
(2014) 02 RAJ CK 0209

In the Rajasthan High Court

Case No : Civil Special Appeal No. 203 of 2004

Bikaner Sahakari Upbhokta Wholesale Bhandar Ltd.

APPELLANT

Vs

Manmal Sharma

RESPONDENT

Date of Decision : 26-02-2014

Acts Referred:

Rajasthan Co-operative Societies Act, 1965 — Section 74

Citation : (2014) LabIC 3870

Hon'ble Judges : Amitava Roy, C.J.;Vijay Bishnoi, J

Bench : Division Bench

Advocate : P.S. Bhati, A.A.G. and Ravinder Singh, Advocate for the Appellant;
M.R. Singhvi, Sr. Advocate and Mohit Singhvi, Advocate for the Respondent

Judgement

Amitava Roy, C.J.

1. The appellants, being aggrieved by the defeasance of their decision to compulsorily retire the respondent herein from service vide judgment and order dated 27.2.2004 passed in S.B. Civil Writ Petition No. 5223/2003, are in appeal. We have heard Dr. P.S. Bhati, learned A.A.G assisted by Mr. Ravinder Singh, for the appellants and Mr. M.R. Singhvi, Sr. Advocate, assisted by Mr. Mohit Singhvi, for the respondent/writ petitioner.

2. The thumbnail facts available from the rival pleadings and indispensable for the present adjudication are that the respondent/writ petitioner was initially appointed as L.D.C. with the appellant-Organization and was eventually promoted as Junior Accountant, Accountant and Manager in succession. His service conditions were governed by the Rajasthan Go-operative Societies Act, 1965, since repealed and substituted by the Rajasthan Co-operative Societies Act, 2001 (for short hereinafter referred-to as "the Act") and the Rules framed thereunder. The Registrar of the Co-operative Societies of Rajasthan in terms of Rule 41 of the Rajasthan Co-operative Societies Rules, 1966 (for short hereinafter referred-to as "the Rules") framed the Sahakari Upbhokta Wholesale/ Kraya Vikraya Sahakari Samiti"s Employees" Service Conditions, 1991 (for short

hereinafter referred to as "the Service Conditions"). According to the respondent/writ petitioner, in spite of his best efforts, while he was working as General Manager, the Organization was running in loss but in view of his unstinted devotion and efforts, he could soon consolidate its financial position. For the overall institutional well being, he also put in extra efforts. As claimed by him, he ventured into new initiatives with that mission and achieved infrastructural enhancements in all respects. He, thus, has sought to project his commendable and laudable service profile. He, however, admitted that on the basis of the memorandum of charges dated 24.1.1991, a Departmental Enquiry was initiated against him but he was eventually exonerated of the charges. That he was again charge-sheeted by the memorandum dated 1.12.1998, which too came to be dropped ultimately, was stated. He did assert that at no point of time, except these two incidents, he had either been subjected to any disciplinary action or even communicated with any adverse remark. The respondent/writ petitioner, however, alleged that the respondent No. 4 was unnecessarily annoyed with him so much so that he even lodged a false complaint against him before the Registrar, Co-operative Societies, Jaipur in April, 2001, which was however finally not pursued, as the allegations levelled against him were found to be untrue. While the matter rested at that, by order dated 5.9.2003, following deliberations in the meeting of the Committee, as contemplated in Condition 25 of the Service Conditions, he was compulsorily retired. As a consequence thereof, he was offered two Bankers Cheque for sums of Rs. 37,312/- and Rs. 18,656/-, aggregating to Rs. 55,968/-, by way of payment of his dues towards service entitlements. The respondent/writ petitioner alleged that these too, were at the instance of the respondent No. 4. He, thus, approached this court seeking annulment of the order of compulsory retirement alleging that the said decision was patently punitive in nature and further vitiated by the mala fide of the respondent No. 4.

