
(2009) 05 JH CK 0072

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1706 of 2004

Parmeshwar Poddar

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-05-2009

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 48
Fundamental Rules — Rule 48, 56

Citation : (2009) 57 BLJR 2177

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Advocate : Rajiv Nandan Prasad, for the Appellant; Faizur Rahman, C.G.C., for the Respondent

Final Decision : Dismissed

Judgement

Ajit Kumar Sinha, J.—The present writ petition has been preferred for the following reliefs:

- 1) For issuance of a writ in the nature of writ of certiorari quashing the order issued by the Respondent No. 5 vide No. E-12012/PR/T.S/2003/1299 dated 7.5.2003 whereby and where under the petitioner has been prematurely retired with effect from 22.6.2003 (FN) in a most illegal and arbitrary manner without assigning any reason for taking such decision and also in violation of Rule 56(j) of the Fundamental Rules since the petitioner has not completed 55 years of age and as such the same is without jurisdiction and has been passed as a major punishment without any material available against the petitioner.
- 2) For issuance of a writ in the nature of writ of mandamus commanding the respondents to reinstate the petitioner into service with back wages and allow him to continue in service till he attains the age of superannuation and also for other consequential relief(s) for which the petitioner is entitled in accordance with law.

2. The main contention raised by the learned Counsel for the petitioner is that Rule 56(j) of the Fundamental Rules has not been complied with and in this regard he has further referred to and relied upon 56(I) to support his contention. He has also referred to and relied upon The State of Gujarat and Another Vs. Suryakant Chunilal Shah, at paragraph-26 to support his contention that what should be considered before passing the order of compulsory retirement in public interest and in particular he has referred to para-26.

3. The learned Counsel for the respondent pointed out that statutory notice was given on 7.5.2003 which is annexed as Annexure-4 as required under Rule 56(j) of the Fundamental Rules. He further submits that in any case he had completed 30 years of service and thus Rule 56(j) was applicable to him and in view of the Fundamental Rule 48 compulsory retirement on completion of 30 years was rightly ordered and thus the order impugned was fully legal and justified. He has also referred to chequered career of the petitioner in which he has listed that as many as fifteen minor and major punishments were given earlier also to him. Thus the order was in public interest.

4. I have considered the submission and the pleadings. Rule 56(j) of the Fundamental Rules is quoted as under:

F.R.56.(j) Notwithstanding anything contains in this rule, the Appropriate Authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any 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:

(i) If he is, in Group "A" or Group "B" service or post in a substantive, quasi-permanent or temporary capacity and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years;

(ii) In any other case after he has attained the age of fifty-five years;

5. With regard to Group-A and Group-B service the requirement as contemplated is 35 years of service or attaining the age of 50 years whereas for other cases it is 55 years,

6. The learned Counsel for the petitioner submits that there is no minimum period of 30 years mentioned in Rule 56(j) and the only clause applicable is Clause (ii) i.e. if he has attained the age of 55 years.

7. In the instant case the admitted position is that the petitioner joined the service on 20.9.1972 and was compulsorily retired on 2.7.2003 and taking his date of birth he had not completed 55 years of service thus Rule 56(j) could not have been invoked. However, the provision of Rule 48 of the Central Civil Services (Pension) Rules, 1972 under which the impugned order was passed on 7.5.2003 clearly contemplates as under:

48. Retirement on completion of 30 years" qualifying service.-(1) At any time

after a Government servant has completed thirty years qualifying service-

(a) he may retire from service; or

(b) he may be required by the appointing authority to retire in the public interest, and in the case of such retirement the Government servant shall be entitled to a retiring pension:

Provided that-

(a) a Government servant shall give a notice in writing to the appointing authority at least three months before the date on which he wished to retire; and

(b) the appointing authority may also give a notice in writing to a Government servant at least three months before the date on which he is required to retire in the public interest or three months' pay and allowances in lieu of such notice:...

8. Thus on attaining 30 years of service a person can be compulsorily retired in public interest and the impugned order clearly records this fact that the order is passed in accordance with provision in Fundamental Rule 48 of the Central Civil Service (Pension) Rules on completion of 30 years of service giving three months notice, three months pay and allowances as required under the statutory provision.

9. I have also considered the factual aspect of the matter and the admitted position is that the petitioner has a chequered history and as many as 15 major and minor punishments have been awarded to him for serious lapses, irregularities and illegalities and in the light of the aforesaid fact it was rightly decided that continuance of the petitioner in service was not in the public interest and the judgment referred to and relied upon *The State of Gujarat and Another Vs. Suryakant Chunilal Shah*, and in particular paragraph 26, does not apply to the facts of the present case.

10. Considering the aforesaid facts and circumstance of the case, this writ petition being devoid of any merit is accordingly dismissed.