

(2003) 11 MP CK 0089
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4368 of 2002

Vishwanath Prasad Agnihotri (Dr.)

APPELLANT

Vs

M.P. State Co-operative Dairy Federation Limited, Bhopal and
others

RESPONDENT

Date of Decision : 12-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Civil Services (Pension) Rules, 1976 — Rule 42(1)(b)
Madhya Pradesh State Co-operative Dairy Federation Limited Employees Recruitment,
Classification and Conditions of Service Regulations, 1985 — Regulation 13(1)

Citation : (2004) 2 MPLJ 292

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Advocate : Shobha Menon, with D.K. Mishra, for the Appellant; H.K. Upadhyaya for Respondent Nos. 1 to 3 and S.D. Khan, Government Advocate for State, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Khare, J.

This is a writ petition under Article 226 of the Constitution of India for quashing order dated 24-6-2002 (Annexure P/16) by which the petitioner has been compulsorily retired from the service under Regulation 13(1) of the M.P. State Co-operative Dairy Federation Limited Employees' Recruitment, Classification and Conditions of Service Regulations, 1985 (hereinafter to be referred to as the Regulations) on payment of salary of three months and for a direction to the respondents to reinstate him in service.

Before dealing with the facts of the present case it would be proper to state legal position relating to compulsory retirement. That has been considered by this Court recently in Arun Kumar Pandey Vs. State of M.P. and Others, . Paras 6 to 9 of that case are being reproduced below for ready reference:-

6. Point (a):-

Rule 42(1)(b) of the M.P. Civil Services (Pension) Rules, 1976, as amended, provides: "The appointing authority may in the public interest require a Government servant to retire from service at any time after he has completed 20 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. Similarly F.R. 56(j) of the Fundamental Rules provides that notwithstanding anything contained in this rule, the appropriate authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice, (i) if he is, in Group "A" or Group "B" service or post in a substantive, quasi permanent or temporary capacity and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years.

The decision to retire an officer or an employee compulsorily under or akin to the rules mentioned above must be arrived at in bona fide exercise of the power in public interest. It should not be arbitrary or mala fide. The object of the rule is to "chop off the dead wood" or to bid farewell to inefficient or whose integrity is doubtful. An order of compulsory retirement under such a statutory rule is not punitive. It does not carry any stigma. It is passed after considering the relevant material and the entire service record. More importance is attached to the latest confidential reports or other record. The adverse remarks prior to promotion or confirmation do not become entirely irrelevant though the importance to be attached to such remarks depends upon the facts of each case. There should be an overall assessment or evaluation of the whole record.

In *The State of Punjab Vs. Gurdas Singh*, it has been held by the Supreme Court that before the decision to retire a Government service prematurely is taken the authorities are required to consider the whole record of service. Any adverse entry prior to earning of promotion or crossing of efficiency bar or picking up higher rank is not wiped out and can be taken into consideration while considering the overall performance of the employee during whole of his tenure of service whether it is in public interest to retain him in the service. The whole record of service of the employee will include any uncommunicated adverse entries as well. In *Bishwanath Prasad Singh vs. State of Bihar*, (2001) 2 SCC 305 it has been reiterated that there are service rules, such as F.R. 56(j) of the Fundamental Rules, which confer on the Government or the appropriate authority, an absolute (but not arbitrary) right to retire a Government servant on his attaining a particular age or on his having completed a certain number of

years of service on formation of an opinion that in public interest it is necessary to compulsorily retire a Government servant. In that case, it is neither a punishment nor a penalty with loss of retiral benefits. More appropriately, it is like premature retirement. It does not cast any stigma. The government servant shall be entitled to the pension actually earned and other retiral benefits. So long as the opinion forming basis of the order for compulsory retirement in public interest is formed bona fide, the opinion cannot be ordinarily interfered with by a judicial forum. Such an order may be subjected to judicial review on very limited grounds such as the order being mala fide, based on no material or on collateral grounds or having been passed by an authority not competent to do so. The object of such compulsory retirement is not to punish or penalise the Government servant but to weed out the worthless who have lost their utility for the administration by their insensitive, unintelligent or dubious conduct impeding the flow of administration or promoting stagnation. The country needs speed, sensitivity, probity, non-irritative public relation and enthusiastic creativity which can be achieved by eliminating the dead wood, the paper logged and callous.

