

(2015) 11 AHC CK 0111
In the Allahabad High Court
Case No : Service Bench No. 1010 of 1994

Ram Gopal Kureel

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-11-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 11 ADJ 65 : (2016) 114 ALR 673

Hon'ble Judges : Amreshwar Pratap Sahi and Attau Rahman Masoodi, JJ.

Bench : Division Bench

Advocate : A.P. Singh, for the Appellant; Upendra Nath Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Attau Rahman Masoodi, J.—This writ petition is directed against the order dated 7.3.1995 whereby the petitioner, based on the recommendation of the screening committee, was retired compulsorily from service with effect from 3.8.1994 (afternoon).

2. The brief facts relevant for the purpose of present case are that the petitioner after due selection in the year 1975, was appointed as Munsif vide order dated 23.12.1976 and was thereafter confirmed. The petitioner was promoted in senior pay scale on 4.1.1986 and in the selection grade by order dated 29.10.1992 on completion of his regular and satisfactory service. It appears that at the relevant point of time the age of superannuation of judicial officers being 58 years was under the active consideration of the State Government for being enhanced to 60 years and as a matter of course, all those cases which, as per the rules, had fallen for consideration within the scope of Rule 56 of the Fundamental Rules for compulsory retirement, stood affected but the position was clarified by the apex court in the judgement rendered in the case of All India Judges' Association and Others Vs. Union of India and Others, . Although U.P. Judicial Officers (Retirement on Superannuation) Rules, 1992 came into force on 20.10.1992 but

consideration of the petitioner for compulsory retirement being unaffected was proceeded with and the screening committee met on 2.8.1994 when having regard to the petitioner's service record, it was found that he was no more worth of being retained in service and was categorized to be a "dead wood" alongwith certain other officers.

3. The impugned order passed against the petitioner has been challenged primarily on the ground that the same having been passed retrospectively, cannot be given effect to from an earlier date and such an exercise of power vitiates the impugned action.

4. The second submission advanced by learned counsel for the petitioner is that the petitioner was issued a charge sheet on 20.8.1994 in respect of some allegations relating to his work and conduct in the year 1993, therefore, the disciplinary proceedings once having been initiated, were not open to be substituted by a course of action in substitution thereof by the impugned action, as such, the impugned order is punitive.

5. The third submission advanced before the Court is to the effect that service record of the petitioner being satisfactory, earned the petitioner all the promotions which fell due during his service tenure and, therefore, the opinion formed by the screening committee being based on no material, renders the impugned order as bad in the eye of law.

6. Per contra, learned counsel appearing for the respondents, in the counter affidavit, has specifically stated that the impugned order has validly been passed after due consideration of the relevant service record relating to the petitioner and having regard to the observations made by the apex court in the case of All India Judges Association (*supra*), the impugned order does not suffer from any legal infirmity whatsoever and, therefore, the challenge made by the petitioner to the impugned order, is wholly misconceived and devoid of any merit.

7. Learned counsel for the respondents also took us through the relevant service record, which was placed before the screening committee on the basis of which the screening committee had formed an opinion to retire the petitioner prematurely.

8. Having glanced through the record placed before us, we have clearly noticed the existence of dissatisfactory service record in relation to the petitioner and we find that the entries of nearly last five years immediately prior to the passing of the impugned order and the remarks recorded by the concerned officers in relation to the discharge of duties by the petitioner, clearly reflected serious dissatisfaction, therefore, it would be wrong to say that the present case is a one where there did not exist any adverse material at all.

9. The rival contentions and submissions advanced before us raise three legal questions for consideration. Firstly, whether the petitioner could be retired compulsorily from service from a date earlier than the date of passing of the

order; secondly, whether after issuance of charge sheet on 20.8.1994, the impugned action of compulsory retirement would amount to be a punitive action or not; and thirdly, whether there existed any adverse material on the basis of which the impugned order was passed.

10. So far as the question of retrospectivity is concerned, learned counsel for the respondents has urged that the petitioner being under suspension up to the date of passing of the impugned order, has subsequently been given all the benefits of salary up to the date of passing of the order, therefore, such a submission advanced before this Court is inconsequential.

