

(2012) 08 MP CK 0184

In the Madhya Pradesh High Court

Case No : Writ Petition (Service) No. 10570 OF 2005

Shyam Lal Nagar

APPELLANT

Vs

High Court of M.P. and Another

RESPONDENT

Date of Decision : 01-08-2012

Acts Referred:

Constitution of India, 1950 — Article 235

Citation : (2012) 08 MP CK 0184

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : N.S. Ruprah, for the Appellant; Rakesh Jain, learned counsel, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Shri Justice Rajendra Menon

1. Challenging the order Annexure P-1 dated 3/08/04 passed by the Distt. Judge, Chhatarpur compulsory retiring the petitioner on public interest and the order Annexure P-1 A dated 29/07/05 passed by the High Court rejecting the appeal filed, petitioner has filed this writ petition. The main ground of challenge in the writ petition is that a charge-sheet was issued to the petitioner for certain acts of misconduct. A departmental enquiry was pending into the charge-sheet but without concluding the departmental enquiry, the petitioner was compulsory retired in public interest under Rule 42 of the Madhya Pradesh Civil Services Pension Rules which is not permissible in view of the law laid down by the Supreme Court in the case of High Court of Punjab and Haryana Through R.G. Vs. Ishwar Chand Jain and Another,

2. Facts in brief which are relevant for deciding the present writ petition indicates that petitioner was appointed as a Process Writer on 26/02/1976 vide Annexure P-2. On 4/01/1990, he was promoted as a "Lower Division Clerk" vide Annexure P-3. It is seen from the records that petitioner was subjected to various

departmental enquiries, punishments and ultimately when the petitioner was working, in the year 1999, it is alleged that there was some dispute between the petitioner and Shri Dinesh Tiwari who was also a clerk in the same establishment. Accordingly, a departmental enquiry was conducted and vide order dated 11/03/98, petitioner was demoted on the post of "Process Writer". After this demotion, petitioner was again charge-sheeted on 28/11/03 vide Annexure P-5 and in this charge-sheet Annexure P-5, certain allegations were made with regard to petitioner not conducting his duties properly with regard to attachment of Talwana form in M. J. C. No. 70/2000.

3. It is the case of the petitioner that enquiry was pending into this charge-sheet (Annexure P-5) and he has demanded certain documents and when the enquiry into the charge-sheet was pending, the impugned action is taken.

4. Taking me through the principles laid down by the Supreme Court in the case of Ishwar Chand Jain (supra) and contending that petitioner was punished and the act of the respondents in retiring the petitioner by using the short-cut methods to by-pass a regular departmental enquiry is illegal, interference into the matter is sought for. The second ground canvassed is that under Rule 42 of the Pension Rules three months notice should be given and in this case only a month's notice is granted and, therefore, the action is vitiated with malafides.

5. Taking me through the return filed by the respondents and the rejoinder, it is argued that, respondents have referred to various confidential reports as contained in Annexures R-7-A and R-7-B, the action taken for compulsory retiring the petitioner without communication of these adverse C. R. is illegal. Accordingly, Shri N. S. Ruprah taking me through the material available on record and the following judgments argued that the act of the respondents is unjustified. The judgments relied upon by Shri Ruprah other than the case of Shri Ishwar Chand (supra) are Pyare Mohan Lal Vs. State of Jharkhand and Others, , Rajendra Singh Verma (Dead) through L.Rs Vs. Lt. Governor of NCT of Delhi and Another,

