

(1999) 04 MAD CK 0057

In the Madras High Court

Case No : Writ Petition No. 5140 of 1999

R. Selvanayagam

APPELLANT

Vs

The State of Tamil Nadu and another

RESPONDENT

Date of Decision : 15-04-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 311
Tamil Nadu Fundamental Rules — Rule 56(2)

Citation : (1999) 2 CTC 411

Hon'ble Judges : V. Kanagaraj, J;S.S. Subramani, J

Bench : Division Bench

Advocate : Mr. Vijay Narain, for the Appellant; Mr. S. Natarajan, Additional Government Pleader Advocate, for the Respondent

Judgement

Judgement pronounced by S.S. Subramani, J.—Petitioner was temporarily appointed as Second Class Magistrate in 1982 and he was

regularised in the year 1988. From 1988, the post was redesignated as District Munsif-cum-Judicial Magistrate.

2. Petitioner was compulsorily retired on 1.2.1999 under Sub-rule 2 of Rule 56 of Fundamental Rules of the Government of Tamil Nadu. First

respondent issued orders on the basis of recommendation of the Review Committee of High Court of Madras and the approval of the

recommendations of the Review Committee by the Full Court of the High Court, Madras.

3. According to petitioner, he is not liable to be compulsorily retired and the impugned order is arbitrary, illegal and violative of Articles 14 and 16

of Constitution of India. It is also submitted that the impugned order was issued against the instructions of G.O.Ms.No. 623 Personnel and

Administrative Reforms (Per-R) Department dated 24.7.1983 setting out guidelines for exercise of powers under Fundamental Rules 56 (d) for

compulsory retirement. According to petitioner, no reasonable person could form an opinion on the basis of material placed before him that

petitioner should be compulsorily retired.

4. For the above reasons, petitioner has come to this court for issuance of writ of Certiorari calling for the records of first respondent in

G.O.Ms.No. Ill Home (Courts 1A) department dated 1.2.1999 and pass such further orders.

5. At the time when the matter came for admission, we directed the learned Government Pleader to take notice and also to produce the file

concerning petitioner.

6. After production of entire file, the entire matter was heard.

7. The only question that requires consideration is whether the impugned order is liable to be quashed for all or any of the reasons mentioned in the

affidavit.?

8. Under Fundamental Rule 56 (2), service of an employee could, be compulsorily retired in Public interest. Relevant portion of the Rule read thus,

Rule 56 (2): Compulsory Retirement: Notwithstanding anything contained 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 at any time after he has attained the age of fifty years or fifty-five years in the case of

Basic Servants, as the case may be. or after he has completed thirty years of qualifying service.

9. In Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, their Lordships enunciated the principle on the

operation of Compulsory retirement and the scope of judicial review. In paragraph 34 of the Judgment, their Lordships held thus,

34. The following principles emerge from the above 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

from 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 me 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. This aspect has been discussed in paras 30 to 32 above.

10. The entire law on Compulsory retirement was considered in the decision reported in T. Ramegowda Vs. R. Krishnamurthy and others, In

paragraph 4 of the Judgment, it is held thus,

4. The question, therefore, is whether the Government, while exercising its powers of compulsorily retiring the appellant under Rule 7 I(a) of

Orissa Service Code and C.A. Department Circular No. 30495/GA. dated 24.11.1987 had exercised its power in the public interest and me

order is legal. It is contended in the counter-affidavit filed in this Court as well as in the tribunal that the sole foundation for the exercise of the

power of retiring the appellant compulsorily from service is the ""gross adverse remarks for the period 1.4.1987 to 29.2.1988"" and the

recommendation of the Review Committee. It is well settled law from a leading judgment of this Court by a Constitution Bench in *Shyam Lal Vs.*

The State of Uttar Pradesh and The Union of India (UOI), that compulsory retirement does not amount to dismissal or removal from service within

the meaning of Article 311 of the Constitution. It is neither punishment nor visits with loss of retiral benefits. It does not cast stigma. The officer will

be entitled to the pension that is actually earned and there is no diminution of the accrued benefits. The object to exercise the power to

compulsorily retiring the government employee was considered and held in *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, that power can

be exercised subject to the conditions mentioned in the rule. (Rule 56(j) of the Fundamental Rules), one of which is that the authority concerned

must be of the opinion that it is in public interest to do so. If that authority bona fide forms that opinion, the correctness of that opinion cannot be

challenged before courts. It is open to the aggrieved party to contend that the requisite opinion has not been formed or the decision is based on

collateral grounds or that it is an arbitrary decision. Compulsory retirement involves no civil consequences. While exercising the power various

consideration would weigh with the appropriate authority. In some cases the Government may feel that a particular post may be more usefully held

in public interest by an officer more competent than the one who is holding the office is not inefficient but the appropriate authority may prefer to

have a more efficient officer or in certain key posts public interest may require that a person of undoubted integrity and ability should be there.