11. Normally any punitive order passed against a government servant takes effect from the date of passing of order and in the present case, giving a retrospective effect to the impugned order, was certainly erroneous but all the consequential benefits arising up to the date of passing of the order have already been released in favour of the petitioner and virtually there is hardly any dispute.

12. The retrospectivity of the impugned action was due to the reason that the screening committee had met on 2.8.1994 which had adjudged the petitioner as unsuitable for being retained in active service. Once the salary has been paid to the petitioner up to 7.3.1995, adverting to the said ground would be a futile exercise and the mere fact of order being retrospective does not vitiate the action.

13. As far as the question of institution of disciplinary proceedings is concerned, such a measure on the part of the respondents certainly leads to an inference as if the authorities had decided to take a stringent measure against the petitioner for some misconduct alleged in the charge sheet but on scrutiny of the material placed before us, it has been found that the disciplinary proceedings against the petitioner were dropped without conclusion of any punitive action against him for the reason that the screening committee had already taken a decision of compulsory retirement against the petitioner on 2.8.1994. The assessment for petitioner's compulsory retirement was clearly made before the issuance of charge sheet, therefore, dropping of enquiry does not inure to any advantage in favour of the petitioner, nor does it affect the right of employer to give effect to its decision.

14. Once the screening committee had found the petitioner to be unsuitable for being retained in service, it was not found desirable that the petitioner may be visited with any harsh action in respect of the alleged charges.

15. It is also urged that issuance of charge sheet subsequent to the date of screening committee meeting i.e. 2.8.1994, has not influenced the decision making process at all and what was considered by the screening committee is the relevant service record relating to the petitioner.

16. From the record placed before us, we have seen that the charge sheet against the petitioner has not been a subject matter of discussion and the same

has not even otherwise affected his consideration by the screening committee. So far as the existence of adverse material is concerned, the service record of the petitioner during the last few years before passing of the impugned order, is certainly below the mark on account of which the decision arrived at by the screening committee cannot be held to be faulty in any manner. Insufficiency of adverse material, it is well settled, cannot be a ground of challenge, therefore, we do not find any merit in the argument advanced by learned counsel for the petitioner that sufficient adverse material for forming such an opinion did not exist before the screening committee. The contention is noted to be rejected.

17. Learned counsel for the petitioner, in order to substantiate his argument, has referred to the judgement rendered by the apex court in the case of High Court of Judicature at Allahabad Through Registrar Vs. Sarnam Singh and Another, and referring to Para 31 of the judgement, argued that as per the dictum of the apex court, such a decision ought to have been taken before the petitioner attained 58 years of age. The decision, of course, has been taken by the screening committee on 2.8.1994, therefore, in view of law laid down by the apex court in All India Judges Association case (supra) as well as the judgements reported in Nawal Singh Vs. State of U.P. and Another, ; Rajendra Singh Verma (Dead) through L.Rs Vs. Lt. Governor of NCT of Delhi and Another, and R.C. Chandel Vs. High Court of M.P. and Another, , we do not find any good ground to hold the impugned order passed against the petitioner as bad in the eye of law. Fundamental Rule 56 provides for compulsory retirement of a government servant who has attained the age of 50 years, subject to the satisfaction of the appointment authority in public interest.

18. In the instant case, once the service record of the petitioner is found to be dissatisfactory and performance below the benchmark during the last few years, such a decision based on the existing material, cannot be interfered with under Article 226 of the Constitution of India.

19. We have noticed that integrity of the petitioner remained a question mark and some adverse remarks were also made in respect of some judicial orders and all these materials clearly justify the passing of the impugned order. In this regard, the judgements reported in State of Uttar Pradesh and Others Vs. Vijay Kumar Jain, and Pyare Mohan Lal Vs. State of Jharkhand and Others, support the contention of the respondents.

20. The petitioner at this stage by virtue of his age when he cannot be taken back in service, therefore, the writ petition is reduced to merely a matter of academic interest but on the question of past full salary upto the age of superannuation, we are of the clear view that no case for interference is made out under Article 226 of the Constitution of India.

21. In the totality of circumstances, interference in the present writ petition under Article 226 of the Constitution of India, is uncalled for. The writ petition, being devoid of merit, is hereby dismissed.

22. No order as to cost.