
(1995) 03 MP CK 0005
In the Madhya Pradesh High Court
Case No : M.P. No. 3650 of 1993

Rameshwar Prasad Gupta

APPELLANT

Vs

High Court of M.P. Jabalpur

RESPONDENT

Date of Decision : 07-03-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227, 235

Citation : (1995) 2 MPJR 82

Hon'ble Judges : S.K. Dubey, J

Bench : Single Bench

Advocate : V.S. Dabir. with Mr. B.K. Rawat and Mr. A.G. Dhande, for the Appellant; Ravindra Shrivasiava, Advocate and Mr. Manindra Shrivasiava . Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Dubey, J.

By this petition under Article 226/227 of the Constitution of India, the petitioner who, was a member of the Madhya Pradesh State Judicial Service holding the post of Additional Judge to the Court of District Judge, Sehore at Sehore has challenged the order dated 28.8.1993 (Annexure-A) passed by the State Government in exercise of the Powers under Fundamental Rule 56 (3) as amended by the Madhya Pradesh Shaskiya Seva (Adhivarshiki Aayu) Sansadhan Adhiniyam. 1993. of compulsory retirement in public interest on completion of age of 55 years.

The facts giving rise to this petition are these : The petitioner, whose date of birth is 10.11.1937. on his selection by Public Service Commission, joined the service in M.P. State Judicial Service as Civil Judge. Class 11 in the year 1972. The petitioner was promoted on the post of Civil Judge. Class I in the year 1983 and as Chief Judicial Magistrate, vide order date 12.12.1990; and as a member of the Higher Judicial Service by the Resolution of Full Court Meeting of the High

Court held on 27th and 28th April. 1991 and appointed as Additional Judge to the Court of District Judge, vide order dated 2.8.1991. The petitioner's case was also considered along with other Judicial Officers, who were to complete the age of 55 years, during the period ending 1993. and was found fit to be retained till the age of 58 years by the resolution of Full Court Meeting held on 2nd and 3rd May 1992. However, the petitioner was not found fit for confirmation in the Court Meeting held on 30th April and 1st and 2nd May 1993. hence, it was resolved by the Full Court to retire the petitioner in public interest under Fundamental Rule 56 (3) giving 3 months pay in lieu of notice, accordingly the State Government was moved, which in turn, vide order dated 28.8.1993 retired. the petitioner compulsorily in public interest after giving him 3 months pay in lieu of notice vide Annexure A.

The petitioner contends that prior to completion of his age of 55 years, the matter of his retention in service was considered by the Full Court, wherein, the petitioner was found fit for being retained in service up to the age of superannuation, that is. 58 years. Therefore, having once taken a decision of continuance of the petitioner up to the age of 58 years, in the next Full Court Meeting, the Full Court could not have resolved to retire the petitioner compulsorily. The petitioner has got an unblemished record of service and was entitled to continue not only till the age of superannuation, but. in view of the recent pronouncement of the Supreme Court in All India Judges Association Vs. Union of India (1) and All India Judges Assn. Vs. Union of India (2) the petitioner was entitled to continue till the age of 60 years after screening on attaining the age of 58 years, As the petitioners screening was done in the year 1992. on the basis of the uncommunicated A.C.R. entry which is not adverse to the petitioner and a Demi Official letter of the District Judge. Sehore. sent just after 15 days of the A.C.R. which was a commend performance and procured only by the Registry as a result of prejudice and bias, the petitioner could not have been retired without, giving him an opportunity of hearing, because, even the report of the Inspecting Judge of the High Court which is a sacrosanct document does not recommend the compulsory retirement of the petitioner, but, only transfer of the petitioner from his place of posting. Therefore, there was no sufficient material in case of the petitioner to retire him compulsorily in public interest. The action of the compulsory retirement is null and void, arbitrary, punitive and is violative of Article 14 of the Constitution of India.

