
(2003) 07 AHC CK 0110

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 19966 of 1989

Radha Charan Yadav

APPELLANT

Vs

Chairman, Town Area Committee, Mathura

RESPONDENT

Date of Decision : 21-07-2003

Acts Referred:

Citation : (2003) 07 AHC CK 0110

Hon'ble Judges : R.B.Misra, J

Judgement

R.B. Misra, J.—Heard Sri Jitendra Kumar Sharma learned counsel for the petitioner and Sri Merun Dey learned counsel for the respondents.

The Miscellaneous application dated 17902 has been filed recalling the order dated 7799. The cause shown is sufficient, therefore, the order dated 7799 is recalled and the main writ petition is heard on merits.

2. The petitioner was working as a Collection Moharrir in Town Area Committee, Sadabad, Mathura. According to him his service has along been satisfactory and by an order dated 24789 the petitioner's service ignoring so many other persons whose service and collection was inferior to the petitioner has been compulsorily retired behind the back.

3. According to the petitioner the order dated 2471989 has been passed mala fide by a nonspeaking order of compulsory retirement passed by way of punishment without assigning reasons as the petitioner's record of service is clean and there has been no departmental disciplinary action against him, the order of compulsory retirement is discriminatory in derogation to the provisions of Articles 14 and 16 of Constitution and is punitive and has been passed in derogation to the provisions of Article 311 of the Constitution of India and not in public interest. As averred no adverse entry, if any, against the petitioner has ever been communicated to him. According to him if any adverse entry exists the same cannot be made basis of the compulsory retirement. The petitioner was made to retire compulsorily on 2471989 without disclosing anything to the

petitioner and without affording the petitioner opportunity of hearing. The petitioner has claimed that the said order is stigmatic when the circumstances are unveiled and effect civil consequences.

4. The counter and rejoinder affidavits have been filed which indicates that the service records of the petitioner has been seen and in according to the prevailing rules of Uttar Pradesh Town Area Committee and Notified Area Committee (Centralised) Services Rules, 1976 and in reference to Rule 38 (1) and (2) of Rules 1976 above, the petitioner has been compulsory retired.

5. According to the petitioner the compulsory retirement should not be passed by ways of punitive measure in the light of 2001 (2) AWC 1445 (SC), *M.P. Electricity Board v. Shree Baboo*. In the case of *Shree Baboo* there was no material at all in the service record for compulsory retirement, whereas, in the present case as contended by the respondents large number of adverse remarks are available and different suggestive warnings are also available in the service record of petitioner which was indicated to improve and reform the functioning of the petitioner. The fundamental rules provides for compulsory retirement are in the interest of public service and in the present case retiring the petitioner in public interest is not illegal in view of *Union of India v. J.N. Sinha*, AIR 1971 SC 40; (1971) 1 SCR 791.

6. According to the learned counsel for the petitioner the public interest in relation to public administration envisages retention of honest and efficient employees in service and dispensing with services of those who are inefficient, deadwood or corrupt and dishonest in view of *Brij Mohan Singh v. State of Punjab*, (1987) 2 SCR 583; AIR 1987 SC 948. In the present case warning have been given to bring the improvement of the petitioner. The provisions of compulsory retirement are constant reminders to the Government servants to conduct themselves properly, diligently and efficiently throughout their service career *State of U.P. v. Chandra Mohan*, AIR 1977 SC 2411; (1977) 4 SCC 345.

7. Since the service of as many others of the same department was scrutinised by the screening committee and petitioner was compulsorily retired on the analysis of facts and records therefore, such order cannot be treated to be violative of Articles 14 and 16 of the Constitution in reference to the decision of *P. Radhakrishna Naidu v. Government of A.P.*, (1977) 2 SCR 365; AIR 1977 SC 854.

8. The retirement of the petitioner made in the public interest shall also be treated to have been made in the interest of public administration and could not be said to illegal in the light of the decision of *Gian Singh Mann v. The High Court of Punjab and Haryana*, (1981) 1 SCR 507; AIR 1980 SC 1894 and *Union of India v. Col. J.N. Sinha*, (1971) 1 SCR 791; AIR 1971 SC 40.

9. The principal of natural justice have no place to contest of an order of compulsory retirement as the order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour. Since the

action is taken on the subjective satisfaction of the State Government as such there is no room for importing the audi alteram partem rule of natural justice in view of *Baikuntha Nath Das v. Chief District Medical Officer*, (1992) 1 SCR 836; AIR 1992 SC 1020; (1992) 2 SCC 299.

