
(2013) 02 J&K CK 0003
In the Jammu And Kashmir High Court
Case No : LPASW No. 140 of 2008

Kapoor Chand

APPELLANT

Vs

State of J. and K. and Others

RESPONDENT

Date of Decision : 05-02-2013

Acts Referred:

Ranbir Penal Code, 1989 — Section 409, 420

Citation : (2013) LabIC 3291 : (2013) 5 LLN 289

Hon'ble Judges : M.M. Kumar, C.J.;Hasnain Massodi, J

Bench : Division Bench

Advocate : D.C. Raina and F.A. Nantoo, for the Appellant; Gagan Basotra, Sr. AAG, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Kumar, C.J.—This appeal under Cl. 12 of the Letters Patent is directed against the judgment and order dated 23.04.2008 rendered

by the learned single Judge of this Court holding that the appellant-petitioner was rightly retired prematurely from service exercising power under

Article 226(2) of the Jammu and Kashmir Civil Services Regulations. A brief resume of facts would be necessary to spell out the legal issue. The

appellant-petitioner was appointed as Salesman and when he was posted at Sales Depot 'C' Jawahar Nagar, Rajouri he was placed under

suspension on the charges of embezzlement in the year 1987. A criminal challan u/s 420/409/467/468 RPC resulted in acquittal by the learned

Sessions Judge, Rajouri vide order dated 21.11.1994. The appeal preferred by the State met the same fact.

2. The respondent-Commissioner, Consumer Affairs and Public Distribution Department passed an Order No. 94-FS of 1996 dated 18.10.1996

appointing a Commission of Inquiry to hold a regular enquiry against the appellant-petitioner along with another official Jagdish Lal. The Inquiry

Officer found both of them guilty of charges of embezzlement of public funds. It was found that appellant-petitioner and Jagdish Lal had embezzled

an amount of Rs. 6,30,848.51/- and Rs. 3,28,980.75/- respectively. The Inquiry Officer submitted his report on 29.09.1997. The appellant-

petitioner, however, was reinstated in service vide Order dated 26.10.1998 pending decision concerning his suspension period and it was further

held that an amount of Rs. 3000/- per month shall be recovered from his salary. The suspension period of the appellant-petitioner was also

decided in pursuance of the directions issued by this Court in SWP No. 2336/2000 decided on 30.07.2000. Vide order dated 23.01.2003, his

period of suspension was treated on as spent on duty w.e.f. 31.08.1987 to 25.10.1998, but the arrears of salary were adjusted towards the

outstanding amount which was to be recovered from his salary.

3. On account of the aforesaid proved charges of embezzlement and misappropriation, respondent No. 2 passed an order on 09.12.2003

prematurely retiring the appellant-petitioner from service w.e.f. forenoon of 09.12.2003.

4. The aforesaid order was challenged by the appellant-petitioner by filing writ petition, which has been dismissed by the impugned judgment. The

learned single Judge has held that the order of premature retirement is based on relevant consideration as set out by Article 226(2) of the

Regulation and that he was rightly retired at the age of 48 years. The view of the learned single Judge is discernible from the concluding para of the

judgment and order, which reads as under:--

The petitioner as indicated above, was involved in an embezzlement case and was found to have misappropriated public exchequer to the tune of

Rs. 6,30,848.51/- and Rs. 3,28,980.75/- in connivance with another employee of the department concerned namely Jagdish Lal. The Inquiry

Officer had recommended that an amount of Rs. 3000/- per month was being recovered from his salary. Therefore, under such circumstances, it

cannot be said that the petitioner was not having a doubtful integrity and that his performance was satisfactory. By no stretch of imagination, such a

Government employee can be said to have maintained efficiency and initiative in

service, rather, such an act as committed by the petitioner is a misconduct for which he has rightly been declared as a dead wood and compulsorily retired from service on attaining the age of 48 years which is in accordance with Article 226(2) and J&K CSR, referred to above and thus the action of the respondents in passing the order impugned, in my view, does not suffer from any illegality.

For the reasons mentioned above, this petition is found to be without merit and is dismissed.

5. Mr. Raina, learned senior counsel appearing for the appellant-petitioner has vehemently argued that one adverse entry in the service record of an employee may not constitute sufficient material to pass an order of compulsorily retirement. According to him, an order of compulsory retirement must be passed in public interest and should be rooted in the close examination of whole service record. Mr. Raina states that in the present case, whole service record of the appellant-petitioner has not been examined and on the basis of one inquiry the appellant-petitioner has been declared unfit to continue in service. In support of his submission the learned senior counsel has placed reliance on the view taken by Division Bench of this Court in the case of State of J. & K. and others v. Gulam Rasool Magray (LPA No. 95-1/2005 decided on 20.10.2009) which in turn follows various judgments of Hon'ble the Supreme Court.

6. Mr. Basotra, learned Senior AAG appearing for the respondent-State has, however, submitted that a single entry concerning doubtful integrity would constitute sufficient material to weed out an employee from public service and such an order would serve the larger public interest.

