

(2022) 04 MP CK 0058

In the Madhya Pradesh High Court

Case No : Writ Petition (S) No. 143 Of 2005

Purushottam Bhatt

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 22-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 226, 235, 311
Madhya Pradesh Civil Services (Pension) Rules, 1976 — Rule 42 (1) (b)
Fundamental Rules, Vol I — Rule 56(3)
Madhya Pradesh Civil Services (Pension) Rules, 1976 — Rule 42 (1)(b)
Negotiable Instruments Act, 1881 — Section 138

Citation : (2022) 04 MP CK 0058

Hon'ble Judges : Ravi Malimath, CJ;Purushaindra Kumar Kaurav, J

Bench : Division Bench

Advocate : Manoj Sharma, Parag Tiwari, Shobha Menon

Final Decision : Dismissed

Judgement

1. The petitioner in the instant writ petition is aggrieved by the order dated 13.09.2004 (Annexure-P-1) whereby, he has been compulsorily retired.

2. The facts of the case are that the petitioner was appointed vide order dated 28.07.1979 as Civil Judge Class-II. His services were later-on confirmed and he was given promotion from time to time to next higher posts. Vide order dated 13.08.1998 the petitioner was confirmed as District Judge with effect from 04.10.1997. According to petitioner, his entire service career remained unblemished. His service record remained excellent. Most of the ACRs were very good or excellent barring few which were also not adverse but only of advisory in nature. The petitioner was served with the impugned order dated 20.09.2004 in exercise of powers under Rule 42 (1) (b) of the Madhya Pradesh Civil Services (Pension) Rules 1976 (hereinafter as referred as "the Rules of 1976), whereby, he has been compulsorily retired in public interest.

3. Shri Manoj Sharma, learned Senior counsel appearing for the petitioner has

submitted that the impugned order is not in public interest, the same is contrary to the provisions of law. The Annual Confidential Reports of the petitioner for the relevant past five years commencing from 1999-2000 to 2003-04 do not contain iota of adverse material. Not even a single departmental inquiry was conducted against the petitioner. The petitioner was good performer and he cannot be termed as dead-wood. Since the order impugned is arbitrary and is violative of Article 14 of the Constitution, therefore, the same deserves to be set aside by this Court in exercise of power under Article 226 of the Constitution.

4. The respondents have justified their stand. It is stated that the impugned order is strictly in accordance with law. The services of the petitioner are governed by the Madhya Pradesh Uchhatar Nyanik Seva (Bharti Tatha Seva Sharten) Niyam, 1994 and sub-rule 2 of Rule 14 provides that the provisions of Rule 56 (3) of the Fundamental Rules and Rule 42 (1) (b) of M.P. Civil Services (Pension) Rules 1976 have been specifically made applicable to the members of higher judicial services. It is provided in the applicable Rules that the appointing authority in public interest may retire a Government servant after he has completed 20 years of qualifying service or 50 years of age, whichever, is earlier with the approval of the State Government after giving three months notice or and in the absence of such notice the Government servant is entitled to claim a sum equivalent to the amount of his pay plus allowance for the period of notice. The petitioner can always be retired on completing the 20 years of service or 50 years of age whichever is earlier. In the present case, the petitioner was not given three months notice in lieu thereof, three months salary has been given to him in advance.

5. In rejoinder, the petitioner has submitted that in February 1980, the petitioner was posted as Civil Judge, Class-II in Vidisha. The communication dated 14.01.1982 issued to him was advisory in nature. He was not graded as "D" and was never communicated with the adverse remark in the year 1980-81. The disposal of the work of the petitioner was average 91.05% per month. For the year ending 31st March, no grading was mentioned in his ACR and the communication dated 15.09.1982 was advisory in nature. The adverse remark pertaining to ending year 31st March 1983 graded "D" has never been communicated to him. So called adverse remark of the year 1983-84 as Annexure-R-3 was never communicated to the petitioner. On the contrary, the District Judge himself endorsed the disposal of work at the relevant time as 105. %. The adverse remark "D" for the year ending 1984-85 was also not communicated. Neither the remark for the year 1984-85 graded C was communicated to the petitioner. The petitioner has explained in his rejoinder all adverse remark. He states that the same are only either advisory in nature or have been made without intimation to the petitioner hence, they should not be taken into consideration. He further submits that when the Administrative Committee decided not to compulsorily retire the petitioner, therefore, the Full Court should have accepted the said recommendations and if at all there was any reason to take a different view, the Full Court should have recorded sufficient

