
(2002) 03 MP CK 0095

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 5510 of 2000 and 6109, 6219, 6733-6735 and 7141-7142 of 2002 and 480 of 2001

State of M.P.

APPELLANT

Vs

Laxmi Chand Awadhiya and Others

RESPONDENT

Date of Decision : 01-03-2002

Acts Referred:

Citation : (2002) 5 MPHT 228 : (2002) 4 MPLJ 343

Hon'ble Judges : Uma Nath Singh, J; Dipak Misra, J

Bench : Division Bench

Advocate : Sanjay Yadav, for the Appellant; K.K. Trivedi, Malti Dadariya, Subhash Chaturvedi, P.R. Bhawe and Kamleshwar Prasad Mishra, for the Respondent

Judgement

Dipak Misra, J.

This batch of writ petitions, being interconnected and interlinked, raising common grounds to assail the orders of the State Administrative Tribunal passed separately in individual cases, was heard together and is disposed of by this common order.

Ordinarily when the matters are heard analogously the facts in one case are uncurtained and adumbrated but in this batch of cases we are inclined to exposit the facts in each case for the simple reason to a great extent, the facts in each case are similar but thereafter the facts have to be stated separately qua each case, so that the clarity holds sway and one is not compelled to get into a situation of labyrinth or imbroglia. Hence, we proceed to narrate.

In W.P. No. 5510/2000, the respondent No. 1 Laxmi Chand Awadhiya feeling aggrieved by the order of compulsory retirement passed in accordance with Rule 42 of the Civil Service (Pension) Rules, 1976 (for brevity "the Rule") read with F.R. 56 on 1-10-97, approached the State Administrative Tribunal in Original Application No. 3061/97. The aforesaid original application was heard alongwith

other applications and the contentions of the petitioners therein was that the Screening Committee which was constituted to screen the cases of the likes of the petitioner was not properly constituted and the recommendations given by the said Committee suffered from the vice of coram non-judice and as a necessary corollary a final order passed by the State Government was indefensible. The Tribunal accepted the contentions raised by the applicants before it and came to hold that the defects creates a hollow in the action taken by the authorities of the State in passing the impugned order. Being of this view, the Tribunal quashed the order of compulsory retirement and directed the respondent to reinstate the petitioner forthwith and pay all consequential benefits till reinstatement within a period of six weeks from the date of receipt of the order after adjusting the amount already paid.

The sustainability of the order passed by the Tribunal was called in question by the State of Madhya Pradesh in W.P, No. 1411/1998. The said writ petition came to be disposed of by a Division Bench of this Court at Gwalior. The Division Bench gave the stamp of approval to the findings returned by the Tribunal and held that the order passed by the Tribunal did not suffer from any such legal infirmity which may justify any interference therein by this Court in exercising the extraordinary jurisdiction envisaged under Article 227 of the Constitution of India. In Paragraph 27 of the said order, the Division Bench held as under:--

"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 employees 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."

In Paragraphs 29 and 30, the Bench proceeded to so state:--

"29, 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. The 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." (As Mr. S.K. Yadav, learned Govt. Advocate placed heavy reliance on the said paragraphs for a different purpose to which we shall advert at a later stage.)

On the basis of the decision rendered by the Gwalior Bench similar orders were passed in other writ petitions by a Division Bench at the Principal Seat at

Jabalpur. After the aforesaid order, the State Government constituted a Screening Committee which forwarded its recommendations to the competent authority of the State Government who by order dated 3-1 -2000 contained in Annexure P-7 opined that the case of the petitioner has been scrutinized by the Screening Committee and the order of compulsory retirement passed on earlier occasion stood affirmed. We may hasten to add that the competent authority has stated the order of compulsory retirement stood as it is.

