
(2013) 03 MP CK 0037

In the Madhya Pradesh High Court

Case No : Writ Petition No. 6710 of 2005 (S)

Mumtaz Jahan Khan

APPELLANT

Vs

Bharat Scouts and Guides and Others

RESPONDENT

Date of Decision : 04-03-2013

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 311

Citation : (2013) 2 MPLJ 353

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : V.K. Shukla, for the Appellant; Vivek Agrawal for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

K.K. Trivedi, J.—The petitioner, an employee of the Bharat Scouts and Guide, has approached this Court by way of filing this writ petition under Article 226 of the Constitution of India ventilating her grievance against the order dated 25-6-2005 by which she has been compulsorily retired on attaining the age of 50 years and completion of 20 years of service. It is contended that since such action is taken only on account of prejudices borne in the mind of respondents, to reduce the establishment expenses in terms of the decision taken in a State Level meeting of the said respondents on 20-9-2004, the order impugned is bad in law. Facts giving rise to filing of this writ petition are that the petitioner was initially appointed in the Bharat Scouts and Guides at State Branch as was found fully suitable to be appointed on the post vide an order dated 15-6-1979. Initial appointment of the petitioner was on the post of Assistant State Organizing Commissioner (Guide). The petitioner has rendered satisfactory services and was made to work on the post at division level. Considering the merits of the petitioner, she was posted on the post of State Organizing Commissioner at Bhopal, was given a promotion as Joint Secretary and was given the current charge of State Level Secretary at head office of the respondents at Bhopal. The

petitioner was communicated adverse entry recorded in her confidential report against which the representations were made timely but despite making reminders, the decision was not given on the said representation. The petitioner was senior most and was entitled to be considered for promotion, therefore, she made a representation claiming such promotion. Because of these prejudices borne in the mind in terms of the decision taken in the meeting of the State Level Committee, action was taken and the petitioner was made to compulsory retired by the impugned notice. Such an action of the respondents was per se illegal as the scheme made for compulsory retirement was not properly examined nor any action was taken pursuant to the said policy or scheme. In fact by making a mathematical calculation of merit of the petitioner, which was reflected in the policy made by the State Government in circular dated 12-12-2001 she was made to compulsory retired, whereas the said circular was recalled vide circular dated 20-3-2003. In terms of the circular dated 22-8-2000, the case of the petitioner was not properly screened and, therefore, action taken by the respondents was bad in law.

2. Refuting the allegations made by the petitioner in the petition, a return has been filed by the respondents No. 2 and 3 stating that the respondent is not a State within the meaning of Article 12 of the Constitution of India and is not amenable to the writ jurisdiction of this Court. It is contended that the respondent-organization is a society registered under the Society Registrkaran Adhiniyam and, therefore, would not be termed as an authority within the meaning of Article 12 of the Constitution of India and will not be subjected to any writ jurisdiction of this Court. It is further contended that overall service performance of the petitioner was looked into. The screening committee has found the petitioner ineligible to continue in the employment any longer and in terms of the circular made by the State Government, after due scrutiny of the case of the petitioner, she was compulsory retired. It is, therefore, contended that the action taken by the respondents is just and proper and need no interference from this Court. The direction was given to the respondents to produce the original record of screening committee, which has been made available.

3. Heard learned Counsel for the parties at length and perused the record.

4. First of all it has to be examined whether the respondent Society is amenable to the writ jurisdiction of this Court or not. The very same objection was raised in the case of Anirudh Dwivedi Vs. The State Chief Commissioner, Bharat Scout and Guide and Another, which came to be decided on 29-1-2009. A co-ordinate Bench of this Court after analysis of the law laid down by the Apex Court, has categorically held that such an objection of the respondents is liable to be rejected outrightly. It has been held that the respondents would be termed as an authority within the meaning of Article 12 and would, therefore, be amenable to the writ jurisdiction of this Court. The concluding part of the order in that respect, contained in paragraph 24 of the report, is reproduced thus:

In view of the aforesaid facts and circumstances, I am in respectful agreement with the view taken by this Court in the case of D.L. Sharma (*supra*) which is also in line with the subsequent judgments of the Supreme Court referred to in the preceding paragraphs and hereby conclude that the present writ petition filed by the petitioner for enforcing due compliance of the Rules of 1966 against the respondent-society which is performing a public function involving public law element is maintainable. The preliminary objection, raised by the learned counsel for the respondents, is accordingly rejected. I now proceed to decide the petition on merits.

