
(1999) 08 MP CK 0042
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1411/98

State of M.P.

APPELLANT

Vs

B.L. Kaul and Others

RESPONDENT

Date of Decision : 16-08-1999

Acts Referred:

Constitution of India, 1950 — Article 227

Madhya Pradesh Civil Services (Pension) Rules, 1976 — Rule 42, 42(1), 56, 56(3)

Citation : (2000) 1 MPHT 79 : (2000) 1 MPJR 254

Hon'ble Judges : S.P. Srivastava, J;N.G. Karambelkar, J

Bench : Division Bench

Advocate : K.B. Chaturvedi, for the Appellant; J. Maheshwari, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.

Feeling aggrieved by the order passed by the M.P. State Administrative Tribunal whereunder allowing the application filed by the respondent No. 1, the order compulsorily retiring him from service dated 1-10-1997 had been quashed with a direction to reinstate him forthwith and pay to him all consequential benefits of the salary etc., the State has, by means of the present writ petition, approached this Court seeking redress praying for the reversal of the impugned order passed by the Tribunal.

We have heard the learned Government Advocate representing the petitioner as well as the learned counsel representing the contesting respondent and have carefully perused the record.

The facts in brief, shorn of details and necessary for the disposal of this writ petition lie in a narrow compass. The State Government had issued a Circular dated 13th of January, 1997 in supersession of its previous orders constituting Screening Committee laying down the norms and the procedure to be adopted while considering the cases of the employees who deserved to be compulsorily

retired on their attaining the age of 55 years exercising the jurisdiction envisaged under Fundamental Rule 56 or on their completing the 25 years of service, exercising the jurisdiction envisaged u/s 42 of the Pension Rules of 1976. In the aforesaid circular it was indicated that the Government desired that the directions contained in the circular should be strictly complied with. The Screening Committee constituted for considering the cases of Gazetted Officers was to consist of-- (a) A Secretary of the department as a Convenor, (b) Head of the Department as a Member, (c) Secretary, General Administration Department as a Member. Thus, this Screening Committee was to consist of three members.

On 2-7-1997 an order was issued by the Government whereunder referring to an earlier order issued by the State Government dated 26-9-1996, a different Screening Committee was constituted in which in place of Secretary of the General Administration Department, the Deputy Secretary, General Administration Department was substituted. In the order dated 2-7-1997 what had been pointed out was that earlier, vide the order dated 26-9-1996 Secretaries of the General Administration Department were nominated as Members of the Screening Committee for compulsory retirement of the Gazetted Officers of all departments but now Smt. Abha Asthana, Secretary, GAD, and some Additional Secretaries were being nominated for the departments mentioned in the order. The order dated 2-7-1997 purports to nominate Smt. Abha Asthana, Secretary, GAD, as well as Shri Alok Shrivastava, Dy. Secretary, GAD as nominees of GAD in the Screening Committees for some departments.

As a result of the order dated 2-7-1997 Shri S.D. Godbole, Secretary of the department who also happened to be Engineer-in-Chief and as such the Head of the Department became the Convenor-cum-Member of the Screening Committee and instead of the Secretary, GAD Dr. Sushil Trivedi, Deputy Secretary, GAD became Member of the said Screening Committee, for the department in question. It is not disputed that it was, thus a two member Screening Committee which had examined the cases of the respondents for submitting its recommendations in the matter relating to the compulsory retirement of the said respondent.

The aforesaid committee considered the cases of 309 Executive Engineers (Civil), 20 Executive Engineers (E/M), 191 Assistant Engineers (Civil), and 39 Assistant Engineers (E/M), in all 559 officers whose records were claimed to have been screened in its meeting held on 24-9-1997. Accepting the recommendations of the aforesaid committee the State Government passed the impugned order dated 1-10-1997 compulsorily retiring the contesting respondent, while exercising the jurisdiction vesting in it under Rule 56 (3) of the Fundamental Rules.

The aforesaid order was challenged by the said respondent before the M.P. State Administrative Tribunal. The Tribunal vide its order dated 22-4-1998, impugned in the present writ petition, allowing the application filed by respondent No. 1 quashed the order dated 1-10-1997 referred to hereinabove with a direction to reinstate him forthwith and pay all consequential benefits of salary etc. till

reinstatement within a period of six weeks from the date of receipt of the said order after adjustment of the amount already paid.

