
(1997) 02 AP CK 0018

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13148 of 1994

P. Nagi Reddy

APPELLANT

Vs

Govt. of A.P. and Another

RESPONDENT

Date of Decision : 26-02-1997

Acts Referred:

Constitution of India, 1950 — Article 21, 311

Citation : (1997) 4 ALT 24

Hon'ble Judges : S. Parvatha Rao, J; Motilal B. Naik, J

Bench : Division Bench

Advocate : B. Narasimha Sarma, for the Appellant; G.P. for Respondent No. 1 and V.V.S. Rao, for the Respondent

Final Decision : Dismissed

Judgement

S. Parvatha Rao, J.—The petitioner questions G.O.Rt.No. 209, Home (Courts-C) Department, dated 28-1-1994 issued by the 1st respondent i.e., the Government of Andhra Pradesh, retiring him from service at the end of 58 years of his age i.e., from 31-7-1994. That G.O.Rt. was issued by the 1st respondent after notice to him under G.O.Rt.No. 208, Home (Courts.C) Department, dated 28-1-1994 stating as follows:

"The Supreme Court of India, in their interim judgment dt. 13-11-1991 have directed that all Judicial Officers shall continue upto 60 years in W.P.No. 1022/89 until further orders. In the reference 2nd read above, the Supreme Court of India in their order dated 24-8-1993 in R.P. No. 249/92 in W.P.No. 1022/89 have directed that while the superannuation age of every subordinate judicial officer shall stand extended upto 60 years, the respective High Courts should, as stated above assess and evaluate the record of the judicial officer for his continued utility well within time before he attains the age of 58 years by following the service rules applicable to him and give him the benefit of the extended superannuation age from 58 to 60 years only, if he is found fit and eligible to continue in service. In case he is not found fit and eligible, he should be

compulsorily retired on his attaining the age of 58 years.

The Registrar, High Court of Andhra Pradesh, in his letter third read above, have recommended to the Government to notify the retirement of the following subordinate judicial officers at the end of 58 years of their age after review of their continued utility in service:-

1. Sri Shaik Ibrahim, District Munsif - 30-4-94
2. Sri Ahmed Giayas Khan, District Munsif - 31-5-94
3. Sri Q.M.A. Rabbani, Sub-Judge - 30-6-94
4. Sri P. Nagi Reddy, Special Judicial Magistrate - 31-7-94
5. Sri E. Sreenivasacharyulu, Sub-Judge - 31-8-94

In the circumstances stated above, Government have decided to issue 3 months notices to the above Officers as per rules".

The petitioner was at serial No. 4.

2. At the time of his retirement, the petitioner was a District Munsif and was working as Special Judicial Magistrate of I Class for Railways at Nellore. The petitioner questions the said G.O. on the ground that no reasons were given and, therefore, it was violative of principles of natural justice and fair play. He contends that since no specific reasons were communicated to him nor any opportunity was given to him, the entire proceedings were vitiated. He further submits that in the absence of any enquiries or stigma against him during his entire tenure, he was entitled to continue in service till he attained 60 years of age and that, under those circumstances, any decision of the 2nd respondent i.e., the High Court of A.P., recommending for his retirement at the age of 58 years would be arbitrary, unjust and unsustainable. He contends that the decision to retire him on his attaining 58 years of age virtually keeps him under stigma and that is punitive in nature and subjected him to humiliation.

3. Though the Writ Petition was admitted on 3-8-1994, it has come up before us now for final disposal in view of W.P.M.P.No. 32833 of 1996 preferred by the petitioner for expeditious disposal of the Writ Petition. It is not in dispute that even if he was continued for 60 years, he would have retired by 31-7-1996, and that, in fact, he retired on 31-7-1994. The only question that arises, therefore, is whether the impugned G.O.Rt. No. 209 dated 28-1-1994 is liable to be set aside on the grounds raised by the petitioner and, if so, with what result.

