

(2015) 02 MP CK 0001
In the Madhya Pradesh High Court
Case No : W.P. No. 3398/2000

Shiv Kumari Gulhani and Others

APPELLANT

Vs

District and Sessions Judge, Mandla

RESPONDENT

Date of Decision : 02-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2015) 2 MPJR 279

Hon'ble Judges : Rajendra Menon and C.V. Sirpurkar, JJ.

Bench : Division Bench

Advocate : Malti Dadariya, Advocate, for the Appellant; Rakesh Jain, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

C.V. Sirpurkar, J.—This writ petition under Article 226 /227 of the Constitution of India is directed against the order No. 124/III-10-7/1999, dated 10.5.2000 passed by the District and Sessions Judge, Mandla, on administrative side, whereby the petitioner was directed to be compulsorily retired w.e.f. 12.5.2000. The facts giving rise to this writ petition, may briefly be summarized as hereunder:

"The petitioner was appointed as Lower Division Clerk-cum- deposition writer on the establishment of District Judge, Seoni, in the month of June, 1964. He was transferred therefrom to the establishment of District Judge, Mandla in the month of September, 1972. He was promoted as Upper Division Clerk on 20.9.1980 and as Assistant Accountant on 15.9.1992. He completed 57 years of age on 23.12.1999. Thereafter, he was compulsorily retired by the impugned order dated 10.5.2000 (Annexure-P/1) passed by District and Sessions Judge, Mandla under section 56(3) of the Fundamental Rules read with memo of Government of Madhya Pradesh General Administration Department No. C-3-24/84/3/1, dated 20.7.1984 read with memo of the High Court of Madhya Pradesh, Jabalpur No. B/5666/III/18-117/84 dated 27.6.1985. He was directed

to be paid salary and allowances for the period of notice of three months, in lieu of the notice."

2. Aforesaid order had been challenged mainly on the grounds that the petitioner was a sincere and hard working employee. There was not even a single complaint against his work or conduct during his entire tenure. His career record was excellent and unblemished. No adverse entry or remark entered in his service record was ever communicated to him; therefore, it shall be deemed that there were no adverse entries or remarks in his annual character role. No departmental inquiry was ever instituted against him and no penalty, minor or major, was ever imposed upon him. The impugned order dated 10.5.2000 was laconic and indicated no reason as to why continuation of the petitioner in the service, was against public interest. It has been pleaded in the rejoinder that the petitioner had already been reverted from the post of Accountant to that of Assistant Accountant on the basis of entries in ACR. Thus on the same record, he could not have been compulsorily retired as this tantamount to double jeopardy. It has further been argued that three months salary and allowances in lieu of notice period have not been tendered to him. On aforesaid grounds, it has been submitted that the impugned order was arbitrary, illegal and void and it has been prayed that the order be quashed.

3. Opposing the writ petition, it has been contented on behalf of the respondent that after being promoted as Assistant Accountant in the year 1992 the petitioner was also promoted as Accountant. However, since his work as Accountant was not satisfactory, he was reverted back to the post of Assistant Accountant by order No. 8/II-12-1/1996 dated 10.1.1996 passed by District and Sessions Judge, Mandla on administrative side. The work and conduct of the petitioner, was not satisfactory as he was careless and negligent in discharge of his duties. The entries in annual character role of the petitioner from the year 1995 to the year 2000, were extremely adverse and reflected poor performance of the petitioner. On various occasions, his explanations were called and warnings were issued; however, his performance did not improve.

4. It has further been submitted that in aforesaid circumstances, the departmental screening committee examined the case of the petitioner under section 56 of the Fundamental Rules and recommended compulsory retirement in public interest as he had already attained the age of 55 years. It has further been submitted on behalf of the respondent that for the purpose of compulsorily retiring a Government servant, his entire service record is required to be assessed; as such, there is no question of double-jeopardy; therefore, it has been prayed that the writ petition be dismissed.

5. Having carefully considered the rival contentions, this Court is of the view that the challenge to the impugned order must fail for the reasons hereinafter stated:

"In the case of Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, , the Supreme Court, after considering the entire gamut

of case law available on the point, formulated following principles in respect of compulsory retirement of Government employee:--

32. 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 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 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.

6. It is clear from the aforesaid principles that all that is required for compulsorily retiring a Government servant, is the subjective satisfaction of the Government that such compulsory retirement is in public interest. Principle No. 3 reproduced hereinabove, delineates limits of the scope of judicial review of such an order. In the case of challenge to the order of compulsory retirement, the Court is not competent to examine the matter as an appellate Court; however, the Court may interfere if it is satisfied that the order is mala fide or there is no evidence to support the order or it is perverse because no prudent person would form requisite opinion on the basis of material available against the employee.

