
(1996) 08 MP CK 0065
In the Madhya Pradesh High Court
Case No : M.P. 1476 of 1986 (J)

Smt. Subhadra Bai and Others	Vs	APPELLANT
District and Sessions Judge Durg and Others		RESPONDENT

Date of Decision : 16-08-1996

Acts Referred:

Madhya Pradesh Civil Services (Pension) Rules, 1976 — Rule 42(b)

Citation : (1998) 1 MPJR 421

Hon'ble Judges : C.K. Prasad, J

Bench : Single Bench

Advocate : N.S. Agrawal, for the Appellant; V.S. Shroli, Advocate for respondent No. 2 and Mr. P.D. Gupta, Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Prasad, J.

This writ application was filed by the petitioner Vimal Kumar Shri vastava for quashing the order dated 7.12.1985 passed by the District & Sessions Judge, Durg whereby in exercise of the powers conferred under Rule 42 (b) of the M.P. Civil Services (Pension) Rules, 1976 the petitioner was directed to be compulsorily retired on completion of 25 years of service. During the pendency of the writ petition, the petitioner died and this writ petition is being pursued by his legal heirs.

Short facts giving rise to the petition are that during the relevant time the petitioner was working as an officiating Uppar Division Clerk in the office of the District & Sessions Judge, Durg. A Departmental Enquiry was initiated against the petitioner vide order dated 17.8.1964, charge sheet was served on the employee and he submitted his reply to the charges on 29.1.1984. In the reply the petitioner denied the charges levelled against him. After submission of the reply an Enquiry Officer was appointed and while the aforesaid enquiry was pending, by the impugned order dated 17.8.1984, the petitioner was directed to

be compulsorily retired. According to the petitioner he was communicated of the adverse remark in the confidential report for the year 1982-83 to 1983-84 against which he had filed representation and it is his stand that his representation was pending, still the order of compulsory retirement was passed. It is the stand of the petitioner that in the confidential report of the years 1979-80 to 1983-84 his performance was held to be poor except for the year 1981-82 for which his performance was recorded as category "C" i.e. average. According to the petitioner the entry of poor remarks in his confidential reports are the subject matter of enquiry which was initiated against him.

According to the petitioner the order of compulsory retirement during the pendency of a departmental enquiry, is not permissible. His further stand is that although the order impugned indicates that he is being compulsorily retired in public interest, but the details thereof have not been given in the order, which in the submission of the learned counsel for the petitioner, vitiates the impugned order. The petitioner further contends that before passing the order of compulsory retirement, notice was not given which is mandatory requirement and in that view of the matter the order of compulsory retirement is first to be quashed. His further submission is that the impugned order was neither proceeded by payment of three months salary or notice and this renders the order illegal.

The stand of the respondents in the return is that the confidential report of the petitioner for the years 1979-80 to 1983-84 were adverse and the adverse remarks given by the District & Sessions Judge in the confidential report of the petitioner dated 31.3.1981 read as follows :

He is another useless man and so his grade is category "D".

The entry in the annual confidential report of the petitioner dated 31.3.1983 reads as follows :-

He talks much but does little. He never takes interest in work. He does a poor knowledge of the work and seems to be passing time.

It is the stand of the respondents that the District and Sessions Judge who is appointing authority of the petitioner assessed the entire service record and over all performance and found him useless for being retained in service, in public interest. The petitioner had completed qualifying service of 25 years and attained the age of 50 years and accordingly the District & Sessions Judge referred the matter, recommending compulsory retirement of the petitioner under Rule 42 of the M.P. Civil Services (Pension) Rules, 1976 to the Registrar of the High Court and ultimately the State Government accorded sanction for compulsory retirement of the petitioner by memo dated 1.11.1985. The Registrar of this Court thereafter vide letter dated 3.12.1985 permitted the District and Sessions Judge to take action for compulsory retirement of the petitioner as contemplated in Rule 42 of the aforesaid Rules and ultimately the District & Sessions Judge vide order dated 7.12.1985 passed the order of compulsory retirement of the

petitioner with effect from 31.12.1985. It is the stand of the respondents that the order of compulsory retirement is not a punishment nor it involves any stages and after making an over all assessment of work and performance of the petitioner and on persual of the entire service records, particularly of the recent past year, the District & Sessions Judge has opined that it is not in public interest to retain the petitioner. The High Court also pursued the record of the petitioner and concurred with the opinion of the District & Sessions Judge.

