
(1997) 12 GUJ CK 0042

In the Gujarat High Court

Case No : Special Civil Application No. 3494 of 1986

Dr. H.V. Shah

APPELLANT

Vs

The State of Gujarat and Another

RESPONDENT

Date of Decision : 09-12-1997

Acts Referred:

Bombay Civil Services Rules, 1959 — Rule 161, 161(1)

Citation : (1997) 12 GUJ CK 0042

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : S.R. Brahmbhatt, for the Appellant; None, for the Respondent

Judgement

S.K. Keshote, J.—The petitioner, a Deputy Director in the Directorate of Health, Medical Services and Medical Education, Government of Gujarat, filed this Special Civil Application challenging the order dated 10.7.86 of the respondent-State under which he was ordered to be compulsorily retired from the Government services.

2. This order has been passed by the Government in exercise of powers conferred by clause (aa) of Sub Rule (1) of Rule 161 of the Bombay Civil Services Rules, 1959. After filing this Special Civil Application, the petitioner has got amended the same. The respondents have filed three replies to this Special Civil Application. The first reply is of 23rd July 1986. This affidavit has been filed by Mr. Christy Fernandez, Joint Secretary to the Government of Gujarat, Health & Family Department. Then comes the second reply filed by the same deponent on 28th July 1986. The last reply dated 21st March 1987 has been filed by Mr. Madhusudan P. Parekh, Secretary to the Government of Gujarat, Health & Family Welfare Department. None put appearance for respondents.

3. The learned counsel for the petitioner contended that the order impugned in this Special Civil Application is wholly arbitrary and unjustified. The respondents have not produced on record of this Special Civil Application, any material on the

basis of which a prudent man could have formed an opinion that the petitioner has become a dead-wood which should be chopped off. It has next been contended that the order is nothing but only a malafide order passed by respondents to punish the petitioner for his act of filing Special Civil Application before this Court for his legitimate claims. Though the respondents have filed three replies to this Special Civil Application, no material whatsoever has been produced on record to show that the petitioner had any adverse remarks in his service record or that he has ever been punished for any misconduct or otherwise his work was not satisfactory to the extent where his services have to be brought to an end in public interest or that his integrity was doubtful or he was dishonest person, etc. Even the proceedings of the Review Committee have not been produced on record of this Special Civil Application by respondents. Over and above this, the service record of the petitioner has also not been produced on record of this Special Civil Application by respondents.

4. First of all, I consider it to be appropriate to deal with the submission of learned counsel for the petitioner that the order impugned is passed malafide. The pleadings of the petitioner in this respect are as under:

The petitioner, at the time of his appointment as Deputy Director, was working as Civil Surgeon at Himmatnagar. As a Civil Surgeon, the petitioner was allowed to do private practice but on his appointment as Deputy Director, for some unknown reasons the Government did not allow him to do private practice which led to filing of Special Civil Application No.6528 of 1985. In this petition the petitioner alleged that as he was not allowed to do private practice the matter had gone up to the then Hon"ble Health Minister Shri Manoharsinhji Pradumansinhji Jadeja, who made some noting on the file pertaining to the petitioner that the petitioner be allowed to do private practice. The petitioner, in the previous petition, filed an affidavit of then then Hon"ble Minister for Health, Shri Manoharsinhji Jadeja, who had in clear terms stated that private surgical practice of the petitioner will not be disturbed. The Government, on seeing this affidavit of Shri Jadeja, felt offended and their whole case fell to ground. This was not liked by the authorities and therefore they wanted to see that the petitioner is taught some lesson anyhow and this, according to the petitioner, was the only incident which happened in his whole career as Deputy Director. The main reason for retiring the petitioner compulsorily is the affidavit of Shri Jadeja, who had exposed the whole false defence of the Government.