4. Before proceeding further, it is necessary to refer to the decision of the Supreme Court in All India Judge's Assn. v. Union of India, AIR 1993 SC 2493 dated 24-8-1993 referred to in the notice in G.O.Rt.No. 208 issued by the 1st respondent to the petitioner. In that the Supreme Court laid down the criteria for consideration of the potential for continued utility of the Judicial Officers for retaining them beyond 58 years and for giving them the benefit of the increase

of retirement age to 60 years. The Supreme Court very detailedly laid down the manner in which such consideration should be made as follows:

"The benefit of the increase of the retirement age to 60 years shall not be available automatically to all judicial officers irrespective of their past record of service and evidence of their continued utility to the judicial system. The benefit will be available to those who, in the opinion of the respective High Courts, have a potential for continued useful service. It is not intended as a windfall for the indolent, the infirm and those of doubtful integrity, reputation and utility. The potential for continued utility shall be assessed and evaluated by appropriate Committees of Judges of the respective High Courts constituted and headed by the Chief Justices of the High Courts and the evaluation shall be made on the basis of the judicial officers' past record of service, character rolls, quality of judgments and other relevant matters.

....Those who will not be found fit and eligible by this standard should not be given the benefit of the higher retirement age and should be compulsorily retired at the age of 58 by following the said procedure for compulsory retirement. The exercise should be undertaken before the attainment of the age of 58 years even in cases where earlier the age of superannuation was less than 58 years. It is necessary to make it clear that this assessment is for the purpose of finding out the suitability of the concerned officers for the entitlement of the benefit of the increased age of superannuation from 58 years to 60 years. It is in addition to the assessment to be undertaken for compulsory retirement and the compulsory retirement at the earlier stage/s under the respective Service Rules".

It is obvious from the above observations of the Supreme Court that the continued utility of a judicial officer to the judicial system will have to be evaluated not merely on the basis of his past record of service and character, but also on the basis of the quality of judgments rendered by him and other relevant matters and that it is not intended to be a windfall. The assessment is of the suitability of the officer for the entitlement of the benefit of the increased age of superannuation. If, on the assessment made, the officer is not found suitable, he shall not be entitled to that benefit. This assessment has to be made by a Committee of Judges of the High Court headed by the Chief Justice of the High Court.

5. In the present case, it is not the contention of the petitioner that his case was not considered by a Committee of Judges of the High Court headed by the Chief Justice or that the Committee had not assessed or evaluated him or that the Committee had not found that he was not suitable because he had no requisite potential for continued useful service beyond 58 years of age and recommended for his retirement on his attaining the age of 58 years. His only grievance is that he was not given a notice and that no reasons were given for the formation of the said opinion by the High Court. We are of the view that this contention has no merit.

6. The learned Counsel for the petitioner submits that the assessment required to be made by the High Court is of the nature required for compulsorily retiring a person under the relevant rules providing for compulsory retirement. Even assuming that to be so, the law is well settled that compulsory retirement of a Government servant under the relevant rules does not cast any stigma and that, no notice or opportunity need be given before deciding that a person should be compulsorily retired under the rules providing for compulsory retirement. In *The State of Sikkim and others Vs. Sonam Lama and others etc.*, a two judges Bench of the Supreme Court agreed with the contentions advanced that the order of compulsory retirement did not require observance of rules of natural justice to the parties, and that there was no scope for importing the provisions of Article 21 of the Constitution for making an order of compulsory retirement. The Supreme Court held as follows:

"We agree with the first two contentions and make it clear that we do not agree with the findings of the High Court that before passing an order of compulsory retirement, the principles of natural justice have to be followed and we also cannot accept the finding of the High Court that in a case of compulsory retirement the provisions of Article 21 of the Constitution have to be observed".