It is not disputed by the respondents that the order of compulsory retirement has been passed during the pendency of a departmental enquiry against the petitioner. Learned counsel for the petitioner submits that in the present case the order of compulsory retirement has been passed by way of punishment which would be apparent from the fact that such an order was passed during the pendency of a departmental enquiry. In support of the aforesaid submission strong reliance has been placed on a decision of the Supreme Court in the case of Nara Singh Patnaik v. State of Orissa (1966) 3 S.C.C. 619;

In the instant case, after the remarks were made in the confidential reports for the years 1975-76 and 1977-78 the appellant had been promoted on the post of Superintending Engineer in the year 1978 and thereafter Executive Engineer in 1984. It has been pointed out that in respect of years prior to 1975-76, in the year 1976-77 and in the years subsequent to 1977-78 the performance of the appellant was appraised as good. In these circumstances, we are of the view that the adverse remarks in the annual confidential reports for the years 1975-76 and 1977-78 referred to above, by themselves, cannot sustain the opinion leading to the compulsory retirement of the appellant on the basis that further retention of the appellant in service was not in public interest. We are, therefore, unable to uphold the order of compulsory retirement dated 5.3.1986 and the same has to be set aside.

In the aforesaid case, the authority took into consideration 7 circumstances to pass the order of compulsory retirement. The Supreme Court on facts found that out of 7 circumstances, the proceedings in relation to 6 circumstances were dropped and the only circumstances which remained was the adverse remarks in the annual confidential report of 1975-76 and 1977-78. The Apex Court further found that after the adverse entry the employer was promoted in 1978 and 1984 and his performance was appraised as good. He was compulsorily retired on 5.3.1986. Taking into consideration the aforesaid circumstances, the Supreme Court held that the order of compulsory retirement was not in public interest. The order of compulsory retirement was found to be bad not on account of the fact that it was passed during the pendency of the departmental proceeding but on the grounds referred to above. Thus the authority relied on by the petitioner is clearly distinguishable and does not in any way support the case of the petitioner.

There is no dispute about the proposition that the employer cannot take recourse to an order of compulsory retirement to punish a person. In case it is found that,

in fact, the order of compulsory retirement has been resorted to by the employer in order to punish the employee, the same is fit to be interfered with by this Court, but wide proposition that an order of compulsory retirement cannot be passed during the pendency of a departmental enquiry, is not fit to be accepted. In my opinion, during the pendency of a departmental enquiry, the over all assessment of the performance of an employee indicates that his continuance in the service is not in public interest, the pendency of a departmental enquiry will not prohibit the employer to take recourse to the power of compulsory retirement provided under the Service Rules. In the present case, the performance of the petitioner in the recent past years were found to be poor and according to the entries made in the annual confidential report the petitioner was found to be useless person. The appointing authority i.e. the District and Sessions Judge found the retention of the petitioner in service to be not in public interest which was concurred by the High Court also. The opinion formed by the appointing authority is based on the relevant material reflected in the annual confidential record of the petitioner and in that view of the matter the opinion formed by the employer to compulsorily retire the petitioner cannot be interfered with by this Court. I am fortified in by aforesaid view from the judgement of the Apex Court in the case of State of U.P. and another, v. Abhai Kishore Maste, (1), wherein the Apex Court held as follows :-

7. So far as the order of compulsory retirement under Fundamental Rule 56 (j) is concerned, we are of the opinion that the principle enunciated by the High Court in J.N. Bajpai and followed in the judgment under appeal is unsustainable in law. It cannot be said as a matter of law nor can it be stated as an invariable rule, that any and every order of compulsory retirement made under Fundamental Rule 56 (1) (or the provision corresponding thereto) during the pendency of disciplinary proceedings is necessarily panel. It may be or it may not be. It is a matter to be decided on a verification of the relevant record or the material on which the order is based.

(Emphasis supplied).

The learned counsel for the petitioner further contends that although the order impugned states that the petitioner is being compulsorily retired in public interest, but no details thereof has been given. The order of compulsory retirement is not a punishment nor it is a stigma. In my opinion, there is no need of giving the details of public interest in the order of compulsory retirement. However, in case the order of compulsory retirement is questioned in a Court of law the employer is obliged to place on record the reasons for passing the order of compulsory retirement in public interest. In the present case the respondents have placed on record entries in the annual confidential report of the petitioner which indicates that the performance of the petitioner in the recent past years was absolutely poor and he was found to be a useless person. In view of the material placed by respondents in the case, I am satisfied that the order of compulsory retirement of the petitioner has been passed in relevant

consideration and the opinion formed by the employer that the petitioner is fit to be compulsorily retired in public interest, cannot be interfered. Reference in this connection can be made to the decision in Union of India (UOI) and Others Vs. Dulal Dutt, . Relevant portion of the judgment reads as follows :-

