

**(1994) 08 BOM CK 0006**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 1587 of 1994**

|                                     |    |            |
|-------------------------------------|----|------------|
| Dashrath Shelke                     | Vs | APPELLANT  |
| The State of Maharashtra and Others |    | RESPONDENT |

**Date of Decision :** 03-08-1994

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16  
Maharashtra Civil Services (Pension) Rules, 1982 — Rule 10(4)

**Citation :** (1994) 4 BomCR 570

**Hon'ble Judges :** Vishnu Sahai, J; M.S. Rane, J

**Bench :** Division Bench

**Advocate :** K.K. Singhavi, Nitin Pradhan and S.D. Khot, for the Appellant; C.J. Sawant, S.C. and R.D. Soni, Assistant Public Prosecutor for respondent Nos. 1 to 4, for the Respondent

**Final Decision :** Dismissed

## Judgement

M.S. Rane, J.—This petition is being disposed of at the stage of admission itself on hearing the learned Counsel for both the sides and on perusal of the relevant record comprising of the pleadings i.e. the return filed by the 4th respondent, petition and service record of the petitioner made available by the respondents to the Court.

2. The petitioner, a District Judge, in this petition challenges order dated 18th November, 1993 issued by Law and Judiciary Department, Mantralaya, Bombay compulsorily retiring him from service as a District Judge in public interest. The said order has been passed under sub-clause (1) of Clause (a) of sub-rule (4) of Rule 10 of the Maharashtra Civil Services (Pension) Rules, 1982 (for the sake of brevity hereinafter referred to as "the Rules").

3. The brief appraisal of the facts would be necessary.

The petitioner joined the judicial service in Maharashtra in the year, 1970 as Civil Judge. Junior Division and Judicial Magistrate, First Class, in the year 1979 was

promoted to the post of Civil Judge, Junior Division, in the year 1982 promoted and appointed as an Assistant Judge and Assistant Sessions Judge, in the year 1988 appointed in the cadre of District and Sessions Judge and in the year 1993 his appointment as District and Sessions Judge was confirmed.

4. The petitioner has in his petition stated various facts with regard to his postings at various places which are not relevant in the present context.

5. The order impugned in this petition as stated is dated 18th November, 1993 which the petitioner has sought to challenge broadly on the following grounds :

(i) The same is not in the public interest.

(ii) The order is vitiated because of mala fide.

(iii) He has been victimised and indiscriminated.

6. The matter came before us sometime back when the respondents were directed to file the affidavit. Accordingly they have filed the return through Shri Vidyadhar Ramchandra Datar, Additional Registrar (Legal), High Court, Appellate Side, Bombay, being dated 2nd August, 1994, wherein the respondents have denied the various allegations made by the petitioner in his petition asserting that the steps taken in premature retirement of the petitioner are strictly in accordance with the rules. It is stated that the procedure needed to be followed and complied with in that behalf has been adhered to. It is also stated that the case of the petitioner alongwith various other judicial officers was considered by the Review Committee constituted by the Honourable the Chief Justice comprising of 3 Senior Judges of this Court in accordance with the modalities fixed in the Chamber Meeting of all the Honourable Judges in accordance with the decision of the Supreme Court in the case of, State of Uttar Pradesh Vs. Batuk Deo Pati Tripathi and Another, .

7. It is stated that the Review Committee considered the service record of the petitioner for the last five years as well as his leave record, the disposal chart and the complaints received by the S.I.D. i.e. Special Investigation Department. The report of the said Committee reads :

"The Committee examined the case of Shri D.R. Shelke. After examining the confidential record for the last five years as well as leave record, the disposal chart and the complaints received by S.I.D., the Review Committee is of the unanimous opinion that the officer should be retired in accordance with the provisions of Rule 10(4)(a)(i), Shri Shelke was born on October 11, 1939 and had joined the service on April 30, 1970, i.e. before attaining the age of 35 years and can be retired after attaining age of 50 years. The Review Committee is of the opinion that it is in the public interest to retire Shri D.R. Shelke. The Review Committee recommends that instead of giving notice of three months as contemplated under Rule 10(4), it is desirable, as permitted by the Rule, to give three months pay and allowances in lieu of such notice".

8. The return further mentions that the report of the Review Committee was then placed before the Administrative Judges of this Court who accepted the same in their meeting held on 14th October, 1992. Thereafter steps for the issuance of the impugned order were taken.

9. Mr. Sanghavi, the learned Counsel for the petitioner submitted that the petitioner has not been communicated any reasons or grounds for justifying the passing of the impugned order. The order is therefore perverse and mala fide.

10. We called upon the learned Counsel for the respondents to make available the service record of the petitioner reference of which has been made in the decision of the Review Committee and accordingly the service record of the petitioner in the nature of confidential reports, disposal chart, report regarding the complaints received by the S.I.D. were made available. The same was also made available to Shri Sanghavi, the learned Counsel for the petitioner for his perusal.

11. Before we deal with the submissions made before us, it will be appropriate to notice the relevant rules and also the judicial view on the point directly involved in this petition.

