

(2009) 11 PAT CK 0024
In the Patna High Court
Case No : C.W.J.C. No. 11444 of 1997

Chhotelal Chuniyara

APPELLANT

Vs

Hon"ble Patna High Court and others

RESPONDENT

Date of Decision : 13-11-2009

Acts Referred:

Citation : (2009) 11 PAT CK 0024

Judgement

S.K. Singh, A.C.J. and Shyam Kishore Sharma, J.—This writ petition has been preferred by the petitioner against his compulsory retirement in public interest vide notification/order dated 16.9.1996 issued by the Government of Bihar in exercise of power under Rule 74(b)(ii) of the Bihar Service Code.

Earlier this writ petition was dismissed by judgment and order dated 9.8.1998. The Hon"ble Supreme Court did not approve that order of dismissal of the writ petition in limine only on the ground that mentioning of public interest in the order of compulsory retirement does not amount to any stigma. Pursuant to" order of the Hon"ble Supreme Court dated 29th October, 1999 passed in Civil Appeal No. 6184 of 1999 the matter was again considered by a Division Bench of this Court which admitted the case for detailed hearing on 6.3.2000. The matter has now been heard in detail.

2. Learned Counsel for the petitioner has placed the relevant facts which lie within a narrow compass. Petitioner joined judicial Service as a Munsif on 9.4.1974 he was promoted to the next post of Sub-Judge on 16.11.1986 and was put under suspension on 30.8.1993. On the recommendation made by the Standing Committee of the Patna High Court, Patna the Full Court in its meeting dated 4.5.1996 resolved for compulsory retirement of the petitioner in public interest. The Government took sometime and ultimately the impugned order/ notification was issued on 4.9.1996 and in the meantime enquiry report in the disciplinary proceeding initiated after suspension was submitted on 30.5.1996.

3. Three main contentions have been advanced by learned Counsel for the petitioner. The first contention is that the High Court adopted a short-cut and

instead of completing the departmental proceeding on its merits recommended for compulsory retirement of the petitioner and, therefore, the impugned order should be held to be penal in nature and should be quashed as such. Secondly, it was contended that some old entries in the confidential reports relating to the petitioner should have been kept out of consideration whereas the materials, on record show that the entire records were considered by the High Court for recommending compulsory retirement. In particular, it was submitted that entries adverse to the petitioner prior to his promotion in 1986 could not have been taken into consideration. Lastly, it was contended that even that adverse entry by the Inspecting Judge has been taken into consideration against which the petitioner had filed a representation which was still pending.

. 4. In support of the first contention learned Counsel for the appellant has placed reliance upon judgment of the Hon"ble Supreme Court in the case of High Court of Punjab and Haryana Through R.G. Vs. Ishwar Chand Jain and Another, and a Division Bench judgment of this Court in the case of Hira Prasad Pandey v. State of Bihar, 2000 (2) PLJR 88.

5. I earned Senior Advocate appearing for the Respondents No. 1, 2 and 3 representing the Parna High Court on its administrative side has first advanced arguments on the issue of law as to permissibility of resorting to compulsory retirement in public interest during pendency of disciplinary proceeding. On this issue he has placed reliance upon several judgments of the Hon"ble Supreme Court including judgment in the case of Ishwar Chand Jain (supra) relied upon by the learned Counsel for the petitioner. First of all he cited judgment of the Apex Court in the case of State of Uttar Pradesh and another v. Abhai Kishore Masta, 1995 (70) FLR 789 (SC) particularly Paragraph-6, to submit that the law is well settled that every order for compulsory retirement during the pendency of disciplinary proceedings need not necessarily be penal. It is a matter to be decided on verification of the relevant record or the material on which the order is passed. Paragraph-27 of the judgment in the case of Ishwar Chand Jain was highlighted in support of the aforesaid proposition that it cannot be said, as a matter of law nor can it be as an invariable rule, that any and every order of compulsory retirement during the pendency of disciplinary proceedings is necessarily penal.

6. In reply to the second contention raised on behalf, of the petitioner, Seamed Senior Advocate for the High Court relied upon judgment of the Hon"ble Supreme Court in the case of Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, According to the views of the Apex Court in that judgment, particularly in Paragraph-26, there had arisen a conflict in the views of the Hon"ble Supreme Court on the issue--whether principles of natural justice are required to be observed while passing an order of compulsory retirement. After examining all the relevant earlier judgments in Paragraph-30 of the judgment the three Judges came to the opinion that the view taken in Union of India (UOI) Vs. Col. J.N. Sinha and Another, is correct and the principles of

natural justice are not attracted in a case of compulsory retirement under Fundamental Rule 56(j) or a rule corresponding to it. Paragraph-34 of that judgment enunciates all the relevant principles relating to an order of compulsory retirement. It is relevant to recapitulate those principles in brief. An order of compulsory retirement is not a punishment and implies no stigma. When required to be issued in public interest, it is based on subjective satisfaction. Principles of natural justice have no place in the context of an order of compulsory retirement. However, judicial scrutiny is not wholly excluded. The High Court is not required to examine the matter as an Appellate Court, it may interfere if satisfied that the order passed is (i) mala fide, or (ii) that it is based on 10 evidence, or (iii) that it is arbitrary--in the sense that no reasonable person would form the requisite opinion on the given material, that is, if the order is found to be perverse.