Being dissatisfied with the aforesaid order, the respondent No. 1 visited the Tribunal in Original Application No. 402/2000 and the Tribunal by order dated 25-8-2000, Annexure P-12 came to hold that order of compulsory retirement could not have been given retrospective effect as such an action is impermissible in law. While so holding the Tribunal in Paragraph 16 expressed as under:--

"16. In so far as this case is concerned it may be further observed that the applicant has been retired compulsorily as already mentioned above on the ground that he was awarded a major penalty in the year 1995. No other reason has been assigned by the screening committee for its recommendation to retire the applicant compulsorily. It is seen from the gradation chart which was prepared and possibly perused by the screening committee that the applicant had been given a penalty of withholding of five increments with cumulative effect with effect from 6-5-95 and it is only to this punishment that the screening committee has made a reference in its recommendation. It is also seen that the A.C.R. record of the applicant from the year 1980-81 till the year 1993-94 which was as aforesaid possibly considered by the screening committee, shows that the applicant's performance record has been generally Very Good or even outstanding in some years. In only a couple of years it has fallen below the said level. The fact that the committee has chosen to base its recommendation only on the basis of major penalty imposed upon the applicant can not be accepted. It is dear that on the conclusion of the concerned disciplinary proceeding against the applicant, the competent disciplinary authority namely the State Government, had not considered it necessary in the facts and circumstances of the case to award a higher penalty than that of withholding of five increments with cumulative effect. In other words the competent disciplinary authority did not at the time it passed the final punishment order consider it appropriate to award the punishment of compulsory retirement under the Madhya Pradesh Civil Services (Classification, Control & Appeal) Rules, 1966. If the retention of the applicant was not considered to be in public interest or it was otherwise unjustified because of the circumstances of the said case then quite clearly the competent disciplinary authority could have imposed such punishment. The fact that it did not impose such punishment implies that it was not considered necessary to remove the applicant from service by way of compulsory retirement, A decision now to retire the applicant compulsorily under Pension Rule 42 tends to negate the said decision and in a sense amounts to review of the said order which is not permissible. Had the screening committee considered the other adverse factors which were placed before it in making its

recommendation then it would have been justified in making the recommendation which it made. However, its recommendation based upon only the imposition of the aforesaid major penalty can under the circumstances not be said to be quite justified, appropriate or sustainable."

On the basis of the aforesaid discussion, the Tribunal quashed the order of compulsory retirement and directed reinstatement of the respondent No. 1 with a further command that he would be deemed to have continued in service from the date he was retired compulsorily by the earlier order dated 1-10-1997 and he shall be paid his salary and allowances for the entire period from 1st October, 1997 till the date he is finally reinstated in terms of the order passed and placed on duty by the respondents therein.

We may at this juncture state that the Tribunal has disposed of the other cases filed by the other officers but unfortunately, the Tribunal has not discussed anything else except stating as under:--

"This case is similar to O.A No. 402/2000, Laxmi Chand Awadhiya v. State of M.P. The said case of Shri Awadhiya has been allowed yesterday. The case being similar the discussion in paras 3 to 15 of the order applies equally in the present case. For the said reasons this application is also allowed and the directions given in para 18 of the order in the said case shall apply mutatis-mutandis in the present case also."

We will dwell upon this aspect at a later stage.

Assailing the order passed by the Tribunal, Mr. S.K. Yadav, learned Government Advocate has submitted that the Tribunal has fallen into error by coming to hold that the State Government could not have passed the order of retirement with retrospective effect. To buttress the aforesaid submission he has placed heavy reliance on certain paragraphs of the decision rendered by the Division Bench of this Court in W.P. No. 1411/98. The learned State Counsel has also questioned the pregnability of the reasonings given by the Tribunal in Paragraph 16 In the case of Laxmi Chand Awadhiya and has canvassed that the Tribunal has not discussed the cases of other officers who had independently approached the Tribunal but has adopted the reasoning given in Paragraph 16 of the order though, the said reasonings cannot apply mutatis-mutandis to the cases of other officers, facts being quite different. The learned Counsel for the State has also raised a colossal grievance with regard to the grant of financial benefits to the officers on the ground that in a case of this nature such a direction was totally unwarranted.

