
(1985) 04 MP CK 0017
In the Madhya Pradesh High Court

Sambhudayal Sharma

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 23-04-1985

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1985) JLJ 632 : (1986) 1 LLJ 110 : (1985) 30 MPLJ 461

Hon'ble Judges : G.L. Oza, C.J;B.M. Lal, J

Bench : Division Bench

Judgement

B.M. Lal, J.

Petitioner, Dr. Shambu-dayal Sharma who is double M.A., M.Ed, and Ph.D. was appointed as an upper division teacher on 6th September, 1958 by the respondent No. 1 and his services were placed under the respondent No. 2, the Director, Tribal, Harijan and Backward Classes Welfare Department, Government of. Madhya Pradesh, Bhopal. He was discharging his duties honestly, efficiently and diligently. Therefore, according to him, he was given timely promotion to the higher posts and was also allowed to cross the efficiency bar by an order of the respondent No. 1. The petitioner on 8th October, 1984 was posted as Principal, Higher Secondary School, Kurai, District Seoni, from where he was compulsorily retired by the respondent No. 1 in exercise of powers under Rule 42 of the Madhya Pradesh Civil Services (Pension) Rules, 1976 (hereinafter referred as the "Rules"). Therefore, this petition has been filed by the petitioner under Articles 226 and 227 of the Constitution of India.

By this petition, the petitioner seeks to quash the order dated 8th October, 1984 contained in Document No. 1 passed by the respondent No. 1.

In brief, the case of the petitioner is that at the time of compulsory retirement, although he had served the department for 25 years, yet he was only about 52 years old and his retiring age being 60 years, his premature retirement made on 8th October, 1984, is illegal mala fide and passed in colourable exercise of

powers which is against the "public interest.

According to the petitioner, throughout in his service career, his disposition of work has been excellent, inasmuch as he was neither awarded any punishment so far, nor was ever communicated any adverse confidential character report. Hence, according to him, his compulsory retirement is based on extraneous considerations which cannot be said to be any "public interest."

The petitioner further submits that he had been Principal in a Tribal Higher Secondary School for the last near about 11 years. During that period the results of the Board Examinations were ranging from 80 per cent to 100 per cent and he implemented and encouraged all activities leading to the development of tribal students.

For his extra efficient and excellent disposition of work, he was given responsible duties of valuation of answer books as Deputy Head Valuer. He was also appointed the head of the Flying Squad to supervise Middle School Board Examinations of Jabalpur Division.

The petitioner was Principal in a Tribal School in Mandla District for near about eight years, i.e., from 1977 to February, 1984 and from there he was transferred to Kurai, District Seoni as Principal of Tribal Higher Secondary School. He states that at Mandla while maintaining the discipline in the institution, he had to take strict action against his subordinate staff and the students so that the discipline of the institution may not be disturbed. Because of his punctilious treatment with his subordinate staff and the students of the school, it caused annoyance to some of the members of the staff who were trying to prevail upon him by instigating the students and making false complaints against him.

Shri A.B. Dube, Upper Division Clerk who was working under the petitioner's hand, had good relations with Shri Dahima, Collector, Mandla and the former was instrumental in disturbing the school peace and discipline.

On petitioner's report against A.B. Dube, Shri Dahima, Collector, Mandla appointed Shri Arya, Sub-Divisional Officer, Mandla to inquire into the matter, but according to the petitioner A.B. Dube was so thick with the Collector, Shri Dahima that he managed to bring pressure upon Shri Arya, with the result, instead of taking any action against A.B. Dube, disciplinary action was proposed to be taken against the petitioner for which, Shri Dahima by misusing his high office, wrote a letter to the Director, Tribal Welfare Department, Bhopal about the petitioner upon which a show cause notice vide Document 4, dated 10th October, 1983 was served on him asking as to why his two increments should not be withheld.

The petitioner who was surprised to receive the show cause notice, gave his reply stating that the report of Shri Arya, Sub-Divisional Officer was baseless. Actually, it was he (petitioner) who lodged the report against A.B. Dube, U.D.O., but instead of taking any action against A.B. Dube, action is being taken against

him which has no nexus at all and the show cause notice was full of bias and mala fides.

The petitioner also named Shri J.S. Bhaskar, Deputy Director, Harijan and Backward Classes Welfare Department, Mandla who was prejudiced against him because of his high educational, qualifications and the pay scale of the petitioner and that of Shri Bhaskar was the same i.e., Rs. 1000 to Rs. 1920. Shri Bhaskar was on that post of Deputy Director on ad hoc basis, therefore, he was not a superior officer to the Petitioner ", Shri Bhaskar was having biased attitude against him.

