
(2014) 10 BOM CK 0101
In the Bombay High Court
Case No : Writ Petition No. 302 of 2013

Shraddha Vinod Deo

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 08-10-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 311, 32

Citation : (2014) 6 ABR 754 : (2015) 1 ALLMR 63 : (2015) 2 BomCR 620 :
(2015) 1 MhLj 62

Hon'ble Judges : N.H. Patil, J;B.P. Colabawalla, J

Bench : Division Bench

Advocate : Amol P . Mhatre, Advocate for the Appellant; P.P. Kakade, AGP and
P.S. Dani, Advocate for the Respondent

Judgement

N.H. Patil, J.

1. Rule. Rule made returnable forthwith.

Heard by consent of parties.

2. The petitioner challenges the order of her compulsory retirement passed by the respondents. The contention of the petitioner is that by an order dated 1st September 1990, she was appointed as Judicial Magistrate First Class and posted at Jalgaon. She served at Jalgaon from 1st September 1990 to 3rd March 1991. Thereafter she worked at various places like Wardha, Thane, Karjat, Pune. From 2000 to 2004 the petitioner was posted as Judge, Industrial Court, Mumbai. In the year 2007 -08, the petitioner served as Member, Motor Accidents Claims Tribunal, Mumbai. In the year 2011, the petitioner was posted as Member, Family Court, Bandra and thereafter as Additional Judge, Small Causes Court, Mumbai. The first assured progression scale was granted to the petitioner in the year 2003 and the second was granted on 14th December 2011. It is contended that Annual Confidential Reports ("ACRs" for short) for the year 2002 to 2004 were rated as "Good" whereas ACR of 2006 was rated as "Very Good". The integrity of the

petitioner was found to be good on the basis of ACRs. The petitioner has placed on record photostat copies of ACRs of the relevant years. The petitioner has also worked as Paper Setter for IPS and MPSC examinations. She worked as Moderator and Second Moderator for J.M.F.C. examinations. It is the petitioner's contention that in spite of having such a good record of service the petitioner was compulsorily retired. The concerned remarks which were taken into consideration were not communicated to the petitioner. The impugned order, according to the petitioner, is arbitrary in nature and liable to be set aside.

3. Learned counsel for the petitioner submitted that neither a single adverse remark was communicated to the petitioner nor any warning was given to her. The petitioner did not face a single departmental enquiry through out her career. She secured excellent remark like "Noteworthy". The petitioner discharged her duty efficiently in the place like Malegaon and tried sensitive cases. Learned counsel referred to Maharashtra Civil Services Rules, 2008 ("MCSR" for short). Rule 5 thereof refers to the assured career progression scale. It is submitted that benefit under the Assured Career Progression Scale Scheme is given after five years of service considering integrity and overall function of the judicial officer. The petitioner, according to learned counsel, secured positive remarks and in spite of the same the petitioner was compulsorily retired. Learned counsel submits that the Review Committee of the High Court had taken into consideration ACRs for the years 1994 -95; 1995 -96 and 2002 to 2006. It is submitted that the petitioner was not served with any adverse remarks in her service imparted during these six years. Neither any enquiry was conducted against the petitioner nor any show -cause -notice was issued to her regarding allegations on account of integrity; behavior; and overall conduct of the petitioner. Learned counsel further submitted that latest ACRs were in favour of the petitioner. Therefore, according to learned counsel, the confidential reports, which were taken into consideration and not communicated to the petitioner could not form basis for taking adverse action against the petitioner.

4. Learned counsel appearing for respondent No. 2 submitted that the petitioner cannot claim, as a of right, continuation of service beyond the age of 55 years. The Administration considers overall profile of the candidate before taking decision. The Review Committee comprising of Hon"ble the Chief Justice and senior most Judges of the High Court had verified the record and reports and taken an appropriate decision in the public interest and larger interest of the institution. According to learned counsel, judicial scrutiny in such matters is of restricted nature. The Review Committee is entitled to look into tangible and intangible material. The petitioner would be getting all the service benefits and, therefore, no prejudice on that account is caused to the petitioner. The decision of the Review Committee has been confirmed by His Excellency the Governor of Maharashtra. On merits it is submitted that even non -communication of confidential reports also can be considered while Review Committee would assess a particular case. Learned counsel submitted that considering the ratio laid down by the Apex Court and in the facts of the case, the decision taken by the Review

Committee does not call for any interference. Learned counsel placed reliance on the affidavit -in -reply filed by respondent No. 2 in support of his submission.