Mr. K.K. Trivedi, learned Counsel appearing for respondent No. 1, in oppugnation, has proponed that the Tribunal was absolutely justified in treating that the order passed by the competent authority of the State Government on second occasion could not have been given retrospective effect as the order of compulsory retirement has to take place from the date when it is passed and cannot be given any kind of retro-activity. Defending the order qua respondent No. 1, it is

putforth by him that ACR's of the respondent No. 1 are absolutely good and the punishment which was imposed relate to the incident that had occurred between 1980 to 1983 and in any case the said order is the subject-matter of challenge before the Tribunal. It is urged by him as only the ground for compulsory retirement is the imposition of aforesaid penalty which has been assailed before the Tribunal and in the event of success of the petitioner the bed rock will be dented and that would automatically be the raisen D'etre for collapse of the superstructure, i.e., the order of compulsory retirement.

Before we advert to the justifiability of the order of compulsory retirement passed in each case we would like to address ourselves whether the State Government could have passed the order on the second occasion by giving it a lease of life from the prior date. The said issue is involved in each case and hence, we proceed to answer them treating it as a first limb of contention raised by the Counsel for the parties.

It is not in apposite to state here that the Tribunal on earlier occasion had categorically and unequivocally held that the committee was not properly constituted and, therefore, the order of compulsory retirement could not have been passed. This Court in W.P. No. 1411/98 in Paragraphs 28 to 30 which have been reproduced hereinbefore has expressed the opinion that a validly constituted screening committee on a careful application of mind can come to the conclusion that an employee deserves to be compulsorily retired and the State Government will be well within its jurisdiction to act upon such a recommendation. It is submitted by Mr. Yadav, learned Government Advocate that in Paragraph 30 of the order, the Court directed to get the cases of all the 559 employees re-examined by a validly constituted committee in accordance with law within a period of six weeks and pass the appropriate orders and, therefore, the validly constituted committee can pass a fresh order which is appropriate and such an order would validate the act done by the earlier committee and the same should be a fortiori accepted. To appreciate the aforesaid submission of Mr. Yadav, we have carefully perused the contents of said paragraph. This Court had agreed with the findings recorded by the Tribunal and while so doing had granted leave to the State Government to proceed in accordance with law and the said direction was given as the order of compulsory retirement was nullified on a technical ground. This Court had nowhere stated that the earlier order, on proper scrutiny if affirmed will rise like a phoenix. In this context we may profitably refer to the decision rendered in the case of R. Jeevaratnam Vs. The State of Madras, , wherein a three Judge Bench of the Apex Court in Paragraphs 3 and 4 held as under:--

"3. Counsel for the appellant next contended that the order of dismissal dated October 17, 1950 having been passed with retrospective effect is illegal and inoperative. Counsel for the respondent submitted (1) the order of dismissal with retrospective effect as from the date of the suspension is valid in its entirety, and (2) in any event, the order is valid and effective as from October 17, 1950. The

High Court accepted the first contention, and declined to express any opinion on the second contention. In our opinion, the second contention of the respondent is sound, and in this view of the matter, we decline to express any opinion on the first contention. Counsel for the appellant conceded that if the respondent's second contention is accepted, the appeal must fail.

The order dated October 17, 1950 directed that the appellant be dismissed from service with effect from the date of the suspension, that is to say from May 20, 1949. In substance, this order directed that-- (1) the appellant be dismissed, and (2) the dismissal do operate retrospectively as from May 20, 1949. The two parts of this composite order are separable. The first part of the order operates as a dismissal of the appellant as from October 17, 1950. The invalidity of the second part of the order assuming this part of the order. The order of dismissal as from October 17, 1950 is valid and effective. The appellant has been lawfully dismissed, and he is not entitled to claim that he is still in service."

