
(2014) 06 BOM CK 0062
In the Bombay High Court
Case No : Writ Petition No. 2960 of 2014

Kishor

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 27-06-2014

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (2014) 5 MhLj 488

Hon'ble Judges : S.B. Shukre, J;B.R. Gavai, J

Bench : Division Bench

Advocate : V.N. Morande, Advocate for the Appellant; Kalyani Deshpande, A.G.P, Advocate for the Respondent

Final Decision : Dismissed

Judgement

S.B. Shukre, J.

1 Rule. The learned Assistant Government Pleader Mrs. Kalyani Deshpande waives service for the respondents. Heard finally by consent of the parties.

2. By this petition, the petitioner has challenged legality and correctness of the order of his premature retirement dated 28/3/2014 passed by respondent No.2 following the decision taken by the Review Committee regarding premature retirement of the petitioner.

3. The petitioner was initially appointed as Junior Clerk on 10/01/1993 and was posted to work at Civil Court, Junior Division, Kelapur, Distt. Yavatmal. After some years he was promoted as Senior Clerk and again promoted as Assistant Superintendent on 17/02/2001. He was posted as Assistant Superintendent at various places, such as at Wani, Ner, Kelapur and was working as such lastly in the Court of Civil Judge, Junior Division, Digra. Since he was attaining the age of 55 years, his case was placed for his suitability to continue in service before the Review Committee of District Court, Yavatmal, which consisted of Principal District Judge, Yavatmal as Chairman and District Judge -I and Civil Judge,

Senior Division, Yavatmal as its members. The Review Committee in its meeting held on 26/3/2013, reviewed the case of the petitioner and considering his annual confidential reports, leave account, medical fitness, integrity and the remarks of his Presiding Officer, decided to observe the work of the petitioner for a period of one year and thus he was continued for a period of one year after attaining the age of 55 years.

4. The case of the petitioner, after lapse of the period of about one year once again came up for consideration for his suitability to continue in service before the Review Committee. The Review Committee held its meeting on 27/3/2014 and after considering the annual confidential reports of the petitioner and also other relevant material, came to the conclusion that the petitioner was not suitable to be continued in service and decided to retire him prematurely under Rule 10 of the Maharashtra Civil Services (Pensions) Rules, 1982 by issuing the necessary notice. Accordingly, the Principal District and Sessions Judge, Yavatmal issued notice dated 28/3/2014 to the petitioner intimating him that he would stand retired from the government service on 28/6/2014 or the day immediately following the date of expiry of the period of three months commencing from the date of service of the notice on him, whichever was later. Being aggrieved by the same, the petitioner has filed the present writ petition.

5. Shri Morande, learned Counsel for the petitioner has assailed the impugned notice on the ground that it has been issued arbitrarily, without taking into consideration the relevant material available on record and it is the result of total non application of mind to the relevant facts speaking positively about the petitioner. According to him, the decision to retire the petitioner prematurely was primarily based upon the special report of Shri N. K. Walke, Civil Judge, Senior Division, who had an opportunity to observe the work and performance of the petitioner only for four months. He submits that this report could not have been made a basis for arriving at the impugned decision.

6. Shri Morande further submits that the Review Committee has acted in an arbitrary manner when it took the decision to continue the other officials namely, Shri B. M. Betawar, Superintendent in the Court of Additional District Judge, Darwha and Shri R. V. Katolkar, Junior Clerk to the Civil Judge, Senior Division, Yavatmal, whose confidential reports were adverse and who were facing enquiries. He submits that the Review Committee could not have applied one standard for one set of employees and another standard for another employee. He also submits that a clerical error made in the leave record, which was corrected and explained by the petitioner to his superiors, could not have been highlighted against him by terming it as an instance of doubtful integrity. He further submits that the remarks of the Judicial Officer made in the report that the petitioner does not obey the directions also could not have been relied upon by the Review Committee as no show cause notice was ever issued to the petitioner. Thus, the learned Counsel for the petitioner submits that this is a fit case for interfering with the impugned notice.

7. Mrs. Deshpande, learned Assistant Government Pleader for the respondents has submitted that the scope of judicial review of the order of premature or compulsory retirement is very limited and the High Court can not examine the legality or correctness of the order as if it is a Court of appeal. Learned A.G.P. further submits that it is not open to the High Court to make any interference with the order of premature retirement only because in the opinion of the High Court, another view is possible. She further submits that unless the order is shown to be *ex facie* illegal or arbitrary, no judicial review of the order is permissible.

8. The law of judicial review of the order of premature or compulsory retirement is now crystallized and well settled. The High Court can interfere with an order of premature or compulsory retirement only on the ground of *mala fides* or on the ground that the order is based on no evidence or no material whatsoever or it is arbitrary in the sense that no reasonable person would form requisite opinion on the given material or in other words, it is a perverse order. Further, the order of compulsory retirement should not give any hint of it being stigmatic. If it does, the Court would treat that order as an order of punishment attracting the provisions of Article 311(2) of the Constitution. These are the principles, which have emerged over a period of time from the several judgments of Hon'ble Apex Court.

In *Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another*, following principles governing the nature of order of compulsory retirement and the scope of its review by the Courts have been laid down.

(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 un-communicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference".

In the case of *The State of Gujarat and Another Vs. Suryakant Chunilal Shah*, the Hon''ble Apex Court held that while considering the case of an employee for compulsory retirement, public interest is of paramount importance. The dishonest, corrupt and dead -wood deserve to be dispensed with. How efficient and honest an employee is, is to be assessed on the basis of the material on record, which may also be ascertained from confidential reports. However, there must be some tangible material against the employee warranting his compulsory retirement.