reason for the same. It is the specific case of the petitioner that the ACR which were advisory in nature, are not sufficient to take a decision to compulsorily retire the petitioner and the ACRs were written by the higher officers who themselves were subjected to the order of compulsorily retirement by the Hon'ble High Court. Therefore, the same should not be taken into consideration. Strong reliance is placed on a memo dated 17.08.2006 issued by the High Court of M.P. i.e. after the impugned order was passed seeking consent of the petitioner for re-employment on adhoc basis to dispose of the case under Section 138 of the Negotiable Instruments Act and other petty offences. According to the petitioner, the request of consent of the petitioner itself shows that the entire career of the petitioner remained unblemished. Had there been anything adverse against him, he would not have called for re-employment.

6. The respondents by way of additional affidavit dated 5. 03.2022, have explained the communication dated 17.08.2006, stating therein that as per the order of the Law and Legislative Department, 60 posts of Special Judicial Magistrates were sanctioned on the terms and conditions mentioned therein. Under the said back-drop, consent was asked from retired judicial Officers of the State without evaluating their record. Since the letters were issued to all the retired judicial Officers, therefore, the petitioner also received the said offer. However, when the consents were obtained by the High Court, the individual cases were examined and despite the fact that the petitioner gave his consent, he was not offered the employment which can be seen from the document Annexure-R-28 where out of 29 officers who had given the consent, the approval for reappointment was granted to only 28 Officers barring the petitioner. Under such circumstances, no benefit can be given to the petitioner on the basis of communication dated 17.08.2006.

7. We have heard the learned counsel appearing for the parties and perused the record.

8. In para 11 of the reply, the service graph of the petitioner has been extracted. The same is reproduced as under:-

"11. Petitioner joined Judicial Service as a Civil Judge Class-II on 6th August, 1979 in the Establishment of District & Sessions Judge, Bhopal. His service graph is as under: -

1. For the period of 31st March, 1981 petitioner was graded "D" and adverse remarks were communicated to him vide D.O. No. 124 dated 14.1.1982-Annexure R-1.

2. For the ending year 31st March, 1982, grading was not mentioned in his ACR but adverse remarks were communicated to him vide D.O. No. 1555 dated 15.9.1982-Annexure R-2.

3. For the ending year 31st March, 1983, petitioner was graded "D".

4. For the ending year 1984, grading in ACR was not mentioned but District

Judge, Jabalpur has reported that petitioner was a ordinary worker. A copy of ACR for the ending year 1984 is Annexure R-3.

5. For the ending year 1985, petitioner was graded "D", his reputation and behavior towards the Members of the Bar and Public and his activity was quoted by District Judge as ordinary. A copy of the ACR for the ending year 1985 is Annexure R-4.

6. For the year ending 31st March, 1986, petitioner was graded "C".

7. For the ending year 31st March, 1987, grading was not mentioned in his ACR but District & Sessions Judge, Ratlam has written in ACR that his integrity was not intact means a lot of talk about his integrity. In Civil MJC No.57/86, which was decided by District Judge on 4.6.87, serious allegations were made against Shri Bhatt in regard to his integrity but his close association with local people. In Cr. Case No. 0/86 (Kanhaiyalal Vs. Onkarlal and two others) serious allegations of corruption was made against him by Shri D.S. Vyas a Senior Advocate and President of 3a the Bar, Ratlam. A copy of ACR for the ending year 31st March, 1987 is Annexure R-5.

8. For the year ending 1988, petitioner was graded "C", District Judge, Indore has quoted in ACR about integrity of petitioner that some oral complaints have been made against him. A copy of ACR for the year ending 1988 is Annexure R-6.

9. For the year ending 1988-99, petitioner was graded "C"

10. For the year 1999-90, petitioner was graded "C".

11. For the year 1990-91, petitioner was graded "B".

12. For the ending year 1991-92, petitioner was graded "B".

13. For the ending year 1993 and for the year 1993-94, petitioner was graded "C", but adverse remarks of both years were communicated to the petitioner vide D.O. No. 773 dated 2.7.1996 Annexure R-7.

15. For the year 1994-95, petitioner was graded "D", adverse remarks were communicated to the petitioner vide D.O. No. 1145 dated 19.6.1995 and D.O. No. 847 dated 2.7.1996 "that Average Officer. There are complaints of integrity."- Annexure R-8 & R-9.

16. For the year 1995-96, petitioner was graded "D" and adverse remarks were communicated to him vide D.O. No. 94/96 dated 14th March, 1996-Annexure R-10.

