

(2000) 07 OHC CK 0049

In the Orissa High Court

Case No : Original Jurisdiction Case No. 12895 of 1997

Jagabandhu Ghantiali

APPELLANT

Vs

District and Sessions Judge and Another

RESPONDENT

Date of Decision : 05-07-2000

Acts Referred:

Orissa Service Code, 1939 — Rule 71

Citation : (2000) 90 CLT 654 : (2000) 2 OLR 220

Hon'ble Judges : P.K. Patra, J;P.K. Misra, J

Bench : Division Bench

Advocate : C.R. Nanda, S.C.Dash, K.K.Dash and T.K. Mohapatra, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Misra, J.—The petitioner who was working as a Sheristadar in the office of the Civil Judge (Senior Division), Karanjia, has filed this writ application challenging the order of the District and Session Judge. Mayurbhanj, compulsorily retiring the petitioner from service under Rule 71 (a) of the Orissa Service Code.

2. The petitioner joined in service as a Junior Clerk in December 1960, and in course of time after several promotions he was posted as Sheristadar in the office of the Civil Judge (Senior Division), Karanjia. On the basis of the report of the Review Committee, the petitioner was made to retire with effect from 26.8.1997 on payment of three months' salary in lieu of notice, pursuant to the order passed by the District Judge. The said order is being challenged in the present writ application.

3. The petitioner has averred that the relevant extracts of the Confidential Character Roll (hereinafter called the "C.C.R.") for the years 1994 and 1996 were communicated to him for the first time on 12.8.1997 just on the eve of sitting of the Review Committee and those reports had been considered in spite of the representation; dated 20.8.1997 made by the petitioner. It has been

submitted that the aforesaid facts indicate that the confidential entries had been made with a motive to punish the petitioner. It is further submitted that without initiating any disciplinary proceeding, the order of compulsory retirement had been passed as a measure of penalty which is not permissible as per paragraph-6 of the Government instruction dated 24.11.1987 laying down the procedure of premature retirement of a Government servant.

4. In the counter affidavit filed on behalf of the opposite parties, the allegations have been refuted. Pursuant to our direction the learned counsel appearing for the State has produced the entire file including the report of the Review Committee relating to the order of compulsory retirement.

5. The submission that the confidential entries, had not been communicated for a long period and were communicated just on the eve of the sitting of the Review Committee only with a view to penalise the petitioner is not acceptable. It is of course true that in normal course an adverse entry is to be communicated to the person concerned as early as possible without any undue delay. A perusal of the records including the proceedings of the Review Committee indicates that the representation against such adverse entries made by the petitioner on 20.8.1997 had been considered and rejected. The Review Committee consisted of District Judge of the District, another officer in the rank of District Judge from outside the district as well as the Civil Judge (Senior Division) of the Court where the petitioner was working as Sheristadar. The Review Committee perused the C.C.R. of the preceding years and took an overall view that further continuance of the petitioner was not in the public interest. Merely because some of the entries were communicated a few days prior to the sitting of the Review Committee, it cannot be inferred that such communication had been made only with a view to penalise the petitioner. In any case, the petitioner had been given opportunity of making representation and the said representation had been disposed of. There were some adverse entries in respect of some other years also. The submission that the remarks had been made and explanation had been called for only with a view to punish the petitioner is too vague and does not merit any serious consideration.

6. Learned counsel for the petitioner submitted that paragraph-6 of the instruction issued relating to the question of compulsory retirement had been violated and the authorities without initiating any disciplinary proceeding should not have passed the order relating to compulsory retirement. Law is well settled that order regarding premature retirement in accordance with Clause (a) of Rule 71 of the Orissa Service Code should be passed in public interest and not as a measure of penalty. However, that does not mean that in all cases an employer is only required to initiate disciplinary proceeding. It appears that the entries related to the general attitude of the petitioner and on some occasions it had been found that the petitioner had come to office after drinking liquor. The petitioner has not been able to point out any particular reason as to why such report would be made by various Judicial Officers from time to time. Merely

because no disciplinary proceeding had been initiated, it cannot be inferred that the various entries were unfounded. In the facts and circumstances of the present case, it cannot be said that the order of compulsory retirement has been made without any reasonable basis.

7. The learned counsel for the petitioner further submitted that paragraph-7 of the Government instruction had not been followed and the entire service career of the petitioner had not been scanned. Paragraph-7 of the Government instruction is quoted hereunder :

7. It will not be in public interest to reatian an employee in service if -

(a) he is clearly lacking in integrity, or

(b) although his integrity is not in doubt, his physical or mental condition is such as to make him inefficient for further service, or

(c) even though his work in a lower grade was satisfactory, he clearly lacks in the standard of efficiency required to discharge the duties of the post he presently holds."

Though there is no allegation that the petitioner was lacking integrity and his suitability to continue in further service was in doubt, keeping in view the attitude of the petitioner as revealed from his C.C.R. it can be said that the instruction indicated in Paragraph-7(b) and (c) had been satisfied. After having perused the proceedings of the Review Committee and the entries in the C.C.R., it is difficult for us to come to a conclusion that the order of compulsory retirement is based on any malice or without any basis.

8. For the aforesaid reasons, we do not find any merit in the writ application which is accordingly dismissed. There will be no order as to costs.

P.K. Patra, J.

9. I agree.