In reply to the averments made in the petition, in the return and additional return it is stated that the rules of natural justice are not applicable in the action of compulsory retirement in public interest" nor a Writ Court would examine as an Appellate Court the decision of compulsory retirement in public interest on the materials taken on subjective satisfaction. The judicial service is a distinguished class by itself and. therefore, the Judicial Officers stand on a different footing than, other Government Servants. There is no comparison between the Government servants in Executive Class and the Judicial Officers. An order of compulsory retirement is not a punishment because it does not cast any stigma,

misconduct or misbehaviour. It is subjective satisfaction of the High Court on the basis of the material on record and. therefore, the principles of natural justice have no place. Interference cannot be made in this order unless the order is proved to be *mulafide*. based on no evidence and/or arbitrary in the sense that no reasonable person could form the opinion on the material or the order is of perverse. The petitioner's promotion to the post of Higher Judicial Service has no relevance as the decision of compulsory retirement was taken on overall examination of the record of service attaching more importance to the conduct and record of service during the latter years. The decision was taken by the High Court in its Full Court Meeting, and therefore, adequacy and sufficiency material cannot be questioned which was absolutely necessary for the purposes of compulsory retirement. The entire service record of the petitioner reveals that the petitioners service was not satisfactory much less outstanding. Even at the earlier stage the petitioner was not found fit for confirmation as Civil Judge in due course. When the petitioner became due for consideration for appointment as Chief Judicial Magistrate/Addl. Chief Judicial Magistrate, he was not found fit in the Full Court Meeting held on 14.2.87, and therefore, his case was postponed to the next meeting as not found eligible. In the Full Court meeting dated 23.4.1988 when he became eligible for consideration again his case was postponed. In the Court Meeting dated 22-23 April. 1989 the petitioner was appointed as Chief Judicial Magistrate as late by order dated 28th December. 1990. Although the petitioner was found fit for promotion as District Judge in the case of Higher Judicial service and was accordingly promoted on 2.8.91 hut he was not found fit for confirmation as District Judge, in Higher Judicial Service in the Full Court Meeting held on 30th April and 1st and 2nd May, 1993. While considering the question of screening of Judicial Officer who would be completing the age of 55 years to 57 years during the year 1992-93, the Full Court in meeting having regard to the material available on record was found fit to be retained in service after 55 years of age, but. later, on overall assessment of the service and conduct, the petitioner was not found lit to be confirmed and a decision was taken to retire him after completion of 55 years of age in public interest under F.R. 56 (3) by giving 3 months salary in lieu of notice, as besides the entire record of service, there was a report of the Distinct Judge and of the Inspecting Judge (Hon''ble Shri Justice R. D. Shukla) and the complaints by the Bar Association and Public relating to the petitioner's work and conduct. The disposal of cases of the petitioner was on the lower side. The Inspecting Judge in his report has stated thus;

The disposal of cases of Shri R. P. Gupta has been found to he poor that is nearly 38% in 1991 and 71% in 1992. (See page 40-A of the inspection note). The approach in the cases of Criminal Appeal and sentence is not proper (refer Criminal Appeal No. 57/89 at page 36 of inspection note). He has tried to review his own Judgment, which is not desirable.

The knowledge of law of the Judge also does not appear to be good (Criminal Revision Nos. 28/87. 69/82 and Criminal No. 69/92 at page Nos. 36 to 38 of the

inspection note). The approach in civil cases is also not proper (see Civil Appeal No. 9-A/91 page 39 of the inspection note. The Judge while remanding the case has given finding on every issue which is not desirable as that is likely to cause embarrassment to the Trial Judge. In claim case No. 21 (page 39 of the inspection note) while accepting income of the deceased Rs. 400/-p. m. no deduction on his personal expenditure has been made and the award has been made by applying multiplier of 20."

To this return rejoinder was filed by the petitioner. Respondent filed additional return where in it is stated that Fundamental Rule 56 (3) and the orders of the State Government issued therein, in the case of such Government servant who is considered fit to be retained on completion of 55 years, his continuance after the age of 55 years should be by a specific order not more than a year, the order issued under Fundamental Rule 56 (3) issued by the Government reads thus :

I. L.G.O. I :

Every case of Government servant whom it is proposed to retain in service beyond the age of 55 years, should be covered by a specific order of the competent authority. The period of such retention should be limited to brief spells of not more than a year at a time so that the continued fitness and efficiency of the Government servant concerned may be kept fairly constantly under review in the public interest.

