
(2006) 07 AHC CK 0177

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 22603 of 2001

Thakur Prasad Dubey

APPELLANT

Vs

State of U.P. and Naib Tahsildar Gaur

RESPONDENT

Date of Decision : 19-07-2006

Acts Referred:

Citation : (2006) 7 ADJ 460 : (2006) 6 AWC 6523

Hon'ble Judges : S.K. Singh, J

Bench : Single Bench

Advocate : P.N. Tripathi, for the Appellant; Sarita Singh and Alam and S.C., for the Respondent

Final Decision : Allowed

Judgement

S.K. Singh, J.—Heard Sri. P.M. Tripathi, learned Advocate in support of this petition and Sri Alam, learned Standing Counsel in opposition thereof.

2. Challenge in this petition is the order dated 31.5.2001 passed by the respondent No. 2, Sub. Divisional Magistrate, Harraiya, District Basti by which petitioner has been directed to be compulsory retired.

3. Petitioner claims to have been appointed as Seasonal Collection Amin in the year 1974 and on account of his continuous satisfactory service he was regularised in the year 1985 and it is said that on account of their being less recovery from the target by the petitioner an adverse entry was given in the year 1993. It is thereafter in the year 2000, in view of the fact that again petitioner could get recovered amount to a tune of about 17,000/- in place of Rs. 30,000/= petitioner was placed under suspension which was stayed by this Court but thereafter petitioner has been directed to be compulsory retired by the impugned order dated 31.5.2001 and thus this petition before this Court.

4. Submission of the learned Counsel for the petitioner is that even if the charge against the petitioner is accepted to be correct that in the year 1993 there was adverse entry in respect to charge of less recovery and in the year 2000 he was

placed under suspension for the same reason that cannot be made a ground for compulsory retirement of the petitioner. Submission is that several other Seasonal Collection Amins who got even lessor amount against the recovery target were although placed under suspension but they were reinstated but the petitioner although having realized even more amount has been dealt with in the manner as has been impugned in this petition. Details in this respect has been given in the writ petition. In support of the aforesaid submission, reliance has been placed on the judgment given in case of *Devi Saran Sharma v. District Magistrate/Zila Adhikari, Meerut and Ors.* reported in [2000] 1 UPLBEC 582 and the judgment of this Court given in case of *Chandar Prasad Verma v. State of U.P. and Ors.* reported in 2006 (2) ESC, 1491.

5. In response to the aforesaid Sri Alam learned Sanding Counsel submits that even on the basis of a single adverse entry petitioner can be directed to be compulsory retired. In this connection reliance has been placed on the decision given by the Apex Court in case of *S. Prabhjeet Singh Johar Vs. Harjeet Singh and Others*,

6. There appears to be no dispute about the fact that petitioner was initially appointed as Seasonal Collection Amin in the year 1974 and on completion of satisfactory service in the year 1985 he was given regular appointment as Collection Amin. It is said that on account of less recovery to the targeted amount he was placed under suspension but that order was stayed by this Court. In fact recovery was to be effected from the farmers and against the targeted amount of Rs. 30,000/= he recovered an amount of Rs. 17,393.80. It is said that in the report of the enquiry officer it is mentioned that payment to the farmers about their sugar cane was not started and farmers informed that as soon as payment of their sugar cane is started they will immediately make payment upon which targeted amount of the petitioner would have also complete. In the counter affidavit this appears to be the sole ground for directing the petitioner to be compulsory retired Although Apex Court in the judgment given in case of *State of U.P. v. Vijay Kumar Jain (Supra)* has said that on the basis of a single adverse entry the order of compulsory retirement can be passed but that happened to be a case of serious adverse entry relating to integrity of a government servant. This Court in case of *Ravi Saran Sharma (Supra)* has clearly held that exercise of power to compulsory retire a government servant is to be exercised in public interest as object is to weed out dead wood and it should appear from the record that continuance of that employee in the service became of no use and if it is not established then action is to be held as arbitrary and punitive. The same view has been expressed by this Court in case of *Chandar Prasad Verma (Supra)* in which it has been said that power to compulsory retire a government servant cannot be used to punish a government servant. So far case in hand is concerned if there was less recovery from the targeted amount there may be various factors as has been stated by the petitioner and even that appears from the enquiry officer's report. Lastly, it can be (sic) that it has been held by this Court that lesser amount of recovery cannot be said to be a ground

for removing a government servant from service unless something further is established against his integrity and conduct. Petitioner has submitted that several other Collection Amins having recovered even lessor amount than the petitioner has been earlier placed under suspension but have been reinstated and therefore on these facts it cannot be said that impugned order of compulsory retirement of the petitioner is in the public interest and petitioner has been established to be dead wood and of no use in the department.

7. Petitioner was retired in the public interest. This expression has been explained in series of judgment. Reference can be made to the judgment given in case of S. Ramachandra Raju v. State of Orissa reported in (1994) Vol. 28, Administrative Tribunal Cases, 443 in which Apex Court has held that order of compulsory retirement passed on one adverse entry followed by subsequent report makes the exercise of power arbitrary.

8. In view of the aforesaid discussions, this writ petition succeeds and is allowed. The order dated 31.5.2001 passed by the respondent No. 2 (Annexure-1 to the writ petition is hereby quashed and petitioner is to get consequential benefits.