Again in *State of Gujarat Vs. Umedbhai M. Patel*, it is stated that the law relating to compulsory retirement has now crystallized into definite principles, which could be broadly summarised thus:

- (i) Whenever the services 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.

The same legal position has been subsequently reiterated by the Supreme Court in *State of U.P. vs. Vijay Kumar Jain*, AIR 2002 SC 1345 in which it is held: "If the conduct of a Government employee becomes unbecoming to the public interest or obstructs the efficiency in public services, the Government has under

F.R.56(c) read with Explanation (2) an absolute right to compulsorily retire such an employee in public interest. The Government's right to compulsorily retire an employee is a method to ensure efficiency in public service and while doing so the Government is entitled under Fundamental Rule 56 to take into account the entire service record, character roll or confidential report with emphasis on the later entries in the character roll of an employee. In fact, entire service record, character roll or confidential report furnishes the materials to find out whether a government servant has outlived his utility in service. It is on consideration of totality of the materials with emphasis on the later entries in the character roll that the Government is expected to form its opinion whether an employee is to be compulsorily retired or not".

Thereafter in Jugal Chandra Saikia Vs. State of Assam and Another, , the same principles have been reiterated and it has been observed: "The passing of an order of compulsory retirement depends on the subjective satisfaction of the competent authority, of course on objective consideration. Unless it is shown that the order of compulsory retirement was passed arbitrarily and without application of mind or that such formation of opinion to retire compulsorily was based on no evidence or that the order of compulsory retirement was totally perverse, the Court cannot interfere". Certain decisions have been cited by the counsel for the petitioner in which same principles have been laid down.

Regulation 13 of the Regulations in the present case provided compulsory retirement of an employee on attaining the age of 55 years or on completion of service of 25 years. That Regulation was amended by the Registrar of the Co-operative Societies in exercise of the power conferred by section 55(1) of the M.P. Co-operative Societies Act, 1960. The Amendment came into force on 24-12-2001. A copy of the amended Regulation is annexed with Annexure P/8. The amended Regulation provides that there can be compulsory retirement on attaining the age of 50 years or on completion of service of 20 years. This is at par with rule 42(1) of the M.P. Civil Services (Pension) Rules, 1976 which are applicable to the Government servants. This is also in tune with the order dated 22-8-2000 of the State Government. A copy of that order is Annexure P/30.

The petitioner has been retired on completion of 20 years of service under the amended Regulation 13. The Screening Committee scrutinised the service record of the petitioner for about 20 years. A formula was devised to determine the question whether the employee should be compulsorily retired. This formula is same as has been made applicable to the Government servants by circular dated 12-12-2001 (Annexure R/1) of the. State Government. According to this circular the entire service record of the employee should be considered by the Screening Committee and the competent authority. It is also stated therein that marks are to be given on the basis of the grading in the confidential reports. For "Outstanding" category four marks, for "Very Good" category three marks, for "Good" category two marks, for "Average" category one mark, and for "Poor" category zero mark has been allotted. The total marks are to be divided by the

number of years for which the confidential reports are available and which have been considered. It is further stated that in case the average marks are two or more than two then the employee should not be compulsorily retired and on the other hand if he gets less than two average marks he should be compulsorily retired. In the earlier circular dated 22-8-2000 (Annexure R/2) it has been stated that the special emphasis should be given to the service record for the last five years and the average of those years should also be calculated.

The petitioner's case is that his service record is good and unblemished. The action of the respondents is unjust and arbitrary. It is also stated to be mala fide. The confidential reports of several years have not been made available and those have not been considered. It is also alleged that the respondents have adopted "pick and choose" method. The compulsory retirement of the petitioner is said to be not in public interest. According to the petitioner the action is vindictive. The order dated 24-12-2001 of the Registrar amending the Regulation No. 13 is also challenged on the ground that he has made the amendment as per orders of the State Government which are not applicable to the case of the petitioner. It is also pointed out that as per Regulation 13 an employee is to be retired if his continuation is "not in the interest of Federation" and it is not stated in the Regulation that the compulsory retirement can be given "in public interest". The petitioner has also alleged bias in recording the confidential reports and the genuineness of the such reports has also been challenged.