Shri V.S. Dabir. Shri B.K. Rawat and Shri A. G. Dhande. counsel for the petitioner : Shri Ravindra Shrivastava, counsel for respondent No. 1 and Shri M. L. Choubey. Government Advocate for respondent No. 2 heard. After the close of the hearing the petitioner and counsel for the respondent filed their written synopsis of submissions which were also taken on record.

It may be stated at the outset that the petitioner during the course of hearing has not attributed any malice or oblique motive either against the District Judge or against the Inspecting Judge, but submitted that having once the petitioner was found fit in the Full Court Meeting of May. 1992 for his retention in service after completion of 55 years of age his case could not have been reconsidered in Full Court Meeting on 30th April. 1st and 2nd May. 1993. wherein, the petitioner was found unfit, in view of the circular of the Government dated 26th March. 1984 (Annexure D) and as ruled by the Supreme Court in the case of State of U. P. vs. Chandra Mohan (1). Hence, it was submitted that once the petitioner was found fit for continuance in service beyond the age of 55 years and also in view of the law laid down by the Supreme Court, the petitioner ought to have been continued in service till the age of 60 years, the petitioner's service could not have been terminated by way of compulsory retirement, except by way of disciplinary action. The order of compulsory retirement is against the principles of natural justice and is penal in nature. Reliance was placed on Supreme Court decisions in cases of Baldev Raj vs. Union of India (2); Krij Behari Lal vs. High Court of M.P. (3); Ram Ekhal Sharma vs. State of Bihar (4).

It is submitted that on the one hand the contention of the respondent is that the State Government orders and instructions are not binding on the High Court and on the other hand an old order of the Government of India has been placed reliance. No material has been placed on record that order still survives or not. It was also submitted, the inspection note by the Inspecting Judge of the High Court, is the report of the High Court within the meaning of Article 235 of the Constitution of India, if the report is to be accepted the Inspecting Judge did not recommend the case of the petitioner for compulsory retirement but recommended the petitioner for being transferred to any other different/distant place from Bhopal. In the report there is nothing about the integrity of the petitioner, not the latest A.C.R. of the petitioner is adverse to the petitioner. A procured letter obtained from the District Judge just after 15 days, of sending of by him has no relevance, infact. it is a mala fide attempt to punish the petitioner somehow, without disclosing the material to the petitioner. When once the decision was taken to continue the petitioner it was undesirable and unsafe for the Full Court to review the decision of the previous Full Court Resoulution. reliance was placed on a recent decision of the Supreme Court in case of High Court of M.P. vs. Mahesh Prakash (5). It was further contended that while deciding the judicial cases if the petitioner has taken a wrong view and has passed a wrong order that cannot be a ground for compulsory retirement unless there is an imputation of any corruptive approach or ulterior motive. An unreported decision of this Court in P. S. Guha vs. State of M.P. (6) was ralied upon. Therefore, it was submitted that the petitioner's case once having been screened and the petitioner was found fit to be retained in service, his case could not have been screened again so as 10 compulsory retire him in public interest, if it is allowed to be done every year the sword of debacle shall reamin hanging on the neck of such officer, and it would not be possible for a judicial officer to administer justice without fear and favour, reliance was placed on a decision of the Supreme Court in case of State of U. P. vs. Chandra Mohan (supra).