The respondent No. 1 instead of passing any order on show cause notice, and after giving due opportunity to him, the petitioner was served with the order dated 8th October, 1984 retiring him compulsorily from service under Rule 42 of the Rules, against which this petition has been filed.

The main contention of the petitioner is that the order dated 8th October, 1984 has not been made in the "public interest" but has been made to suit Dahima, Collector Mandla and Shri J.S. Bhaskar, Deputy Director, Harijan and Backward Classes Welfare Department, Mandla who were prejudiced and biased against him. The order of compulsory retirement is the outcome of revengeful attitude of these two District High Heads.

On the other hand, while filing the return the respondents have supported the order of compulsory retirement and denied all other adverse allegations. It has been denied that the order of compulsory retirement has been passed owing to Collector Shri Dahima or Shri J.S. Bhaskar.

It is further submitted that the order of retirement does not attach any stigma against the petitioner. It is also submitted that the entire record of the petitioner's preceding five years service was placed before the Government and it was found that the service record of the petitioner was not upto the mark because of adverse confidential reports for consecutive three years i.e., from the year 1981 to 1983, which were taken into consideration while passing the order dated 8th October, 1984 (Document No. 1). According to the respondents, in such matters, they are the sole Judge and the question of "public interest" is entirely for the respondents to consider.

Lastly, it has been submitted that the order dated 8th October, 1984 does not suffer from any legal infirmities. Therefore, the same is not liable to be interfered with in writ jurisdiction.

After hearing the rival contentions of the learned Counsel appearing for the parties and perusing the service record of the petitioner which was placed with all fairness before us by Shri R.K. Tiwari, Government Advocate, we have reached the conclusion that this petition must be allowed.

The law relating to compulsory retirement in terms of Rule 42 of the rules, is well settled by numerous cases and decided by the highest Court of the land and by

this Court also.

It is, therefore, settled law that the power to retire a public servant compulsorily in "public interest" in terms of Rule 42 of the rules is absolute, provided the retiring authority reaches to a bona fide opinion in "public interest", to pass such an order.

But, nonetheless, it is also settled law that if the decision of compulsory retirement is based on collateral ground and is otherwise arbitrary which could be demonstrated from the record that order passed is biased and mala fide, the same would be interfered with by this Court by issuing an appropriate writ or order to quash such an order of compulsory retirement under writ jurisdiction.

In J.D. Srivastava Vs. State of M.P. and Others, ; Baldev Raj Chadha Vs. Union of India (UOI) and Others, and Brij Behari Lal Agarwal Vs. Hon"ble High Court of Madhya Pradesh and Others, their Lordships of the Supreme Court dealt with the subject matter of compulsory retirement and in Baldev Raj Chadha's case (supra) observed thus:

To constitutionalise the rule, we must so read it as to free it from the potential for the mischiefs we have just projected. The exercise of power must be bona fide and promote public interest.

In these very cases it has been also emphasized that unlimited exercise of discretion cannot be granted to the authorities under the guise of "public interest" and when action is challenged, its validity depends upon its being supported by "public interest". The authority concerned must disclose the material so that the Court must satisfy that the order is not unreasonable for want of any material whatsoever.

It is also settled that the order of compulsory retirement by the authority be formed objectively which should always be bona fide passed on relevant material i.e., documentary evidence, but not subjectively.

In this context meaning of "public interest" has to be construed in the light of the subject matter in issue. Therefore, in this context "public interest" does not mean any personal, political or other extraneous interest, but solely governed by interest" of public service. Hence, "public interest" should not be used as a tool or weapon of personal or political interest while invoking Rule 42 of the Rules.

Judging from these angles, which are acid tests, we have to examine the service record of the petitioner which was placed before us by Shri Rajendra Tiwari, Government Advocate, to arrive at the decision in its right perspective as to whether the petitioner's retirement, as has been made, justifies in the true meaning of the "public interest" or in the personal interest. Hence, we have to examine the record in this background of the statements made in the petition and replied the same in the return relating to mala fide and biased attitude of Shri Dahima, Collector, Mandla and Shri J.S. Bhaskar, the Deputy Director, to find out any material in this regard.

The fact that the petitioner was given timely promotions and no adverse confidential remarks had ever been communicated to him, demonstrates that the petitioner was discharging his duties efficiently and honestly.

As pointed out by the respondents that for three years, the service record of the petitioner was not satisfactory and his confidential reports were also written adversely, we shall now examine the record.

