
(2006) 03 AHC CK 0159
In the Allahabad High Court
Case No : Special Appeal No. 195 of 2006

Dudhnath Ram, Sahayak Wasil Baki Navis (A.W.B.N.) APPELLANT
Vs
State of U.P. RESPONDENT

Date of Decision : 08-03-2006

Acts Referred:

Citation : (2006) 9 ADJ 276 : (2006) 3 AWC 2876

Hon'ble Judges : Sudhir Agarwal, J; S. Rafat Alam, J

Bench : Division Bench

Advocate : R.P. Singh and B.R. Singh, for the Appellant; C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

S. Rafat Alam and Sudhir Agarwal, JJ.—This special appeal, under the rules of the Court, is preferred against the judgment of the Hon'ble Single Judge dated 20.1.2006 in writ petition No. 53729 of 2003 dismissing the appellant's writ petition against the order of compulsory retirement.

2. Learned Counsel for the appellant submitted that the decision to constitute screening committee and the order to retire him compulsorily under Fundamental Rules 56(c) are arbitrary and perverse inasmuch as the same proceeded only on the fact that the appellant was absent unauthorizedly from 1.1.2003 without any leave application although during the said period he was on duty and was paid salary also for the said period. He submits that the Hon'ble Single Judge has not appreciated the aforesaid fact correctly and, therefore, the judgment, under appeal, is liable to be set aside.

3. We have heard learned Counsel for the parties and perused the record.

4. The petitioner-appellant was working as clerk in the office of Collector, Ballia. He absented from duty on 1.8.1999 and sent his leave application on medical ground seeking leave from 1.8.1999 to 14.10.1999. He claims to remain sick till 31.3.2001 and thereafter again absented on 30.4.2001 till 31.3.2002. The

aforesaid long absence of the petitioner-appellant was considered by the Collector, Ballia, who vide order dated 30.9.2002 taking a humanisms and sympathetic approach and considering long period of service of the appellant regularized the absence in the following manner: -

	Period	Days	Nature of leave	sanction	
					6.9. 1999 to
23. 12.1999	172	Medical leave			
				24.12.1999 to	14.9.2000 255
Earned leave					
				15.9.2000 to	2.4.2001 Leave without pay
				30.4.2001 to	30.9.2002 Leave without pay

5. The District Magistrate further vide order dated 3.3.2003 constituted screening committee for considering the case of the petitioner. The screening committee required the appellant to appear before it on 10.4.2003 but the appellant did not appear and sent letter dated 28.4.2003 stating that due to his illness he could not appear before the screening committee and, therefore, proceeding should be dropped since the absence of the petitioner has been on account of his serious illness. It appears that the screening committee considered the service record of the appellant and found that in the preceding ten years there is only one ACR in the service record of the appellant i.e. 1997, which was adverse. Earlier he was awarded adverse entry in the years 1992-93 and 1979-80. His integrity was also not certified in 1979-80. It also noted that without any leave application the appellant remained absent from 1.8.1999 to 9.5.2002. Thereafter he worked only from October 2002 to December 2002 and again has absented. Considering overall work and performance of the petitioner-appellant, the screening committee recommended compulsory retirement, since he had completed 50 years of age in 2001.

6. Fundamental Rule 56(c) and Clause (2) read as under: -

(c) Notwithstanding anything contained in Clause (a) or Clause (b) the appointing authority may, at any time, by notice to any Government servant (whether permanent or temporary) without assigning any reason, require him to retire after he attains the age of 50 years, or such Government servant may, by notice to the appointing authority voluntarily retire at any time after attaining the age of 45 years or after he has completed qualifying service of 20 years.

(2) In order to be satisfied whether it will be in the public interest to require a Government servant to retire under Clause (c) the appointing authority may take into consideration any material relating to the Government servant and nothing herein contained shall be construed to exclude from consideration -

(a) any entries relating to any period before such Government servant was

allowed to cross any efficiency bar or before he was promoted to any post in an officiating or substantive capacity or on an ad hoc basis; or

(b) any entry against which a representation is pending, provided that the representation is also taken into consideration along with the entry; or

(c) any report of the Vigilance Establishment constituted under the Uttar Pradesh Vigilance Establishment Act, 1965.