The respondents' case is that the amendment in the Regulation No. 13 is in exercise of the rule making power conferred upon the Registrar and if the criterion laid down for the Government servants has been adopted in case of the employees of the M.P. State Co-operative Dairy Federation Limited (hereinafter to be referred to as the Federation), it cannot be said to be unjust or unreasonable. According to the respondents, the entire service record of the petitioner was considered by the Screening Committee especially confidential reports for the last five years and as the petitioner has secured less than two average marks he has been compulsorily retired. The competent authority took this action after considering the report of the Screening Committee. It has been specifically pleaded that the petitioner got 21 marks on the basis of 20 annual confidential reports and dividing these marks by 20 he got the average mark of 1.05 and therefore, he was found unfit to be retained in service. Grading and marks for each year have been shown in the additional return. The method which was adopted by the Screening Committee in evaluating the quality of service of the petitioner is just and reasonable. The petitioner submitted a representation to the Grievance Redressal Committee which consisted of four members of the Board of Directors of the Federation. This Committee after considering all the aspects also came to the conclusion that the order of compulsory retirement is just and proper.

The points for determination in this petition are (a) whether Regulation 13 as amended empowered the Federation to order compulsory retirement of the

petitioner and (b) whether the order which has been passed is arbitrary, perverse and without consideration of relevant material.

Point (a):

Regulation 13 even before the amendment in 2001 provided that the compulsory retirement of an employee could be ordered by the competent authority if it was "in the interest of the Federation". The words "public interest" were not mentioned therein. The amendment which has been made in 2001 is only to the effect that the age of 55 years has been reduced to 50 years and the service period of 25 years has been reduced to 20 years. The words which have been used in Rule 42(1)(b) of the M. P. Civil Services (Pension) Rules, 1976 are "in the public interest". The same words have been used in F.R. 56(j) of the Fundamental Rules. It appears that while framing Regulations for the Federation the words which were used were "in the interest of the Federation" and not "in the public interest". That does not, however, change the complexion or the substance. The object of the rule is to get rid of those employees who are inefficient, have become worthless and lost their utility for the employer. Therefore, the argument that words "in the interest of the Federation" are indicative of the interest of the employer and not of the employee is not acceptable. It is not the interest of the employer or the employee which is material but the efficiency and the integrity are paramount consideration. In the words of the Supreme Court quoted above- "The country needs speed, sensitivity, probity, non-irritative public relation and enthusiastic creativity which can be achieved by eliminating the dead wood, the paperlogged and callous". It is well known that many of the public corporations are sinking because of the inefficiency and non-productivity. Therefore, an attempt to weed out the dead wood and encourage efficiency, creativity and productivity cannot be said to be unjust or unreasonable exercise. The decisions must, however, be taken in bona fide exercise of the powers conferred on the employer and the bona fide can be demonstrated by considering the relevant service record. In the present case the Regulations have been amended in conformity with the rules applicable to the Government servants and therefore, the criterion which has been adopted cannot be said to be discriminatory.

Point (b):

The learned counsel for the petitioner has severely criticised the formula which has been adopted by the Federation by placing reliance on the two circulars of the State Government. But on due consideration this Court is of the opinion that the formula which has been adopted does not suffer from any legal infirmity. On the other hand this formula ensures objectivity in the evaluation of service record and rules out the chances of any bias, prejudice or subjectivity. It requires, consideration of the confidential reports of the entire service career with "special emphasis" for the last five years. Thus this formula is in conformity with the law laid down by the Supreme Court in various decisions referred above. The arithmetical evaluation is after all based on grading in the confidential reports.

There is an inbuilt safeguard in this formula ensuring uniformity in the approach of the Screening Committee and of the competent authority towards each employee. The service record according to this formula speaks for itself.

So far as the present petitioner is concerned, his annual confidential reports from the year 1980-81 to 1999-2000 have been considered by the Screening Committee and the competent authority. The original record of the confidential reports has been produced before this Court. It has been perused, the service record atleast for the last ten years of the petitioner on an average cannot be said to "Good". He has been given "Poor" remark from the year 1990-91 to 1992-93. His grading is average for three years and he was under suspension for three years. His grading for 1995-96 alone is "Good". Therefore, on consideration of the service record of the petitioner any person of ordinary prudence would come to the conclusion that he was not fit to be retained in service. He is really a dead wood and worthless and has lost his utility to the Federation. He has got only 1.05 marks on an average of 20 years. Therefore, the decision which has been taken by the Federation is bona fide and cannot be said to be arbitrary or unreasonable and therefore, it is not amenable to judicial review as held by the Supreme Court in the recent decision in Vijay Kumar Jain's case referred above and also in State of U.P. vs. Raj Kishore Goel, (2001) 10 SCC 183 .

The petition is dismissed.