According to Mr. Basotra the exercising of such a power would be wholly within four corners of Regulation 226(2), because aim of compulsory retirement is not to punish an employee but to get rid of the dead wood, inefficient and dishonest ones. In support of his submission he has placed reliance on a judgment of the Supreme Court rendered in the case of Pyare Mohan Lal Vs. State of Jharkhand and Others,

7. Having heard learned counsel for the parties and perusing the paper book with their able assistance, we are of the view that the instant appeal is devoid of merit and is thus liable to be dismissed. Article 226(2) of the Regulation deals with the principles which are required to be followed for

deciding the issue, "whether an employee should be retired compulsorily after completing 22 years of service or on attaining 48 years of age". The

aforsaid Article is set out in extenso which reads as under:--

226(2): Notwithstanding anything contained in these Regulations Government may, if it is of the opinion that it is in public interest to do so, require

any Government servant other than the one working on a post which included in Schedule II of these Rules, to retire at any time after he has

completed 22 years/44 completed six months periods of qualifying service or on attaining 48 years of age; provided that the appropriate authority

shall give in this behalf a notice (in one of the forms prescribed in annexures A and B hereto as the case may be), to the Government servant at

least 3 months before the date on which he is required to retire or 3 months of pay and allowance in lieu of such notice. Such a Government

servant shall granted pensionary benefits admissible under these rules on the basis of qualifying service put in by him on the date of such

retirement....

8. In order to decide the controversy, we are tempted to place reliance on the judgment of Hon'ble the Supreme Court rendered in the case of

Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, of the judgment of Hon'ble the Supreme Court has laid

down five principles for exercising power to award compulsory retirement, the same reads as under:--

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehavior.

(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 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.

9. A perusal of the aforesaid para would show that the order of compulsory retirement is not an order of punishment nor does it imply any stigma

as the order of compulsory retirement is passed on the subjective satisfaction of the Government. Courts are not to sit as a Court of appeal over

the order of compulsory retirement because such orders are passed by the State Government on forming the opinion that it is passed in the public

interest. Principles of natural justice have no place in the context of an order of compulsory retirement. There is limited scope of judicial review in

the case of a compulsory retirement and the same can be set aside on the ground of mala fide or it is based on no evidence and that it is arbitrary in

the sense that no reasonable person would form the requisite opinion on the available material. The Committee has to consider the entire record of

service attaching more importance to record and performance during the later years. An order of compulsory retirement cannot be set aside merely

on the ground that uncommunicated adverse remarks were taken into consideration.

10. When we apply the aforesaid principles to the facts of the present case, it becomes evident that the integrity of the appellant-petitioner was

doubted when he was found guilty of embezzlement and misappropriation of public funds amounting to Rs. 6,30,848.51/- in connivance with

Jagdish Lal who was also found guilty of misappropriation of Rs. 3,28,980.75/-. In the regular departmental inquiry, findings have been recorded

as the Inquiry Officer has recommended recovery of an amount of Rs. 3000/- from the salary of the appellant-petitioner. There is nothing on the record to urge that the order of compulsory retirement suffers from mala fide or it is based on no evidence or it is arbitrary to such an extent that no reasonable person would pass such an order on the given material.

11. We further find that it is well settled proposition of law that one event and enquiry doubting integrity of an employee is sufficient to pass an order of compulsory retirement. It has come on record that the appellant-petitioner has been found guilty of misappropriating sum of Rs.

6,30,848.51/-. Following the principles laid down by Hon'ble the Supreme Court in Pyare Mohan's case (supra), we are of the considered view

that one single adverse entry is sufficient to get rid of a dishonest and a corrupt officer. The judgment of Hon'ble the Supreme Court in Pyare

Mohan's case (supra) would directly apply to the facts of the present case. The following para 29 of the judgment propounds this proposition of

law and the same reads thus:

29... The law requires the authority to consider the ""entire service record"" of the employee while assessing whether he can be given compulsory

retirement irrespective of the fact that the adverse entries had not been communicated to him and the officer had been promoted earlier in spite of

those adverse entries. More so, a single adverse entry regarding the integrity of an officer even in remote past is sufficient to award compulsory

retirement.

12. The judgment rendered in Gulam Rasool's case (supra) would not advance his case, because in the said case the order of compulsory

retirement was passed without examining the service record and the order of compulsory retirement was based on an allegation touching upon his

integrity without any enquiry. However, in the present case, respondent-authorities have taken into account the findings, of inquiry Officer recorded

in the regular departmental inquiry where the appellant-petitioner has been found guilty in an embezzlement case for a sum of Rs. 6,30,848.51/-.

Even recovery of Rs. 3000/- per month was ordered to be effected from his salary whereas in the case of Gulam Rasool there was merely an

allegation. Thus, there is vital difference between the facts of Ghulam Rasool's case and that of one in hand. We are unable to persuade over selves

to accept the aforesaid proposition.

13. We are not inclined to accept the submission of Mr. D.C. Raina, learned senior counsel that the whole service record of the appellant was not

examined and only on the basis of one enquiry he has been prematurely retired. In all cases when the department makes recommendation then

whole service record is sent for examination. It is not believable that only enquiry report was placed before the committee constituted by

government to examine service record of all employees. Thus the contention does not merit acceptance and the same is hereby rejected.

14. For the reasons mentioned above, this appeal is dismissed. No order as to costs.