

(2006) 10 AHC CK 0156
In the Allahabad High Court

Jagannath (Prajapati), Compulsorily Retired Additional
District and Sessions Judge

APPELLANT

Vs

Hon"ble Allahabad High Court and State of U.P.

RESPONDENT

Date of Decision : 19-10-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 112 FLR 601

Hon'ble Judges : Sushil Harkauli, J;Pankaj Mithal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sushil Harkauli and Pankaj Mithal, JJ.—The petitioner was a member of the U.P.-Higher Judicial Service and was posted as Additional District & Sessions Judge, Deoria. He was compulsorily retired by an order of the Governor (appointing authority) dated 17.5.2005, a copy of which has been enclosed as Annexure "I" to the writ petition. The petitioner, by this writ petition, challenges the said order of compulsory retirement.

2. It is not disputed that the order of compulsory retirement has been passed on the recommendation of the Screening Committee, which was approved at a Full Court meeting of the Allahabad High Court and upon the consequent recommendation by the High Court to the Governor.

3. In the case of Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, it has been held by the Supreme Court in paragraph 34 of that law report that an order of compulsory retirement can be interfered with under Article 226 of the Constitution of India only if the Court is satisfied that the order has been passed (a) malafidely, 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.

4. The impugned decision has to be judged in the light of the above parameter, which has been reiterated subsequently in a catena of decisions by the Supreme Court without exception.

5. Counter and rejoinder affidavits have been exchanged and we have heard learned Counsel for the petitioner, viz. Sri Murli Dhar, Senior Advocate, assisted by Sri R.P. Tiwari, Advocate, learned Standing Counsel representing the State and Sri Amit Sthalekar representing the Allahabad High Court (respondent No. 1).

6. We find from the counter affidavit of the High Court that the petitioner joined the U.P. Nyayik Sewa as a Munsif on 5.11.1975 and after completion of training he was posted as Munsif, Ghaziabad, on 25.1.1980.

7. In the Confidential Remarks of the year 1980-81 the petitioner was found to have given below standard disposal (52%) and overall assessment of the petitioner was "Fair". This assessment means that the officer was just above the lowest ranking, i.e. "Poor" and was below the average ranking of "Good". In the Annual Confidential Report of Judicial Officers the rankings are "Outstanding", "Very Good", "Good", "Fair" and "Poor".

8. The next year, i.e. 1981-82, the disposal of the petitioner was 47%. He was again rated merely to be a "Fair" officer. In 1983-84 again he was assessed merely as a "Fair" officer.

9. In 1984-85 the disposal of the petitioner was 35% and he was again assessed to be merely a "Fair" officer. In 1985-86 too his disposal was again below the prescribed standard, being only 95.6%. He was, therefore, again rated to be a "Fair" officer only and his judgments were reported to be "simply satisfactory".

10. At the time when the petitioner was considered by the Screening Committee, it was found in the above backdrop that the petitioner had been transferred once on a complaint and the District Judge reported that the complaints continued to pour in.

11. Normally, complaints against Judicial Officers are very common because in the nature of things at least one party, in litigation, is always aggrieved by the judicial decision. However, officers are not transferred mid-term on such complaints by the High Court unless, upon a verification, the complaint is found to have substance and the transfer is necessary in public interest.

12. Further, at the time when the Screening Committee was examining the case of the petitioner, it was found that there were four departmental enquiries and at least one vigilance enquiry" were pending against the petitioner.

13. In the light of the above, if the Screening Committee has recommended that the petitioner should be compulsorily retired and if that recommendation has been accepted by the Full Court Meeting of all the Judges of the High Court, the decision for the recommendation of compulsory retirement cannot be said to suffer from any of the defects permitting interference according to law laid down

by the Supreme Court.

14. One of the issues upon which great emphasis was laid by the learned Counsel for the petitioner was based upon the decision of the Supreme Court in the case of *Ashok Tanwar v. State of Himachal Pradesh* reported in 2005 CTJ CPJ 113. This is a decision by the Supreme Court and the relevant sentence of that judgment, upon which reliance was placed, reads as follows:

It is a rule of prudence that the Acting Chief Justice may not take major decisions which, otherwise, could have been taken by the Chief Justice or which decisions could wait for a Chief Justice.

15. According to learned Counsel for the petitioner, the Acting Chief Justice could not have constituted the Screening Committee.

16. The submission has to be rejected because the recommendations of the Screening Committee, consisted of Senior Judges, are examined by the Full Court Meeting consisted of all the Judges. Further the permanent Chief Justice do not find it necessary to disband the said Screening Committee when the permanent Chief Justice took over. The constitution of the Screening Committee was never questioned. Once the recommendations of the Screening Committee has been accepted by the Full Court Meeting, the technicality of its constitution by the Acting Chief Justice loses relevance.