6. Shri Rakesh Jain, learned counsel for the respondents refutes the aforesaid and by placing reliance on certain observations made in para 24 of the judgment in the case of Ishwar Chand Jain (supra) argues that even if a charge-sheet was issued to the petitioner and without concluding the enquiry if the action is taken under Rule 42, after considering the overall service record of the petitioner, the action is proper and, therefore, the contention of the petitioner that it was a device to somehow by-pass the normal enquiry is not correct, Shri Rakesh Jain refuted the finding recorded by the Screening Committee which evaluated the case and submitted that in the establishment in question, the cases of all employees who had completed 50 years of age and 20 years of service were placed before the Screening Committee. Apart from the case of the petitioner, cases of more than 20 other employees were taken up by the committee and as per the policy and circular of the State Govt. on evaluation of the entire service record, it is found that petitioner is a "dead wood", therefore the impugned

action is taken. Accordingly, looking to the service profile of the petitioner and the report of the Screening Committee available at page 11 of the return, learned counsel for the respondents argues that in this case, the action taken is proper and the same does not call for any interference. In support of the aforesaid contention, he places reliance on a judgment of this Court in the case of Gafoor Mohammad Vs. State of M.P. and Others,

7. I have heard learned counsel for the parties and perused the record.

8. Having considered the rival contentions, it is clear that the first question warranting consideration in this writ petition is as to whether the act of the respondents in compulsory retiring the petitioner, treating him to be a dead wood under Rule 42 of the M. P. Civil Services Pension Rules was a device to somehow by-pass the normal departmental enquiry proceeding and, therefore, is illegal and what would be the effect of the law laid down in the case of Ishwar Chand Jain (supra). In the case of Ishwar Chand Jain (supra), a judicial officer namely Shri Ishwar Chand Jain was proceeded against departmentally. A charge-sheet was issued to him and during the pendency of the charge-sheet, the High Court exercising its power under Article 235 of the Constitution compulsory retired the person concerned. Similar arguments were advanced and it was found by the Supreme Court in that case that the order for compulsory retirement was issued without there being enough material to show that the employee had a very bad service record or that he was a "dead wood" and by holding that compulsory retirement was a result of the disciplinary proceedings, it was punitive in nature, interference is made. After following the law laid down in the case of Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, the principle is laid down in para 27 in the following manner in the case of Ishwar Chand Jain (supra) :-

The law on the subjective satisfaction has been dealt with elaborately in Barium Chemicals Ltd. v. Company Lay Board. At page 323, Shelat, J., after referring to several decisions dealing with action taken on subjective satisfaction, observed thus: (AIR p. 323, para 61)

Bearing in mind these principles the provisions of Section 237(b) may now be examined. The clause empowers the Central Government and by reason of delegation of its powers the Board to appoint inspectors to investigate the affairs of the company, if "in the opinion of the Central Government" (now the Board) there are circumstances "suggesting" what is stated in the three sub-clauses. The power is executive and the opinion requisite before an order can be made is of the Central Government or the Board as the case may be and not of a court. Therefore, the court cannot substitute its own opinion for the opinion of the authority. But the question is, whether the entire action under the section is subjective

9. If the aforesaid principle of law is taken note of, it would be clear that as a matter of law or as a matter of thumb rule, it cannot be said, always that

whenever the charge-sheet is issued, the employee cannot be compulsorily retired under the relevant Pension Rule or Fundamental Rule without conducting the Departmental enquiry, if fact even in such cases the law permits for scrutiny as per the fact of each case and, thereafter, a decision is to be taken.

10. That being so, in this case also, the entire facts and circumstances will have to be scrutinized and, thereafter, a decision taken. In the case of Ishwar Chand (supra), the employee was found not to be a dead wood and his service career was not so bad warranting compulsory retirement.

