

(1993) 12 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 3962 of 1993

Jai Shankar Prasad Sharma

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 11-12-1993

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1993) ILR (MP) 530 : (1994) 39 MPLJ 592 : (1994) MPLJ 592

Hon'ble Judges : R.C. Lahoti, J; D.M. Dharmadhikari, J

Bench : Division Bench

Advocate : S.K. Dixit, for the Appellant; B.K. Rawat, A.A.G. and O.P. Namdeo and R.C. Dubey, for the Respondent

Final Decision : Allowed

Judgement

D.M. Dharmadhikari, J.

The petitioner has brought before this Court a public interest litigation. This case appears to us to be an ugly instance of administrative arbitrariness, which would be apparent from the facts which we shall shortly state.

The respondent No. 2 Shri M. K. Taimuri was due for retirement on attaining age of superannuation with effect from 30-7-1993 as Joint Registrar of Co-operative Societies. Under Fundamental Rule 56, extension of service up to the age of sixty years, beyond the age of superannuation i.e. fifty eight years, can be granted only to scientific, technical and other persons having special or expert knowledge in any field. The relevant provision under F. R. 56(a) reads as under :-

"F.R. 56(a) Age of Superannuation -

(1) Subject to the provisions of sub-rule (3), the date of compulsory retirement of a Government servant, other than a Class IV Government servant, shall be the date on which he attains the age of 58 years :

Provided that scientific, technical and other personnel having special or expert

knowledge in any field may, with the sanction of the competent authority be given extension of service beyond the age of 58 years subject to their physical fitness and suitability for work, but such extension shall not ordinarily be beyond the age of 60 years.

The date of compulsory retirement of a Class IV Government servant shall be date of which he attains the age of 60 years."

Obviously for the purpose of adopting a uniform policy in the matter of grant of extension of service to the Government servants in accordance with ER. 56, the State Government has issued a circular dated 31-10-1986 (Annexure P.1), laying down the terms and conditions and the manner in which extension of service should be granted to the Government servants. A perusal of the circular would show that the extension of service is to be normally granted only to personnel working in scientific and technical fields or such other personnel whose services, at a particular time, are required on the post and there is no other alternative arrangement available for manning that post. Under the circular, the matters of extension of service have to be considered by a duly constituted committee, consisting of the Chief Secretary as its Chairman, assisted by three other members including the Secretary of the concerned Department, the Finance Secretary and the Secretary of the General Administration Deptt. Paragraph 4 of the circular requires that the screening committee, after considering the case of the concerned Government servant for extension, shall make recommendations for extension, recording specific reasons for grant of such extension. The circular also states that due consideration has to be given to the fact that the extension does not in any manner demoralize the other officers of the same rank and post working in the Department and in no manner adversely affects their service prospects.

The case set out by the petitioner in the petition is that the case of respondent No. 2 for extension of his services as Joint Registrar was turned down formally vide communication of the Government in the Co-operative Department dated 24-7-1993 (Annexure P. 2). According to the petitioner, the respondent No. 2 made special efforts and manipulated an order of extension in his favour, which was got issued just on the verge of last date of his retirement and the same was issued on 1-8-1993, which is challenged in this petition and marked as Annexure P. 2A.

The learned counsel appearing for the petitioner contends that extension of service granted to respondent No. 2 is per se arbitrary and a case of rank favouritism to him and deserves to be quashed on that ground alone.

Since, by the impugned order dated 1-8-1993 (Annexure P.2A), the extension granted to respondent No. 2 in service, for a period of six months only, shall expire by the end of February 1994, we proposed to dispose of this petition early. With that purpose in view we directed the Additional Advocate General to take notice on 18-10-1993 and passed the following order :-

"18-10-1993. Shri S. K. Dixit for the petitioner.

Shri S. L. Saxena, Addl. A. G. for the State respondent No. 1.

Shri B. C. Dubey with Shri O. P. Namdeo for respondent No. 2.

Let respondents show cause as to why this petition be not allowed and the impugned order Annexure P. 2A be not quashed, as the same is in violation of the guidelines mentioned in Annexure P. 1.

Let returns and replies be submitted within 2 weeks.

Put up on 17-11-1993."