The question was elaborately considered by a three Judges Bench of the Supreme Court in *Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another*, . After discussing the various aspects of the matter with reference to compulsory retirement under F.R.56 (j) and the rules corresponding to it, the Supreme Court held that principles of natural justice are not attracted in a case of compulsory retirement under F.R.56 (j) or a rule corresponding to it. The Supreme Court preferred the view taken in *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, and in *Union of India (UOI) Vs. M.E. Reddy and Another*, over that in *Brij Mohan Singh Chopra Vs. State of Punjab*, and *Baidyanath Mahapatra Vs. State of Orissa and Another*, on the question of taking into consideration uncommunicated adverse remarks. After review of the case law, the Supreme Court enunciated the following principles as emerging from the discussion:

"(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 uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference. Interference is permissible only on the grounds mentioned in (iii) above",

The Supreme Court further clarified as follows:

"We are concerned mainly with the question whether a facet of principle of natural justice-*audi alteram partem* - is attracted in the case of compulsory retirement. In other words, the question is whether acting upon undisclosed material is a ground for quashing the order of compulsory retirement. Since we have held that the nature of the function is not quasi-judicial in nature and because the action has to be taken on the subjective satisfaction of the Government, there is no room for importing the said facet of natural justice in such a case, more particularly when an order of compulsory retirement is not a punishment nor does it involve any stigma".

In J.N. Sinha's case (4 supra), a two Judges Bench of the Supreme Court held that though compulsory retirement was bound to have some adverse effect on the Government servant who was compulsorily retired, it did not involve civil consequences. The Supreme Court observed as follows:

"Such a retirement does not take away any of the rights that have accrued to the Government servant because of his past service. It cannot be said that if the retiring age of all or a section of the Government servants is fixed at 50 years, the same would involve civil consequences. Under the existing system there is no uniform retirement age for all Government servants. The retirement age is fixed not merely on the basis of the interest of the Government servant but also depending on the requirements of the society"

The Supreme Court observed that the decisions in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, and *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, are not attracted to compulsory retirement. In this connection, the decision of a Constitution Bench of the Supreme Court in *Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI)*, is instructive. Das J. speaking for the Constitution Bench held as follows:

"It is said that compulsory retirement, like dismissal or removal, deprives the officer of the chance of serving and getting his pay till he attains the age of superannuation and thereafter to get an enhanced pension and that is certainly a punishment. It is true that in that wide sense the officer may consider himself punished but there is a clear distinction between the loss of benefit already earned and the loss of prospect of earning something more.

In the first case it is a present and certain loss and is certainly a punishment but the loss of future prospect is too uncertain, for the officer may die or be otherwise incapacitated from serving a day longer and cannot, therefore, be regarded in the eye of the law as a punishment. The more important thing is to see whether by compulsory retirement the officer loses the benefit he has earned as he does by dismissal or removal. The answer is clearly in the negative".

We may also observe that compulsory retirement we are dealing with here is not one by way of penalty: it is now well settled, as held by a Constitution Bench of the Supreme Court in *Union of India and Another Vs. Tulsiram Patel and Others*, referring to *The State of U.P. Vs. Sri Shyam Lal Sharma*, that "where an order of compulsory retirement is imposed by way of penalty, it amounts to removal from service and the provisions of Article 311 are attracted". An order of compulsorily retirement made in public interest under F.R. 56(j) and similar provisions will not amount to an order for dismissal or removal: see *State of Haryana Vs. Inder Prakash Anand H.C.S. and Others*, .

7. To complete the narration relating to adverse remarks, we have to mention that another three Judges Bench of the Supreme Court in *State of Orissa and others Vs. Ram Chandra Das*, further elaborated the aspect relating to consideration of adverse remarks prior to and after promotion. In that case, the Supreme Court was considering compulsory retirement under Rule 71(a) of the Orissa Service Code which empowered the Government of Orissa to compulsorily retire a government servant in public interest on his attaining the age of 58 years or on completion of 55 years by review of his service record. The Supreme Court held as follows:

"It is contended for the respondent that adverse entries for the two years referred to earlier and pending departmental proceedings would not be sufficient to compulsorily retire the government servant on the premises that after promotion they would become irrelevant and minor penalty was imposed. It is true that the government servant was allowed to cross the efficiency bar to enable him to avail of the benefits to draw higher scale of pay after crossing the efficiency bar. The adverse remarks made are after promotion. Even otherwise, the remarks form part of service record and character roll. The record of enquiry on conduct also would be material. Though minor penalty may be imposed on given facts and circumstances to act of misconduct nevertheless it remains part of the record for overall consideration to retire a Government servant compulsorily. The object always is public interest. The material question is whether the entire record of service was considered or not? It is not for the

Court/tribunal to see whether the decision of the Government to compulsorily retire the Government servant is justified or not. It is for the Government to consider the same and take a proper decision in that behalf. As stated earlier, it is settled law that the Government is required to consider the entire record of service. Merely because a promotion has been given even after adverse entries were made, cannot be a ground to note that compulsory retirement of the Government servant could not be ordered. The evidence does not become inadmissible or irrelevant as opined by the Tribunal. What would be relevant is whether upon that state of record as a reasonable prudent man would the Government or competent officer reach that decision. We find that self same material after promotion may not be taken into consideration only to deny him further promotion, if any. But that material undoubtedly would be available to the Government to consider the overall expediency or necessity to continue the government servant in service after he attained the required length of service or qualified period of service for pension. It is also made clear that in this case adverse entries were made only after promotion and not earlier to promotion. Compulsory retirement is not a punishment. He is entitled to all the pensionary benefits."

8. That the order of compulsory retirement need not be a speaking order is laid by a three Judges Bench of the Supreme Court in *Union of India (UOI) and Others Vs. Dulal Dutt, .* In that case, a Controller of Stores, Metro Railway, Calcutta was compulsorily retired by the Railway Board under Railway Rule 1802 (a) of Volume II of the Railway Establishment Code (1987 Edition) which is identical to F.R. 56 (j). After referring to *Baikuntla Nath Das* (3 supra) and *J.N. Sinha* (4 supra), the Supreme Court held as follows:

"... an order of a compulsory retirement is not an order of punishment. It is actually a prerogative of the Government but it should be based on material and has to be passed on the subjective satisfaction of the Government. Very often, on enquiry by the Court the Government may disclose the material but it is very much different from the saying that the order should be a speaking order. No order of compulsory retirement is required to be a speaking order".

9. We are of the view that the legal position cannot be different in the case of assessment to be made by the committee of the Judges of the High Court for the purpose of assessing the suitability of the petitioner for the entitlement of the benefit of the increased age of superannuation of 60 years as per the directions of the Supreme Court in the second *All India Judges' Assn. case* (1 supra). While laying down the manner in which consideration has to be made for evaluating the judicial officer's continued utility to the judicial system, the Supreme Court did not require any notice to be given to the judicial officer concerned or that reasons should be given for arriving at a decision either way in respect of the judicial officer concerned. In view of the fact that no stigma is attached to the decision taken for retirement of a judicial officer pursuant to the directives of the Supreme Court in the said decision, we are of the view that

principles of natural justice are not attracted and, therefore, there cannot be any question of violation of principles of natural justice. Therefore, for such assessment no notice or opportunity or reasons need be given to the petitioner because it is only for ascertaining his potential for continued utility on the basis of the over-all evaluation of the quality of his past service, his character, fitness and eligibility. Similar assessment is involved in the case of compulsory retirement under the service rules applicable because the object of such compulsory retirement is also "to weed out the dead wood in order to maintain efficiency and initiative in the service and also to dispense with the services of those whose integrity is doubtful so as to preserve purity in the administration" as held by the Supreme Court in *Allahabad Bank Officers Association and another Vs. Allahabad Bank and others*, ; it is "to energize the administration and make it more efficient by chopping of deadwood and to ensure that a key post is held by a person of undoubted ability and integrity" as held in *U.P. State Mineral Development Corpn. and Another Vs. K.C.P. Sinha*, . In *State of Haryana Vs. Inder Prakash Anand H.C.S. and Others*, , a four Judges Bench of the Supreme Court has held as follows:

"It is true that the fixation of the age of superannuation is the right of the State Government. The curtailment of that period under rule governing the conditions of service is a matter pertaining to disciplinary control as well as administrative control. Disciplinary control means not merely jurisdiction to award punishment for misconduct. It also embraces the power to determine whether the record of a member of the service is satisfactory or not so as to entitle him to continue in service for the full term till he attains the age of superannuation. Administrative, judicial and disciplinary control over members of the Judicial Service is vested solely in the High Court. Premature retirement is made in the exercise of administrative and disciplinary jurisdiction. It is administrative because it is decided in public interest to retire him prematurely. It is disciplinary because the decision was taken that he does not deserve to continue in service up to the normal age of superannuation and that it is in the public interest to do so."

In *T. Ramegowda Vs. R. Krishnamurthy and others*, the Supreme Court observed as follows with reference to Rule 71 (a) of Orissa Service Code which provided for compulsory retirement and was similar to F.R.56 (j) :

"The whole purpose of the rule is to weed out the worthless without the punitive extremes covered by Article 311 of the Constitution. After all, Administration, to be efficient, must not be manned by drones, do nothings, incompetents and unworthies. They may not be delinquent who must be punished but may be a burden on the Administration if by insensitive, insouciant, unintelligent or dubious conduct impede the flow or promote stagnation. In a country where speed, sensitivity, probity, and non-irritative public relations and enthusiastic creativity are urgently needed, paper-logged processes and callous cadres are the besetting sin of the Administration."

xxxxx xxxxx xxxxx "The dead wood needs to be removed to augment efficiency.

Integrity in public service needs to be maintained. The exercise of power of compulsory retirement must not be a haunt on public servant but must act as a check and reasonable measure to ensure efficiency of service and free from corruption and incompetence. The officer would live by reputation built around him. In an appropriate case, there may not be sufficient evidence to take punitive disciplinary action of removal from service. But his conduct and reputation is such that his continuance in service would be a menace in public service and injurious to public interest. The entire service record or character rolls or confidential reports maintained would furnish the backdrop material for consideration by the Government or the Review Committee or the appropriate authority. On consideration of the totality of the facts and circumstances alone, the Government should form the opinion that the government officer needs to be compulsorily retired from service. Therefore, the entire service record more particular the latest, would form the foundation for the opinion and furnish the base to exercise the power under the relevant rule to compulsorily retire a government officer".

This was reiterated in *K. Kandaswamy Vs. Union of India*, . With reference to the assessment of the work of quasi-judicial functionaries for the purpose of compulsory retirement, the Supreme Court observed as follows in *Union of India Vs. Ajoy Kumar Patnaik*, which was a case relating to Collector of Customs (Appeals):

"It would thus be clear that an officer though performs official quasi-judicial functions, his conduct in the discharge of the quasi-judicial act or omission relates to the activity in the course of the discharge of his duties as a servant of the Government and bears reasonable relation or nexus with the nature and conduct of the service and when it casts reflection upon his reputation, integrity or devotion to duty as a public servant, that would be squarely referable to the conduct of the public servant amenable to disciplinary proceedings. When it is a misconduct, the competent authority is equally entitled to take a decision whether an officer has impeccable integrity and absolute devotion to duty for further continuation in service. The competent authority would be free to consider the material, particularly the latest one, and form a bona fide decision in the public interest to compulsorily retire an officer from service."

The adequacy or sufficiency of the material for forming the basis for such an assessment and an opinion cannot be questioned: see *Registrar, High Court of Madras Vs. R. Rajiah*, . Such satisfaction or opinion can be interfered with by way of judicial review if it is mala fide, or is based on no evidence, or is arbitrary or perverse as held by the Supreme Court in *Baikuntha Nath Das* case (3 supra). The Court may not interfere with bona fide exercise of power and the Court will not examine the matter as an appellate Court and cannot substitute its judgment for that of the administrator - *S. Ramachandra Raju* (18 supra) and *Chief General Manager, State Bank of India, Bhubaneswar and others Vs. Suresh Chandra Behera*, .

