(2012) 01 CHH CK 0032

In the Chhattisgarh High Court

Case No : W.A. No. 302 of 2007

Dr. G.S. Khatri APPELLANT

Vs

State of Chhattisgarh and Others RESPONDENT

Date of Decision : 17-01-2012

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2012) 1 CGBCLJ 406

Hon'ble Judges : Sunil Kumar Sinha, J;R.S. Sharma, J

Bench : Full Bench

Advocate : Amrito Das, for the Appellant; A.S. Kachhawaha, Dy. Advocate General for the State, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Kumar Sinha, J.—This appeal is directed against the order dated 2% of August, 2006, passed in W.P.(S.) No. 1778 of 2005. By the impugned order, the writ petition filed by the appellant/ petitioner against the order of his compulsory retirement has been dismissed by the writ Court. The appellant was appointed as Veterinary Assistant Surgeon on 6.5.1972 on temporary basis. Thereafter, his services were regularized on the basis of approval granted by Public Service Commission by order dated 23.5.1978. The State government retired the appellant compulsorily in public interest by order dated 2nd January, 1999, which was challenged before the writ Court. Before the writ Court, the appellant raised singular contention that he was neither given any show cause notice nor the enquiry was held before the decision was taken to retire the appellant compulsorily. Except the above ground of violation of principles of natural justice, no other ground was raised. The writ Court, referring to various decisions, including the decision of Bajkuntha Nath Das and another Vs. Chief District Medical Officer Baripada and another, observed that the order of compulsory retirement can be challenged only on the ground that the requisite opinion was not formed or the decision was based on co-lateral grounds/ no evidence or the decision was arbitrary. It was held that if the order is passed on the subjective satisfaction of the government, the High Court cannot sit as an appellate Court to interfere with the decision of the Government/ Employer except in case of no evidence or established malafide or arbitrariness. Since the writ Court did not find all this while examining the matter, the writ petition was dismissed.

2. Shri Amrito Das, learned counsel for the appellant, raised almost similar points, which were raised before the writ Court. In addition, he argued that the order of compulsory retirement was passed on the scrutiny of the records of government servants for their removal to stop the negligence and corruption in various government departments, therefore, it was not a case of compulsory retirement simplicitor and it was punitive. He further argued that the appellant was regularized in service on 23.5.1978, therefore, he had not completed 25 years of qualifying service and as such, he could not have been retired compulsorily under The Madhya Pradesh Civil Services (Pension) Rules, 1976 (hereinafter referred to as ''the Rules 1976'').

3. On the other hand, Shri A.S. Kachhawaha, learned Dy. Advocate General appearing for the State, opposed the arguments and supported the order passed by the writ Court. He argued that the ground of qualifying service was not raised before the writ Court, therefore, the same cannot be raised in this appeal.

4. We have heard learned counsel for the parties at length and have also perused the records of the writ petition.

5. The contents of the order dated 2.1.1999 (order of compulsory retirement) would show that the above order was passed under Rule, 42 (b) of the Rules, 1976. Rule 42 (b) of the Rules provides that the appointing authority may in the public interest require a Government servant to retire from service at any time after he has completed 25 years qualifying service, with the approval of the State Government by giving him three months notice in Form 29. Provided that such Government servant may be retired forthwith and on such retirement, the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing then immediately before his retirement or, as the case may be, for the period by which such notice falls short of three months.

6. The records relating to retirement have been filed before us.

7. A perusal of the records would show that the General Administration Department of the Government had taken a decision that Meeting of Scrutiny Committee shall regularly take place on intervals of six months and it shall scratmize the cases of the officers/employees for compulsory retirement on account of completion of 55 years of age or 25 years of qualifying service. The cases of Veterinary Assistant Surgeons, therefore, were considered in the Meeting of Scrutiny Committee dated 6.11.1998. Secretary, Deputy Secretary and Director in charge of Veterinary Department, were the members of the said committee. The Committee, on the norms already set-up and contained in the

Minutes of the Meeting, scrutinized the cases of all the officers, who fell within the zone of consideration of the committee on such norms and then the names of two Assistant Veterinary Surgeons, including the appellant were recommended for their compulsory retirement.

8. Following are the norms, on which, the scrutiny committee scrutinized the cases of the Assistant Veterinary Surgeons and took a decision as above in the matter of the appellant.

The Minutes of Meeting of the Scrutiny Committee would show that it was not a casual decision and the decision was taken after considering the cases of all the Assistant Veterinary Surgeons, falling in the zone of consideration as per Rules, 1976.

9. In State of Gujarat Vs. Umedbhai M. Patel, the Supreme Court observed that the law relating to compulsory retirement has been crystallized into definite principles and it was broadly summarized as under:

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

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

(iii) For better administration, it is not 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 is given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer

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

10. In the instant case, if a decision was taken by the duly authorized committee of the Government in scrutiny of the cases of all Assistant Veterinary Surgeons in a general manner, unless an infirmity is pointed out so as to make it illegal or arbitrary, the above decision has to be held, to be correct. The committee has considered the entire service records of the concerned employees and then onh it has recommended for compulsory retirement of the two Assistant Veterinary Surgeons, including the appellant. The appellant has not raised any ground in his petition relating to defect in the action taken by the scrutiny committee. He has

challenged the compulsory retirement in general manner. No specific instances for controverting the decision have been taken as ground in the petition filed by the appellant. Even no material was placed on record by the appellant to show perversity or to make out a case of no evidence or to establish malafide or arbitrariness in taking the decision of his compulsory retirement. The writ Court has rightly held that in such cases i.e. in cases of compulsory retirement under Rule 42 (b) of the Rules, 1976, the principles of natural justice, has no role. The writ Court, therefore, held that the order of compulsory retirement, was not suffering from perversity or illegality.

11. Shri Amrito Das, learned counsel for the appellant has next contended that the appellant had not completed 25 years of qualifying service, as the period of his service for the purpose of Rule 42 (b) shall be counted from the date of his regularization, and not from the date of his initial appointment. We have considered the above contention. "Qualifying service", as defined in the Rules itself vide Ride 3 (p), means the period between the date of joining pensionable service under the State Government and retirement therefrom which shall be taken into account for purpose of the pension and gratuity admissible under these rules and includes the period which qualifies under any other order or rule for the time being in force. Though this ground was not pressed before the writ Court, but it was taken in the original application, which was registered as writ petition and additional return was filed by the Government in this regard. It was contended that the appellant was initially appointed on 6.5.1972 and the service rendered by him since 1972, was the qualifying service for the purpose of pension, though the same may not be taken into consideration while fixing the seniority of the appellant. From the definition of qualifying service, it is clear that qualifying service is different than the service to be taken into consideration for fixing the seniority. In the instant case, as rightly contended by the State, the appellant though was granted approval by Public Service Commission and regularized as Veterinary Assistant Surgeon vide order dated 23.5.1978, will get a seniority as Veterinary Assistant Surgeon from the date of regularization through P.SC., but because there was continuity in service, the qualifying service for pension etc. would be the service rendered by him from his initial date of appointment i.e. 6.5.1972. The crucial date, as per definition clause 3 (p) of the Rules, would be the date of joining of the Pensionable service under the State Government and not the date of regularization, as the above clause nowhere indicates like that. We are of the view that the Government has rightly counted the period of qualifying service of the appellant from the first, day of his joining in the Veterinary Department, therefore, the said argument, cannot be accepted.

12. For the foregoing reasons, we do not find any substance in this appeal. The appeal, therefore, is liable to be dismissed and is hereby dismissed. No order as to cost(s).