3. The appellants herein (respondent Nos. 3 and 4 in the writ petition) at the threshold contended that the writ proceeding was not maintainable in the face of alternative remedy of an appeal under the Service Conditions. They, in essence, sought to contend that not only the date of birth, as provided by him at the entry in service, was doubtful, as the same, if accepted, he would have been at that time aged 16 years and ten-months, but also averred that his promotions to the posts of Junior Accountant, Accountant and to that of Manager, had not been in accordance with the relevant provisions of law and instead, was the yield of misuse of his office, including tampering of service records. Referring to Condition 25 of the Service Conditions, the answering respondents stated that in terms thereof, a Committee as envisaged therein had been constituted by the Joint Registrar, Marketing, Jaipur vide his letter dated 28.8.2003 and following due deliberations thereof (Committee) on 5.9.2003, an unanimous decision was taken to compulsorily retire him from service. The respondents averred that in the said meeting amongst others, the Joint Registrar, Co-operative Societies, Bikaner as the representative of the Registrar, Co-operative Department, Deputy

Registrar (Marketing) Co-operative Society, Jaipur as an expert and the General Manager as the representative of the apex body, were present. The respondents recited facts and instances vis-?-vis the respondent/writ petitioner to plead that his overall performance was unsatisfactory in the institutional perspective warranting his compulsory retirement.

4. In the re-joinder filed by the respondent/writ petitioner, he sought to contend that as the Committee, that had decided his compulsory retirement, was infact the appellate authority in the Service Conditions, there was no scope for any further appeal for him. He reiterated his accomplishments and underlined that order of compulsory retirement was one under Condition 24 of the Service Conditions and constituted a penalty. According to him, as admittedly, no enquiry had been held on the imputations referred to in the reply and taken note of, while ordering his compulsory retirement as a penalty and as no opportunity to defend the said action had been afforded to him, the impugned action was null and void.

5. The learned single Judge referring to pleaded facts and taking note of Conditions 24 and 25 of the Service Conditions, concluded that the decision to compulsorily retire the respondent/writ petitioner was penal in nature, awarded for major misdemeanour and that the same having been taken without holding an enquiry, it was vitiated by non-compliance of Condition 24 and, thus, was unsustainable in law. It was held further that the competing assertions bearing on the performance and overall conduct of the respondent/writ petitioner did give rise to the disputed questions of fact, liable to be examined in a fact finding enquiry and not in a writ proceeding. That there was no duly established misconduct of the respondent/writ petitioner as alleged nor was there any adverse order by the competent authority against him on that count, was recorded as well. The impugned decision was held to be vitiated by procedural illegalities and violation of the principles of natural justice. The order of compulsory retirement was interfered with and the appellants herein were directed to reinstate the respondent/writ petitioner in service with all consequential benefits. The appellants were, however, left at liberty to take proceedings in accordance with law and procedure, after giving him reasonable opportunity to defend his case.

6. Mr. Bhati, learned AAG, has urged with particular reference to Condition 25 of the Service Conditions that the respondent/writ petitioner, having completed more than 20 years of service at the relevant point of time, his overall service record was examined by the Committee, as contemplated therein and it, being satisfied on a scrutiny of all relevant aspects that his performance was unsatisfactory, decided to retire him compulsorily in the interest of the institutional well being. The learned AAG has urged that the action taken, was not penal by any means and was based on the subjective satisfaction of the Committee, a high level body, based on objective materials and, thus, the reference to Condition 24 of the Service Conditions, as made in the impugned

judgment and order, is wholly unwarranted. Mr. Bhati has urged that having regard to the limited contour of scrutiny of order of compulsory retirement, based on the subjective satisfaction of the employer, in judicial review, no interference in the attendant facts and circumstances, is called for. He insisted that the impugned judgment and order is based on a wrong premise i.e. Condition 24 of the Service Conditions and, thus, is unsustainable in law as well as on facts. Without prejudice to this, Mr. Bhati has urged that the respondent/writ petitioner is out of service for over a decade and that his reinstatement at this distant point of time, amongst others, would result in administrative dislocations. To reinforce his argument, Mr. Bhati has principally placed reliance on a decision in Posts and Telegraphs Board and others Vs. C.S.N. Murthy, .