5. We have perused the record placed before us. We have also perused the relevant provisions of MCSR and the Maharashtra Judicial Service Rules, 2008 ("Judicial Service Rules" for short) and also the case -laws cited supra.

6. Rule 19 of the Judicial Service Rules reads as under:

"19. Retirement in public interest. - Notwithstanding anything contained in these Rules the Governor shall, on the recommendation of the High Court, if he is of the opinion that it is in the Public Interest so to as, have the absolute right to retire any member of the service when he attains the age of 50 years, 55 years or 58 years by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice."

7. The High Court is entitled to retire a judicial member from service in public interest after considering individual case when he/she attains 50 years, 55 years or 58 years of age. Perusal of the decision of the Review Committee shows that ACRs of the year 1994 - 95; 1995 -96; and 2002 to 2006 were taken into consideration by the committee. The committee had considered reputation of the officer; her conduct; integrity; and behavior. The committee found that actionable material was reported against the petitioner and, therefore, the committee decided to retire the petitioner prematurely from judicial service in public interest in view of provisions of rule 19 of the Judicial Service Rules read with rule 10(4) of MCSR.

8. Respondent No. 2 in para -7 of its affidavit -in -reply has contended as under:

"07. The contents of paragraph 6 (which is numbered as 5 in the Petition) of the said Petition, in so far as the present Petitioner having been posted at Malegaon for the period of June 2008 to June 2011 is concerned, the same is correct. It is also matter of record that the disposal of the cases by the Petitioner was found to be "Noteworthy", but that does not mean that the conduct of the Petitioner at that point of time was above board. In fact, there were several complaints received against the Petitioner during her tenure at Malegaon and her entire conduct as judicial officer in that tenure has been found to be controversial. The said complaints were gone into by the concerned Committee and in fact, even Disciplinary Committee was constituted for holding inquiry into such charges. The reports were also called from the Principal District Judge Nashik, in respect of the said complaints, which included complaints regarding corruption and not doing duty in appropriate manner as also not having cordial relations with the bar. At that point of time, as the Petitioner was already above the age of 50 years, it was also decided to place the case of the present Petitioner before the Review Committee as per provisions of Rule 19 of the said Rules. Thus, merely because disposal of cases by the Petitioner was noted as "Noteworthy" does not absolve the Petitioner of other responsibilities as judicial officer."

In para -13 of the reply, respondent No. 2 has contended that though it was true that the petitioner was granted second assured career progression scale in the year 2011, it was not a reflection of overall service of the petitioner which was subject matter of review under the provisions of rule 19 of MCSR. In para -18, the deponent has contended that the petitioner has completed age of 56 years and 11 months and, therefore, was amenable for conducting review as contemplated in rule 19 of MCSR.

9. The learned counsel for the petitioner has relied upon following judgments:

In Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, , the Supreme Court has observed as under:

"34. 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 misbehavior.

(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. "

In State of Gujarat Vs. Umedbhai M. Patel, the Apex Court has held as under:

"11. The law relating to compulsory retirement has now crystallized into definite principles, which could be broadly summarised thus:

(i) Whenever the services of a public servant are no longer useful to the general

administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead -wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure."

In *Ishwar Chand Jain Vs. High Court of Punjab and Haryana and Another*, , Apex Court observed as under:

"14. Under the Constitution the High Court has control over the subordinate judiciary. While exercising that control it is under a constitutional obligation to guide and protect judicial officers. An honest strict judicial officer is likely to have adversaries in the mofussil courts. If complaints are entertained on trifling matters relating to judicial orders which may have been upheld by the High Court on the judicial side no judicial officer would feel protected and it would be difficult for him to discharge his duties in an honest and independent manner. An independent and honest judiciary is a sine qua non for Rule of law. If judicial officers are under constant threat of complaint and enquiry on trifling matters and if High Court encourages anonymous complaints to hold the field the subordinate judiciary will not be able to administer justice in an independent and honest manner. It is therefore imperative that the High Court should also take steps to protect its honest officers by ignoring ill -conceived or motivated complaints made by the unscrupulous lawyers and litigants. Having regard to facts and circumstances of the instant case we have no doubt in our mind that the resolution passed by the Bar Association against the appellant was wholly unjustified and the complaints made by Sh. Mehalawat and others were motivated which did not deserve any credit. Even the vigilance judge after holding enquiry did not record any finding that the appellant was guilty of any corrupt motive or that he had not acted judicially. All that was said against him was that he had acted improperly in granting adjournments."

