
(1995) 03 GAU CK 0009
In the Gauhati High Court
Case No : Civil Rule No. 967 of 1992

Lnk/297 Joges War Bordoloi APPELLANT
Vs
State of Assam RESPONDENT

Date of Decision : 07-03-1995

Acts Referred:

Fundamental Rules — Rule 56(b), 56(b)

Citation : (1995) 2 GLJ 47

Hon'ble Judges : J.N.Sarma, J

Bench : Single Bench

Advocate : S.N.Medhi, M.Das, A.Choudhary, Advocates appearing for Parties

Judgement

1. This application under Article 226 of the Constitution of India has been filed challenging the legality and validity of two orders dated 27.5.91 Annexure V and order dated 31.8.91, Annexure VII to the writ application. Annexure V and VII are quoted below :

"Annexure V

Officer of the Commandant: 8th AP BN Barhampur : Nagaon : Assam NO. BN. 8/R/7305 dated 27.5.91

To,

Sri Jogeswar Bordoloi,

L/NK 297, 8th AP BN. Barhampur, Nagaon.

Sub: Compulsory retirement.

Whereas you will complete 25 years of service on 27.8.91 it is in the public interest to order your retirement from service by way of compulsory one as per provision laid down in Rule 56 clause (b) of Fundamental Rules and Subsidiary Rules, 1984.

Your compulsory retirement will not involve any penal consequence by way of loss of salary allowances, pension and other benefits acquired by you by your past service. Your compulsory retirement will be effective wef 1.9.91 AM.

You are directed to delivery all the Govt. Kits and other dues before proceeding on compulsory retirement and submit the following documents to this office for preparation of your pension papers for onward submission to the Govt.

Document:

1. 5 Copies of your joint photograph with family (P.P. Size)
2. 3 copies of specimen signature of your wife.
3. 3 copies of your family details.

Sd/ Commandant, 8th AP Bn. Barhampur,

Nagaon, Assam . Annexure VII

Office of the Commandant: 8th Assam Police Battalion, Barhampur, Nagaon, Assam

ORDER

Notice had been issued to LNK 297 Jogeswar Bordoloi of this unit on 27.5.91 intimating him to go on compulsory retirement in the interest of public service wef 1.9.91 as per rule laid down in FR 56 (b) of FR& SR, 1984 read with articles 311 of the Constitution of India. LNK 297 Jogeswar Bordoloi did not received it duly and as such, the said notice was pasted on his house in presence of Sri Bolen Ch. Ray, S.M., Sri Arun Borah,ASSI, Sri Mumtaz Ansari ABSI, Sri Dipak Sarma, Havildar, Sri Nipen Das R/P, Sri Prafulla Saikia R/P, Sri Udhab Ch. Das, R/P, Sri Pabitra Borah B.H.M. on 29.5.91. The compulsory retirement on the part of Sri Jogeswar Bordoloi will not involve any penal consequences by way of loss of salary allowances and pension, other benefits acquired by him by his past service. He will deliver all the Govt. Kits issued to him by 31.8.91 and clear all dues before the scheduled date. He will vacate the Govt. quarter on 1.9.91 or till such date as will be required by him to vacate. Pending vacation of Govt. quarter no monetary transaction will be made to him except the last month's pay. His compulsory retirement will be effective wef 1.9.91 AM with the expiry of 3 months notice issued to him under cover of this office Memo No.BN./8/4/7305 dated 27.5.91. It may be mentioned in this context that the LNK had completed 25 years of service on 27.8.91 and his continuance in disciplined force is detrimental to the public service.

Commandant,

8th AP BN., Bahrampur, Nagaon, Assam"

2. These orders of compulsory retirement were passed in exercise of power under Fundamental Rule 56 (b). The Fundamental Rule 56 (b) is quoted below: "

56 (b) Notwithstanding anything contained in these rules the appropriate authority may, if he is of the opinion that it is in the public interest to do so, retire a Government servant by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice after he has attained fifty years of age or has completed 25 years of service, whichever is earlier."