7. As against this, Mr. M.R. Singhvi, learned Sr. Counsel, has maintained that the contextual facts would demonstrate, in no uncertain terms, that the respondent/writ petitioner has been subjected to illegal and mala fide action at the instance of the appellant No. 2 (respondent No. 4). According to him, the tag of compulsory retirement simpliciter has been used only as a label to camouflage the otherwise blatantly arbitrary and punitive action of the appellants. Referring to the minutes of the meeting of the Committee held on 5.9.2003, as a prelude to the order of compulsory retirement, the learned Senior Counsel has argued that it is apparent therefrom that the impugned order is one of penalty and as the same has been passed without either holding an enquiry into the allegations, taken note of, or affording any opportunity to the respondent/writ petitioner to controvert the same, it is non est in law, as has been rightly held by the learned single Judge.

8. Dr. Bhati in his reply, refuting the allegation of any personal bias of the appellant No. 2, reiterated that the order of compulsory retirement would demonstrate in unequivocal terms that the action taken was not informed with any punitive element but instead, was a bona fide decision taken in the overall interest of the Organization.

The otherwise incompatible pleadings and the competing arguments have been duly examined.

9. The Condition Nos. 24 and 25 of the Service Conditions constitute when judged in the perspective of the attendant facts and circumstances, the diagnostic criteria for the resolution of the issues seeking adjudication. They are thus for ready reference set out herein below:

"24...If a major misdemeanour is alleged against an employee, the management before taking any action against the employee will hold an enquiry by an officer appointed as Enquiry Officer for the purpose. He shall be given a charge-sheet clearly setting forth the circumstances alleged against him and requiring explanation. He shall be informed in writing about the time and place at which enquiry into his alleged misconduct is to be held. He shall be given an opportunity to answer the charge and permitted to be assisted by an employee

of his choice, working in the establishment. If he refuses or fails to present himself for enquiry, the enquiry shall be conducted ex parte. Except for reasons to be recorded in writing by the officer holding the enquiry, the employee shall be permitted to produce witnesses in his defence and cross-examine any witness on whose evidence the charge rests. A concise summary on the evidence led on either side and the employee's plea shall be recorded.

25...Service record of all the employees who have completed 20 years in service or attained 50 years of age will be examined every year and in case of poor performance they may be retired from service after giving them the required notice pay. The record of service will be examined by the Committee or by Board of Directors/Registrar, Cooperative Societies as the case may be. If an employee is surcharged under section 74 of the Rajasthan Cooperative Societies Act, 1965 and subsequently the orders are sustained in appeal, may be relieved from service even without observing the procedure. He will be given a show-cause notice on the basis of orders of surcharge. Recovery will be affected. On receipt of reply of the notice the disciplinary authority will examine the case on merits and award punishment in writing. The case may be decided if the due opportunity of being heard is given and reply is submitted in the time period."

10. There is no wrangle at the Bar that compulsory retirement is also a penalty for major misdemeanour/misconduct under the said Service Conditions. However, a plain reading of Condition No. 25, as set out hereinabove, would proclaim in clear terms that compulsory retirement may ensue as well in case of poor performance if so adjudged on the examination of the service record of an employee, who has completed 20 years in service or has attained 50 years of age, however, after giving him/her the required notice pay. The record of service has to be examined by a Committee or by the Board of Directors/Registrar, Cooperative Societies, as the case may be.

11. In the case in hand, a high level Committee was constituted comprised of Administrator, Sahakari Upbhokta Wholesale Bhandar, Bikaner (Chairman), Joint Registrar, Cooperative Societies, Bikaner (representative of Registrar, Jaipur), General Manager, Rajasthan State Sahakari Upbhokta Sangh Limited, Jaipur, Dy. Registrar (Marketing), Sahakari Department, Rajasthan, Jaipur (expert on behalf of Registrar) and General Manager, Sahakari Upbhokta Wholesale Bhandar Limited, Bikaner. In its meeting held on 5.9.2003, the Committee following an elaborate scrutiny of the service records of the respondent-writ-petitioner unanimously took a decision to compulsorily retire him from the service of the appellant-Society. In arriving at this conclusion, the Committee did notice phase-wise performance, omissions and commissions of the respondent-writ-petitioner and recorded a finding that it was apparent therefrom that during his service tenure, he had demonstrated lack of devotion to duty, indifference, want of commitment, indiscipline and insubordination for which his further retention in service was not in the interest of the appellant-Society. Though the minutes of the said meeting do refer to the various instances leading to these deductions, it