18. It will be noticed that the Tribunal completely erred in assuming, in the circumstances of the case, that there ought to have been a speaking order for compulsory retirement. This Court, has been repeatedly emphasising right from the case of R.L. Butail v. Union of India and Union of India v. J.N. Singh that an order of a compulsory retirement is not an order of punishment. It is actually a prerogative of the Government but it should be based on material and has to be passed on the subjective satisfaction of the Government. Very often on enquiry by the Court the Government may disclose the material but it is very much different from the saying that the order should be a speaking order. No order of compulsory retirement is required to be a speaking order. From the very order of the Tribunal it is clear that the Government had, before it the report of the Review Committee yet it thought it fit of compulsorily retiring the respondent. The order cannot be called either mala fide or arbitrary in law.

Learned counsel for the petitioner submits that before passing the order of compulsory retirement, neither three months notice was given nor payment of salary and allowance for the said period was paid which is required under Rule 42 of the Rules. This omission, in the submission of the learned counsel vitiates the impugned order. Rule 42 (1) of the Pension Rules reads as follows :-

42 (1) (a) :- A Government servant may retire at any time after completing 20 years qualifying service by giving a notice in form 28, to the appointing authority at least three months before the date on which he wished to retire or on payment by him of pay allowances for the period of three months or for the period by which the notice actually given by him falls short of three months.

Provided.....

(b) The appointing authority may in the public interest requires a Government servant to retire from service at any time after he has completed 25 years qualifying service, with the approval of the State Government by giving him three months notice in form 29.

Provided.....

In view of the authority of the Apex Court in the case of State of Orissa Vs. Balakrushma Sathpathy, the order of compulsory retirement cannot be said to have been vitiated only on the ground that the petitioner was not given notice of three months or salary and allowance for the said period. In the aforesaid case the Apex Court held as follows :-

The Rule requires three months prior notice to be given or payment of three months pay and allowances in lieu of such notice. In other words the alternative mode prescribed of payment of the amount in lieu of three months notice when

adopted entitles the Government servant to get that amount, but the validity of the order of compulsory retirement does not depend on its prior full payment as a pre-requisite. The only right of Government servant under such an order is get the amount of three months pay and allowances in lieu of such notice, and no more. This is the manner in which similar provisions have been construed in *Raj Kumar v. Union of India*, (1995) 3 SCR 963 : (A.I.R. 1995 S.C. 1116); *Union of India (UOI) and Others Vs. Arun Kumar Roy*, .

It is relevant here to state that the power of compulsory retirement of a Government servant in public interest in terms of the service Rules is absolute with the employer, provided the employer forms an opinion bona fide and in public interest. Reference in this connection can be made to the decision of the Supreme Court in the case of *J.D. Shrivastava v. State of M.P. and others* AIR 1984 S.C. 638. Relevant portion reads as follows :-

It is now firmly settled that the power to retire a Government servant compulsorily in public interest in terms of a service rule is absolute provided the authority concerned forms an opinion bona fide that it is necessary to pass such an order in public interest. It is equally well settled that if such decision is based on collateral grounds or if the decision is arbitrary, it is liable to be interfered with by the Courts.

In the present case as found earlier, the opinion formed by the employer is bona fide and in public interest and, therefore, the order of compulsory retirement is not bad in law.

The learned counsel for the petitioner submits that although the petitioner has been directed to be compulsorily retired but neither he nor his wife, after his death is being given the pension. It is relevant here to slate that no such prayer has been made in the writ petition. The learned counsel for the petitioner, however, during the course of argument, has made a grievance in relation to the grant of pension. It is worth while to mention that the order of compulsory retirement is not a punishment and the right of the employee to receive pension in accordance with the Rules, for the service rendered by him, cannot be denied. A reference in this connection can be made to the judgment of the Apex Court in the case *A.P. Shrivastava v. Union of India and others* (1955) 6 S.C.C. 227. Relevant portion reads as follows :-

In view of the legal position that an order of compulsory retirement is not a punishment and pension is a right of the employee for service rendered, we see no justification for danying such right to a temporary government servant merely on the ground that he was required to retire by the employer in exercise of power under Rule 56 (j) of the Fundamental rules. In our considered opinion a temporary government servant would be entitled to pension after he has completed more than 20 years of service even if he is required to retire by the employer in exercise of power under Rule 56 (j) of the Fundamental Rules.

In case the pension was not paid to the petitioner or his wife in accordance with

the Rules, the respondents to take steps for payment of the same expeditiously.

In the result, I do not find any merit in this petition. Accordingly it is dismissed with the observation made above. However, in the facts and circumstances of the case, there shall be no order as to costs. Security amount, if deposited, be refunded to the petitioner.