
(1994) 10 MP CK 0003

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 4750 of 1993

Indira Saxena

APPELLANT

Vs

Municipal Council and Others

RESPONDENT

Date of Decision : 26-10-1994

Acts Referred:

Madhya Pradesh Civil Services (Pension) Rules, 1976 — Rule 42, 92
Madhya Pradesh Municipal Employees Recruitment and Conditions of Service Rules,
1968 — Rule 29(1)

Citation : (1994) ILR (MP) 331 : (1995) JLJ 28 : (1996) 1 MPJR 79 : (1995) 40
MPLJ 1045 : (1995) MPLJ 1045

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

Bench : Single Bench

Advocate : Masood Ali, for the Appellant; P.S. Das, for Respondent Nos. 1 and 2
and M.L. Choubey, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.K. Dubey, J.

By this petition under Articles 226 and 227 of the Constitution of India, the petitioner, who was employed as an Upper Division Teacher in Nagar Palika Kanya Uchchar Madhyamik Shala, Bina, Dist. Sagar, seeks a Writ of mandamus or any other suitable writ, direction or order for quashment of the notice dt. 8-9-1993 (Annexure P-I) of compulsory retirement whereby the petitioner has been noticed that after expiry of three months, the petitioner shall stand compulsorily retired.

In case of Municipal employees the age of superannuation is 60 years. The petitioner is 52 years of age and has rendered 25 years service with unblemished service record. It is not the case of Municipal Council that because of the advanced age of the petitioner, her efficiency and capacity to work is lowered down, or on overall assessment the services of the petitioner are not satisfactory. However, the Municipal Council passed a resolution (Annexure R-3) dt. 27-8-1993 wherein after considering the record of service of the petitioner the

council resolved that, now the services of the petitioner are no longer required, hence the petitioner be served with a notice of compulsory retirement in accordance with Rule 42 of the M. P. Civil Services (Pension) Rules, 1976 (for short "the Rules"), and, therefore, the petitioner was served the three months notice (Annexure-1) of retirement, hence, this petition. The respondents Nos. 1 and 2 in their return have taken the stand that because of shortage of the funds the Municipal Council is facing lot of difficulties to pay off the salaries of the employees of the Municipal Council and that strength of the students in the school has been reduced, therefore, the Municipal Council resolved to retire the petitioner in "public interest".

Shri Masood Ali, learned counsel for the petitioner Shri P. S. Das, learned counsel for respondents 1 and 2 and Shri M. L. Choubey, Govt. Advocate, for respondent No. 3 heard.

Learned counsel for the petitioner contended power exercised under Rule 42, is mala fide, the petitioner's compulsory retirement does not fall within the ambit of "public interest", hence, the notice (Annexure P-I), deserves to be quashed and the petitioner deserves to be reinstated with all ancillary benefits.

Admittedly, the Rules, are applicable on the staff and servants of a Municipal Council in view of Rule 23(I)(a) of the M. P. Municipal Employees (Recruitment and Conditions of Service) Rules, 1968. To appreciate the contention, of the petitioner, it would be appropriate to extract relevant provision of Rule 42, which reads thus :

"Rule 42. Retirement on completion of 20/25 years qualifying service - (1)(a) A Government servant may retire at any time after completing 20 years qualifying service, by giving a notice in Form 28, to the appointing authority at least three months before the date on which he wishes to retire or on payment by him of pay and allowances for the period of three months or for the period by which the notice actually given by him falls short of three months :

Provided that where the Government servant giving such notice is under suspension, he shall not be allowed to retire, from service without the prior permission in writing of the appointing authority.

(b) 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 rate at which he was drawing them immediately before his retirement, or, as the case may be, for the period by which such notice falls short of three months.

A look to clause (a) of sub-rule (1) of Rule 42 shows that, an employee who on

completion of qualifying service is desirous of seeking retirement may seek retirement after giving three months notice to the appointing authority where the date on which he wishes to retire or may retire on payment of pay and allowances of three months or for the period by which the notice falls short of three months. While by clause (b) of sub-rule (1) of Rule 42 the appointing authority is vested with the power to retire an employee in "public interest", who has completed 25 years of qualifying service, by giving three months notice. Proviso to this sub-clause gives power to retire an employee forthwith, and on such retirement an employee shall be entitled to claim a sum equivalent to the amount of pay plus allowances which an employee was drawing immediately, before, his retirement for the period of three months notice or for the period of notice which falls short of three months.

Power to retire compulsorily a public servant by the appointing authority in "public interest" in terms of Rule 42 of the rules is absolute, provided the retiring authority reaches a bona fide opinion in "public interest" to pass such an order. See a Division Bench decision of this Court in case of Shambhudayal Sharma (Dr.) v. State of M.P. and others 1985 MPLJ 461 : 1985 MPLJ 632.

In relation to compulsory retirement "public interest" means retention of honest and efficient employees and weeding of inefficient and dishonest. If a public servant is retired after examining his entire service record on subjective satisfaction, that such public servant is no longer fit in the "public interest" to continue in service with an object to weed out the inefficient, corrupt, dishonest or dead wood from public service, such order of retirement will not be a punishment as it does not imply any stigma. See the decisions of the Supreme Court in the cases of Brij Mohan Singh Chopra Vs. State of Punjab, Kailash Chandra Agarwal v. State of M. P. AIR 1984 SC 1871 and Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another,

However, it is also settled that the power to compulsorily retire a public servant, under the guise of "public interest" should not be exercised on extraneous, collateral, personal or political considerations, otherwise the power exercised would be arbitrary, mala fide and would be liable to be interfered by the Court. See the decisions of the Supreme Court in cases of J.D. Srivastava Vs. State of M.P. and Others, Baldev Rai v. Union of India AIR 1981 SC 70 , Brij Behari Lal Agarwal Vs. Hon'ble High Court of Madhya Pradesh and Others, and a decision of this Court in case of Shambhudayal Sharma (Dr.) (supra).

In the light of the settled position, of law on examination of the facts of this case, though the resolution speaks that on considering the entire service record, the Council resolved to compulsorily retire the petitioner on the ground that the petitioner's services are no longer required and on challenge of the said order by the petitioner, the Council came with a stand that because of the shortage of funds and looking to the number of students, the petitioner was compulsorily retired, but for that no record or the data was placed before the court, besides, that fact is not relevant in relation to compulsory retirement of public servant on

the ground of "public interest". The stand, taken in the return is also not stated in the resolution not in the notice of retirement. On the other hand, stand in the return is financial constrains. The petitioner is a teacher and has got a wide experience of 25 years in the education field, with an unblemished record of service. In such circumstances, when it is not the case of the respondents' counsel that the petitioner is not fit to be continued in service in "public interest". The resolution of compulsory retirement of the petitioner cannot be sustained. The reason of shortage of funds seems to be an afterthought as this reason is neither in the resolution nor in the notice of retirement. The law is settled that when a statutory functionary makes an order based on certain grounds its validity must be judged by reasons so mentioned and cannot be supplemented by fresh reasons in the shape of an affidavit or otherwise. Otherwise the order bad in the beginning by the time it comes to the Court on account of challenge gets validated by additional grounds later. See the Supreme Court decisions in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others,

In the result, the petition is allowed. The Notice dt. 8-9-1993 of compulsory retirement is quashed, the petitioner shall be deemed to continue in employment and shall be entitled to all (sic) benefits including back wages. The petitioner shall be reinstated within a period of seven days. Petitioner shall also be entitled to costs of this petition. Counsel's fee is Rs. 750/-, if pre-certified.