A perusal of the order passed by the Tribunal indicates that it had taken into consideration the reasons given by one of its Co-ordinate Bench of the Tribunal holding that the Screening Committee itself was not legally constituted and its recommendations could not be acted upon. The Tribunal in this connection had observed that it did not find any reason to take a different view than the view already taken by the Division Bench of the Tribunal in the case of *Laxmi Chand Awadhiya Vs. State of M.P. and Ors.*, in O.A. No. 3061/97, decided on 20-3-1998. A copy of the aforesaid decision in the case of *Laxmi Chand Awadhiya* (supra) has been annexed as Annexure R-4 to the writ petition.

We have carefully perused the said judgment.

The Tribunal in its aforesaid decision had come to the conclusion that the Screening Committee constituted vide the circular dated 13th January, 1997 was a Screening Committee of three members and the Screening by a committee of only two members was a significant departure from the scheme prescribed under the aforesaid order.

The Tribunal had further come to the conclusion that although the Secretary, GAD was available he was not included as a Member of the Screening Committee in question and instead an Additional Secretary was nominated contrary to the specific directions contained in the Circular dated 13-1-1997, the directions contained whereunder could not be taken to have been superseded in any manner by the order dated 2-7-1997 as the said order specifically referred to an earlier order dated 26-9-1996 which stood already superseded vide the circular dated 13-1-1997.

It was further found that the mere fact that the Screening Committee had considered the cases of 559 officers whose records have been claimed to have been screened on 24-9-1997 was a pointer to the fact that there was no application of mind at all as it was humanely impossible to screen and consider the cases of such a large number of officers in such a short time with due application of mind.

The Tribunal was clearly of the opinion that one of the two officers who attended the meeting could not be deemed to be a validly inducted member. According to the directions contained in the order dated 13-1-1997 the Secretary, GAD and not the Deputy Secretary, GAD could be a member of the Screening Committee. The participation of an unauthorised person as a member of the Screening Committee which in fact constituted of only two members, according to the Tribunal, had vitiated in law its recommendations.

The Tribunal was also of the view that the directions contained in the circular dated 13-1-1997 were binding and secured a valuable civil right in favour of the employees. Such a view appears to have been taken as it was on the

recommendation of the aforesaid committee that the service tenure secured under the relevant service rules in favour of an employee was sought to be curtailed taking recourse to the method of compulsory retirement on the strength of the recommendations of such a committee.

The Tribunal was of the opinion that the serious defect in the procedure adopted by the screening committee went to the root of the matter and vitiated the impugned order passed compulsorily retiring the employee.

The learned Government Advocate representing the petitioner has assailed the findings returned against it in the decision of the Tribunal in the case of Laxmi Chand Awadhiya (*supra*) which has been adopted in support of its conclusions by the Tribunal while passing the order impugned in the present case.

The learned counsel for the contesting respondent has, however, tried to support the conclusions of the Tribunal on the reasonings contained in the case of Laxmi Chand Awadhiya (*supra*).

The provisions contained in Rule 56 of the M.P. Fundamental Rules are to the following effect :--

"56. (a) Age of Superannuation--(1) Subject to the provisions of Sub-rule (3), the date of compulsory retirement of a Govt. servant, other than a Class IV Government servant, shall be the date on which he attains the age of 58 years :

Provided that scientific, technical and other personnel having special or expert knowledge in any field may, with the sanction of the competent authority be given extension of service beyond the age of 58 years subject to their physical fitness and suitability for work, but such extension shall not ordinarily be beyond the age of 60 years.

(2) The date of compulsory retirement of a Class IV Govt. servant shall be the date on which he attains the age of 60 years.

(3) A Govt. servant may, in the public interest be retired at any time after he attains the age of 55 years on three months notice without assigning any reason or on payment of three months pay and allowances in lieu of such notice."

The provisions contained in Rule 42 (1) (b) of the M.P. Civil Services (Pension) Rules, 1976 is to the following effect :--

"42. Retirement on completion of 20/25 years qualifying service--(1) (a)

(b) The appointing authority may in the public interest require 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 that such Government servant may be retired forthwith and on such retirement the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same

rates at which he was drawing then immediately before his retirement or, as the case may be, for the period by which such notice falls short of three months.

....."

It is manifestly clear from the perusal of the aforesaid provisions that the compulsory retirement envisaged thereunder curtailing the service tenure of a Government employee could be ordered only in "public interest". As pointed out by the Apex Court in its decision in the case of Union of India (UOI) Vs. M.E. Reddy and Another, , the aforesaid expression "public interest" in fact is incorporated in the statutory provision with the objective of providing a safety valve and as a safe-guard against any abuse or colourable exercise of power and when the Court is satisfied that the exercise of the power amounts to a colourable exercise of jurisdiction or is arbitrary or malafide it can always direct an order passed in purported exercise of such jurisdiction.