We may also note here that their Lordships referred to the decision rendered in the case of Hemanta Kumar Bhattacharjee Vs. S.N. Mukherjee, , and approved the same indicating that the order of suspension cannot be retrospectively made valid but would be bound from the date of passing of the same. The law laid down in the case of Sudhir Ranjan Halder Vs. State of West Bengal and Another, , wherein the High Court had held contrary to the aforesaid proposition was not given the stamp of approval. Their Lordships opined that an order of dismissal with retrospective effect, in substance is an order of dismissal as on the date. In view of the aforesaid enunciation of law, there remains no scintilla of doubt in our mind that the impugned order passed by the competent authority vide Annexure P-7 on 3-1-2000 cannot be held to be retrospectively applicable as such an applicability is contrary to the basic jurisprudence of service law. Thus, the order passed by the competent authority (Annexure P-7) has to be compartmentalized. As far as aforesaid the retrospective part is concerned, the same has to be severed/segregated/lanceted. The other part remain to be dealt with on merits and accordingly we proceed.

We may pause here for a while to dwell upon the consequences of the amputation of the second limb of the order impugned. Mr. Trivedi, learned Counsel for the petitioner would like us to give the stamp of approval in entirety to the direction contained in Paragraph 18, as far as it relates to the period 1-10-97 till 3-1-2000 for grant of all financial benefits. We may hasten to add we are ruminating on this aspect at this stage inasmuch as each officer would be placed in the same compartment/category/class in this regard. Mr. Yadav, learned G.A. has submitted that though the second limb of the order can be axed but the financial benefit should not be granted. Learned Counsel for the State has submitted the order could not attain finality because of technical reasons and, therefore, this Court should favourably consider to reverse the direction given by the Tribunal. Added to this facet, the Counsel for the State has also urged that the State is undergoing a financial crunch and if the respondents are

paid the arrears it will seriously affect the financial health of the State and the financial backbone shall be atrophied.

We have bestowed are anxious consideration and appreciated the submissions raised by the Counsel at the Bar. It is not in dispute that for the technical defect, the orders were set aside. The State should have been more careful while constituting the screening committee. The negligence shown on the part of the State is neither commendable nor appreciable. It must have kept in view the age old principle that if a certain thing is to be done it has to be done in a particular manner in the said manner or not to be done at all. As it appears in an effort to clean the augean stable, the State Government acted in a hurry and forgot the sacrosanct and sagacious saying justice hurried is justice buried. However, in view the submissions putforth by Mr. Yadav and also taking note of the fact there was a technical fallacy, we are inclined to modify the order of the Tribunal in this regard by reducing the amount to fifty per cent, and accordingly we command that the officers who have been granted benefit in entirety from 1-10-97 till 3-1-2000 shall receive fifty per cent of their lawful dues. The same shall be paid to them within a period of three months from the date of receipt of the order passed today.

Presently we shall proceed to deal with the second spectrum. We have already indicated that the Tribunal passed the order in O.A. No. 402/2000 and followed it in other cases, though there was no similarity in factual set up except the retro-activity of the order. Ordinarily we would have dealt with Laxmi Chand Awadhiya's case on merits and remanded the other cases to the State Administrative Tribunal for reconsideration. When the debate was on the learned Counsel appearing in each case for the affected officers and Mr. S.K. Yadav, learned Govt. Advocate, fairly agreed that the matter be not remanded to the Tribunal and this Court may scrutinise the case on merits. This being a concession which does not relate to the realm of conferring of jurisdiction but in the arena of looking at documents, which we also could have done, we proceed to decide each case on merits.

As far as the case of respondent No. 1 in W.P. No. 5510/2000 is concerned, the Tribunal has not accepted the recommendations of the screening committee on the ground that the committee has taken note of the penalty imposed on 6-5-95 whereby five increments with cumulative effect was stopped. The Tribunal has analysed the aspect that the petitioner's ACRs were very good or even outstanding but the ACRs which later on followed were below the said level. Mr. Yadav, learned G.A. states that there was another punishment of stoppage of one increment with cumulative effect in the year 1993. Shri Trivedi, learned Counsel submitted that in the second order passed by the disciplinary authority has been assailed before the Tribunal in the year 1997 and the same is pending adjudication. The learned Counsel submitted that the order passed by the disciplinary authority suffers from vice of jurisdiction and therefore, he has excellent chance of success. We would refrain from expressing anything on

