
(2008) 08 AHC CK 0288
In the Allahabad High Court

Ishwar Chandra

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 22-08-2008

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2008) 4 AWC 4053 : (2009) 120 FLR 786 : (2008) 3 UPLBEC 2685

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—Heard Shri Gautam, the learned Counsel for the petitioner and Shri Mohan Yadav, the learned standing Counsel appearing for the respondents.

2. The petitioner was appointed as a Collection Peon in the year 1994 in a substantive capacity and continued to work in that capacity till he was compulsorily retired under Rule 56(c) of the Financial Handbook on 8th of September, 2005. The petitioner, being aggrieved by the said order, has filed the present writ petition.

A counter-affidavit has been filed and the record has also been produced. The report of the Screening Committee indicates that the petitioner was certified as "physically unfit". Further, general remarks were levelled against the petitioner and Ors., namely, that several warnings were given, adverse entries were made, in spite of which, the incumbents had not improved their working, and therefore, there was no other choice except to recommend compulsory retirement.

3. In the counter-affidavit, the respondents have further tried to strengthen their case contending that the petitioner did not obey the orders of the superior authorities, that he was careless in his work, that he was working against the rules and connived with those persons against whom recovery orders were issued, and thus, misused the facilities granted by the State. The respondents

further contended that the recovery made by him was not upto 70% as contemplated under the rules, and that, whenever the recovery season began, the petitioner took medical leave.

4. This Court has perused the original record as well as the service book of the petitioner and the Court finds that the general allegations made in the report of the Screening Committee, namely, that warning and adverse entry is not based on any documentary evidence. There is no entry of the like nature in the service book of the petitioner. No document has been placed before the Court, nor has been annexed with the counter-affidavit to indicate that warning letters had been issued to the petitioner in the past, and that he had been given an adverse entry in his service record. Consequently, the general allegations made by the Screening Committee against the petitioner is unfounded as is not based on any evidence on record.

5. In so far as the contention of the respondents made in the counter-affidavit is concerned, the said allegations are also based on non-existing facts and is not supported by any documentary proof. The learned standing Counsel has not been able to show a single document relating to the allegations made in paragraph 2 of the counter-affidavit except one document, namely, a chart showing that the petitioner did not make any recovery during the collection period, and that, during that period, the petitioner had taken medical leave. The learned standing Counsel has placed reliance upon the provisions of Uttar Pradesh Collection Peons Service Rules, 2004 and submitted that in view of the Explanation to Rule 5, the petitioner was required to recover a minimum of 70% of the dues during the four Fasals.

6. Explanation to Rule 5 of the Uttar Pradesh Collection Peon's Service Rules, 2004 states as under:

Explanation.- Satisfactory work shall mean extending full cooperation in at least seventy per cent realisation as per prescribed standard fixed by the Government during the last four Fasals and good conduct throughout.

In my opinion, the said Explanation does not provide the duties which a Collection Peon is required to do. The Explanation only Indicates that a Collection Peon is required to extend full cooperation in the realisation of the dues as per the standard fixed by the Government. It does not mean that the Collection Peon is responsible for the recovery. The responsibility for the recovery of any Government dues is upon the Collection Amin under the Collection Amins Rules, 1974. A Collection Peon is only required to assist the Collection Amin and is not responsible for the collection of dues.

7. Consequently, the submission of the learned standing Counsel and the stand taken by the respondents that the petitioner's recovery of dues was below the target, as fixed by the Government, is patently misconceived since there is no requirement of a Collection Peon to recover the dues of the Government.

The learned standing Counsel further submitted that the petitioner was compulsorily retired because he was found to be physically unfit, and on that basis, he had become a dead wood, and as such, the Screening Committee rightly weeded out the dead wood from the department. The learned Counsel also relied upon Rule 12 of the Rules of 2004, which provides that no candidate could be appointed on the post of Collection Peon unless he was in good mental and bodily health and free from any physical handicap, which was likely to interfere with the efficiency in the performance of his duties.

8. The said rule provides that before an appointment is made, the candidate would be required to produce a medical certificate of fitness in accordance with fundamental Rule 10, contained in Chapter III of the Financial Hand Book, Vol. 2 Part 3. Upon a perusal of the report of the Screening Committee, and upon a perusal of the entire record, the opinion drawn by the selection committee that the petitioner is physically unfit is not supported by any medical evidence and is based on the personal opinion of the members of the Committee or on non-existing evidence.

9. In my opinion, the finding given by the Screening Committee is based on a non-existing ground, and is arbitrary and amounts to non-application of mind. If, under the Rules, physical fitness is required to be proved by the production of a medical certificate under the Fundamental Rules, as per the Financial Hand Book for appointment in Government service, the same principle would equally apply while compulsorily retiring an employee on the ground of physical unfitness. It is a mandatory requirement for the employers to get the employee physically examined by a medical doctor, which, in the present case, was lacking.