In the present case, the impugned order clearly indicates that the decision to compulsorily retire the contesting respondent had been taken in "public interest" after screening his service record. The law is well settled that in cases where the exercise of statutory power is subject to the fulfillment of a condition then the recital about the said condition having been fulfilled in the order raises a presumption about the fulfillment of that condition and the burden is on the person who challenges that the said condition was not fulfilled. However, in a case where the order does not contain a recital about the condition being fulfilled the burden to prove that the condition was fulfilled would lie on the authority passing the order if the validity of the order is challenged on the ground that the said condition was not fulfilled. The presumption as to the regularity of the public acts would apply in such a case but as soon as the order is challenged and it is said that it was passed without fulfilling the condition then the burden would be on the authority to satisfy by other means in the absence of the recital in the order itself that the condition precedent had been complied with.

Further, it is not the personal whim, wish or view or opinion or the Ipse-Dixit-dehors the material but a legitimate inference drawn from the material placed before the authority concerned for recording its satisfaction, which is relevant for the purpose. Sufficiency or otherwise of the material cannot be questioned but the legitimacy of the inference drawn from such material is certainly open to judicial review.

It must be emphasised that the absence of arbitrary power is the first essential of the Rule of law upon which our whole constitutional system is based. In a system governed by Rule of law the discretion when conferred must be confined within clearly defined limits. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is always the antithesis of a decision taken in accordance with law. The Rule of law implies taking a decision by applying the known principles.

In the present case, what we find is that the Tribunal while recording its findings

had gone through the entire record relating to the proceedings culminated in the order of compulsory retirement, from the pleadings contained in the application filed by the contesting respondent and the facts borne out from the record the presumption in regard to the regularity of the proceedings was found to have been effectively rebutted.

From the materials brought on record we are of the considered opinion that the only basis for passing the impugned order of compulsory retirement was the recommendation of the screening committee which had instead of three members only two members out of whom one member was not entitled to take part in the proceedings as a validly inducted member of the said committee. It was a clear case where there could possibly not be any joint deliberation of the three members as contemplated under the circular dated 13-1-1997 and consequently no order of compulsory retirement could have been founded upon the recommendations of such a screening committee. It is not disputed by the petitioner that the recommendation of the committee was the sole foundation of the basis whereof the impugned order compulsorily retiring the respondent No. 1 had been passed.

We are further of the opinion that the entire proceedings relating to the screening started and concluded in a single day disposing of the cases of 559 officers clearly amounted to a farce and the findings returned by the Tribunal in this connection cannot be said to be perverse and it does not require any interference.

Taking into consideration the facts and circumstances established and proved on record, the findings returned against the petitioners which have been adopted by the Tribunal while passing the impugned order do not appear to suffer from any such legal infirmity which may justify any interference therein by this Court while exercising the extra-ordinary jurisdiction envisaged under Article 227 of the Constitution of India.

In view of our conclusion referred to hereinbefore the writ petition deserves to be dismissed.

However, the jurisdiction which stands secured in favour of the petitioners in the matter relating to compulsory retirement of its employees as envisaged either under Rule 56 of the Fundamental Rules or under Rule 42 of the Pension Rules, 1976 cannot be disputed. The mere fact that a decision to compulsorily retire its employee has been found to be vitiated in law on account of serious defects cannot be taken to be an impediment to initiate fresh proceedings for compulsory retirement rectifying those defects. A dead-wood must be chopped off.

It will be against the interest of good administration to retain an employee in service and curtailing the ordinary secured tenure, in case a validly constituted screening committee on a careful application of mind comes to the conclusion that taking into consideration the norms laid down in the circular dated 13-1-1997 such an employee deserves to be compulsorily retired, the State

Government will be well within its jurisdiction to act upon such a recommendation.

It is surprising to note that in spite of the defects having been pointed out by the Tribunal long back on 20-3-1998 no effort was made by the State Government to constitute a fresh screening committee in accordance with law and obtain its recommendations in the matter in question. This Course ought to have been adopted at the earliest so that a non-deserving employee was not allowed to continue in service.

In the aforesaid view of the matter the petitioners are directed to get the cases of all the 559 employees re-examined by a validly constituted committee in accordance with law within a period not later than six weeks and pass the appropriate orders within a period not later than two months.

The learned Government Advocate, representing the appellants, shall communicate this order to the State Government without any delay and the Registrar of this Court shall also ensure that a copy of this order is sent for compliance to the Secretary, Jal Sansadhan Department, Government of Madhya Pradesh, Vallabh Bhawan, Mantralaya, Bhopal for strict compliance.

The writ petition in the circumstances is dismissed with the directions indicated hereinabove.