17. In this regard further reliance has been placed upon the decision of the Supreme Court in the case of *All India Judges' Association and Others Vs. Union of India and Others*, and it has been contended that the Screening Committee constituted ought to have been headed by the Chief Justice. In the aforesaid case the Supreme Court, for the purposes of determining the utility of the Judicial Officers for extending their services upto 60 years after attaining the age of 58 years, has directed for constituting committees of Judges in the various High Courts to be headed by the Chief Justice. The Screening Committee constituted in the present case is not a Committee of the High Court, which had been constituted in pursuance of the above judgment and order of the Supreme Court. The above decision is not at all applicable in the facts and circumstances of the present case. Similarly, the decision of the Supreme Court in the case of *High Court of Judicature at Allahabad Through Registrar Vs. Sarnam Singh and Another*, is also distinguishable on the same lines and is not applicable for the reasons as stated above. Therefore, the argument that the Screening Committee should also have been headed by the Chief Justice is totally baseless and without substance.

18. Learned Counsel for the petitioner has next contended that the annual ratings given to the petitioner cannot mean that the petitioner has lost his effectiveness and utility and, therefore, the order of compulsory retirement is bad. In support, he has placed reliance upon a decision of the Supreme Court in the case of *B.D. Arora v. Secretary, Central Board of Direct Taxes* 1989 Supl. (2) SCC 98. In the said case the officer was rated as an average officer and was held

to be good for routine work in rural areas and, therefore, on the basis of the aforesaid assessment the Supreme Court observed that the officer has not lost his effectiveness provided he is posted in rural areas. The facts of the said case are quite different from the case of the petitioner. The entries given to the petitioner lead to an inevitable conclusion that he is not even an average officer who has shown no sign of any improvement.

19. The petitioner has further relied upon a Supreme Court decision in the case of R.P. Malhotra v. Chief Commissioner, Income Tax, Patiala 1990 (Suppl.) SC 771. In the said case the officer had received good rating throughout his career except for one year in which he had received an average rating. Therefore, the Supreme Court held that he has not lost his effectiveness and utility. However, this is not the situation in the present case. The petitioner has never received commendable entries and, on the other hand, his work was throughout rated as "Fair", i.e. below average. Therefore, the above case law is of no help to the petitioner.

20. The object of compulsory retirement is to see that inefficient and corrupt persons are weeded out from service with a view to secure efficiency in public services and to maintain honesty and integrity amongst the service personnel. The impugned order of compulsory retirement has been passed in furtherance of the above object in public interest. The impugned order of compulsory retirement neither casts any aspersion against the petitioner nor attaches a stigma. It is not the case of the petitioner that the order has not been made in public interest. Therefore, the decisions in the case of Ram Ekbal Sharma Vs. State of Bihar and another, and that of N.C Dalwadi v. State of Gujarat : [1987]3SCR640 are also of no help to the petitioner.

21. Admittedly, the petitioner has not made any allegations of mala fides against anyone nor any person by name has been impleaded in the writ petition. Therefore, the decision of the Supreme Court in the case of Smt. S.R. Venkataraman Vs. Union of India (UOI) and Another, is also not applicable to the facts and circumstances of the present case wherein, on allegations of mala fides, the order of compulsory retirement was passed and it was held to be gross abuse of the power.

22. It is also not the case of the petitioner that the impugned order of compulsory retirement has been passed on extraneous consideration or as a shortcut to avoid departmental inquiry against him. Therefore, the petitioner gets no help even from the decision of the Supreme Court in the case of State of Gujarat Vs. Umedbhai M. Patel,

23. A perusal of the counter affidavit and the recommendations made by the Screening Committee, which have been approved by the Full Court, amply demonstrates that the impugned order of compulsory retirement has been passed after due application of mind on the basis of the past record and conduct of the petitioner in public interest. Therefore, the argument of the petitioner to

the effect that non-application of mind by the appointing authority in passing the order of compulsory retirement vitiates the order is not tenable under law and is not acceptable.

24. A large number of decisions including those cited above have been relied upon from the petitioner's side, compilation of which have been placed before us in the form of a paper book. We have gone through all these decisions and we are unable to see any of them applicable to the facts of the instant case. As stated above, it is not appropriate to apply the decisions of the Supreme Court or of other Courts like statutes by picking out one line from a judgment out of context without reference to the facts in which the decision has been rendered. Further, despite our repeated enquiry, no such relation to the facts of the present case with the decisions relied upon was shown by the learned Counsel for the petitioner. We, therefore, do not consider it necessary to burden this judgment with the said case law consisting of not less than 55 cases. However, we retain the paper book on record.

25. In view of the above, none of the grounds on which judicial review is permissible against the order of compulsory retirement exists to call for any interference by the High Court in exercise of extra-ordinary discretionary power under Article 226 of the Constitution.

26. In view of these circumstances, we find ourselves unable to interfere in the matter. The petition is, accordingly, dismissed.