

(1975) 03 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 907 of 1973

U.K. Narayanan

APPELLANT

Vs

State of Madhya Pradesh and others

RESPONDENT

Date of Decision : 12-03-1975

Acts Referred:

Constitution of India, 1950 — Article 310

Citation : (1978) ILR (MP) 740 : (1975) JLJ 760

Hon'ble Judges : P.K. Tare, C.J;M.L. Malik, J

Bench : Division Bench

Advocate : Gulab Gupta, for the Appellant; S.K. Dixit, Deputy Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Malik, J.—The petitioner seeks a writ of certiorari for the purpose of quashing the two orders of the State Government, dated the 2nd September, 1972, and the 5th January, 1973 (Petitioner's Annexures III and IV). Under the first order, the State Government, purporting to Act under Fundamental Rule 56 (3), has ordered the petitioner's retirement from service on his completion of the age of 55 years and in lieu of three months' notice provided for in the Rule, agreeing to pay three months' salary instead. Under the second order, the petitioner has not been permitted to cross the Efficiency Bar in the scale of pay that he was drawing.

2. The petitioner joined the State Town and Country Planning Department as a Senior Surveyer in the year 1950, and later in the same year, was appointed as a Town Planning Inspector after he was selected by the Public Service Commission. He was confirmed in his appointment and held this post substantively till his retirement. As would appear from the copy of the judgment in Miscellaneous Petition No. 248 of 1979, U.K. Narayanan v. The State of Madhya Pradesh¹ the petitioner was promoted by order dated 28-2-1963, temporarily as Assistant Engineer for a period of six months or till such time a candidate was selected by

the Public Service Commission to fill in the post, whichever was earlier. The period was further extended for six months by order dated the 4th October, 1963. The third order extending the period of temporary appointment was made on 4-3-1964, till such time a candidate was selected by the Public Service Commission.

The petitioner faced the Public Service Commission along with other candidates. He was not selected. Instead, Shri S.T. Majumdar and Shri R.S. Thakkar were selected. On 8-2-1955, the Chief Town Planner, Bhopal, issued an order of reversion of the petitioner to his substantive post consequent upon his non-selection by the Public Service Commission. The petitioner was on a short leave when this order of reversion was communicated. On the expiry of the leave, the petitioner did not report on duty as Town Planning Inspector. He was, therefore, charge-sheeted for non-compliance of the order dated the 8th February, 1965, and for having used intemperate and discourteous language towards the Chief Town Planner, Bhopal. The Departmental Enquiry ended in his dismissal from Service with effect from 14-5-1970.

3. While the Departmental Enquiry was pending, the petitioner filed a writ petition sometime in 1969 challenging the order of his reversion and the selection of Majumdar and Thakkar as Assistant Engineer. Upon his dismissal, he sought the relief of reinstatement also.

The decision of the writ petition went in favour of the petitioner. The Court held that Majumdar and Thakkar were not eligible to be selected, as they did not fulfil the requisite qualifications as notified. The petitioner's appointment to the post of Assistant Engineer could come to an end only after a valid selection was made. An invalid selection could not automatically terminate the petitioner's appointment. The Court further held that the order of reversion dated the 8th February 1965, was, therefore, an illegal order, the non-compliance of which could not visit the petitioner with the penalty of dismissal. The Court said that the order terminating the petitioner's services should also have been passed by the State Government which was the appointing authority. That order was illegal, having been passed by an officer subordinate to the appointing authority. The petitioner was accordingly ordered to be reinstated.

4. In pursuance of the decision of this Court, the petitioner was reinstated by order of the State Government, dated the 30th June, 1972. The petitioner resumed his duty as Assistant Engineer on 3-7-1972. On 2-9-1972, the State Government passed the impugned order compulsorily retiring the petitioner under Fundamental Rule 56 (3) and offered him three months' salary in lieu of three months' notice. An amount of Rs. 1770 was tendered to the petitioner on 23-9-1972, which the petitioner declined to accept, because according to him, the amount did not represent the full three months' salary, and because the whole action was mala fide. The petitioner further says that in order to justify the action and to bring the offer of payment of Rs. 1770 within the ambit of the Rule. The State Government passed another order on 5-3-1973 (long after

compulsorily retiring the petitioner) stopping him at the Efficiency Bar, which fell due to him on 1-3-1969. The petitioner contends that he could be stopped at the Efficiency Bar if there was record of adverse service. But in his case, there could possibly be no adverse record since he was out of office from 1965 to 1972. Reinstatement in 1972 should have brought to him all the consequential benefits including the crossing of Efficiency Bar. The order of the Government dated the 5th January, 1973 was thus clearly mala fide.