There is no denying the fact that in all organisations and more so in Government organizations, there is good deal of dead wood. It is in public

interest to chop off the same. Fundamental Rule 56 (j) holds the balance between the rights of the individual government servant and the interest

of the public. While a minimum service is guaranteed to the government servant, the Government is given power to energise its machinery and

make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest." In that case only the contention raised

was that no opportunity of hearing was given before compulsorily retiring the respondent. The contention was negatived holding that the rules of

natural justice are not embodied in exercising the power under Rule 56(j) of the Fundamental Rules and that no prior opportunity should be given

to the government servant concerned before exercising the power of compulsory retirement. That was found favour with the High Court and was confirmed by this Court.

In the same Judgment, in paragraph 9, it is further held thus,

9. It is thus settled law that though the order of compulsory retirement is not a punishment and the government employee is entitled to draw all retiral benefits including pension, the Government must exercise its power only in the public interest to effectuate the efficiency of the service. 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. When an officer reaching the age of compulsory retirement, as was pointed out by this Court, he could neither seek alternative appointment nor meet the family burdens with the pension or other benefits he gets and thereby he would be subjected to great hardship and family would be greatly affected. Therefore, before exercising the power, the competent, appropriate authority must weigh pros and cons and balance the public interest as against the individual interest. On total evaluation of the entire record of service if the Government or the governmental authority forms the opinion that in the public interest the officer needs to be retired compulsorily, the court may not interfere with the exercise of such bona fide

exercise of power but the court has power and duty to exercise the power of judicial review not as a court of appeal but in its exercise of judicial review to consider whether the power has been properly exercised or is arbitrary or vitiated either by mala fide or actuated by extraneous consideration or arbitrary in retiring the government officer compulsorily from service.

11. The same principle is reiterated in the decision reported in K. Kandaswamy Vs. Union of India, , wherein, in paragraph 8 of the Judgment, their Lordships held thus.

8. ...Compulsory retirement does not amount to dismissal or removal from service within the meaning of Article 311 of the Constitution. It is neither punishment nor visits with loss or retiral benefits; nor does it cast stigma. The officer would be entitled to the pension that he has actually earned and there is not diminution of the accrued benefits. The object of compulsory retirement of the government employee is public interest. If the appropriate authority bona fide forms that opinion, the correctness thereof on merits cannot be challenged before courts, though it may be open to the aggrieved employee to impugn it. But the same may be challenged on the ground that requisite opinion is based on no evidence or has not been formed or the decision is based for collateral grounds or that it is an arbitrary decision." (Italics Supplied)

And, how the power will have to be exercised is considered in paragraph 10 of the Judgment, which read thus,

10. Higher the ladder the officer scales in the echelons of service, greater should be the transparency of integrity, honesty, character and dedication to duty. Work culture and self-discipline augment his experience. Security of service gives fillip to accelerate assiduity to stay in line and measure up to the expected standards of efficiency by the government employee. Thereby, they ultimately aim to achieve excellence in public service. The security of service provided by Article 311 of the Constitution and the statutory rules made under proviso to Article 309 would thus ensure to remove deficiency and incompetence and augment efficiency of public administration. The rights-constitutional or statutory - carry with them corollary duty to maintain efficiency, integrity, and dedication to public service. Unfortunately, the latter is being overlooked and neglected

and the former unduly gets emphasised. The appropriate Government or the authority would, therefore, need to consider the totality of the facts

and circumstances appropriate in each case and would form the opinion whether compulsory retirement of a government employee would be in the

public interest. The opinion must be based on the material on record; otherwise it would amount to arbitrary or colourable exercise of power.

(Italics supplied)

12. The decision in *Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another*, was referred and followed in *M.S.*

Bindra Vs. Union of India and Others, . In that case, their Lordships emphasised that the Court will not interfere if the decision is arrived bona fide

and on the basis of material available before it. In paragraph 11 of the Judgment, their Lordships held that judicial review could be permitted if the

order is either arbitrary or mala fide or on the basis of no evidence.