A perusal of petitioner's confidential record right from 1974 to 1980, shows that his confidential reports for all these years have been written by his superior officers favourably, but for the year 1981 to 1983 i.e., for three years, his confidential reports appear to have been written in one day i.e., on 16th January, 1984 by the Deputy Director, Harijan and Backward Classes Welfare Department against whom allegations here been made in the petition by the petitioner.

We have also seen and examined File No. F. 12/4/83/1/25 relating to compulsory retirement, wherein at page 85, petitioner's name is appearing at S. No. 65. Column 8 thereof describes the classification of confidential report. Hindi alphabet, JJ, is mentioned there in. This (sic) stands for good character roll (sic) finds place for the year 1979 and 1980, but alphabet(sic) which stands for adverse character-roll finds place for the years 1981, 1982 and 1983. We have minutely examined the aforesaid file and found that alphabet (sic) for three successive i.e. 1981, 1982 and 1983, has been fabricated. Initially, the classification was(sic) but later on by over figuring and fabricating this (sic) appears to have been converted into "tf" The fabrication could easily be seen through the naked eyes.

We asked Shri Rajendra Tiwari, the learned Government Advocate to explain as to how on 16th January, 1984 all the confidential reports for the years 1981 to 1983 have been written in one day by Shri J.S. Bhaskar, Deputy Director, Tribal Welfare, Mandla. Shri Tiwari explained that these three years confidential Reports and not in original and for filing the originals, he sought time which was granted to him on 2nd April, 1984 and at his request the case was listed for 8th April, 1984. On this later date Shri Tiwari reported that the original : confidential reports for the years 1981 to 1983 have been lost. Therefore, the State was unable to file the original file.

We have already observed that in File No. 22/4/83/1/25 (Compulsory retirement file) ; at page 85, S. No. 65, where the name of the petitioner finds place in column 8 for the year 1981 to 1983, alphabet (sic) has been farbricated and overfigured as (sic). By this fabrication we have no hesitation to say that the authorities concerned in the garb of "public interest" tried to ruin the career of the petitioner by doing a manipulation in his confidential reports character roll written in one day i.e., on 16th January, 1984, which is apparent from the record.

It is true that the order in question does not spell out the reasons of forced retirement, as it should have been, whereas while passing an order under Rule 42 of the Rules, which is a statutory rule, the authority exercises quasi-judicial

powers and therefore, the authority concerned is expected to pass a speaking order in terms of Rule 42 of the Rules.

Considering the over all assessment of the record of the petitioner's long service, we are of the opinion that the order dated 8th October, 1984 (Document No. 1) does not justify his premature retirement in "public interest". Therefore, in our opinion, in no way, the retention of the petitioner in service would adversely affect the "public interest", whereas his service record demonstrates that the order of forced (premature) retirement has been passed in "personal interest". Therefore, if the petitioner is allowed to retire, the pupils will be deprived of to reap the benefits of petitioner's learning who is a highly qualified teacher and disciplined Principal of a tribal institution.

In our welfare State which is of democratic set up, the Government is not only supposed but actually is the chief custodian of its people who have great faith and confidence on it and therefore, it is expected that the Government shall act and deal with its people in all fairness in all matters, may be a service matter or any other matter relating to administration etc.

From the circumstances appearing on record, it appears that a deliberate attempt was made to spoil the service record of the petitioner and by filing false return and affidavit by the respondents who had, it appears, no respect for the truth at all. This we consider to be a serious matter and we direct that the Government shall look into the matter by making necessary inquiry into it.

While filing the return, the respondent State has suppressed material facts. In future it is expected of the office of the Advocate General that while drafting the return they should look into the relevant documents and after satisfying themselves, should file return so that they may not be faced with this ugly situation, as has arisen in this case.

Before parting with the case we must observe that this order shall be complied with within a month from today and the original records which are placed before us by the Government Advocate Shri Rajendra Tiwari, for our perusal, shall be kept in a sealed cover under the custody of the Registrar and shall be returned to the Government Advocate after the period of appeal if any, or subject to any order that may be passed in appeal, so that in the mean while the possibility of further manipulation or fabrication be ruled out.

Consequently, from the aforesaid discussion, this petition is allowed with costs. The order dated 8th October, 1984 contained in Document No. 1, retiring the petitioner from service is quashed and he shall be deemed to be in service from the date he was made to retire. We further direct that the petitioner shall be entitled to all the benefits of his salary etc thereof. Counsel fee Rs. 200/-, if certified. Security amount Rs. 250/- shall be refunded to the petitioner.