7. Under Fundamental Rule 56(c), a Government servant, who has completed 50 years of age or 20 years of service, can be considered at any time by the competent authority for premature retirement. The decision has to be taken by the competent authority in public interest after considering the entire service record of the government servant. The facts, as admitted by the appellant, shows that he was absent for a period from 6.9.1999 to 30.9.2002 i.e. for more than three years. His integrity also remained uncertified in the year 1979-80. In the subsequent period also when the screening committee considered the matter the petitioner-appellant rejected absent on the ground of illness, as is apparent from Annexure VI to the affidavit filed in support of he stay application. The representation dated 10.5.2002 and 28.4.2003 of the appellant also shows that he requested the Collector, Ballia to allow him to join service, meaning thereby the date on which the aforesaid representations were submitted he was not working. In these circumstances, when the screening committee after considering the entire service record, formed its opinion that the appellant has lost his utility and his continuance is not in public interest, it can not be said that the decision is based on no material or is arbitrary or discriminatory.

8. It cannot be disputed that the appointing authority has a right to require a government servant to retire after he has attained the age of 50 years. Clause (2) of Fundamental Rule 56 provides the guideline for taking such decision requiring satisfaction of the appointing authority on the basis of the material relating to government servant that it is in public interest to retire such government servant compulsorily. It is neither punishment nor can be said to be an order entailing penal consequences.

9. In Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI), the Hon"ble Apex Court while holding that Article 311 has no application in the matter of compulsory retirement held that the officer, who is compulsorily retired, does not lose any part of the benefit that he has earned. He is entitled for pension and other retrial benefit in accordance with rules and there is no deprivation of the accrued benefits. It may be true that the officer may consider himself punished but there is a distinction between loss of benefit already earned and loss of prospect to earn some thing more.

10. Considering the scope of judicial review in the matter of compulsory retirement under Fundamental Rule 56 the Hon"ble Apex Court in State of U.P. and Another Vs. Bihari Lal, has held as under: -

It is now settled law that the entire service record should be considered before taking a decision to compulsorily retire a government servant exercising the power under Rule 56(j) of the Fundamental rules. It is not necessary that adverse remarks should be communicated or every remark, which may sometimes be categorized as adverse, be communicated. It is on an overall assessment of the record, the authority would reach a decision whether the government servant should be compulsorily retired in public interest. In an appropriate case, there may not be tangible material but the reputation of officer built around him could be such that his further continuance would imperil the efficiency of the public service and would breed indiscipline among other public servants. Therefore, the Government could legitimately exercise their power to compulsorily retire a government servant. The Court has to see whether before the exercise of the power, the authority has taken into consideration the overall record even including some of the adverse remarks, though for technical reasons might be expunged on appeal or revision. What is needed to be looked into is the bona fide decision taken in the public interest to augment efficiency in the public service. In the absence of any mala fide exercise of power or arbitrary exercise of power, a possible different conclusion would not be a ground for interference by the court/tribunal in exercise of its judicial review.

11. In Jugal Chandra Saikia Vs. State of Assam and Another, the Hon"ble Apex Court held that an order of compulsory retirement depends on subjective satisfaction of the competent authority based on objective consideration unless this shows that the decision is based on no evidence or is totally perverse, the Court would not interfere. In para 6 of the judgment the Hon"ble Apex Court observed "it can not be disputed that the passing of an order of compulsory retirement depends on subjective satisfaction of the competent authority, of course on objective consideration. Unless it is shown that the order of compulsory retirement was passed arbitrarily and without application of mind or that such formation of opinion to retire compulsorily was based on no evidence or that the order of compulsory retirement was totally perverse, the Court cannot interfere."

12. It can not be said in the case in hand, that there was no material or the formation of opinion by the respondents for compulsory retiring the appellant is perverse or arbitrary.

13. In view of the aforesaid discussion, we do not find any reason to interfere with the judgment under appeal and, in our view, the Hon"ble Single Judge has rightly dismissed the writ petition upholding the order of compulsory retirement of the appellant.

14. In the result, the special appeal, being devoid of merit, fails and is dismissed. No order as to costs.