
(1990) 07 AHC CK 0025
In the Allahabad High Court
Case No : Writ Petition No. 833 of 1990

Sri Ram

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 23-07-1990

Acts Referred:

Penal Code, 1860 (IPC) — Section 161
Prevention of Corruption Act, 1947 — Section 5(1)(d), 5(2)

Citation : (1990) 07 AHC CK 0025

Hon'ble Judges : S.H.A.Raza, J

Final Decision : Allowed

Judgement

S.H.A. Raza J.

1. Aggrieved against the order of compulsory retirement the petitioner has filed this writ petition. The main thrust of the argument of the learned counsel is that he was never served with any adverse entry for the last ten years. He was only involved in a case under Section 161 IPC read with Section 5(1)(d)/5(2) of Prevention of Corruption Act. He was placed under suspension. On 15684 the Second Additional Sessions Judge, Unnao acquitted him from the offence. After being released he was reinstated in service.

2. A counter affidavit has been tiled on behalf of the State. It is more or less admitted in the counter affidavit that besides the aforesaid criminal case in which he was acquitted there was nothing adverse against him. After being reinstated no order as to the payment of salary to him during the period of suspension was passed and it was stated in the order, regarding the payment of remaining dues of pay, that separate orders would be passed. In view of the fact that there is nothing on the record to show that there existed anything adverse against the petitioner except the criminal case mentioned hereinabove, there is no reason as to why the impugned order of compulsory retirement be not set aside for the reason that no adverse entry or warning was ever issued to the petitioner. Even after his acquittal the petitioner was not proceeded with any departmental

enquiry, hence the order of compulsory retirement, only on the basis that he was charged in a criminal case in which he was acquitted, cannot be sustained.

3. In a case *Union of India v. Col. N.J. Sinha and another*, reported in (1971) 1 Supreme Court Reports, 791, it was indicated as under:

?Now coming to the express words of Fundamental Rule 56(1), it appears that the appropriate authority has the absolute right to retire a government servant if it is of the opinion that it is in the public interest to do so. The right conferred on the appropriate authority is an absolute one. That power can be exercised subject to the conditions mentioned in the rule, one of which is that the concerned authority must be of the opinion that it is in public interest to do so. If that authority bona fide forms that opinion, the correctness of that opinion cannot be challenged before courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision.?

4. Relying upon the said decision

Mr. Justice Ranganath Misra, speaking on behalf of the Bench in the case of *C.D. Ailawadi v. Union of India*, 1990 I SVLR (1), 160, indicated as under:

?An aggrieved civil servant can challenge an order of compulsory retirement on any of the following grounds as settled by several decisions of this court: (i) that the requisite opinion has not been formed; or (ii) that the decision is based on collateral grounds; (iii) that it is an arbitrary decision. In *Union of India v. Col J.N. Sinha and another*, (1971) 1 SCR, 791 this court held that if the civil servant is able to establish that the order of compulsory retirement suffered from any of the above infirmities, the court has jurisdiction to quash the same. It is not disputed that compulsory retirement under rule 56(j) is not a punishment as it does not take away any of the past benefits. Chopping off the dead wood is one of the important considerations for invoking rule 56(j) of the Fundamental Rules. In the instant case, on the basis of the service record, the committee formed the requisite opinion that the petitioner had ceased to be useful and, therefore, should be retired prematurely. We do not think petitioner has been able to place any satisfactory material for the contention that the decision was on collateral grounds. Once the opinion is reached on the basis of materials on record, the order cannot be treated to be arbitrary. The service record of more than five years which we have perused shows that the higher officers under whom the petitioner had worked were different and different sets of reviewing officers had also made the entries. Therefore, the reports must be taken to have reflected an appropriate and objective assessment of the performance of the petitioner.

The writ petition must accordingly fail and is, therefore, dismissed. There shall be no order as to costs.?

5. In the instant case it cannot be said that the authority while retiring the petitioner formed a bonafide opinion that it was in the public interest to retire the

petitioner for the reason that there existed some material to form such an opinion. As there existed no material or adverse circumstances against the petitioner, the impugned order suffers from arbitrariness and the same has not been passed in accordance with Rule 56 of Fundamental Rules but has been passed in colourable exercise of powers.

6. In view of what has been stated above a writ in the nature of certiorari is issued quashing the order dated 16/1/90 contained in Annexure 1. The petitioner will be allowed to continue on his post till he attains the age of superannuation.