10. In *Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another*, the Supreme Court laid down the principles with regard to premature retirement of a Government employee. The Supreme Court in paragraph 34 held:

The following principles emerge from the above discussion:

(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 circumstance by itself cannot be a basis for interference.

11. The Supreme Court further held that it was permissible for the Court to interfere only on the grounds mentioned in Clause (3) of the aforesaid principles, namely, that the order was mala fide or was based on no evidence or that the order was arbitrary.

12. In *M.S. Bindra v. Union of India* (1978) 7 SCC 310, the Supreme Court held:

Therefore, judicial scrutiny of any order imposing premature compulsory retirement is permissible if the order is either arbitrary or mala fide or if it is based on no evidence. The observation that principles of natural justice have no place in the context of compulsory retirement does not mean that if the version of the delinquent officer is necessary to reach the correct conclusion, the same can be obviated on the assumption that other materials alone need be looked into.

13. A Division Bench of this Court in *Bhoop Narain Tewari Vs. Uptron India Ltd. and Others*, held:

Until and unless an employee has lost his utility in service or there exists anything adverse against him, he cannot be compulsorily retired even if he is less meritorious in comparison to other employees. When such an employee is promoted, the defect, if any, stands diluted.

14. Another Division Bench of this Court in *Triloki Nath Maini v. State of U.P.* (2002) 5 ESC 307 held:

The compulsory retirement is to be made in public interest in case the Government servant has outlived his utility or has become dead wood. The conduct, performance and integrity of the Government servant is reflected from the character roll entry which do form the basis of consideration of public interest in the matter of compulsory retirement.

15. In *State of Uttar Pradesh v. Vijay Kumar Jain* (2002) 3 SCC 641 : 2002 (2) AWC 1230, the Supreme Court held:

The aforesaid decisions unmistakably lay down that the entire service record of a

Government servant could be considered by the Government while exercising the power under F.R. 56 (c) of the Rules with emphasis on the later entries. F.R. 56 (c) of the Rules read with Sub-rule (2), empowers the State Government with an absolute right to retire an employee on attaining the age of 50 years. It cannot be disputed that the dead woods need to be removed to maintain efficiency in the service. Integrity of a Government employee is foremost consideration in public service. If a conduct of a Government employee becomes unbecoming to the public interest or obstruct the efficiency in public services, the Government has an absolute right to compulsorily retire such an employee in public interest. The Government's right to compulsorily retire an employee is a method to ensure efficiency in public service and while doing so the Government is entitled under Fundamental Rule 56 to take into account the entire service record, character roll or confidential report with emphasis on the later entries in the character roll of an employee. In fact, entire service record, character roll or confidential report furnishes the materials to Screening Committee or the State Government, as the case may be, to find out whether a Government servant has outlived his utility in service. It is on consideration of totality of the materials with emphasis on the later entries in the character roll, the Government is expected to form its opinion whether an employee is to be compulsorily retired or not.

Rule 56(c) of the Fundamental Rules provides as under:

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 fifty years or such Government servant may, by notice to the appointing authority, voluntarily retire at any time after attaining the age of forty five years or after he has completed qualifying service for twenty years.

16. In view of the aforesaid Rule and in view of the aforesaid decision of the Supreme Court, it is clear that the Fundamental Rules confers an absolute right to retire an employee on the happening of certain events, namely, that the employee attains the age of 50 years. The Courts have no authority or jurisdiction to interfere with the exercise of power if it is based on the basis of material available on the record.

17. Further, premature retirement is required to be made in public interest. In the case where an employee has outlived his utility or has become a dead wood, the conduct and the performance of the Government servant is reflected in his service record which forms the basis of consideration in public interest in the matter of pre-mature retirement.

In the present case, from a perusal of the Screening Committee's report and the entire record that has been produced by the respondents, it is clear that the findings given by the Screening Committee, namely, that the petitioner is physically unfit, is not supported by any medical proof and, presumably, it is

based on the personal opinion of the Screening Committee which cannot be allowed to be done.

18. Personal knowledge cannot be imported while passing an order for compulsorily retiring an employee. In my opinion, the impugned order is arbitrary and violative of Articles 14 and 16 of the Constitution.

In view of the aforesaid, the Court is of the opinion that the action of the employer in pre-maturely retiring the petitioner is patently illegal and the impugned order has been passed without application of mind and without basing it on any material on record and, therefore, it cannot be sustained and is quashed. The writ petition is allowed.

19. Since the petitioner was wrongly retired compulsorily, he is entitled to be reinstated with full arrears of wages and all consequential benefits, for which, I order accordingly.