10. The order impugned in the present writ petition has been passed taking into consideration the material available in the service record and on the subjective satisfaction of the State Government an order of compulsory retirement may not be passed by a speaking order, in the light of *R.L. Butail v. Union of India*, (1970) 2 SCC 876 and in view of the decision of *Union of India v. Dulal Dutt*, 1993 AIR SCW 1008.

11. The compulsory retirement is not to be treated as punishment for the purpose of Article 311 of the Constitution *State of Gujarat v. Umedbhai M. Patel* 2001 (3) SCC 314, the present compulsory retirement is simplicitor does not amount dismissal or reduction in rank as such is not hit by the provision of Article 311 of the Constitution, in view of the judgment of *Andhra Pradesh v. L.U.A. Dixitulu*, AIR 1979 SC 193, relying on judgment in *Tara Singh v. State of Rajasthan*, AIR 1975 SC 1487 and *State of Haryana v. Inder Prakash*, AIR 1976 SC 1841.

12. The order of compulsory retirement in question has been passed by exercising power of Fundamental Rule 1956 where there appears no arbitrariness as such it is not illegal in view of the decision of *Union of India v. K.R. Tahiliani*, AIR 1980 SC 953; (1980) 1 SLR 847, by retiring the petitioner before attaining the age of superannuation on the basis of material available on the record shall not tantamount stigma in view of the decision of *State of U.P. v. Shyam Lal Sharma*, AIR 1971 SC 2151.

13. The Supreme Court held that the charge or imputation "that the respondent had outlived his utility" was made the condition of the exercise of power and hence the order amounted to dismissal or removal from service within the meaning of Article 311 (2) of the Constitution. The Supreme Court itself did not agree and overruled the view taken by the Full Bench decision in *Abdul Ahad v. The Inspector General of Police, U.P.* AIR 1965 All. 142 to the effect that compulsory retirement will always be on the ground that the employee can no longer render useful service, and the position does not become worse because what is implied is expressed in *State of U.P. v. Madan Mohan Nagar* (1967) 2 SCR 333; AIR 1967 SC 1260.

14. The impugned order of compulsory retirement is a simplicitor and stigma is not to be drawn out of which by speculative process as for making the order compulsory retirement the stigma must stems from the order itself and the scheme endeavoured to be derived from the circumstances or possibility or suspicion vide the decision in the *State of U.P. v. Shyam Lal Sharma*, AIR 1971 SC 2151; *State of U.P. v. Ramchandra*, AIR 1976 SC 2547 and *Sreshta v. Commissioner of Income Tax*, (1973) 2 MLJ 485, it has been repeatedly pointed

out by the Supreme Court that Courts cannot delve into the records and pierce the veil of the order for discovering a stigma. What is open to the Court is that it could find out a stigma if it is apparent on the record or otherwise clear and springs from the order, vide the decision in *State of U.P. v. Sughar Singh*, AIR 1974 SC 423; *State of U.P. v. Ramchandra* and *State of Bihar v. Shiva Bhikshuk Misra*, AIR 1971 SC 1011. Unless the Court is satisfied that such a stigma stems out from the order, an interference with an order of compulsory retirement is not envisaged while exercising the extraordinary jurisdiction under Article 226 of the Constitution in the light of *K. Venugopalan v. Government of Tamil Nadu*, 1979, SLJ 517.

15. The mere form of order of compulsory retirement though not a conclusive and the Court may some times delve into the basis of the order to lift the Veil, however, I find that after scrutiny even the present order in question is not stigmative or by way of punishment, therefore, cannot said to passed in derogation of the decision of *Shyam Lal v. State of U.P.* (1955) 1 SCR 26; *Baldev Raj Chadha v. Union of India*, AIR 1981 SC 70; *Union of India v. J.N. Sinha*, (1971) SCR 791; *Samsher Singh v. State of Punjab*, (1975) 1 SCR 814; AIR 1974 SC 2192 and *Anoop Jaiswal v. Government of India*, (1984) 2 SCR 453, the Supreme Court observed:

?On a consideration of the above decision the legal position that now emerges is that even though the order of compulsory retirement is couched in innocuous language without making any imputation against the Government servant who is directed to be compulsorily retired from service, the Court, if challenged, in appropriate cases can lift the veil to find out whether the order is based on any misconduct of the Government servant concerned or the order has been made bona fide and not with any oblique or extraneous purposes. Mere form of the order in such cases cannot deter the Court from delving into the basis of the order if the order in question is challenged by the Government servant as has been held by this Court in *Anoop Jaiswal's* case.?