is evident therefrom that no departmental enquiry had been conducted into the same and the eventual decision to compulsorily retire the respondent/writ-petitioner was as a consequence of the overall bearing of considerations relatable thereto and was taken, being impelled by the satisfaction that it was essential in the Organizational welfare. The factors, as weighed with the Committee, did lead to the unanimous conclusion that his performance had been conspicuously unsatisfactory so much so that his further retention in service would not be in the interest of the Society. The order dated 5.9.2003 compulsorily retiring the respondent-writ-petitioner from service thus only conveyed the decision to this effect. Thereby, he was offered three months salary in lieu of the notice for the said period vide Banker's cheques as referred to therein.

12. The law pertaining to compulsory retirement as a measure to weed-out an incumbent in public service to relieve it of a dead wood or someone who has outlived his/her utility is no longer *res integra* and as recalled in *Posts and Telegraphs Board and others Vs. C.S.N. Murthy*, had been succinctly enunciated by the Hon'ble Apex Court in *Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another*, .

The salient features with regard thereto have been culled out therein as here in below:--

"34. The following principles emerge from the above discussion:

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to retire a Government servant compulsorily. The order is passed on the subjective satisfaction of the Government.

(iii) 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 sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

(iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter- of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a Government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, *moreso*, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court

merely on showing that, while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.

Interference is permissible only on the grounds mentioned in (iii) above. This aspect has been discussed in paras 30 to 32 above."

13. The pronounced judicial view thus is that compulsory retirement if not awarded as a major punishment is bereft of punitive element and does not imply any stigma or suggestion of misbehaviour. The decision generates from the subjective satisfaction of the employer and is taken in public interest. The principles of natural justice have no application vis-à-vis such an exercise and no curial intervention is contemplated unless the order suffers from mala fide or is based on no evidence or is arbitrary so much so that there is no material whatsoever to derive such a satisfaction. It is incumbent on the employer to consider the entire service records of the employee concerned which would naturally include the entries in the confidential records/character rolls, both favourable and adverse and that an order of compulsory retirement is not liable to be quashed by a Court merely on the ground that in passing the same uncommunicated adverse remarks had also been taken into consideration. Their Lordships in *Posts and Telegraphs Board and others Vs. C.S.N. Murthy*, with reference to the Fundamental Rule 56(j) enwombing the concept of compulsory retirement propounded that it authorizes the Government to review the working of its employees at the end of their period of service referred to therein and to require the servant to retire from service, if, in its opinion, public interest calls for such an order. It was clarified that whether the conduct of the employee is such as to justify such a conclusion is primarily for the departmental authorities to decide and that the nature of the delinquency and whether it is of such a degree as to require the compulsory retirement of the employee are aspects primarily for the Government to decide upon. A caveat was sounded against the interference therewith if arrived at bona fide and on the basis of materials available on record. Adjudged by the above judicially adumbrated principles, we are of the considered opinion that in the exercise of this Courts power of judicial review, no interference with the order dated 5.9.2003 compulsorily retiring the respondent-writ-petitioner from service is warranted. The impugned decision does not suffer from want of factual foundation thereof and is not vitiated by proved mala fide as well. On an analysis of the attendant facts and circumstances, we find ourselves in respectful disagreement with the determination of the learned single Judge that the impugned action had been taken as contemplated in Condition No. 24 of the Service Conditions. In that view of the matter, the order of compulsory retirement cannot be viewed to be one by way of penalty for major misdemeanour and therefore, adherence to the procedure otherwise prescribed for a disciplinary proceeding to enquire into the charge of misconduct is not required. In our opinion, the order of compulsory retirement has been passed as envisaged in Condition No. 25 of the Service Conditions and as the pre-requisites therefore do exist as the contextual facts

demonstrate, the impugned judgment and order cannot be sustained and is thus liable to be interfered with. Ordered accordingly.

The appeal stands allowed.