Courts are temples of justice, where the justice should be properly administered in respect of all who seek justice. A Judicial Officer who adminsters justice holds a great responsibility. Sense of confidence in the Courts is essential to maintain the fabric of order and liberty for a free people and it is for the Subordinate Judiciary by its action and for the High Court by its appropriate control to ensure it. The Society expects from a Judicial Officer that the Judge ought to be wise enough to know that he is fallible and therefore, ever ready to learn and be courageous enough to acknowledge his errors. The conduct of every judicial officer should be above reproach. He should be conscientious, studious, through, courteous, petient, puctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private, political or partisan influences: he should administer justice according to law, and deal with his appointment as a public trust: he should not allow other affairs or his private interest to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or

increasing his popularity. See the decision of the Supreme Court in case of All India Judges" case (supra).

In the review case of all India Judges" case (supra) the Supreme Court has declared that the Judicial service is not a service in the sense of "employment" and the Judges are not employees. As the members of the judiciary they exercise the sovereign judicial powers of the State. They are holders of public office in the same way as members of the counsel, and the members of the Legislature. It is said that in a Democracy like ours the Executive, Legislature and Judiciary are the 3 pillars of the State. What is intended to be conveyed is that 3 essential functions of the State are entrusted to 3 organs of the State and each one of them in turn represent the authority of the State. However, the distinction between the Judges and Officers of other service has to be kept in mind as Judicial independence cannot be procured by making solemn proclamation. It has to be secured both in substance and source. Self reliance in the function of the independence. Society has to set the independence of Judiciary and no price is heavy to secure it.

Therefore, the Judicial service being not like other Government service the case of the petitioner is to be considered keeping in view the aforesaid principles.

True, when the Judicial officer is screened once for retention in service after qualifying service one or attaining the age of 55 years, he gets a lease to continue up to the age of 58 years. Prior to the attainment of the age of 58 years he is to be again screened for his continuance up to the age of 60 years in the light of the decision of the Supreme Court in all India Judges" case (supra). But, a Judicial Officer or even a public officer who is screened for continuance to the age of superannuation does not get the lease to continue in service by sitting idle, or to work according to his own timings, or inefficiently. After screening and continuance of service, his work should be satisfactory, he should not be a corrupt or dead wood, he should be efficient and should administer justice keeping his conduct above reproach. Circular/order of the Government issued under F.R. 56 (3) quoted in the additional return states that after screening to retain the Government servant after the age of 55 years the period of such retention should be limited to brief spells or not more than a year at a time so that the continued fitness and efficiency of such Government servant be kept fairly constantly under review in the public interest. Circular issued by the State Government dated 26th March. 1984 does not in any manner supersede the earlier order of Government, but, it only says that when the Government employee is found to be fit for retention after the age of 55 years, ordinarily screening would not be required every year. Therefore, the circular gives a guide line, that every year screening should not be done, but, it does not bar the screening on the availability of the adverse materials, or fresh objectionable grounds. In case of Judicial Officer whether a member of subordinate Judicial service should be retained after screening, after the age of 55 years, the accountability of the work and conduct is a must to conscience of the Judicial

Officer so that the confidence of the public in Judiciary may not be shaken. In the absence of statutory bar of screening every year, and, further it is the concern of the High Court which falls squarely within Article 235 of the Constitution, I am of the opinion, that screening should be done every year, if the circumstances, disclosed objectionable grounds such as integrity or some other weighty reasons in public interest, as the High Court should not be a silent spectator to tolerate a Judicial officer whose work and conduct are not satisfactory or he is inefficient or his is a dead wood or his integrity is not above board, and a Judicial Officer cannot complain that he cannot be retired in public interest" till the disciplinary action is not taken against him for misconduct which would amount to allowing a Judicial Officer to continue in service at the cost of Justice. To say so, I take support from the decision of the Supreme Court in case of State of U. P. vs. Chandra Mohan (supra).