16. The present order of compulsory retirement has been passed in public interest. It was not necessary to give a detail reason in the order in exercise of power under fundamental rule in view of the *State of Maharashtra v. V.S. Naik*, AIR 1980 SC 1095; (1980) Supp. SCC 229.

17. Uncommunicated adverse entries but mostly based upon general assessment of performance shall not render an order of compulsory retirement invalid as the rule of audi alteram partem does not apply. The Supreme Court has held that their non communication of such adverse entry could not have the effect of vitiating the order of compulsory retirement *Jayanti Kumar Sinha v. Union of India*, AIR 1989 SC 72, and the similar view was taken to decide the question of compulsory retirement that the rule of audi alteram partem does not apply in view of the decision of *Union of India v. V.P. Seth*, AIR 1994 SC 1261 and *Secretary to Government v. Nityanand Pati*, AIR 1993 SC 383.

18. The compulsory retirement in question is not based on remote and stale adverse entries but is based on two latest entries as such is not in derogation AIR 1984 SC 630, J.D. Srivastava v. State of M.P. The said compulsory retirement is not based on the basis of reports written by a bias officer and the order of compulsory retirement is not hit by the provisions of Article 21 of the Constitution in view to the State of Sikkim v. Sonam Lama, AIR 1991 SC 534 and order of compulsory retirement does not involved civil consequences hence no show cause notice was necessary in view of decision in E. Venkateswararao v. Union of India, 1973 SC 698. Since the decision in the present compulsory retirement by the present order is based on clean and bona fide exercise and as a placed of the doctrine of the State Government in legitimate exercise of power under fundamental rule is not illegal as such compulsory retirement based on material on record cannot be interfered with in view of the C.D. Ailawadi v. Union of India, AIR (1990) 1 SCR 783; AIR (1990) SC 1004.

19. Compulsory retirement involves no civil consequences: The compulsory retirement when exercised subject to the conditions mentioned in the Rule, as for example, FR 56 (j); one of which is that the authority concerned must be of the opinion that it is in the public interest to do so then such order of compulsory retirement does not amount to dismissal or removal from service within the meaning of Art. 311 of the Constitution. It is neither a punishment nor visits with loss of retiral benefits. It does not cause a stigma. The officer will be entitled to pension that is actually earned and there is no diminution of the agreed benefits. If the competent authority bona fide forms that opinion the same cannot be challenged before the Courts. But it is open to the aggrieved party to contend that the requisite opinion has not been formed or that the decision is based on collateral ground or that it is an arbitrary decision. However, the compulsory retirement involves no civil consequences. While exercising the power various considerations would weigh with the appropriate authority. In some cases, the Government may feel that a particular post may be usefully held in public interest by an officer more competent than the one who is holding the office. That does not mean that the concerned officer is inefficient but the appropriate authority may prefer a more efficient officer or in certain key posts, public interest may require that a person of undoubted integrity and ability should be there. S. Rama Chandra Raju v. State of Orrisa, 1994 Supp (3) SCC 424.

20. When the charge against the Government servant has been proved by the departmental enquiry and punishment has been awarded and the entry to that effect has been entered in the confidential report compulsory retirement on the basis of that entry is valid and cannot be held to be in the nature of punishment. Collector v. Chottelal, (1995) Supp (1) SCC 184; 1995 SCC (L & S) 375; (1995) 29 ATC 146; (1995) II LLJ 757.

21. In another decision K. Kandaswamy v. Union of India, (1995) 6 SCC 162; 1995 SCC (L & S) 1361; (1995) 31 ATC 479, the Supreme Court has again reiterated that if the appropriate authority forms a bona fide opinion that in view

of the doubtful integrity it would not be desirable in public interest to retain the officer concerned in service the action thereof cannot be challenged before the Courts, though it is open to the aggrieved party to impugn it on the ground that requisite opinion is based on no evidence or has not been formed on bona fide ground or is based on collateral grounds or arbitrary. When the order has been passed by the competent authority on the basis of totality of facts and circumstances appropriate to the case the order cannot be held to be arbitrary, unjustified or based on no evidence. When the adverse remarks in the confidential reports contained a reflection on his integrity in discharging the duty, the decision to compulsorily retire him on such adverse remarks is held to be in public interest. *U.P. State Mineral Dev. Corporation v. K.C.P. Sinha*, (1996) 5 SCC 111; 1996 SCC (L & S) 1144.