In *Sukhdev Singh Vs. Union of India (UOI) and Others*, , the Apex Court

observed as under:

"8. In our opinion, the view taken in Dev Dutt Vs. Union of India (UOI) and Others, , that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same, Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR - poor, fair, average, good or very good - must be communicated to him/her within a reasonable period."

10. The learned counsel appearing for respondent No. 2 has relied upon following judgments:

R.C. Chandel Vs. High Court of M.P. and Another, , the Supreme Court observed as under:

"27. That the Appellant's challenge to 1993 and 1994 entries was unsuccessful right upto this Court is not in dispute. However, the learned Senior Counsel for the appellant has placed heavy reliance upon the observations made by the Division Bench in its judgment and order dated 25.02.1997, particularly, paragraph 69 thereof wherein the Division Bench held that adverse remarks on the reputation in the relevant years should not haunt him all through his judicial career and hamper his prospects for all times. We are afraid the above observations by the Division Bench while upholding the remarks in no manner restricted the power of the Full Court in taking into consideration these adverse remarks in its exercise to find out whether or not the Appellant should be retained in service after he has attained the required length of service. The consideration of the Appellant's case for grant of selection grade and super time scale stood on different footing. The entire service record and overall profile of a judicial officer guide the High Court in reaching its satisfaction about the continuance or otherwise after the judicial officer has attained the required length of service or age. When the entire service record of a judicial officer is under consideration, obviously the High Court is alive to such judicial officer's having got promotion(s), increments, etc. during the service.

.. .. .

29. Judicial service is not an ordinary government service and the Judges are not employees as such. Judges hold the public office; their function is one of the essential functions of the State. In discharge of their functions and duties, the Judges represent the State. The office that a Judge holds is an office of public

trust. A Judge must be a person of impeccable integrity and unimpeachable independence. He must be honest to the core with high moral values. When a litigant enters the courtroom, he must feel secured that the Judge before whom his matter has come, would deliver justice impartially and uninfluenced by any consideration. The standard of conduct expected of a Judge is much higher than an ordinary man. This is no excuse that since the standards in the society have fallen, the Judges who are drawn from the society cannot be expected to have high standards and ethical firmness required of a Judge. A Judge, like Caesar's wife, must be above suspicion. The credibility of the judicial system is dependent upon the Judges who man it. For a democracy to thrive and rule of law to survive, justice system and the judicial process have to be strong and every Judge must discharge his judicial functions with integrity, impartiality and intellectual honesty.

In *Pyare Mohan Lal Vs. State of Jharkhand and Others*, , the Apex Court observed as under:

"18. Thus, the law on the point can be summarised to the effect that an order of compulsory retirement is not a punishment and it does not imply stigma unless such order is passed to impose a punishment for a proved misconduct, as prescribed in the statutory rules. (See *Surender Kumar Vs. Union of India (UOI) and Others*, . The Authority must consider and examine the over-all effect of the entries of the officer concerned and not an isolated entry, as it may well be in some cases that in spite of satisfactory performance, the authority may desire to compulsorily retire an employee in public interest, as in the opinion of the said Authority, the post has to be manned by a more efficient and dynamic person and if there is sufficient material on record to show that the employee "rendered himself a liability to the institution", there is no occasion for the Court to interfere in the exercise of its limited power of judicial review.

.. .. .