This Court once has held that the respondent is an authority within the meaning of Article 12 of the Constitution of India and is amenable to the writ jurisdiction of this Court, therefore, such an issue is not to be re-decided by this Court as nothing has been pointed out by the respondents that the law laid-down by the co-ordinate Bench of this Court in case of Anirudh Dwivedi (*supra*) has been set aside by the higher forum. The preliminary objection raised by the respondents is thus rejected.

5. Now coming to the consideration of the case of the petitioner for compulsory retirement. The proceeding produced by the respondents indicates that the circulars dated 22-8-2000, 11-7-2001, 25-6-2002 and various other circulars subsequently issued were taken note of and the screening was done. The committee was constituted in terms of the decision taken by the respondents. The said committee met on 19-3-2005. However, it indicates that the ACRs of the petitioner were evaluated in terms of the circular dated 12-12-2001 wherein the mathematical assessment was required to be done. This is apparent from the opening paras of the proceedings of the meeting where it is recorded in the following manner (translated by the Court in English):

The committee decided to make calculation of last 5 years ACRs of the employees on the basis of their grading and to assign them the marks. It was further decided that those, who have earned less than 2 marks in average, will be recommended for compulsory retirement.

After this the names of those officers/employees were mentioned, who have received less than 2 marks in average in assessment of last 5 years ACRs. The name of the petitioner was on top of this list. Thus, in fact the consideration was done by the respondents in terms of the circular dated 12-12-2001, which itself was recalled by the State Government, General Administration Department, vide circular dated 20-3-2003. If the consideration was done on the strength of a circular, which itself was recalled, how could it be said that the screening committee has considered the case of the petitioner in appropriate manner. This particular aspect was considered by this Court and those who were retired only on the strength of circular, which was repealed or recalled, were granted the relief. Even the State Government has directed re-consideration of the cases of those persons vide circular dated 20-3-2003 wherein it was specifically directed that if in case any employee is compulsory retired in terms of the circular dated

12-12-2001 without examining the overall service record of the employee, his case would be reviewed and would be considered in terms of the circular dated 22-8-2000 as is amended vide order dated 20-3-2003. This makes it clear that in fact the consideration of the case of the petitioner was not rightly done and, therefore, the order of compulsory retirement was not sustainable.

6. Further it has to be seen that the law is well settled in various cases by the Apex Court. In the case of Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, , the Apex Court has laid-down certain guiding factors, which were to be taken note of while making the recommendation for compulsory retirement. Again in the case of State of Gujarat Vs. Umedbhai M. Patel, , the Apex Court has looked into these aspects and has categorically prescribed the criteria to be considered for recommending compulsory retirement of the employees on attaining the age of 50 years or 20 years of qualifying service. This Court in the case of Arun Kumar Gupta Vs. State of M.P. and Others, , has analyzed all such law and has categorically held in paragraphs 6, 7 and 8 of the report thus:

6. Even though compulsory retirement is not a punishment and for taking action for compulsorily retiring a person, the principles of natural justice is not to be followed, but at the same time a decision taken to compulsorily retire a person has to be based on evidence and material on the basis of which the opinion to declare a person as dead wood is arrived at. If the decision is based on no material or evidence, the decision is termed as arbitrary and on such considerations the decision can be interfered with. This is the principle laid down by the Supreme Court in the case of M.S. Bindra Vs. Union of India and Others, . Similar views have been taken by the Supreme Court in various cases like V.P. Singh vs. State of Bihar, (2001) 2 SCC 2305; and the law relating to compulsory retirement and the principle to be followed is crystallized in the case of State of Gujarat Vs. Umedbhai M. Patel, If the principle laid down in the case of Umedbhai M. Patel (supra) is taken note of, the law is laid down by the Supreme Court in the following manner, in paragraph 11, as under:

11. The law relating to compulsory retirement has now crystallized into definite principles, which could be broadly summarized thus:

(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead-wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of

and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure.