7. Reliance was next placed upon judgment of the Supreme Court in the case of *Union of India v. M.E. Reddy*, (1990) 2 SCC 15 to support the same principle that compulsory retirement is not a punishment and it does not involve stigma. paragraph-18 of that judgment which contains the views of the Court on the facts noticed from the Service Record of the concerned officer, was highlighted to show that the Hon'ble Supreme Court considered the entire confidential personal file of the officer and the Court observed that before passing an order of compulsory retirement, "it is not an entry here or an entry there which has to be taken into consideration by the Government but the overall picture of the officer during the long years of his service that he puts in, has to be considered". The Supreme Court further noticed that the last entry which was sought to be expunged through a representation and other entries made before showed that the integrity of the officer was not above board. It was highlighted that the Supreme Court even considered the last entry although a representation had been made for expunging that entry.

8. Reliance was also placed upon Supreme Court decision in the case of *Badrinath Vs. Government of Tamil Nadu and Others*, In Paragraph-56 of that judgment the Apex Court considered an earlier judgment in the case of *State of Punjab v. Gurdas Singh*, 1998 (79) FLR 317 (SC) in which it was held that although in the case of *Baikunth Nath Das* it was said that adverse remarks prior to promotion lose their sting, but such entries are not wiped out and can be taken into consideration while considering the overall performance of the employee during the whole tenure of service. It was also noticed with approval that even uncommunicated adverse remarks could be relied upon. After considering the other relevant judgments, in Paragraph-59, the Supreme Court summarized the principles, of course in the context of right of consideration for promotion, that adverse remarks of an officer for the entire period of service can be taken into consideration "while promoting an officer or while passing an order of compulsory retirement" but what weight, should be attached to the adverse remarks depends upon sound principles of fairness. Some of the principles were to highlight how fairness could be achieved and the 16th principle in

Paragraph-59 is in following words:

Uncommunicated adverse remarks could be relied upon even if no opportunity was given to represent against them before an order of compulsory retirement is passed.

9. Lastly, learned Counsel for the High Court relied upon recent judgment of the Supreme Court in the case of National Aviation Company of India Ltd. Vs. S.M.K. Khan, In Paragraph-13 of that judgment the Apex Court has held that an order of compulsory retirement in pursuance of rule/regulation enabling the competent authority to pass such an order on a bona fide opinion that continuation of an employee will not benefit the institution, is valid and not open to challenge. It is neither a punishment nor carries any stigma. In Paragraph-16 of that judgment it has been held that while examining the validity of such an order the proper approach of the Court would be to consider whether the order is sustainable with reference to the requirements of the relevant rule, rather than examining whether the order can also be construed as a punishment for misconduct.

10. In the light of aforesaid principles of law highlighted by learned Counsel appearing for the parties we have examined the Service Record of the petitioner which has been brought on record as Annexure-A to the counter affidavit of Respondents No. 1, 2 and 3. In the year 1974-75 while noticing that his criminal out turn was found twice to be inadequate during the year 1974, the District Judge has recorded that the officer was found to be of doubtful integrity, Similar adverse entry regarding integrity is recorded in the year 1975-76. In the following year another District Judge has also recorded that he is deficient in the knowledge of law, below average and ill-reputed for his integrity. In the year 11982-83 it is recorded that he does not enjoy good reputation regarding his integrity. In the next year it is recorded that a number of transfer petitions making allegations against his integrity were preferred in certain suits. Thereafter, as per Paragraph-8 of the counter affidavit which is not controverted, the petitioner was confirmed after seven years from the date of his joining. He was thrice superseded in the matter of promotion to the rank of Sub-Judge and was ultimately promoted as such with effect from 27.9.1996. In that rank also he was superseded in the matter of confirmation.

11. Coming back to the entries in his Service Record, in the year 1990-91 it was recorded that he has not maintained the reputation of honesty and impartiality. In the next year it is recorded that certain anonymous petitions have been filed against him and the matter was under enquiry. In the year 1992-93 it is recorded that some complaints have been received against him--Does not carry good reputation. The inspection reports of Hon"ble Inspecting Judges disclose that in the year 1984 he was found below average and in the year 1993 the Hon"ble Inspecting Judge has recorded three adverse entries against various columns to show that he was very I unpopular for his lack of integrity and honesty.

12. In the background of the aforesaid materials relating to Service Record of the petitioner, and on applying the principles emerging from the judgments of the Apex Court noticed above we find substance in the submission advanced by the learned Senior Counsel appearing for the Respondents No. 1, 2 and 3 that the High Court on its administrative side committed no illegality in looking into the entire Service Record of the petitioner at the time of passing the order of compulsory retirement. There was no requirement to exclude the earlier entries relating to lack of integrity. In view of Principle No. 5 in Paragraph-59 of the Supreme Court judgment in the case of Badri Nath (*supra*), for highlighting the principles of fairness it was further held that:

If the adverse remarks relate to a period prior to an earlier promotion they must be treated as having lost their sting and as weak material, subject however to the rider that if they related to dishonesty or lack of integrity they can be considered to have not lost their strength fully so as to be ignored altogether.

13. We are also of the considered view that merely because a departmental proceeding had been initiated and was pending, there was no legal bar upon the power of the employer to consider and pass the order for compulsory retirement because of availability of materials. The submission that such order was passed by way of penalty to circumvent passing an order on merits in the disciplinary proceeding, does not appear to have any substance when it is clear from the relevant dates that when the Standing Committee as well as the Full Court considered to retire the petitioner compulsorily in public interest under relevant rules, even the enquiry report was not available and there was no material on the basis whereof it could be decided to punish the petitioner for any lapses. Charges were still under enquiry and the findings of the Enquiry Officer were not known to anyone. Hence, in the facts of the case it cannot be said that the order of compulsory retirement was a camouflage for passing an order of punishment.

Considering the submissions advanced on behalf of respondents noticed above and the discussions and findings, we are of the view that no ground has been made out to interfere with the impugned order of compulsory retirement. Accordingly we dismiss the writ petition as one without merits. There shall be no order as to costs.