17. For the year 1996-97, petitioner was graded "D", adverse remarks were communicated to him D.O. No. 1042 dated 2.5.1997-Annexure R-11.

18. For the year 1997-98, petitioner was graded "D", adverse remarks were communicated to him vide D.O. No. 1185 dated 30.6.1998-Annexure R-12.

19. When the petitioner was posted as Additional District & Sessions Judge, Korba, he has committed negligence in discharging of his duties as Officer-in-charge Nazarat, Korba, therefore, he was warned to remain careful in future vide D.O. letter No. 1510 dated 27th August, 1998Annexure R-13.

20. The petitioner has submitted a representation against adverse ACR for the year 1997-98. The representation of the petitioner after due consideration has been rejected and he was intimated about rejection of representation vide D.O. No. 9020 dated 1.4.1999-Annexure R- 14.

21. For the year 1998-99, petitioner was graded "D" and adverse remarks were communicated to the petitioner vide D.O. No. 32 dated 13.4.1999-Annexure R-15. Against the adverse remarks petitioner has made a representation after due consideration, which was partly allowed. The remark "Have a lower moral fiber"? have been expunged. Rest of the representation has been rejected and intimation was sent vide D.O. No. 932 dated 24.8.1999 Annexure R-16.

22. For the year 1999-2000, petitioner was graded "C". Advisory remarks were communicated to him vide D.O. No. 627 dated 26.5.2000-Annexure R-17.

23. For the year 2000-01, petitioner was graded "C".

24. For the period 1.1.2001 to 31.12.2001, petitioner was graded "B",

25. Vide Registry letter No. C/3350, Jabalpur dated 5.9.2002 Annexure R-18, petitioner was advised to not to take excess leave.

26. For the year 2002, petitioner was graded "C" and for the year 2003, petitioner was graded "B".

9. It is seen that the case of the petitioner was placed before the Administrative Committee No.1 for screening as he had completed 20 years of qualifying service and attained the age of 50 years during the period 01.07.2003 to 31.07.2004 for his retirement in public interest under the Rules of 1976. However, the Administrative Committee resolved that the services of the petitioner should continue. The recommendations of the Administrative Committee were placed before the Full Court and the Full Court recommended for compulsory retirement of all Officers recommended by Administrative Committee-I adding the name of the petitioner. A copy the minutes of the Full Court dated 11.09.2004, have been placed on record. The recommendations of the Full Court have been accepted by the State Government and accordingly an order of compulsory retirement dated 13.09.2004 (Annexure-P-1) was issued.

10. The examination of the service graph of the petitioner as reproduced in preceding paragraph would clearly indicate that the service career of the petitioner does not appear to be satisfactory. Vide D.O. dated 14.01.1982, he was graded "D" and, adverse remark were communicated to him which is reproduced as under:-

".....He should work heard to improve his disposal that is only 91.5% and his

Court is a heavy one. He should improve his grasp of law. He is a raw hand therefore should pay more attention to application of High Court Rules and Orders in day to day working....."

11. Vide D.O. dated 15.09.1982, the remark for his ACR for the period ending 31st March, 1982 reflects that it was communicated to him that "he must see his subordinates follow Rules and Orders properly". His ACR for the ending 1984 contains remark that he is an "ordinary worker". For his ACR ending year 31st March 1987, there is a reference to his integrity. There was doubts about his integrity and particularly in Civil M.J.C. No.57 of 1986 which was decided on

4. 06.1987, where serious allegations were made against the petitioner with regard to his integrity and his close association with local people. In criminal case No.0/86, Kanhaiyalal vs. Onkarlal and two others, serious allegations of corruption were made against the petitioner by Mr. D.S. Vyas, Senior Advocate and President of Bar, Ratlam. In his ACR for the year ending 1988, again his integrity was doubted and various oral complaints were received against him. He was graded "C". For the year ending 1988-89 and 1989-90, he was graded "C" and for the year 1990-91 and 1991-92, he was graded "B". His ACR for the period 1992-93 and 1993-94 contains the adverse remark which were communicated to him vide order dated 02.07.1996. The same reads as under:-

"92-93:.....he should have avoided long narration (Cr. A. No.120/84). The default ground in ejectment suit was not available even on plaintiff 's allegation and consequently should have not been left undecided (Civil Rev. No.14/91). He should remain cautious at the time of recording of the evidence as an important piece of evidence could have come on record with Court's intervention (S.T. No.1/90)....