5. In the reply affidavits to this Special Civil Application, the averment that earlier the petitioner had filed a Special Civil Application has not been controverted and further that in the said petition the petitioner had filed the affidavit of the then Hon"ble Health Minister, has also not been controverted. The case of the petitioner is that this is the only material against him which has resulted in his compulsory retirement. In reply to the Special Civil Application, as stated earlier, nothing has been stated against the petitioner's service record. What the respondents stated in the reply is that the Government has taken a

decision to retire the petitioner from the Government services in the light of review of the service record of the petitioner by Review Committee, but what adversities were there in the service record of the petitioner have not been produced on record. It has further been stated that merely because the adverse remarks are not there in the service record of the petitioner, it cannot be said that the decision of the Government to retire him compulsorily from services is illegal. What the respondents contended that if the performance of the Government servant is not satisfactory, the powers conferred under Rule 161 of the Bombay Civil Services Rules, 1959, can be exercised by it. In the next affidavit, it has been stated that the Director of Health and Medical Services had, on number of occasions, brought a number of omissions and commissions to the notice of the petitioner. It is significant to mention here that what were the omissions and commissions of the petitioner which have been brought to the notice of the petitioner by the Director, have not been produced on record of this Special Civil Application. Then comes the affidavit of the Secretary of the Department dated 21st March 1987. The deponent himself was one of the member of the Review Committee. The deponent has stated that the Review Committee consisted of the then Chief Secretary, Additional Chief Secretary and himself. The entire service record of the petitioner was placed before the Review Committee and was taken into consideration by it. Alongwith this affidavit also, the relevant service record of the petitioner has not been produced. So after going through the contents of these three affidavits, the only adversity in the service record of the petitioner which comes out is that the Director of the Department had, on number of occasions, brought number of omissions and commissions to petitioner's notice. As stated earlier, what were the omissions and commissions of the petitioner which have been brought to his notice by the Director of the Department have not been produced on record of this Special Civil Application, nor these omissions and commissions have been specifically stated in the affidavits. In one of the affidavits, the deponent therein stated that in case the work of the petitioner was not satisfactory he can be compulsorily retired.

6. The object underlying the provisions enabling the appointing authority to compulsorily retire an officer before he attains the prescribed age of superannuation is to energize the administration and make it more efficient by chopping the dead-wood and to ensure that a key post is held by a person of undoubted ability and integrity. The object of compulsory retirement is to weed out the dead-wood to maintain efficiency and initiative in service and also to dispense with the services of those whose integrity is doubtful so as to preserve purity in the administration. In the case of State of Orissa and others Vs. Ram Chandra Das, , Their Lordships, Hon"ble Supreme Court have laid down permissible limits of judicial review of this Court in the decision of the Government to compulsory retire its officer. Their Lordships have observed that the material question in such matter is whether the entire record of service of the officer concerned was considered or not. It is not for the Court to see whether the decision of the Government to compulsorily retire the Government

servant is justified or not. It is for the Government to consider the same and take an appropriate decision in that behalf. What would be relevant is whether upon that state of record a reasonable prudent man would reach the decision. It has further been observed that although the selfsame material after promotion may not be taken into consideration to deny him further promotion, if any. But that material undoubtedly would be available to the Government to consider the overall expediency or necessity to continue the Government servant in service. So this Court will not sit as an appellate authority over the decision of the appointing authority to retire an officer compulsorily. What has to be considered is whether upon that state of record as a reasonable prudent man would the Government or competent officer reach that decision. So this Court has to examine the record which has been considered by the appointing authority to confirm the opinion that it is not in the public interest to retain the officer in service and then to consider whether upon that state of record a reasonable prudent man would reach that decision? But that opportunity was not given to this Court by respondents. In the matter where the officer has impugned the order of his compulsory retirement from services passed under Rule 161 of the Bombay Civil Services Rules, 1959, it was for the respondents to produce complete record before this Court for its perusal, which record this Court would have examined to satisfy whether the decision taken on the basis of the same could have been taken by a reasonable prudent man. There must be some material on record and then to certain extent the satisfaction may be subjective in the matter of compulsory retirement of the officers but in case there is no material whatsoever on record then the decision taken to order for compulsory retirement of the officer concerned is perverse. Though only on the basis of the fact that the petitioner earlier filed a writ petition in respect of his claim for private practice and in which he procured the affidavit of the then Hon''ble Health Minister in his favour may not be sufficient to hold the order of the Government to compulsory retire him from services to be malafide but in the state of affairs as is there in the present case where the respondents have not given out any adversity in the service record of the petitioner in their reply, nor his service record is produced for perusal of this Court and further the proceedings of the Review Committee have also been withheld, the plea of malafide may have some strong footing. In absence of any adversity in the service record of the petitioner brought on the record of this Special Civil Application, the petitioner's say, that he has been compulsorily retired only to punish him for his act of filing Special Civil Application earlier and further the affidavit of the then Hon''ble Minister of the Department, cannot be said to be altogether irrelevant. In absence of any material to support the decision of compulsorily retiring the petitioner from the services, this order cannot be allowed to stand. It is true that this Court will not go on sufficiency of material or on the question of subjective satisfaction of the authority but without producing anything on record to show that the petitioner has become altogether useless or dead-wood in the service to be chopped off, the only inference following therefrom is that the order is perverse or what the petitioner say that the order has been passed only as a consequence of his