merits of the case. The order of compulsory retirement, as is perceptible, has been passed solely, on the basis, of the punishment. In view of the said premises, this Court while not setting aside the order thinks it apposite to direct the S.A.T. to hear the original application within six weeks and pass the order within a period of four weeks from the date of hearing. We may herein clarify that this Court has passed the order without quashing the order passed by the Tribunal and if any benefit is to be granted that will be subject matter of a future litigation.

Now we shall proceed to deal with case of W.P. No. 6109/2000, wherein Shashi Kant Mishra, has been arrayed as respondent No. 1. Mr. Yadav, learned G.A. has submitted that the said officer was compulsorily retired as three departmental enquiries were initiated against him. Learned Counsel fairly stated that the enquiry relates to three different periods first is 1983 to 1986, second in 1989 and the third in 1990 to 1992. The learned Counsel could not say why the enquiries had not been finalised. It is very fairly put forth by him after obtaining instruction from the O.I.C. P.K. Malhotra, Executive Engineer that the A.C.Rs. of said Shashi Kant Mishra have been althrough good. In this context we may profitably refer to the decision rendered in the case of State of Gujarat v. Umedbhai M. Patel, 2001 AIR SCW 862. In Paragraph 12 of the said case, their Lordships narrated the facts wherein the officer was placed under suspension on 22-5-1986 pending disciplinary proceedings and an enquiry was initiated against him on certain grounds. While the enquiry against the delinquent officer continued the State Government passed order of compulsory retirement on reappraisal of performance. Their Lordships after referring to the law laid down in various cases culled out the principles in Paragraph 11 which we may profitably reproduce

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

- (i) Whenever the service 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."

Thereafter in Paragraph 12 their Lordships held as under;--

"In the instant case, there were absolutely no adverse entries in respondent's confidential record. In the rejoinder filed in this Court also, nothing has been averred that the respondent's service record revealed any adverse entries. The respondent had successfully crossed the efficiency bar at the age of 50 as well as 55. He was placed under suspension on 22-54986 pending disciplinary proceedings. The State Govt. had sufficient time to complete the enquiry against him but the enquiry was not completed within a reasonable time. Even the Review Committee did not recommend the compulsory retirement of the respondent. The respondent had only less than two years to retire from service. If the impugned order is viewed in the light of these facts, it could be said that the order of compulsory retirement was passed for extraneous reasons. As the authorities did not wait for the conclusion of the enquiry and decided to dispense with the services of the respondent merely on the basis of the allegations which had not been proved and in the absence of any adverse entries in his service record to support the order of compulsory retirement, we are of the view that the Division Bench was right in holding that the impugned order was liable to be set aside. We find no merit in the appeal, which is dismissed accordingly."

We have referred to the aforesaid decision in extenso because we are of the considered view that if charge-sheets had been issued to a person and his A.C.Rs, are good and nothing has happened for a period of fourteen years that may not be justifiable ground to compulsorily retire him. We may proceed to add that there is no other material on record except the initiation of departmental proceedings. It is not the case of the State that there are adverse entries or any other aspect which makes it necessary to pass an order on compulsory retirement as the same is warranted in public interest. It is also not the case of the State that at any point of time any communication was made to the respondent No. 1 with regard to his integrity. Thus, we set aside the order of compulsory retirement and direct that the respondent shall be reinstated within a period of three months from today. As far as the consequential benefits are concerned, the respondent No. 1 shall be entitled to get fifty per cent of the back wages. We would not like to comment anything with regard to the justifiability of the initiation of the departmental proceedings. It will be open to the department to proceed in the departmental proceedings which have been initiated and finalise the same as per law.

