
(2001) 01 GAU CK 0021
In the Gauhati High Court
Case No : Civil Rule No. 2884 of 1997

Mukut Chandra Borah

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 05-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 1 GLT 56

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : Mr. A.K. Phukan, Mr. V.M. Thomas and Mr. Ripun Bora, for the Appellant; Govt. Advocate, Mr. S. Sarmah, Mr. A.N. Chaudhury and Mr. R. Borodoloi, for the Respondent

Final Decision : Dismissed

Judgement

Heard Mr. A K Phukan and Mr. V Thomas, learned counsel for the petitioner and Mr. S. Sarma, learned Standing Counsel for the Gauhati Municipal Corporation.

In this- application under Article 226 of the Constitution, the petitioner has challenged the order dated 17.6.97, whereby the petitioner was forced to go on compulsory retirement. The petitioner joined the Nagaon Municipal Board in the year 1967, and while he was serving as Head Assistant, he was sent on compulsory retirement. The petitioner has challenged the same mainly on the following grounds :

- (a) The order of compulsory retirement was punitive in nature as the petitioner was involved in a disciplinary proceeding ;
- (b) No public interest was involved ;
- (c) No notice of three months pay was paid to the petitioner ;
- (d) The impugned order has cast a social stigma.

The respondent Municipal Board has filed an affidavit-in-opposition stating, inter alia, that the impugned order was neither related to any contemplated disciplinary proceeding nor it was punitive in nature. Moreover, no prior notice is required to be served and the petitioner was given all the benefits of retirement as per the rule. The entire service record was perused before passing the impugned order. It is further stated that the service record shows that the petitioner was charged with the offence of misbehaviour, violation of office rules and procedure, dereliction of duties, misappropriation of Board's fund, fraud, unauthorised absence etc. He was placed under suspension earlier also and although there was recommendation for dismissal, but on humanitarian consideration, the petitioner was allowed to continue. The petitioner even dared to change the order of promotion passed by the competent authority by interpolation and overwriting without permission or intimation to the superior officer concerned. It is stated that considering the entire service record, the petitioner was compulsorily retired in public-interest.

It has been submitted by the learned counsel for the petitioner -that FR 56(b) of the Fundamental Rules is not applicable in case of the petitioner as he was a municipal employee only. The counsel for the respondent on the, on the other hand, submits that in view of the order passed by the Industrial Tribunal, Guwahati in the year 1969 itself and as per demand of the All Assam Civil Bodies Workers Federation, all relevant rules including the Fundamental Rules applicable to the Govt. employees were made applicable to the civic body workers. In view of the above I find no force in the submission that FR 56 is not applicable to the petitioner.

Admittedly, no notice of 3 months was issued to the petitioner before passing of the impugned order. Further, the impugned order itself provides that the petitioners shall be entitled to all the benefits of compulsory retirement which according to the learned counsel includes salary for 3 months as provided under the Rules. It can not be said that the payment of salary is a condition precedent for passing the order of compulsory retirement. When an alternative relief is provided and the same was extended to the petitioner the impugned order cannot be found fault on that count.

The law regarding the compulsory retirement was laid down by the Apex Court in the case of Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another. The above decision was followed in catena of later decisions by the Apex Court. This Court has followed the law laid down as above in the case of 2000 (3) GLT 72.

Broadly speaking, the following principles have been laid down by the Apex Court.

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

(ii) The order have to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsarily. 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 the 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 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 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 can not be a basis for interference.

On perusal of the impugned order, it is seen that although the petitioner was involved in a departmental proceeding at the relevant time, it has been specifically mentioned that the order of compulsory retirement is not related to any disciplinary proceeding and the impugned order has been passed on perusal of the entire service records and in the public interest. The petitioner was given all the benefits of retirement as per the Rules and no stigma was attached with the order of retirement.

In a recent case, *Prabodh Sagan v. Punjab State Electricity Board* AIR 2000 SCW 1656, the Apex Court has held that the employer has an absolute power to retire an employee pre-maturedly upon following the procedure set out in the Rules. In the present case, the Nagaon Municipal Board has submitted that the entire service record of the petitioner speaks volume about the simple fact that the petitioner is more a liability than asset to the Board. He was involved in a number of occasions in serious cases of omissions and commissions, dereliction of duty, including misappropriation of public fund. In the month of November, 1996 one C.M. Duora was promoted to the post of Inspector and the order of promotion was passed by the Executive Officer but subsequently it was discovered that the petitioner has changed the word Inspector by striking out the same and putting the word "Supervisor". When an explanation was called from the petitioner he admitted to have done the same without knowledge or information to his superior officer, who had passed the said order of promotion.

Petitioner had no business to do so and he has thus tempered with the official record and it has been stated that the post of "Inspector" was in existence and vacant but there was no provision for the post of Supervisor. The respondents have produced the service record of the petitioner to show that the petitioner is in the habit of tempering with the official record. The Service Book of the petitioner shows that his date of birth, as stated in the service book has been tempered with. It is stated that this has been done by the petitioner and there was no order/or endorsement by the competent authority regarding the above. There are numerous instances where the petitioner was asked to show cause for his dereliction of duties, misappropriation of public funds etc. The question of compulsory retirement depends on the facts of each case and in view of the service record of the petitioner available with the Board, the Board on perusal of the same came to a definite finding that the petitioner cannot be retained in the job and as such passed the impugned order. On perusal of the record it can not be said that the impugned order is not based on the materials available on record or that no reasonable man can come to the above finding on perusal of the record. So far the social stigma is concerned, all employee who are asked to go on compulsory retirement may have some grievance on that count but so far the impugned order is concerned, petitioner has not been ousted with any stigma. Considering all aspects of the matter I hold that no interference is called for in the present case. The order passed by the respondent Board is in accordance with law and the petitioner is not entitled to any relief.

Writ petition stands dismissed.