The petitioner says that Shri Kaplish, Additional Director, Town and Country Planning (respondent No. 4), bore ill will against the petitioner and he had misdirected the Public Service Commission in the matter of selection of Majumdar and Thakkar and in rejecting the petitioner. It is he who had misdirected the Government in passing the order of the petitioner's compulsory retirement and the one of stopping him at the Efficiency Bar.

5. The learned counsel for the petitioner very fairly conceded that in view of the dictum of the Supreme Court in J.N. Sinha's case Union of India (UOI) Vs. Col. J.N. Sinha and Another, the order of compulsory retirement could be challenged on very limited grounds, and the grounds could possibly be that the competent authority had not formed the requisite opinion about the public interest involved, or that the order was passed arbitrarily or that it was founded on collateral facts. To quote their Lordships' words:

Where an appropriate authority bona fide forms opinion that a Government servant be retired in public interest, he can pass order of compulsory retirement. That opinion cannot be challenged before Courts. Not Rule 56 (j) requires that the opportunity to show cause against compulsory retirement must be given. Order of compulsory retirement can be challenged only on ground that either the requisite opinion was not formed or that the order was passed arbitrarily or on collateral grounds.

Fundamental Rule 56 (j) holds the balance between the rights of the individual Government servant and the interests of the public. While a minimum service is guaranteed to the Government servant, the Government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest. Compulsory retirement involves no civil consequences. Rule 56 (j) is not intended for taking any penal action against the Government servants. That rule merely embodies one of the facets of the "pleasure doctrine" embodied in Article 310 of the Constitution.

The Rule 56 (j) which was the subject-matter of construction before their Lordships of the Supreme Court is in no way different from our Rule 56 (3) which may be usefully reproduced here:

Rule 56 (3): A Government 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.

6. We may straight go, therefore, to consider whether the order of compulsory retirement was passed mala fide. It is said that Shri Kaplish influenced the decision of the Public Service Commission in getting the petitioner rejected in the selection of Assistant Engineers or in getting Majumdar and Thakkar selected. There is no evidence whatsoever, in what manner, by what correspondence and by what words Shri Kaplish tried to influence the members of the Public Service Commission. The members, as we ought to presume, are persons of highest integrity and they record their individual and independent opinion upon the merit of the candidates assisted, if they so desired, by the opinion of the experts present. To mislead such an august body is almost impossibility. At any rate, no evidence is placed on record from which it could be gathered that the Commission was misled by Shri Kaplish.

7. We are not concerned here with the non-selection of the petitioner or selection of Majumdar or Thakkar to the post of an Assistant Engineer. The selection was struck down by this Court on the ground that the persons selected did not fulfil the qualifications as notified. The Court did not say that Shri Kaplish had influenced the members of the Public Service Commission. The petitioner was, however, reinstated on the temporary post that he held, after the decision of this Court.

8. The question is whether the decision as to his compulsory retirement was influenced by Shri Kaplish and whether the State Government had acted mala fide in taking that decision. It would be relevant to note that the petitioner had brought to the notice of the State Government all facts, real and imaginary, that Shri Kaplish bore ill will against him and meant to harm him at whatever cost and that he was a man of doubtful integrity himself. The State Government directed an enquiry into the conduct of Shri Kaplish by the Vigilance Commission and found no truth in the slanderous attack made by the petitioner. If an enquiry could be directed against Shri Kaplish, it would be foolish to suggest that Shri Kaplish was yet in a position to influence the decision of the State Government in retiring the petitioner. The Chief Minister, to whom the file was marked, had his own independent advice in the matters both at the time of taking the initial decision and when a departmental appeal was made. The petitioner had written everything he could, in his representations against Kaplish, exhibiting piquancy, intemperance and insubordination. His address lacked decroum and propriety.

The State Government was thus fully apprised of the petitioner's outlook towards Kaplish and yet the Government took the decision of compulsorily retiring him. It could not possibly be said that in evaluating the petitioner's work and conduct, the Chief Minister had no independent advice.

9. The learned counsel for the petitioner argued that the petitioner was out of Office from 1955 to 1972, and, therefore, all that could be seen about his work and conduct was that he was granted a promotion in 1963 and he worked satisfactorily till 1965. He was twice granted an extension in the promoted post, presumably because he was discharging his duties efficiently.