aforesaid act of filing the Special Civil Application and further the affidavit of the then Hon''ble Health Minister, cannot be ignored. Withholding of the service record of petitioner as well as the proceedings of the Review Committee, from this Court goes to show that the respondents have not produced the same before this Court as the same would have gone against them. For non production of the relevant service record of the petitioner and proceedings of the Review Committee and further for not giving the details of adversity in the service record of the petitioner, adverse inference has to be drawn.

7. Now the next point which has to be gone into is the contention of respondents that the Director of the Department had, on number of occasions, brought number of omissions and commissions to the notice of the petitioner and in this regard, it is suffice to say that it is nothing but a vague averment made in the reply without there being any supporting material produced by the respondents. What types of omissions or commissions were there, have not been brought on record and in absence of those omissions and commissions committed the petitioner, it is too difficult for this Court to say that the decision taken by respondents to compulsory retire the petitioner is correct.

8. The last defence taken by respondents is that where the work of an officer is not satisfactory he can be ordered to be compulsorily retired. It is suffice to say that that is not the only consideration but the consideration should have been whether a reasonable prudent man would have, on the basis of adversity in the service record of the concerned officer, to his satisfaction, reached to the conclusion that it is not in the public interest to continue him in service, and forming of this opinion can only be on the basis of record which has to be produced before this Court for its perusal and examining whether on the basis of the said record such opinion could have been formed by a man of reasonable prudence.

9. Taking into consideration the totality of the facts of the case, I have no hesitation to hold that the order of compulsory retirement of the petitioner is perverse and it cannot be allowed to stand. In the result, this writ petition succeeds and the same is allowed and the order of the respondent-State dated 10th July 1986, annexure `B'', is quashed and set aside.

10. The petitioner, by now, would have attained the age of superannuation and therefore the next question which calls for consideration of this Court is what relief should be granted to the petitioner in this matter. The petitioner would have continued in service till the date of his superannuation in case this order would not have been passed but by illegally ordering to compulsorily retire his period of service has been curtailed without there being any fault on his part. The respondents are directed to treat the petitioner to have continued in service until the age of superannuation for all purposes, i.e. pay, allowances, pension and other retirementary benefits. The respondents are directed to pay to the petitioner the salary for the period from the date of his compulsory retirement till the date of his age of superannuation with all consequential benefits like yearly

grade increment etc. In the meanwhile, if there would have been further promotion, then the case of the petitioner should also be considered for further promotion and in case he is found suitable for promotion then he shall be given all the consequential benefits of next higher post. The pension and other retirementary benefits have to be revised accordingly. The respondents are directed to undertake this exercise and complete the same within a period of six months from the date of receipt of certified copy of this order and pay to the petitioner all the arrears of salary and in case the petitioner is found entitled for promotion, then to pay further arrears of difference of salary as well as the arrears of revised pension, gratuity and other retirementary benefits, etc. within next two months. It is a case where the petitioner has been harassed by respondents and as such, I consider it to be a fit case where he should be awarded interest on all the arrears of pay fixation as well as revised amount of pension, gratuity, retirementary benefits, etc. The respondents are directed to pay to the petitioner, interest on all these amounts at the rate of 12% p.a. from the due date. The petitioner, as stated earlier, has unnecessarily been harassed by respondents, and as such it is a fit case where exemplary costs, quantified at Rs.5,000/- have to be paid to the petitioner by respondent-State. The amount of costs have also to be paid to the petitioner within stipulated period as ordered above. Rule made absolute.