13. *Durya Das Basu on Shorter Constitution of India*, 1996 Edition , commenting on Article 311 of the Constitution of India, at page 964 and 965

has considered the aspect based on various decisions of Supreme Court and various High Courts. Learned author, summarised the position thus,

... it does not entail any penal consequences, it does not amount to a "dismissal" or "removal" so as to attract the operation of Article 311, or the

principles of natural justice. Even where an inquiry is actually made into charges drawn up against the Government servant, that must be taken to

be only for the satisfaction of the authority for ordering compulsory retirement.

In short, a compulsory retirement (or premature retirement), without any additional loss, does not attract Art. 311, even though misconduct or

inefficiency weighs with the Government in ordering compulsory retirement, or it is made during the pendency of disciplinary proceedings.

Learned author further says,

An order of compulsory retirement is passed by the Government on its subjective satisfaction that it is in the public interest to retire a Government

servant compulsorily.

Whether it is in the public interest or not to retain an employee in service after he has completed 25 years of service is for the Government to

decide and its opinion on the point cannot be challenged before a Court of law, except on the ground of mala fides; or failure to consider a material

fact in determining the efficiency of the employee.

"Public interest", in this context, means the weeding out of inefficient and dishonest employees.

Learned author further said,

In foregoing its aforesaid subjective satisfaction, the appropriate authority shall have to consider the entire service records of the concerned

employee, -attaching more importance to the record of performance during the later periods and giving less importance to these adverse remarks

in his confidential Roll notwithstanding which he has thereafter been promoted to a higher post.

Even an adverse report for a single year may constitute sufficient material for the Government to come to a decision that the employees standard of

work was not satisfactory and should therefore be retired. The reason is that the nature of the delinquency and whether it is of such a nature as to

require compulsory retirement is for the departmental authorities to decide. The Court will not interfere with the exercise of that power except on

the ground of mala fides or that of absence of any material on which the subjective satisfaction of the Government could be based.

14. On the basis of above decision, we have to consider whether the Full Court has taken into consideration the relevant materials before

recommending compulsory retirement of petitioner to the Government.

15. The work done by the Officer from 1.1.1990 till 31.7.1997 has been taken into consideration. Except for a short period during four months

from 1.1.1994 to 30.4.1994 and for five and half months from 15.6.1996 to 31.12.1996, the work turned out by petitioner was far below the

norms. In fact in his confidential report also it was entered that great efforts should be put in by petitioner for disposal of cases and the adverse

entry was also communicated to petitioner. Thereafter, for some period, petitioner was on leave. It could also be seen from his character role that

there is complaint received against petitioner and an enquiry was also conducted, but the same was dropped. Apart from the above fact, petitioner

himself in paragraph 3 of the affidavit has given various instances that the petitioner's work was commented by High Court. The way in which he

has been passing interim orders are all commented by High Court on the report of Principal District Judge. It could also be seen from paragraph 4

of the affidavit that various complaints have been filed against petitioner. Even though petitioner may contend that disgruntled litigants used to

complain about the conduct of judicial Officers, which is also material factor to be considered while considering the entire service records of

petitioner. On going by the service records of petitioner, it cannot be said that recommendation for compulsory retirement of petitioner is based on

no evidence or that proper materials have not been taken into consideration. Petitioner has no case that the order was issued without any bona

fides. In fact, by the same order not only petitioner, but few other persons were also recommended for compulsory retirement. The case of

petitioner is not solitary one.

16. Learned counsel for petitioner submitted that Compulsory retirement could be ordered only after High Court is satisfied about the aim of

G.O.Ms.No. 623 dated 24.7.1983. On going by the file we find that this Government Order was also taken into consideration by the Full Court

before recommending compulsory retirement. That apart, G.O.Ms.No. 623 is only guideline and the same is not exhaustive. Inefficiency is always

considered as one reason for compulsory retirement. According to us guideline 4(iii) will apply to petitioner's case.

17. If petitioner's physical and monetary condition is as such for making him inefficient for further service, it will be a ground for compulsory

retirement. Even after repeated reminders sent by this court and also by District Judge, performance of petitioner did not improve and even though

for a short span of time he showed some improvement, subsequently, the same seriousness was not shown. If in spite of comments by his superior

officers he has not improved, this Court will be justified that he cannot be efficient in the sense he has made himself inefficient for further service and

thus render him unfit for discharge of duties. That is not stigma but it is only weeding out the inefficient.

18. For the above reasons, we do not find any ground to interfere in the impugned order.

19. In the result, the Writ petition is dismissed. No costs.