93-94:..... but should pay special attention to old cases and part heard sessions trials.....He should improve the quality of his judgment and should avoid dull narration (Cr. A No.6-A/78 & 9-A/86, S.T 175/91). No clarity was found whether the alleged ground for ejectment was made out and almost passing contingent decre in appeal judgment (36-A/79). He should have avoided suomotu reopening of an old sessions case particularly when it was closed for judgment (S.T 87/84). He should have been more strict in the trial of a very old S.T. No.272/88 in which not a single material witness examined after he took over...."

12. His ACR for the period ending 31st March 1995 shows that he was advised to pay more attention towards disposal of old pending cases and for the period ending 1994-95, the ACR contains that the petitioner was average Officer and there were complaints of his integrity. For the year ending 29th February 1996, his ACR contains that the petitioner needed more concerted efforts in disposal of old pending cases and the ACR for the period 31st March 1997 contains that he should specially pay attention towards the marshalling of evidence. He should improve the marshalling of evidence in his judgments. His ACRs for the period ending 31st March 1998 contains that his judgments are lengthy and some time

they are missing legal propositions. It also contains that complaints were received against him showing his inability to control the proceedings in Court resulting in unnecessary adjournments causing harassment to the prosecution witnesses and he was graded "D".

13. Vide D.O. dated 27.08.1998, he was warned to remain careful in future as he committed negligence in discharge of his duties as Officer Incharge, Nazarat, Korba. The representation of the petitioner against his adverse ACR 1997-98 was rejected vide D.O. dated 1.4.1999. For the year ending 1998-99, the petitioner was graded "D" and adverse remarks were communicated to him. Against which, the representation submitted by the petitioner was partly allowed and the remark "lower moral fiber" was expunged. However, the rest of the representation was rejected and intimation was given on 28.04.1999. For the year 1999-2000, the petitioner was graded "C" and advisory was served upon him on 26.05.2000 and for the year 2000-01 also he was also graded as "C". For the period 01.01.2001 to 31.12.2001, the petitioner was graded "B" and for the year 2000-2003, the petitioner was graded "C" and "B" respectively. It is also seen that vide memo dated 5. 09.2002, the petitioner was advised not to take excess leave.

14. The overall analysis of the entire service career of the petitioner clearly demonstrates that it is not just a remote or stray entry or a single entry but series of entries have been made against the petitioner.

The instant case cannot be said to be a case where the decision is found to be based on no material. There is application of mind. It is well settled law that the decision of compulsorily retirement can be taken over all assessment of the individual Officer and if it is found by the competent Authority that the Officer is not fit to be continued in service in public interest, such a decision cannot be held to be illegal unless the said decision is proved to have been issued on account of malafide reasons. In the instant case, there are no allegations of malafide. Under Article 235 of the Constitution of India, the High Court can assess the performance of any judicial Officer with a view to discipline the black shed or weed out the dead wood.

15. The Hon'ble Supreme Court in the matter Baikuntha Nath Das vs. District Medical Officer (1992) 2 SCC 299. has held that an order of compulsory retirement is not a punishment. It implies neither stigma nor any suggestion of misbehavior. Such an order is passed on subjective satisfaction of the employer. The principle of natural justice has no place in the matter of order of compulsory retirement. The judicial scrutiny is limited to examine (a) Whether the order suffers with mala fides (b) that is based on no evidence (c) that it is arbitrary- the test of order being arbitrary would be in the sense that no reasonable person would form an opinion on the given material; in short if it is found to be a perverse order. It has also been held that an order of compulsory retirement is not liable to be quashed by Court merely on the ground that while passing such an order un-communicated adverse remarks were also taken into consideration.

16. So far as the decision cited by the learned Senior Counsel for the petitioner in the matter of *State of Gujrat Vs. Umedbhai M.Patel* (2001) 3 SCC 314. is concerned, the Hon'ble Supreme Court was considering the case of an officer who was working as Executive Engineer in Narmada Development Department of State of Gujrat. At the time of passing of an order of compulsory retirement, the concerned officer was already facing a disciplinary proceeding and was under suspension. His superannuation was due within 1 ½ years from the date of passing of the order of compulsory retirement. The Hon'ble High Court of Gujrat found that the impugned order therein was punitive in nature and, accordingly, the same was set aside. In an appeal before the Hon'ble Supreme Court at the instance of State of Gujrat, the Hon'ble Supreme Court has held that whenever the services of a public servant are no longer useful to the general administration, an officer can be compulsorily retired for the sake of public interest. Ordinarily, the order of compulsory retirement is not to be treated as a punishment under Article 311 of the Constitution. Any adverse entry made in the Confidential Report shall be taken note of and be given due weightage in passing such an order and even uncommunicated entries in the Confidential Report can also be taken into consideration. The Hon'ble Supreme Court found that in that case there were absolutely no adverse entries in the Confidential Report of the Officer and the order was found to have been passed as short cut to avoid the departmental inquiry and despite having sufficient time with the State Government, the departmental inquiry was not complete with a reasonable time. The Hon'ble Supreme Court under those circumstances did not interfere with the order passed by the Hon'ble High Court of Gujrat.