(Emphasis supplied)

7. The aforesaid judgment clearly stipulates that compulsory retirement can be resorted to in public interest, but the decision to compulsorily retire an employee should be taken after assessing his entire service record and when it is found on such assessment that his utility to the department is not at all existing or that he is a dead wood. It is based on the aforesaid principle that compulsory retirement can be done.

8. In the case of Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, , it has been held by the Supreme Court that an order to compulsorily retire an employee has to be arrived at on the basis of subjective satisfaction of the Government/competent authority. When the subjective satisfaction of the competent authority is required to be recorded for taking the action, the subjective satisfaction has to be based on due appreciation of the documents and other material forming the subject-matter for scrutiny of the service record. In the absence of scrutiny of the service record and the basis for arriving at the subjective satisfaction being established or demonstrated before this Court, the action impugned which is without any material, has to be termed arbitrary and unjustified and is liable to be interfered with.

7. In view of the law laid down by the Apex Court, as made applicable by this Court in certain circumstances, if the proceedings done by the respondents are considered, it will be clear that the case of the petitioner was not objectively considered, assessing whether she was a dead-wood or not. The ACRs of the petitioner for the year 1993-94 onwards were taken into consideration up to the year 2003-04. From the chart produced before the screening committee it is clear that the committee was apprised that the petitioner has earned good remarks for continuous 5 years up to the year 1998-99. There was a slight down grading in the ACR of the year 1999-2000 where she was graded as average, which remained the same in the year 2000-01. However, again there was rise in the standard of working of the petitioner as she was graded as good in the year 2001-02. Again there was a downfall when the petitioner was graded as below average in the ACR of 2002-03. Against this ACR, after communication, the petitioner made representation but there is no whisper in the return filed by the respondents that such a representation was considered and decided. Again in the

next year the ACR of the petitioner for the year 2003-04 was average. If this service record is seen, no man of prudent mind will hold that the petitioner was a dead-wood or that her overall working in the entire service was not satisfactory or was below average so as to treat her as a dead-wood and chop her off from the employment by way of compulsory retirement in the interest of administration. The findings recorded by the Committee in this respect again indicate that action taken against her way back in the year 1984 when she was placed under suspension was taken note of. A penalty was imposed on the petitioner in the year 1995 for such a misconduct of the year 1984 by which two increments of pay of the petitioner were withheld with cumulative effect. All other facts recorded in the note prepared by the Committee reflects certain orders or memos, which were issued way back in the year 1983 barring for few when she was given the warning in the year 2004. As is contended by the petitioner, against such an action of the year 2003-04, representations were made but nothing is indicated as to what action was taken on those representations. If this overall consideration is taken note of, it will mean nothing but a cumulative decision of the respondents to hold that the petitioner was not a good officer because of these events and not on the assessment of her ACRs, which in fact were reflecting the performance of the duty in such standard as is indicated hereinabove. This cannot be said to be an objective consideration of the case of an employee, specifically in terms of the policies made by the State Government, which according to the respondents, were specifically made applicable in consideration of such cases of compulsory retirement.

8. In view of the analysis made hereinabove, it is clear that the case of the petitioner was not properly screened by the respondents for suggesting her compulsory retirement. Such a faulty report of the screening committee was made a basis for giving notice of compulsory retirement, that too with immediate effect. Such an action of compulsory retirement of the petitioner, therefore, cannot be sustained in the eye of law.

9. Consequently, the writ petition is allowed. The order dated 23-6-2005 (Annexure P-17) issued by the respondents is hereby quashed. If the petitioner has not completed the age of superannuation prescribed in the services of the respondents, she be reinstated in service. In case she has attained the age of superannuation, she be treated in service till the age of superannuation and be paid all the monetary benefits of such service including the pay and allowances of the post. The writ petition is allowed to the extent indicated hereinabove. However, there shall be no order as to costs.