradesh Civil Services (Pension) Rules, 1976 — Section 42 (1)(B)

Citation : (2022) 05 MP CK 0016

Hon'ble Judges : Ravi Malimath, CJ;Purushaindra Kumar Kaurav, J

Bench : Division Bench

Advocate : R.K. Samaiya, Anshuman Singh

Final Decision : Dismissed

Judgement

Purushaindra Kumar Kaurav, J

1. This intra Court appeal takes an exception to order dated 05.05.2006, passed by the learned Single Judge in Writ Petition No.126 of 2000, whereby, petition preferred by the appellant has been dismissed upholding an order of compulsory retirement passed against the appellant.

2. The facts of the case are that the appellant was appointed as Process Writer on 05.07.1994 and thereafter, vide order dated 11.09.1972 he was promoted on the post of L.D.C. Since then the appellant was working under the Establishment of District and Sessions Judge, Damoh. The appellant was also holding the position of Divisional President of M.P. Judicial Employee Association, Sagar Branch, District Damoh. Vide order dated 11.11.1997 (Annexure-A/9), the appellant has been compulsorily retired in public interest in exercise of power vested under Rule 42 (1)(B) of the Madhya Pradesh Civil Services (Pension) Rules, 1976 (hereinafter referred to "Rule of 1976"). The appellant preferred appeal against the said order which has also been dismissed, vide order dated 11.5.1999 (Annexure-P15). The appellant, therefore, approached this Court in a

writ petition challenging both the orders. The learned Single Judge vide impugned order did not find any substance in the case of the appellant and hence his writ petition has been dismissed.

Therefore, the appellant has filed instant intra Court appeal.

3. The learned counsel appearing for the appellant submits that the order of compulsory retirement has been passed by way of punishment and, therefore, the same is violative of principles of natural justice. According to him, the communication made by the District and Sessions Judge, Damoh vide his Memo dated 04.09.1997 clearly shows that serious allegations were made against the appellant and it is on the basis of such communication, the decision for compulsory retirement has been taken. According to him, the language of the order alone is not decisive to gather as to whether an order of compulsory retirement is in public interest or by way of punishment. The Court should always go behind the order and find out whether the same was founded upon the misconduct of the employee by lifting the veil. He also states that if there were any adverse ACRs, the same should have been communicated to the appellant. In absence of such communication, the adverse ACRs cannot be taken note of. He also states that even on 11.09.1973, the appellant was promoted from the post of Process Writer to Lower Division Clerk and thereafter, he was further promoted on 13.09.1992 from the post of Lower Division Clerk to Upper Division Clerk and if the appellant was found to be suitable for promotion in the year 1992, any adverse ACR prior to his promotion cannot be taken into consideration. He further states that only old entries between 1968 to 1988 have been taken into consideration, whereas, the subsequent entries of remaining 15 years were ignored. He, therefore, submits that the learned Single Judge has erred in dismissing the writ petition. Learned counsel places reliance on a decision of the Hon'ble Supreme Court in the matter of Ram Ekbal Sharma Vs. State of Bihar and Another (1990) 3 SCC 504, Chandra Prakash Sahi Vs. State of U.P. and others (2000) 5 SCC 152, State of U.P. Vs. Madan Mohan Nagar AIR 1967 SC 1260, Union of India Vs. J.N. Sinha and another AIR 1971 SC 40, and also a decision of division Bench of this Court in the matter of Shambhudayal Sharma Vs. State of Madhya Pradesh and others 1985 MPLJ 461.

4. On the other hand, learned counsel appearing for the respondents' state that the appellant was compulsorily retired after assessment of his entire service record. Screening Committee has applied its mind. While demonstrating the entire service record, reliance has been placed to ACR of various years. The same are being shown in the following table:-

S.No.

Year

ACR

1.

31.03.1968

R1/12

"Ability to draft and note-very poor Intelligence and initiative-poor"

2.

31.03.1969

R2/13

"Intelligence and initiative-poor.

Capacity for control and promptness – poor Work – Below normal. No interest in picking new work".

Note by District Judge – "not up to the mark."

3.

31.03.1971

R3/14

"Not sincere in doing work"

4.

31.03.1972

R4/15

"Intelligence and initiative – Not upto mark. Capacity for control and promptness – Not upto mark.

Ability to draft and note-Not upto mark. Habit of quarreling with his colleagues."

5.

31.03.1973

R5/16

"Intelligence and initiative-unsatisfactory. Capacity for control and promptness unsatisfactory.

Ability to draft and note-unsatisfactory.

Lazy and lacking efficiency. Found guilty of office and court discipline."

6.

31.03.1974

R6/17

Sent process of Misc. Case No.45/1973 to wrong address. "Below average."

7.

31.03.1975

R7/18

Petitioner was reported to be: "Below average."

8.

16.11.1977

R8/19

The petitioner directed to improve his manner and behaviour and to give better performance.

9.