17. The Hon'ble Supreme Court in the matter of *Pyare Mohan Lal Vs. State of Jharkhand and others* (2010) 10 SCC 693 has considered the case of a Judicial Officer who was compulsorily retired by the State of Jharkhand on the recommendations of the High Court of Jharkhand. It was pleaded before the Hon'ble Supreme Court by the Officer that there was no adverse entry against him and he had even been promoted to the post of Additional District and Sessions Judge (Fast Track). Thus, the adverse entries, if any, stood washed off as the same had been made prior to the date of his promotion. There were many other grounds raised by the Officer in that case. While considering various earlier decisions of the Hon'ble Supreme Court including the matter of *Posts and Tegraps Board Vs. C.S.N.Murthy* (1992) 2 SCC 317, *Sukhdeo Vs. Commissioner* (1996) 5 SCC 103, *I.K.Mishra Vs. Union of India* (1997) 6 SCC 228., *M.S.Bindra Vs. Union of India* (1998) 7 SCC 310 and *Rajat Baran Roy Vs. State of W.B.* (1999) 4 SCC 235, it has been held that there is limited scope of judicial review in a case of compulsory retirement and it was permissible only on the grounds of non-application of mind, mala fides or want of material particulars. Power to retire compulsorily a government servant in terms of service rules is absolute, provided the authority concerned forms a bona fide opinion that compulsory retirement is in public interest.

18. The decision in the case of *State of Orissa Vs. Ram Chandra Das* (1996) 5

SCC 331 was relied upon which was followed in the case of State of Gujarat Vs. Umed Bahi (2001) 3 SCC 314 for the proposition that adverse entries still remain part of the record for overall consideration to retire a government servant compulsorily. The object always is public interest. Therefore, such entries do not lose significance, even if the employee has subsequently been promoted. It has further held that merely because 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. In para-24 of the decision of Pyare Mohan Lal (2010) 10 SCC 693, the Hon'ble Supreme Court has observed that washed-off theory does not have universal application. It may have relevance while considering the case of government servant for further promotion but in a case where the employee is being assessed by the reviewing authority to determine whether he is fit to be retained in service or requires to be given compulsory retirement, as the Committee is to assess his suitability taking into consideration his "entire service record".

19. The Hon'ble Supreme Court has taken similar view in the matter of Nand Kumar Verma Vs. State of Jharkhand (2012) 3 SCC 580 and RC.Chandel Vs. High Court of M.P. (2012) 8 SCC 58.. The same principles have been reiterated in the matter of Arun Kumar Gupta Vs. State of Jharkhand (2020) 13 SCC 355 and High Court of Rajasthan Vs. Bhanwar Lal Lamror (2021) 8 SCC 377

20. The Division Bench of this Court in the matter of Dr. Kailash Chandra Sharma Vs. High Court of M.P. W.P.No.2538-1996 decided on 16.11.2021 has held that when serious adverse entries were made against the officer and under such circumstances his conduct cannot be said to be above board. Any act of commission or omission made by a judge cannot be condoned if it lacks integrity.

21. In another decision of this court in the matter of Munnalal Markam Vs. The State of M.P. and another W.A.No.932-2006 decided on 18.11.2011 it was held that the Officer concerned was not taking interest in day-to-day work and he was found to be below average for many years. Maintenance of integrity was found to be not sufficient by itself, however, beyond possessing integrity there has to be at least an average turn out of work. The slow turn out of a judge leads to denial of justice. There is no place for lethargy.

22. While taking into consideration the aforesaid legal position as discussed above, we are of the view that the entire service career of the appellant-petitioner clearly suggests that there were repeated adverse entries, warnings and advisories to him. An adverse comment on his integrity was made and his overall performance was not found to be satisfactory.

23. In view of the aforesaid, we are of the considered opinion that the impugned order has been passed taking into consideration the entire service career of the petitioner. Accordingly, the petition being devoid of merit is hereby dismissed.