The case was re-listed on 17-11-1993, on which date the respondent No. 1 had submitted his return, but the Addl. A.G. appearing for the State requested for grant of time for filing the return. Time was granted and 1-12-1993 was fixed as the date for final hearing. The order of this Court dated 17-11-1993 is very specific in that behalf, on 1-12-1993 when the case was taken up for hearing, a request for adjournment was made on behalf of the State, for a day. On 2-12-1993 the Addl. A.G. appearing for the State again made a request for time, stating that reply to the show cause notice only has been filed, but the complete return is yet to be submitted. In view of the orders earlier passed by this Court, the matter was taken up for final hearing and was heard accordingly.

The Addl. Advocate General, after the submissions of the petitioner, first stood up only to raise technical objections. Firstly, it is said that detailed enquiries were made to know the whereabouts of the petitioner, who was a non-existent person. It is then stated that there is no society by name Education Development Society, of which the petitioner claims to be the President. In the return of respondent No. 2, allegations have been made that the petitioner has been set up by some members of a co-operative society, against whom the respondent No. 2, in his official capacity has initiated some action. We reminded the learned counsel appearing for the respondent that this being a public interest litigation, we would not go into the technical objections and the respondents should address the Court on merits of the case.

The learned Addl. Advocate General then made attempts to support the action impugned, on the provisions contained in to support the action impugned, on the provisions contained in F.R. 56(a), quoted above. The contention advanced on behalf of the State is that the matter is governed by the Fundamental Rules and the guidelines framed thereunder are not law but only are executive instructions which have no binding effect. It is also submitted that the service record of the petitioner, which was placed before us for perusal, was exemplary and he has always earned outstanding remarks from his superiors for his work and performance. The submission made is that the extension of service to respondent No. 2 was granted in exigencies of service and the public interest and only because his services were indispensable, for the post in question.

On the question, whether the case of respondent No. 2 was placed before the screening committee, under the guidelines or not the learned Addl. Advocate General, was not in a position to make any categorical statement. He, however, sought time to produce the necessary record of the screening committee, if available. We closed the case after hearing the arguments and permitted the State to produce such record on or before 9-12-1993. The concerning file produced shows that the extension was granted by the orders of the Governor communicated on FAX, from Patria. It was never placed before the screening committee.

After setting out the necessary facts, the limits of the power of judicial review in such matters of administrative discretion have to be determined. Lord Halsbury in the case of *Sharp v. Wakefield* (1981) A.C. 173, has held that " "Discretion" means when it is said that something is to be done within the discretion of the authorities that something is to be done according to the rules of reason and justice, not according to private opinion according to law and not humour. It is to be not arbitrary, vague and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself." [See Administrative Law by HWR Wade, Fifth Edition, pages 352-353].

As has been stated, in the instant case, attempt was made to demonstrate that respondent No. 2 was an excellent worker and it is for that reason he was granted extension of service. The worth of respondent No. 2 does not, however appear to have been assessed by the screening committee, constituted specifically for the purpose, under the Circular Annexure P. 1. The stand taken on behalf of the State, cannot be accepted that the matter of extension would be governed by the provision contained in F.R. 56 and not by the circular containing the guidelines which are only supplemental to the rule and are framed to lay down uniform policy in the matter of extension of service. In fact, what has been stated by the petitioner and not controverted by the State is that the case of respondent No. 2 earlier went to the screening committee and was rejected. Even if it was not so, the proposal for extension of his services had already been turned down by the Government vide communication dated 24-7-1993 (Annexure P. 2). It has not been explained as to on what ground and for what reason the case of respondent No. 2 was re-considered for extension of his services just on the last date of his retirement. The impugned order of extension does not contain reasons in brief, which are required to be recorded before granting extension, in accordance with the guidelines contained in the circular. The manner in which the extension was granted to respondent No. 2 does give rise to an apprehension that the respondent No. 2 was himself instrumental in securing extension and was favoured by the authorities concerned, totally overlooking the regular and normal procedure laid down in F. R. 56 and the guidelines. Even if it is assumed that the extension granted was based on good motive, to retain services of an efficient officer, the manner and method of granting the same being arbitrary, we have no hesitation in holding that the

administrative power in granting extension of service to respondent No. 2 has been abused. It is needless to emphasise that even in the matters of granting extension, it is necessary to bestow due consideration to the legitimate claims and prospects of others in the Department, similarly situated and in comparable position.

Consequently, we allow the petition and quash the impugned order dated 1-8-1993 (Annexure P. 2A), granting extension to respondent No. 2. This petition being a public interest litigation, the petitioner is entitled to costs of this petition also. Counsel's fee Rs. 500/- (Rs. Five hundred) if certified.