3. So, what is required is that the power must be exercised by forming an opinion that the compulsory retirement of the employees is in public interest. Public interest is the touch stone to decide the legality and validity of such an order. A bare perusal of the order will show that only the word public interest has been quoted but how this order of compulsory retirement will serve a public interest has not been spelt out, either by the production of the record or otherwise. The legality and validity of these orders are challenged on the ground that this power is exercised in a mala fide manner only to punish the petitioner. Earlier to it there was an enquiry against the petitioner and the petitioner was asked to show cause. Thereafter, this order for compulsory retirement was passed by dropping the proceeding as against the petitioner.

4. In AIR 1971 SC 40 (Union of India vs. JN Sinha) the Supreme Court pointed out that this power may be exercised subject to the conditions mentioned in the rule and one of which is that the concerned authority must be of the opinion that it is in public interest to do so. The Supreme Court further pointed out that if that authority bona fide forms that opinion, the correctness of that opinion, cannot be challenged before Courts. If it is challenged that the requisite opinion has not been formed or the decision is based on the collateral grounds or that it is an arbitrary decision, the authority must satisfy the Court that these issues which were raised, were not correct.

5. The law has been further settled by the Supreme Court in AIR 1990 SC 1368 (Ram Ekbal Sharma vs. State of Bihar & another) where the Supreme Court has pointed out as follows :

"Even if an order of compulsory retirement is couched in innocuous language without making any imputations against the Government servant who is directed to be compulsorily retired from service, the Court, if challenged, in appropriate cases can lift the veil to find whether the order is based on any misconduct of the Government servant concerned or the order has been made bona fide and not with any oblique or extraneous purposes. Mere form of the order in such cases cannot deter the Court from delving into the basis of the order if the order in question is challenged by the concerned Government servant."

6. This matter also came up for further consideration in AIR 1981 SC 70 (BR Chadha vs. Union of India) where the Supreme Court pointed out as follows:

"The exercise of power must be bona fide and promote public interest. When an order is challenged and its validity depends on its being supported by public interest the State must disclose the material so that the Court may be satisfied

that the order is not bad for want of any material whatever which, to a reasonable man reasonably instructed in the law, is sufficient to sustain the grounds of "public interest" justifying forced retirement of the public servant. Judges cannot substitute their judgment for that of the Administrator but they are not absolved from the minimal review well settled in administrative law and founded on constitutional obligations."

7. This aspect of the matter also came up for consideration in a recent judgment of the Supreme Court in AIR 1995 SC 111 (S. Ramachandra Raju

vs. State of Orissa) where the same law has been reiterated by the Supreme Court with an addition as follows :

"The limitation on judicial power in this area are well known and we are confined to an examination of the materials merely to see whether a rational mind may conceivably be satisfied that the compulsory retirement of the officer concerned is necessary in public interest."

8. The Supreme Court pointed out that the whole purpose of the rule is to weed out the worthless without the punitive extremes covered by Article 311 of the Constitution. The Supreme Court further pointed out that to retire a public servant compulsorily on the basis of confidential reports may lead to a deficiency may not always be a proper exercise of power. But the Supreme Court said that aspect of the matter should be left to the administrator and should not be reviewed by the Court but the Supreme Court struck a note of caution that this confidential reports must receive proper checking if it is utilised as basis for decision making. It is not necessary to consider that aspect of the matter. In this case it is to be noted that exercise of power of compulsory retirement must not be a haunt on public servant but must act as the check and reasonable measure to ensure efficiency of service and free from corruption and incompetence.

In the instant case, I am satisfied that these orders for compulsory retirement were not proper exercise of power and accordingly, both these orders are quashed. The petitioner shall be taken back in service and he shall be allowed to continue his service till he attains the age of superannuation subject to due process of law. The petitioner shall also be entitled to all his back wages.

This disposes of the writ application.