In the case of *State of U.P. and Another Vs. Bihari Lal*, the Hon''ble Apex Court has placed emphasis upon the factor of bona fide decision taken in public interest to augment efficiency in the public service, while examining the legality and correctness of the decision of compulsory retirement.

In the case of *Allahabad Bank Officers Association and another Vs. Allahabad Bank and others*, it was held thus:

"17. The above discussion of case law makes it clear that if the order of compulsory retirement casts a stigma on the government servant in the sense that it contains a statement casting aspersion on his conduct or character, then the court will treat that order as an order of punishment, attracting provisions of Article 311(2) of the Constitution., The reason is that as a charge or imputation is made the condition for passing the order, the court would infer therefrom that the real intention of the Government was to punish the government servant on the basis of that charge or imputation and not to exercise the power of compulsory retirement. But mere reference to the rule, even if it mentions grounds for compulsory retirement, cannot be regarded as sufficient for treating the order of compulsory retirement as an order of punishment. In such a case, the order can be said to have been passed in terms of the rule and, therefore, a different intention cannot be inferred. So also, if the statement in the order refers only to the assessment of his work and does not at the same time cast an aspersion on the conduct or character of the government servant, then it will not be proper to hold that the order of compulsory retirement is in reality an order of punishment. Whether the statement in the order is stigmatic or not will have to be judged by adopting the test of how a reasonable person would read or understand it."

In the case of *M.P. State Co-op. Dairy Fedn. Ltd. and Another Vs. Rajnesh Kumar Jamindar and Others*, the Hon''ble Apex Court held that judicial review of an order of compulsory retirement is permissible if the order is perverse or arbitrary as also in the cases where there is non -compliance of statutory duty by

statutory authority, but the Court cannot go into the factual findings. The factors not germane for passing an order of compulsory retirement should not be taken into consideration. The criteria and rules adopted by the employer must be adhered to, to determine whether the employee had become liable for compulsory retirement. An authority discharging public function must act fairly.

9. It would thus become clear from the above discussion that the scope of judicial review of an order of compulsory or premature retirement is very limited and the Court can examine the legality and correctness of such an order only on the anvil of arbitrariness or perversity and whether it is stigmatic in nature or not.

10. On careful perusal of the impugned notice dated 28/3/2014, one can very well see that it is not at all stigmatic in nature as it nowhere refers adversely to the petitioner. It only mentions the rule under which the petitioner would stand retired from the government service after giving notice. It does not cast any aspersion on the conduct or character of the petitioner. Therefore, there would be no scope for this Court to review the impugned notice on the ground of it being in the nature of punishment.

11. As regards the contention that the impugned notice is primarily based upon the report of Shri N. K. Walke, learned Civil Judge, Senior Division, who had an occasion to observe the performance of the petitioner just for four months, we find that same is not factually correct. The minutes of the review meeting held on 27/3/2014 disclose that the annual confidential reports of the petitioner for the period from 2008 to 2013 have been particularly considered and his overall performance and record have also been considered by the Review Committee in order to reach its decision to prematurely retire the petitioner. It is also seen from the said minutes that the Review Committee has also considered the report previously given by Shri R. R. Raut, the reporting officer, which stated that the petitioner was not maintaining properly the record and making erasers as well as additions in his own leave record and this report was based upon the report of the inspection of the official record taken by the Inspection Team. The minutes of the Review Committee thus clearly show that upon overall consideration of the work, conduct and performance of the petitioner, the Review Committee has taken a conscious decision to prematurely retire the petitioner in public interest as he was not found fit and suitable for continuation in service after completion of the age of 55 years.

12. No doubt, the petitioner was continued for a period of one year subject to observation of his work and performance, when review of his work and performance was taken by the previous Review Committee in its meeting held on 26/3/2013. There is also no doubt about the fact that his annual confidential reports for the years 2007-08 and 2008-09 were below average and thereafter there was some improvement in his performance. His annual confidential reports for the years 2009-10, 2010-11 and 2011-12 were respectively below average; "B" positively good and average. These confidential reports have also been considered by the Review Committee and it has come to the conclusion that

overall work and performance of the petitioner is average. It has also found, upon consideration of the material available before it, that there was cloud on his integrity. Thus, the Review Committee, in public interest, decided to prematurely retire the petitioner. We find neither any mala fides nor any arbitrariness nor any perversity in the conclusion so reached by the review committee. After all, the view taken by the Review Committee is based upon the material available before it and there being no material placed before us to establish mala fides, it cannot be said to be actuated by any extraneous consideration. Therefore, it would not be open for this Court to interfere with the decision taken by the Review Committee.

13. So far as the contention that the petitioner has been treated unequally and with different standard is concerned, we find no merit in the same. The concept of equality, it is well settled, does not operate in a negative way in as much as, we find that the cases of S/shri Betwar and Katolkar have different facts and circumstances and, therefore, cannot be compared with the case of the petitioner. That apart, both of them, i.e. Shri Betawar and Shri Katolkar, have been continued in service at the age of 55 years subject to keeping them under observation for a period of one year. This implies that no final decision as regards compulsory or premature retirement of the said officials has been taken so far.

14. The petitioner has also contended that no show cause notice was ever issued to him on the allegation that he was not obeying the directions given by the judicial officers. We find that even though no show cause notice has been issued to the petitioner on this aspect of the matter, the decision of the Review Committee cannot be interfered with on this ground alone for the simple reason that it has been arrived at after overall consideration of the material available against him. It is equally well settled that even un -communicated adverse remarks can be taken into consideration for reviewing the case of the government servants for continuation in service beyond the age of 55 years. Therefore, we find no substance in the said contention.

15. In the above circumstances we find that no case has been made out for reviewing the impugned notice in extra ordinary writ jurisdiction of this Court and as such the petition deserves to be dismissed.

Writ petition is dismissed. No costs.