A Judicial Officer who has been screened for his retention after the age of 55 years can also not claim immunity that in view of the decision of the Supreme Court in All India Judge's case (supra) the age limit of 56 years stands modified to age of 60 years, therefore, screening can only be at the age of 58 years and not earlier, therefore, the submission that the petitioner having attained the age of 55 years but being below the age of 58 years the power under sub-rule (3) of F.R. 50-A was not available for retirement of the petitioner, has been repelled by the Supreme Court in recent decision rendered on 26th September. 1994 in Gopinath Goel vs. High Court of M.P. and another W.P. No. 550/94., wherein the Supreme Court ruled that in two judgments of the All India Judges' case (supra) case nothing can be read as modifying S. R. (3) of F.R. 56-A to substitute the express "58" in place of the age "55" years thereunder. The power available on the State of retire at the age of 55 years still continues to be available and such Government servant can be retired in public interest, under such provision law has been summarised and reiterated in Baikunth Nath vs. C. M. O. Baripada and another (2).

It is true that an order of compulsory retirement even if it is couched in innocuous language without making any imputations 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 bonafide 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 concerned Government servant. See Ram Ekbal Sharma vs. State of Bihar (3).

It is now settled that while considering the overall record uncommunicated adverse remarks can be taken into consideration. The principles of natural justice do not apply to the order of compulsory retirement. The High Court or the Supreme Court would not examine the matter as an Appellate Court. The interference can only be made if on satisfaction it is found that the order passed

is (a) malafide (b) or that it is without any reasons (c) or it is arbitrary on the ground that no reasonable person would draw such an opinion if it is found to be perverse. See Baikunth Nath's case (supra). A bonafide decision of the competent authority to compulsorily retire a Government Servant in public interest on the basis of the opinion framed on the service record not subject to judicial interference merely on account of solitary good entry at the end of the year. See Union of India vs. Inderjit Rajput (4).

In view of the settled position of law that an order of compulsory retirement is not an order of punishment and is not subject to the judicial scrutiny except in the circumstances stated in the Baikunth's case (supra), this Court examined the service record of the petitioner placed by the respondent to satisfy whether Order of compulsory retirement was in public interest based on the material or was malafide, arbitrary or without any reason or was by way of punishment. On going through the record produced and brief resume of petitioner's service career, this Court is of the opinion that the order of compulsory retirement is not by way of punishment for misconduct, but is in public interest. It may be that a different conclusion be taken but this Court cannot set as a Court of appeal and is confined to examine all the material to see whether rational man may come to the conclusion that compulsory retirement of a public officer is necessary in public interest, as it is the appropriate authority not the Court which takes a decision.

A look to the overall service record given in para 10 (b) (iv) of the return shows that the petitioner right from the entry in his service, the petitioner had not been like an efficient Judicial Officer. He was not confirmed or promoted in his regular turn. Though he was promoted in Higher Judicial Service vide order dated 2.8.1991 but was not confirmed as District Judge because of the report of the Inspecting Judge, A.C.R. of the relevant years and the Demi Official letter of the District Judge.

In the A.C.R. in paragraph 13 in column of general remarks, poor performance in the judicial cases has been reflected. In the Demi Official letter of the District Judge it is stated that the petitioner after joining as C. J. M. at Sehore never stayed at Sehore and used to do up and down of about 40 kilometers from Bhopal to Sehore. There were complaints received that he was not punctual and was not devoting full time to the Court work. He was involved and was-taking keen interest in his own affairs at Bhopal. On holidays he did not stay at Bhopal; he never sought permission to leave headquarters.

In view of the above facts and circumstances and the report of the Inspecting Judge, to which no oblique motive is attributed and the report of the District Judge the decision of the compulsory retirement of the petitioner was taken by the Full Court, wherein, every Hon'ble Judge of the High Court participated in the discussion and contributed the thoughts in response to the agenda placed in the meeting regarding the compulsory retirement of the petitioner and the decision was arrived at, hence, it cannot be said that the decision of compulsory

retirement of the petitioner was arbitrary or a motivated one, as participation of every Judge in the discussion in the Court Meeting Rules out the arbitrariness. See Mahesh Prakash's case (supra). Hence this Court is of the opinion that the order of compulsory retirement of the petitioner is in public interest and is not arbitrary, malafide or is by way of punishment.

As a result of the aforesaid discussion, the petition is devoid of any merit and is dismissed with no order as to costs. Security amount if any be refunded to the petitioner.