10. In *G. Nageswara Rao v. State of Andhra Pradesh*, Judgment dated 10-2-1993 in W.P.Nos. 14683 and 14670 of 1993, a Division Bench of this Court while dismissing the Writ Petitions preferred by two judicial officers questioning the assessment made by the committee of judges of the High Court pursuant to the directions of the Supreme Court in the second All India Judges' Assn. case (1 supra) observed as regards the entitlement of the judicial officers to the benefit of the increased age of superannuation from 58 years to 60 years as follows:

"We have no hesitation in holding that the petitioners (judicial officers) do not have the right to hold the post beyond 58 years. Their right to continue upto 60 years is hedged in certain conditions. Unless those conditions are satisfied, they are not entitled to seek the benefit. As the Supreme Court in its judgment dated August 24, 1993 has directed the High Court to assess and evaluate their potential for continued utility and as the High Court had conducted this exercise in pursuance of the said direction, it is not open to this Court to interfere with the said decision, and in the circumstances, it cannot be said that the right of the petitioners to continue till 60 years is scuttled. In view of the discussion of the above case law and the judicial dicta, what emerges is that the finding of the review committee that the petitioners do not possess the requisite potential for continued useful service beyond 58 years of age is a finding recorded for purposes of giving the benefit of extended superannuation or not, and it does not ipso facto amount to punishment. It is not a compulsory retirement simpliciter, but it is a case of giving benefit of extended period of service under the terms of the Supreme Court Judgment alone, and no question of stigma arises if under those grounds no benefit is given."

We are in agreement with this view because the Supreme Court has made it abundantly clear in the judgment that "the benefit of the increase of the retirement age of 60 years shall not be available automatically to all judicial officers ... the benefit will be available to those who, in the opinion of the respective High Courts, have a potential for continued useful service." To that extent, therefore, this is not really a case of assessment for compulsory retirement and thereby depriving the benefit of full service upto the age of superannuation; but a case of assessment for giving the benefit of continuing in service upto the age of 60 years.

11. The petitioner has not questioned the recommendation made by the High Court on the ground of mala fides. He says that his disposals were good and that there were no charges or enquiries against him, and that, therefore, the recommendation made by the High Court for retiring him at the age of 58 years is arbitrary, unjust and unsustainable. We do not see how this conclusion per se follows. Admittedly, he was working as District Munsif -cum - Judicial First Class Magistrate from 31-12-1983 till he attained the age of 58 years on 31-7-1994. Thus, he was appointed as District Munsif when he was aged about 48 years and he had not come up for consideration for promotion as Subordinate Judge even though he completed 10 years of service as District Munsif. In the counter-

affidavit dated 21-8-1996 of the Registrar (Management) of the 2nd respondent, the manner in which the petitioner was considered for assessing his potential for his continued utility beyond 58 years is stated as follows:

"In that process the relevant records and material pertaining to the petitioner were placed before the Committee of the Hon"ble Judges for the purpose of evaluation. On an examination and consideration of the matter, the Committee felt that the petitioner does not possess the requisite potential for his continued utility beyond 58 years. Accordingly, the High Court has addressed the Government to notify the retirement of the petitioner as on 31-7-1994 on which he attains the age of 58 years and to give three months notice to him as required as per procedure for compulsory retirement under the rules".

This shows that the requirements for not giving the benefit to the petitioner as per the directives of the Supreme Court are satisfied. On the facts of the present case, we find that no prima facie case or basis is made out for doubting or enquiring into the assessment of the petitioner's potential and utility by the committee of Judges of the High Court and for interference with the recommendation made by the High Court as regards the petitioner.

12. In the result the Writ Petition is dismissed. No costs.