29. The law requires the Authority to consider the "entire service record" of the employee while assessing whether he can be given compulsory retirement irrespective of the fact that the adverse entries had not been communicated to him and the officer had been promoted earlier in spite of those adverse entries. More so, a single adverse entry regarding the integrity of an officer even in remote past is sufficient to award compulsory retirement. The case of a Judicial Officer is required to be examined, treating him to be differently from other wings of the society, as he is serving the State in a different capacity. The case of a Judicial Officer is considered by a Committee of Judges of the High Court duly constituted by Hon^{ble} the Chief Justice and then the report of the Committee is placed before the Full Court. A decision is taken by the Full Court after due deliberation on the matter. Therefore, there is hardly any chance to make the allegations of non-application of mind or mala fides."

In *Rajendra Singh Verma (Dead) through L.Rs Vs. Lt. Governor of NCT of Delhi*

and Another, , the Apex Court observed as under:

"122. Normally, the adverse entry reflecting on the integrity would be based on formulations of impressions which would be result of multiple factors simultaneously playing in the mind. Though the perceptions may differ in the very nature of things there is a difficulty nearing an impossibility in subjecting the entries in the confidential rolls to judicial review. Sometimes, if the general reputation of an employee is not good though there may not be any tangible material against him, he may be compulsorily retired in public interest. The duty conferred on the appropriate authority to consider the question of continuance of a judicial officer beyond a particular age is an absolute one. If that authority bona fide forms an opinion that the integrity of a particular officer is doubtful, the correctness of that opinion cannot be challenged before courts. When such a constitutional function is exercised on the administrative side of the High Court, any judicial review thereon should be made only with great care and circumspection and it must be confined strictly to the parameters set by this Court in several reported decisions. When the appropriate authority forms bona fide opinion that compulsory retirement of a judicial officer is in public interest, the writ Court under Article 226 or this Court under Article 32 would not interfere with the order.

123. Further this Court in M.S. Bindra's case (Supra) has used the phrase "preponderance of probability" to be applied before recording adverse entry regarding integrity of a judicial officer. There is no manner of doubt that the authority which is entrusted with a duty of writing ACR does not have right to tarnish the reputation of a judicial officer without any basis and without any "material" on record, but at the same time other equally important interest is also to be safeguarded i.e. ensuring that the corruption does not creep in judicial services and all possible attempts must be made to remove such a virus so that it should not spread and become infectious. When even verbal repeated complaints are received against a judicial officer or on enquiries, discreet or otherwise, the general impression created in the minds of those making inquiries or the Full Court is that concerned judicial officer does not carry good reputation, such discreet inquiry and or verbal repeated complaints would constitute material on the basis of which ACR indicating that the integrity of the officer is doubtful can be recorded. While undertaking judicial review, the Court in an appropriate case may still quash the decision of the Full Court on administrative side if it is found that there is no basis or material on which the ACR of the judicial officer was recorded, but while undertaking this exercise of judicial review and trying to find out whether there is any material on record or not, it is the duty of the Court to keep in mind the nature of function being discharged by the judicial officer, the delicate nature of the exercise to be performed by the High Court on administrative side while recording the ACR and the mechanism/system adopted in recording such ACR."

11. The view of the Apex Court is that judicial service is not an ordinary

government service and the Judges are not employees as such. The office that the Judge holds is an office of public trust. The Review Committee while exercising powers conferred under the provisions of law would take into consideration all these aspects which are integral part of judicial service. The Review Committee had, accordingly, taken into consideration the service record and other available record of the petitioner. After consideration of the service record and the material placed before the Review Committee decision was taken to retire the petitioner prematurely. This decision was taken in public interest. Interference by this Court in exercise of writ jurisdiction in such matters is of a limited extent and is to be made in exceptionally rare cases.

12. In the facts of the case and considering the record placed before us, we do not find that the impugned order of compulsory retirement of the petitioner is vitiated, in any way, on the grounds raised by the petitioner. We do not find that the petitioner has made out any case for re -consideration of the decision, taken by the Review Committee, by this Court in exercise of its writ jurisdiction.

13. Taking into consideration the facts and material placed before us, the view adopted by the Apex Court, and the principles governing Review Committee's powers to retire judicial officers in public interest, we are of the opinion that the Review Committee reached appropriate decision in accordance with law and in public interest. In the facts of the case, we are of the view that the petitioner has failed to make out any case for causing interference in the view adopted by the Review Committee comprising of Hon''ble the Chief Justice and senior most Judges of the High Court.

14. The petition is dismissed. Rule stands discharged. No order as to costs.