15.06.1978

R9/20

It was reported that there is scope for improve in petitioner's work and behaviour.

10.

15.05.1981

R10/21

Petitioner was directed to complete his work efficiently and on time.

11.

March, 1982

R11/22

Petitioner was directed to complete his work efficiently and on time. Work is average.

12.

24.04.1987

R12/23

Petitioner does not priorities his work. Leaves his seat regularly.

13.

01.08.1987

R13/24

Petitioner was punished with character roll warning.

14.

20.10.1987

R14/25

Petitioner was punished with censure.

15.

26.10.1987

R15/26

Petitioner was punished with character roll warning.

16.

March, 1988

R16/27

It was recorded that the petitioner was not interested in work. Petitioner did not complete the work on time, despite warnings.

17.

14.08.1997

R17/28

Complaint by Additional Sessions Judge against the conduct of the petitioner.

5. Learned counsel for the respondents further submits that since the entire service record was available before the Screening Committee, hence, considering the available record, recommendations were made for compulsory retirement of the appellant in public interest and accordingly the State Government approved the proposal by order dated 11.11.1997. It is submitted that a perusal of impugned order nowhere suggests that the same is stigmatic and is passed by way of punishment.

6. He therefore, submits that the principles of natural justice have no application in the case of compulsory retirement. The "washed off theory" i.e. the remarks would be wiped off on account of such record being of remote past, has no applicability when the case of an employee is being assessed to determine whether he is fit to be retained in service or requires to be given compulsory retirement and even uncommunicated ACR can also be taken into consideration for the purposes of compulsory retirement. The learned counsel appearing for the respondent places reliance on a decision of Hon'ble Supreme Court in the matter of Ram Murti Yadav Vs. State of Uttar Pradesh and another (2020) 1 SCC 801, Union of India and others Vs. Dulal Dutt (1993) 2 SCC 179, Punjab State Power Corporation Limited and others Vs. Hari Kishan Verma (2015) 13 SCC 156, State of Gujarat Vs. Umed Bhai Patel (2001) 3 SCC 314.

7. We have heard the learned counsel for the parties and perused the record.

8. The learned Single Judge in paragraph No.6 of its decision has taken into consideration the entire service record of the appellant. While placing reliance on the principle laid down in the case of State of Gujarat Vs. Umed Bhai Patel⁹ and on other decisions of the Hon'ble Supreme Court, it has been found that the order of compulsory retirement does not call for any interference.

9. The scope of judicial review of an order of compulsory retirement based on the subjective satisfaction of the employer is extremely narrow and restricted. Unless the order of compulsory retirement is found to be arbitrary or capricious, vitiated by mala fide, or overlooks relevant material, no interference is warranted. The Courts cannot sit in the judgment over the decision taken by the employer. The principles of natural justice have no application in the case of compulsory retirement. Even if the general reputation of an employee is not good and there may not be any tangible material against him, he may still be compulsorily retired in public interest. Of course, if it is a case of no material or no evidence, the same can certainly be held to be arbitrary or without application of mind, but the sufficiency of material cannot be examined by a writ Court. Ordinarily, the order of compulsory retirement is not to be treated as a punishment under Article 311 of the Constitution and such an action is necessary for better administration to chop-off the dead-wood having regard to the entire service record of the officer/employee concerned. The analysis of the various judgments relied upon by the parties would show that even a single adverse entry of integrity can be held to be sufficient for passing the order of compulsory retirement. The power to retire compulsory a government servant in terms of service rules is absolute, provided the authority concerned forms a bona fide opinion that compulsory retirement is in public interest.

10. We have perused the order dated 11.11.1997, in the context of the submissions made by the learned counsel for the appellant that the same is stigmatic and we find that there is no substance in the argument. The order dated 11.11.1997 m

11. So far as the reliance placed on communication dated 07.10.1997 made by the High Court to the State Government is concerned, the same reiterates the fact relating to the service career of the appellant. The communication concludes that the Screening Committee formed an opinion to recommend for compulsory retirement of the appellant. Para 3 and 4 of the communication dated 7.10.1997 reads as under:-

12. A perusal of the said communication only indicates the facts relating to the working of the appellant which are not disputed by the appellant. Under such circumstances, it cannot be said that the order of compulsory retirement of the appellant is by way of punishment and stigmatic. Compulsory retirement from service would be in the nature of removal from services, if termination of service is ordered by way of penalty. There are two tests for deciding whether

termination of service was by way of penalty or not. The two tests are; (1) whether there was a charge or imputation against the Officer? and (2) whether there is loss of benefit already accrued? In the present case, neither there is any charge of imputation against the appellant nor there is any loss of benefit already accrued. We find that the same is absolutely in public interest. It has been passed on the basis of subjective satisfaction of the Screening Committee and accepted by the State Government.