In the case of Jagat Pratap Singh, respondent No. 1 in W.P. No. 6219/2000, an order of compulsory retirement has been passed on the basis of initiation of two departmental proceedings and pending of two criminal cases. It is not disputed

at the Bar that the criminal cases which were initiated against respondent No. 1 have been ended in acquittal. The said order has been passed during the pendency of this writ petition. In view of the reasons we have already indicated in W.P. No. 6309/2000, we are of the considered view, that the said principle would also apply to the present case. It is not disputed by Mr. Yadav, that the A.C.Rs. are very good except 1993 where he was awarded Grade-C (average). Accordingly we direct that the respondent No. 1 shall be reinstated with fifty per cent of back wages within three months.

In the case of R.Y. Tripathi, respondent No. 1 in W.P. No. 6733/2000, it is submitted by Mr. Yadav that he was awarded five Grade-C (average) and three Grade-D which is below average. Keeping in view the guidelines and the performances which have been recorded, we do not find any error in the order passed by the State Government. The same is accordingly given the stamp of approval.

In the case of T.C. Lilhare, the respondent No. 1 in W.P. No. 6734/2000, it is submitted by Mr. Yadav, learned G.A. that he was given Grade-C (average) in the years 1981 and 1982 and Grade-D (below average) in the year 1990. It is not disputed that thereafter he was given Grade-C in the year 1991 and the A.C.Rs, of 1992 to 1995 are not available and also one departmental enquiry is pending. Considering the totality of circumstances, and taking note of the fact the A.C.Rs. were not written for last three years, and there are no adverse remarks in the last ten years, it was not apposite to him to pass an order of compulsory retirement. It is apposite to mention here that there is no other material on record. It is urged by the State Counsel that the departmental enquiry is pending and it has to be finalised. Accordingly, we grant leave to the authority to proceed with the enquiry but the order of compulsory retirement has to be set aside and accordingly we so direct. He shall be reinstated within a period of three months from today. As far as consequential benefits are concerned, the respondent shall be entitled to get fifty per cent of the back wages for the period in question.

In the case of K.A. Siddiqui, the respondent No. 1 in W.P. No. 6735/2000, it has been stated by the learned Counsel for the State that there are three "Cs" for the years 1988, 1992, 1994 and four "Ds". In view of the aforesaid A.C.Rs. we are of the considered view that the screening committee is justified in recommending the case for compulsory retirement and the same should not be nullified by this Court. Hence the order of compulsory retirement is affirmed.

In the case of B.S. Parihar, the respondent No. 1 in W.P. No. 7141/2000, it is submitted by Mr. Yadav, learned G.A. that he was graded "C" in the years 1986, 89, 90 and 91. Hence, we are of the considered opinion that the order of compulsory retirement was justified and it does not deserve to be set aside by this Court.

In the case of M.L. Binjolkar, the respondent No. 1 in W.P. No. 7142/2000, it is put forth by Mr. Yadav, learned G.A. that the order of compulsory retirement was

passed on the basis of criminal prosecution launched against him and it is not disputed at the Bar that the respondent No. 1 has been acquitted by the learned Special Judge, Mandla in Special Case No. 16/96. Mr. Yadav, has fairly stated that after obtaining the order of acquittal nothing else remains against the respondent and his A.C.Rs. are good. Hence we quash the order of the compulsory retirement and command the respondent authority of the State to reinstate him in service with fifty per cent back wages.

In the case of R.L. Pathak, the respondent No. 1 in W.P. No. 480/2001, it is submitted by Mr. Yadav, learned G.A. that there are five "Cs" for the years 1982, 83, 84, 88 and 85 and three "Ds" relating to the years 1987, 89 and 1991. In view of the aforesaid A.C.Rs., the order of the compulsory retirement passed by the State is justified and it does not deserve to be interfered with.

The writ petitions are accordingly disposed of.

We may add here that if any aggrieved party files any application before any Court of law, the same shall be dealt with on its own merit keeping in view the factum of delay and laches. We may at this juncture state that the decision rendered in this case are confined to the respondents and would not automatically enure to the benefits of others.