22. The competent authority can also take into consideration record of pending disciplinary enquiry against the Government servant along with other relevant record for formation of opinion to compulsorily retire a Government servant in public interest even if such departmental enquiry resulted in imposing a minor penalty. *State of Orissa v. Ram Chandra Das*, AIR 1996 SC 2436; (1996) 5 SCC 331; 1996 SCC (L & S) 1169 : 1996 Lab IC 2062.

23. Bad service record. Adverse remark made in the confidential report although preceded by promotion constituted a material on the basis of which the opinion could be formed to compulsorily retire the employee concerned in public interest. *H.G. Venkatachaliah v. Union of India*, (1997) 11 SCC 366. The employee concerned out of last ten years was graded in ACRs for part of one year and for three other years as 'average'. He was punished by three warnings in respect of various lapses in prepromotion and postpromotion period. In view of such average gradings and punishment order compulsory retirement passed against him has been upheld by the Supreme Court. *Satya Prakash Gupta v. State of Haryana* 1997 SCC (L & S) 1764.

When the entire service record of the concerned employee was placed before the Review Committee and the Review Committee on considering the adverse entries and punishment imposed on the Government servant recommended compulsory retirement and the competent authority on the basis thereof passed the order of compulsory retirement. It cannot be held that the order of compulsory retirement was arbitrary or illegal. *I.K. Mishra v. Union of India*, (1997) 6 SCC 228; 1997 SCC (L & S) 1654; 1997 Lab IC 2866. While considering the entire service record of the employee the authority took into consideration and adverse entry even prior to his promotion. The order passed bona fide cannot be faulted because such adverse remarks even prior to promotion is not wiped out by promotion of the concerned employee. *State of Punjab v. Gurdas Singh* AIR 1998 SC 1661; (1998) 4 SCC 92; 1998 SCC (L & S) 1004; 1998 Lab IC 1401; (1998) 11 LLJ 324; (1998) 3 LLN 94.

When entire service record including the record for the period prior to 1st April, 1985 i.e. prior to confirmation, which contained adverse remark was considered

it cannot be said that there was no sufficient material for the appropriate authority to form the requisite opinion that further retention of service of the respondent was not in public interest. *Union of India v. P.S. Dhillon*, (1996) 3 SCC 672; 1996 SCC (L & S) 799; AIR 1996 SC 1736.

24. In *Bishwanath Prasad Singh v. State of Bihar and others*, 2001(1) LBESR 765 (SC) : (2001) 2 Supreme Court Cases 305, the Supreme Court has observed in para 12 as below:

?(12) Compulsory retirement in service jurisprudence has two meanings. Under the various disciplinary rules, compulsory retirement is one of the penalties inflicted on a delinquent Government servant consequent upon a finding of guilt being recorded in disciplinary proceedings. Such penalty involves stigma and cannot be inflicted except by following procedure prescribed by the relevant rules or consistently with the principal of natural justice if the field for inflicting such penalty be not occupied by any rules. Such compulsory retirement in the case of a Government servant must also withstand the scrutiny of Article 311 of the Constitution. Then there are service rules, such as Rule 56 (j) of the Fundamental Rules, which confer on the Government or the appropriate authority, an absolute (but not arbitrary) right to retire a Government servant on his attaining a particular age or on his having completing a certain number of years of service on formation of an opinion that in public interest it was necessary to compulsorily retire a Government servant. In that case, it is neither a punishment nor a penalty with loss of retiral benefits. (See *Shyamlal v. State of U.P.*, AIR 1954 SC 369; (1995) 1 SCR 26; *Birj Mohan Singh Chopra v. State of Punjab*, (1987) 2 SCC 188; (1987) 3 ATC 496; *S. Ramachandra Raju v. State of Orissa*, 1994 Supp (3) SCC 424; 1995 SCC (L & S) 74; (1994) 28 ATC 433, *Baikuntha Nath Das v. Chief District Medical Officer, Baripada* (1992) 2 SCC 299; 1993 SCC (L & S) 521; (1992) 21 ATC 649. More appropriately, it is like premature retirement. It does not cast any stigma. The Government servant shall be entitled to the pension actually earned and other retiral benefits. So long as the opinion forming basis of the order for compulsory retirement in public interest is formed bona fide, the opinion cannot be ordinarily interfered with by a judicial forum. Such an order may be subjected to judicial review on very limited grounds such as the order being mala fide, based on no material or on collateral grounds or having been passed by an authority not competent to do so. The object of such compulsory retirement is not to punish or penalise the Government servant but to weed out the worthless who have lost their utility for the administration by their insensitive, unintelligent or dubious conduct impeding the flow of administration or promoting stagnation. The country needs speed, sensitivity, probity, nonirritative public relation and enthusiastic creativity which can be achieved by eliminating the dead wood, the paperlogged and callous (See *S. Ramachandra Raju v. State of Orissa*, 1994 Supp (3) SCC 424; 1995 SCC (L & S) 74; (1994) 28 ATC 443. We may with advantage quote the following passage from this decision: (SCC p. 430, para 9):