13. So far as the decision relied upon by the learned counsel appearing for the appellant in the case of Ram Ekbal Sharma¹ is concerned, in that case, the concerned Officer was promoted on April 1st 1984, to the Higher Post. In the year 1988, a large number of his juniors were given higher scale. The concerned Officer made representation to the State Government and without any order being passed on such a representation, an order of his compulsory retirement was passed on 26th October, 1988. It was under those circumstances, the Hon'ble Supreme Court had held that even though the order of compulsory retirement is couched in innocuous language without making any imputations against the government servant who is directed to be compulsorily retired from service, the court, if challenged, in appropriate cases can lift the veil to find out whether the order is based on any misconduct of the government servant concerned or the order has been made bona fide and not with any oblique or extraneous purposes. Mere form of the order in such cases cannot deter the court from considering the basis of the order, if the order in question is challenged by the concerned government servant. The aforesaid legal position is not disputed, therefore, we have not only examined the language of the order but also perused the intra departmental communication to understand as to whether the order in question is in public interest or by way of punishment.

14. So far as another decision in the matter of State of U.P. Vs. Madan Mohan Nagar AIR 1967 SC 1260 is concerned, a perusal of the said decision would show that the order impugned therein contained a stigma that the concerned Officer has "outlived his utility". The learned Single Judge of the Hon'ble High Court found that the order in that case was in violation of the principles of natural justice and therefore, the learned Single Judge set-aside that order. The appeal preferred by the State was also rejected by the Division Bench. The State of U.P. thereafter, had taken up the matter to the Hon'ble Supreme Court in SLP. The Hon'ble Supreme Court while placing reliance on its earlier decision in the matter of Jagdish Mitter Vs. Union of India 10 AIR 1964 SC 449 has held that a clear statement appears on the face of the order that the respondent in that case had "outlived his utility". It was found by the Hon'ble Supreme Court that such an expression would mean that the Officer concerned was incapacitated from holding the post of Director, State Museum, Lucknow. Under such circumstances, such an order was found to be stigmatic as any person who reads such an order would immediately consider that there is something wrong with an Officer or his capacity to work. Under such circumstances, the decision in the case of Madan Mohan Nagar AIR 1967 SC 1260 would be of no help to the appellant.

15. So far as the decision relied upon by the appellant in the case of Union of India Vs. J.N. Sinha and another AIR 1971 SC 40 is concerned, in that case, the order of compulsory retirement was set-aside by the High Court on the ground of violation of principles of natural justice. The Hon'ble Supreme Court in paragraph No.9 of the decision has held that an order of compulsory retirement is bound to have some adverse effect on the Government servant but a Government servant does not lose any of the benefits earned by him till the date of his retirement. The decision of the Hon'ble High Court, in that case, was set-aside by the Hon'ble Supreme Court and hence, the said judgment is also of no assistance to the appellant.

16. So far as the decision relied upon by the appellant in the case of Chandra Prakash Shahi (2000) 5 SCC 152. is concerned, the said case was pertaining to termination of a Temporary Employee by a simple notice. The order in that case was passed on account of alleged involvement in the quarrel between the Constables and thereupon some preliminary enquiry was conducted. The State Tribunal set-aside the order of termination after perusing the original record holding therein that there was no adverse material against the appellant in that case. It was therefore found that only on account of such an incident, his services were terminated. The order of the Government was set-aside by the High Court relying on a decision of the Hon'ble Supreme Court in the case of State of U.P. and others Vs. Kaushal Kishore Shukla (1991) 1SCC 691. Under the aforesaid circumstances, the Hon'ble Supreme Court has held that the Temporary Government servant or probationers are also entitled to the protection of Article 311(2) of the Constitution as the permanent employee. It has also been held that termination simplicitor of a Temporary Government servant on the ground of unsuitability does not attract the provisions of Article 16, nor the protection under Article 311(2) of the Constitution is available to a Temporary Government servant, unless the termination involves "stigma". Keeping in mind the aforesaid facts and legal position, the Hon'ble Supreme Court found that the termination of the appellant in that case was stigmatic and without issuing him any notice or the ground on which his services were proposed to be terminated, hence, interference was made. The present is a case of compulsorily retirement and, as discussed above, the principles of natural justice are excluded unless order contains a stigma against the appellant. In the instant case, there is no stigma caused against the appellant and, therefore, the principle laid down in the case of Chandra Prakash Shahi (supra) would not help the appellant.

17. So far as the decision of the Division Bench of this Court in the case of Shambhudayal Sharma⁵ is concerned, in that case this Court found that deliberate attempts were made to spoil the service record of the appellant. In paragraph No.30, this Court found that by way of fabrication and manipulation the confidential report of the appellant was spoiled. Under those circumstances, apart from directing an enquiry against the Officers, the order of compulsory retirement was set-aside by this Court.

Such are not the facts in the present case.

18. Taking into consideration the overall facts and circumstances of the case, we do not find any reason to interfere into the order passed by the learned Single Judge and hence, the writ appeal is accordingly dismissed.