As against this, is the argument of the learned Government Advocate, that there was a man who took his reversion with ill-grace; did not join on his substantive post for long seven years, went to the High Court four years after the passing of the said reversion order deprived the State of his services in whatever capacity, and thereby exhibited lack of devotion to duty, used intemperate and offensive language towards his superior officers for which he was charge-sheeted and actually removed from service on that count. If the Government took all these factors into consideration in taking a decision as to whether it would be in public interest to retain him after the age of 55 years, could that decision be called mala fide at all? And after all, the petitioner was only promoted temporarily as Assistant Engineer. He had no vested right to continue on the post and he was also not selected by the Public Service Commission.

10. We agree with the learned Government Advocate and we are of the view that the decision of the Government in compulsorily retiring the petitioner at the age of 55 years, could not be attacked on the ground of the "mala fide".

11. The next argument of the petitioner is that the order of retirement under the Rule could be effective only if the State Government simultaneously offered payment to him of his three months' salary. Unless the payment of an exact amount accompanied the service of notice, the order of compulsory retirement would be bad. Reliance is placed by the petitioner on the authority of the Supreme Court reported in Senior Superintendent, R.M.S., Cochin and Another Vs. K.V. Gopinath, Sorter, It was a case of termination of a temporary servant and the Rule read: "The services of such Government Servant may be terminated forthwith by payment to him of his pay plus allowances.....". Their Lordships of the Supreme Court interpreted this Rule to mean that the service of notice would be effective only upon payment forthwith.

The Rule in question here has not that rigor. The words "forthwith" and "by payment to him" used in the context are missing. We would advert to another case, the reference to which has been made in para. 6 of their Lordships' judgment. The case is: The State of Uttar Pradesh v. Dinanath Rai 1969 SLR 647 (S C) decided on the 11th October 1968. The relevant portion of Rule for interpretation reads thus:

.....Provided that in the case of notice of the appointing authority the latter may substitute for the whole or part of this period of notice pay in lieu thereof provided further that it shall be open to the appointing authority to relieve a Government servant without any notice or accept notice for a shorter period, without requiring the Government servant to pay any penalty in lieu of notice.

Their Lordships construed the Rule differently and observed:

The rule does not say that the pay should be given in cash or by this cheque at the time the notice is issued. Knowing the way the Governments are run, it would be difficult to ascribe this intention to the rule-making authority. There is no doubt that the Government servant would be entitled to the pay in lieu of

notice but this would be in the ordinary course.

In the present case, the language of the Rule is akin to the language used in the Rule in Dinanath Rai's case and we would prefer to construe the Rule in the manner it was done in Dinanath's case. The payment contemplated by the Rule is neither payment to be made forthwith, simultaneously with the notice, nor would the notice be effective only upon payment being made. Payment could follow in the ordinary course.

12. Even otherwise, we find that there was substantial compliance of the Rule. The offer of Rs. 1770 towards three months' salary, was made, presumably, on the same day notice of compulsory retirement was served or soon thereafter. The petition does not disclose the date of service of notice. The grievance of the petitioner is that the salary offered was calculated on the basis, as if; the petitioner was stopped at the Efficiency Bar. According to him, the question of his crossing the Efficiency Bar could not arise for consideration after his retirement. The competent authority had to consider the question prior to or on the date the petitioner became entitled to it and that date was 1-3-1969. If he was not considered on that date for any reason whatsoever, it should be presumed, he says, that the competent authority had no objection to his crossing the Efficiency Bar.

13. The relevant rule is Rule 25 of the Fundamental Rules. It says:

Where an efficiency bar is prescribed in a time-scale, the increment next above the bar shall not be given to a Government servant without the specific sanction of the authority empowered to withhold increments,

Sanction to the crossing of the Efficiency Bar has to be specifically given. Unless there was specific sanction, the petitioner could not claim that he had crossed the bar automatically in the time-scale.

14. The petitioner was out of office from 1965 to 3rd July 1972. After his reinstatement in pursuance of this Court's order, his pay and allowances had to be regularized. But before that could be done, he was made to compulsorily retire. Yet the competent authority had to settle his pay and pension and in order to determine that, he must necessarily decide whether the petitioner should be permitted to cross the efficiency bar. Delays do not affect the grant. The grant could be made retrospectively.

15. We do not see how the petitioner could claim the sanction to crossing the efficiency bar simply because he had retired. The sanction could be given or withheld even after his retirement. If it was given, he could claim benefits even though retired. If it was withheld, he did not lose anything, because he had already stopped at that stage. It was, therefore, no infliction of punishment.

16. In this view of the matter, we see no substance in this petition. The petition is hereby dismissed with costs. Counsel's fee Rs. 150. The balance of the security amount, if any, shall be refunded to the petitioner.