?Though the order of compulsory retirement is not a punishment and the Government servant on being compulsorily retired is entitled to draw all retiral benefits, including pension, the Government must exercise its power in the public interest to effectuate the efficiency. Integrity of public service needs to be maintained. The exercise of power of compulsory retirement must not be a haunt on public servant but act as a check and reasonable measure to ensure efficiency in service, and free from corruption and incompetence. The officer would go by reputation built around him. In appropriate case, there may not be sufficient evidence to take punitive act of removal from service. But his conduct and reputation in such that his continuance in service would be a menace in public service and injurious to public interest.?

25. The order of compulsory retirement is neither punitive nor stigmatic and in the formation of opinion while passing order of compulsory retirement the entire service records, character roll or confidential report with the emphasis cannot be taken into account along with the relevant period and the contention that the consideration of adverse material older than ten years vitiated the order of compulsory retirement was rejected by the Supreme Court in the State of U.P. and others v. Vijay Kumar Jain, 2002(1) JCLR 951 (SC) : (2002) 3 SCC 641, and order of withholding integrity certificate and censor entry are sufficient entries for compulsory retirement under Rule 56 (c) and (j) of U.P. Fundamental Rules. In Vijay Kumar Jain (supra) the Court in para Nos. 13 and 14 had noted below:

?(13) In Baikuntha Nath Das v. Chief District Medical Officer, Baripada, (1992) 2 SCC 299: 1993 SCC (L & S) 521: (1992) 21 ATC 649, this Court laid down certain principles which are as under: (SCC pp. 31516, para 34).

?34. (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 showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.?

?(14). In *State of Punjab v. Gurdas Singh*, (1998) 4 SCC 92: 1998 SCC (L & S) 1004, it was held thus: (SCC p. 99, para 11):

?Before the decision to retire a Government servant prematurely is taken the authorities are required to consider the whole record of service. Any adverse entry prior to earning of promotion or crossing of efficiency bar or picking up higher rank is not wiped out and can be taken into consideration while considering the overall performance of the employee during whole of his tenure of service whether it is in public interest to retain him in the service. The whole record of service of the employee will include any uncommunicated adverse entries as well.?

26. In the present case the relevant records character roll, confidential report and service book have been seen and the order in question is not passed arbitrarily and is made in public interest in compliance to the Fundamental Rules 56 as such judicial review is not possible in view *Vijay Kumar (supra)*. The present compulsory retirement have been passed fairly, bona fide free from arbitrariness, in the public interest and in the interest of the administration and in consonance to the fundamental rules by way of order of simplicitor, therefore, is in consonance to the decision of Supreme Court (1992) 2 SCC 317, *P & T Board v. C.S.N. Murthy*, and on the material available in the service record of the petitioner and in the light of judgment of *Baikuntha Nath (supra)* and AIR 1994 SC 1261, *Union of India v. N.P. Seth*, (1998) 4 SCC 92; *State of Punjab v. Gurudas Singh*, 1998 (9) SCC 220; *UPSRTC v. Hari Nath Singh*, (1997) 7 SCC 483; *Union of India v. G. Ganayuthan* and 1997 (6) SCC 381; *State of Punjab v. Bakshi Singh*.

27. In view of the above decisions compulsory retirement order has been passed against the petitioner in the public interest did not indicate any stigma and the principal of natural justice is not attracted. Therefore, no scope of any interference is made out.

Writ petition is dismissed.