7. In the backdrop of aforesaid legal position, when we examine the case of the petitioner, we find that the order was passed on the recommendation of Departmental Scrutiny Committee, which was duly constituted by the office order

No. Q/IIMO-4/99 dated 25.11.1999, comprising one Additional Sessions Judge and one Judicial Magistrate of First Class (R/15). The recommendation of the Committee was made pursuant to the report dated 5.1.2000 of the Clerk of Court. The scrutiny committee took into account the fact that the petitioner persistently failed to properly maintain the registers, required to be maintained by him and failed to prepare various statements within the prescribed time limits. He was also grossly negligent in submitting telephone and other bills in time, necessitating payment of surcharge. The fact that the surcharge was ultimately recovered from the petitioner, is besides the point. The Committee also considered the ACR entries for the years from 1995 to 1999 and concluded that the Committee was of the opinion that the petitioner was extremely careless and negligent in discharge of his duties and his conduct amounted to dereliction of duty. The quality of the work of the petitioner was poor and there was no improvement in his performance, even after repeated directions and warnings. In the circumstances, the opined that petitioner was a financial liability on the establishment and it was in the public interest to retire him compulsorily, as he had already attained the age of 57 years. The recommendation of the Committee was accepted by the District and Sessions Judge, who was a competent authority to order compulsory retirement of a non-gazetted employee. Consequently, the impugned order for compulsory retirement of the petitioner was passed.

8. It may be observed that the recommendations of the Committee were passed on the reports submitted by the Clerk of Court dated 15.12.1999 (Annexure-R/15). The conclusions of the Committee are supported by the entries made in the annual confidential report of the petitioner for the years from 1995 to 1999 (Annexure-R/2 to R/7). In the year 1994-1995 (R/2) it has been recorded that after getting promotion, he had not performed well. In March, 1996 (Annexure-R/3), it has been recorded that he is a poor worker and he had been reverted from the post of Accountant. He was advised to improve his work. He was also graded as "E" [poor]. Though, in the year 1996-1997 it was observed that his work is satisfactory; however, in the following year, i.e. 1997-1998, it was recorded (Annexure-R/5) that he is negligent in working, he is not punctual and there is a great scope of improvement. It was also observed that he should improve his behaviour with his colleagues.

9. Learned counsel for the petitioner was at pains to point out during the arguments that in Annexure-R/5, it has been recorded that the petitioner can be considered for clearing efficiency bar or promotion; however, this lone entry cannot be read in isolation and has to be read along with myriad damning entries. In the year 1999 he was again graded as a poor worker and it was recorded that he lacks capacity and zeal to work. He was also found to be not alive to the responsibility of position he was occupying and had to be reminded many a time before he made any compliance. It was specifically observed that he was unfit for promotion. In the annual character role recorded on 10.4.2000 (R/1) he was again graded as poor and it was observed that he does not prepare bills, periodic statements etc. within time. It was also observed that all the files

related to his work are maintained in a totally haphazard manner and a explicit remark to the effect that it would be in the interest of the Government to retire him, was made.

10. In the order of reversion dated 10th of January, 1996 (Annexure-R/1) also, aforesaid deficiencies in the work and conduct of the petitioner are reflected.

11. Thus, the character role entries and observations made in the order of reversion, are based upon office record from AnnexureR/8 to Annexure-R/I 2. Hence, it may be seen that there was ample material on record for the District and Sessions Judge, Mandla to form a subjective satisfaction that it is in public interest to compulsorily retire the petitioner at the premature age of 57.

12. The entries made in the annual confidential role of the petitioner have been challenged mainly on the ground that they were never communicated to the petitioner. However, it has been held in the case of Baikuntha Nath Das (supra) that an order of compulsory retirement is not liable to be quashed by a Court merely on showing that while passing it, un-communicated adverse remarks were also taken into consideration. It was further observed that this circumstance, by itself, cannot be a basis for interference by the Court.

13. Now we shall advert to the second argument advanced on behalf of the petitioner that the order of compulsory retirement has resulted in double-jeopardy. It may noted in this regard that for the purpose of arriving at subjective satisfaction that continuation of the petitioner in service would not be in public interest, entire service record of the petitioner, particularly the entries in the recent years are required to be considered. In this view of the matter, the fact that the petitioner was earlier reverted from the post of Accountant to that of Assistant Accountant would not come in the way of passing an order for compulsory retirement. As such, this argument also, does not have any substance.

14. No other ground has been raised during the arguments.

15. On the basis of aforesaid discussions, this Court is of the view that the impugned order compulsorily retiring the petitioner, was passed by the competent authority in a bonafide manner, it was based on sufficient material available on record and by no stretch of imagination could it be deemed to be arbitrary or perverse. Consequently, this writ petition is dismissed.