12. The relevant rule is sub-clause (i) of Clause (a) of sub-rule (4) of Rule 10 of the said rules which provides :

"(4) Notwithstanding anything contained in sub-rules (1) and (2) of this rule, the appropriate authority, if it is of the opinion that it is in the public interest so to do, by giving notice of not less than three months in writing in Form 30 or in Form 31, as the case may be, or three months" pay and allowances in lieu of such notice, have the absolute right to retire-

(a) any Gazetted Government servant under the rule making control of the State Government :-

(i) if he had entered Government service under any Government in India, before attaining the age of thirty-five years, after he has attained the age of fifty years,"

An analysis of this rule clearly shows that the following essential ingredients of the rule must be satisfied before an order compulsorily retiring a Government Servant is passed.

(i) that the member of the service must be a Gazetted Government servant.

(ii) He had entered the service before attaining the age of 35 years.

(iii) that the member of the service must have completed 30 years of qualifying service or the age of 50 years.

(iv) that the Government had an absolute right to retire the Government servant.

(v) that the order must be passed in public interest.

(vi) that three months previous notice in writing shall be given or three months pay and allowance in lieu of such notices.

It may be noted that the age of the petitioner when he joined the judicial service was less than 35 years which fulfills the condition of sub-clause (i) of the rule quoted above. Further the Government has issued a Circular being No. GRC-1082/952-XIV dated 1st September, 1983 and the guidelines in accordance and in furtherance of the rule in question which has been done in the light of decision of the Supreme Court in the case of State of Uttar Pradesh Vs. Batuk Deo Pati Tripathi and Another, . In the said decision the Apex Court had to consider the case of a Government Servant subjected to compulsory retirement in public interest as in the instant case. It is noticed that the provision with regard to the compulsory retirement of a Government servant, in the said decision is in turn similar to one as in the case herein. Besides there were separate instructions issued by the State Government providing guidelines and prescribing the procedure while making recourse to the rule in question. It appears that thereafter the State Government had issued the circular and guidelines being dated 1st September, 1983 mentioned above.

13. The judicial view on the point is also well settled and is evident from the various decisions of the Apex Court. In as much as the settled legal position on this aspect has clearly revealed from various judicial pronouncements which proceed to enunciate the principal as under :

- (i) Compulsory retirement is not a punishment and does not involve stigma.
- (ii) It is a sole prerogative of the Government.
- (iii) Speaking order is not required.
- (iv) Uncommunicated adverse remarks can be taken into consideration.
- (v) Principles of natural justice do not apply.

It is further laid down that (i) the said order must be in public interest. (ii) The Review Committee shall have to consider the entire report of the service of the concerned employee before taking any decision in the matter attaching more importance to record and performance being of the later year. (Referred to (i) Union of India (UOI) and Others Vs. Dulal Dutt, , (ii) Baikuntha Nath Das v. Chief District Medical Officer, Baripada, (iii) Hari Chand alias Harish Chandra Vs. Daulat Ram, , (iv) Baldev Raj v. State of Punjab, 1984 (Supp.) S.C.C. 211 , (v) Hari Datt Kainthala v. State of U.P., (vi) Union of India (UOI) Vs. M.E. Reddy and Another, and the latest in the case of Union of India Vs. V.P. Seth and another, . It is not necessary to multiply further.

14. Mr. Sanghavi the learned Counsel for the petitioner referred to the decision of the Supreme Court in the case of Baldev Raj Chadha Vs. Union of India (UOI) and Others, . However, the facts and circumstances that obtained in the said matter before the Supreme Court and in the matter herein are distinguishable. In

as much as it is noticed that in the said decision before the Supreme Court the reliance was placed on old adverse entries of the employee concerned for taking decision of his compulsory retirement and as pointed out earlier which is not the case in the matter in hand. Therefore the said decision of the Supreme Court is of no help to the petitioner.

15. We will only reproduce the principles evolved by the Apex Court on the point in its various decisions and reiterated and re-affirmed in the latest decision of Union of India v. V.P. Seth and another, (supra) :

"Mr. Goswami the learned Senior Counsel appearing for the appellant rightly points out that the position of law has now been settled by this Court by two recent decisions reported in Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, and Posts and Telegraphs Board and others Vs. C.S.N. Murthy, , which clearly hold that uncommunicated adverse remarks can certainly be considered for the exercise of power of compulsory retirement. In paragraph 34 (of S.C.C.) (Para 32 of A.I.R.) of the decision first mentioned, this Court evolved the following principles :

"(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, more so, 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 the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstances by itself cannot be a basis for interference."

16. On perusal of the impugned order of this petition, we find that the same fully

conforms all the conditions mentioned in the rule in question and the guidelines. The Review Committee constituted under the rules comprising of 5 Senior Judges of this Court has considered the case of the petitioner and has unanimously recommended his compulsory retirement. All the relevant service record of the petitioner as mentioned in the return of the 4th respondent was placed before the Committee which has benefit of its perusal for reaching its conclusion. As stated we have also perused and examined the said report. The same was also made available to the learned Counsel appearing for the petitioner. We do not find any substance and merits after perusal of the said service record of the petitioner, that the decision recommended by the Review Committee is arbitrary in the sense that no reasonable person would form the opinion on the given material made available as has been done by the Review Committee in the case of the petitioner. It is quite apparent that the Committee has assessed and evaluated the service record of the petitioner for the last 5 years and has reached unanimous conclusion with regard to the potentiality for continuity in service of the petitioner and has recommended the course which in our view is justified having regard to the service record of the petitioner. It is also further noticed that all the conditions mentioned in the rules referred to above and the guidelines prescribed have been complied with.

17. In the circumstances, we do not find any merits in the petition and consequently the same stands dismissed.

Petition dismissed.