11. In the present case, the entire situation is different. The records of the petitioner shows that during his service period of 23 years, his service and performance were not good. Vide order dated 7/06/1989 on the basis of the departmental enquiry conducted, he was punished with a warning recorded in his service book. Thereafter, in the year 1996, a second departmental enquiry was conducted and vide order dated 20th August, 1996, he was demoted to a lower post. A third departmental enquiry was conducted against him in the year 2004 and he was compulsorily retired on the basis of this departmental enquiry vide order Annexure R-4 dated 12/01/04 but on an appeal, the order was modified and he was taken back in service. Thereafter, a fourth departmental enquiry was held against him in which also a finding of guilt was recorded but on a undertaking given by him, he was warned and then let off. The fifth departmental enquiry was pending against him which could not be concluded because of the compulsory retirement ordered under Rule 42 of the Pension rule. It is therefore seen that in this case the petitioner has proceeded against departmentally on more than 5 occasions. Apart from the aforesaid, the return filed by the respondents indicates that further his entire 27 years service record was summoned by the Screening Committee and the report of the Screening Committee Annexure R-1 indicates that his service had been categorized as bad ("Ghatiya"). Assessment of the Screening Committee has been done by awarding marks for each entry in the service record and as per the Bench mark fixed, and thereafter, petitioner's performance has been categorized as poor and he was recommended for compulsory retirement. Petitioner had joined the service in the year 1976 and right from the year 1978-79 adverse entries were entered in his service record. He was found to be negligent in discharging of his duties particularly in the matter of issuance of the process fee and notice to the parties in the year 1978-79. In the year 1982, adverse entries were made with regard to improvement in character and in working capacity and in the year 1994-95, adverse remarks were recorded to his service book for misbehaving with the office staff and learned Presiding Judge. He also remained absent without due permission from the duty and also even misbehaved with the parties. There are adverse entries in the year 1997, 1999, 2001 and 2002 and again in 2004. Thereafter, it is a case where the entire service record of the petitioner is scrutinized and finding him to be a dead wood, the action is taken. In the report Annexure R-3, name of the petitioner finds place at serial no. 4 and it indicates that during his 25 years of service, he has received various adverse remarks and

at the time when the screening committee met, two departmental enquiries were pending against him. After evaluating his case, the screening committee has graded him as a poor worker and classifying him to be an employee of "poor standard", the impugned action is taken. The manner in which the petitioner is proceeded against if viewed, in the backdrop of law laid down in the case Ishwar Chand Jain (supra), it is evident that the case of the petitioner was placed before the appropriate Screening Committee along with that of 24 other employees who had completed 50 years of age or 28 years of service and after evaluating the entire service record, the impugned action is taken, whereas in the case of Ishwar Chand Jain (supra) the entire service record was not scrutinized and it was not found to be so bad, on the contrary the employee in that case had a good record but it was found to be "very poor", therefore the impugned action is taken.

12. That being so, it cannot be said that the action taken is after by-passing the rules and regulations and without conducting a departmental enquiry. On the contrary, pending finalization of the departmental enquiry which was the fourth in the series of 5 which was held, the service record of the petitioner was evaluated and it was found to be "very poor", therefore, the impugned action is taken.

13. Keeping in view the observations made in para 24 in the case of Ishwar Chand Jain (supra), the first ground canvassed by Shri Ruprah cannot be accepted. It was a case where the employee was punished without conducting the enquiry and without scanning his entire service record, he is treated as dead wood and compulsorily retired which was not permissible under law and, therefore, the said case will not apply to the present petition.

14. As far as the second ground with regard to non-grant of three months salary or notice of three months is concerned, during the pendency of the appeal itself, this provision has been complied and, therefore, on this ground interference into the matter is not called for.

15. As far as grant of opportunity of communicating adverse C. R. is concerned, even though Shri Ruprah tried to emphasize that the past conduct of the petitioner and the adverse entry be quashed after due subsequent act of the respondents in not taking any action but considering the law laid down by the Supreme Court in the case of Pyare Mohan Lal Vs. State of Jharkhand and Others, and Rajendra Singh Verma (Dead) through L.Rs Vs. Lt. Governor of NCT of Delhi and Another, am of the considered view that merely because adverse entry is not communicated to the petitioner that will not vitiate the entire action.

16. In the case of Rajendra Singh Verma (supra), the Supreme Court has laid down the following principle :-

However, when the order of compulsory retirement is passed, the authority concerned has to take into consideration the whole service record of the officer concerned which would include non-communicated adverse remarks also. Thus it

is settled by several reported decisions of this Court that uncommunicated adverse remarks can be taken into consideration while deciding the question whether an official should be made to retire compulsorily or not.

Accordingly, in the facts and circumstances of the case as the action taken against the petitioner is based on due evaluation of the entire service record and there is no illegality in the matter warranting interference, the petition is dismissed.