

(2005) 10 AHC CK 0104

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6289 (S/S) of 2005

Yogesh Mowar

APPELLANT

Vs

U.P. Jal Nigam, Lucknow and others Opposite parties

RESPONDENT

Date of Decision : 19-10-2005

Acts Referred:

Citation : (2005) 10 AHC CK 0104

Hon'ble Judges : Rakesh Sharma, J

Final Decision : Allowed

Judgement

Rakesh Sharma, J.—Heard Sri Ritu Raj Awasthi, learned Counsel for the petitioner and Sri I.P. Singh, learned Counsel for the opposite parties, U.P. Jal Nigam.

2. Under challenge is an order of compulsory retirement passed against the petitioner, a Junior Engineer of U.P. Jal Nigam and issued on 2.9.2005 by Sri A.K. Seth, Chief Engineer A22, U.P. Jal Nigam, Lucknow, appointing authority for the post held by the petitioner.

3. The learned Counsel for the petitioner has submitted that the petitioner had entered the services of U.P. Jal Nigam as Junior Engineer (Civil) on 25.1.1980. He was allowed to cross E.B. on 21.6.1986 and thereafter he was confirmed in the services vide order dated 26.6.1992. The confirmation order was to become effective from 25.12.1983. The petitioner was allowed higher pay scale on completion of ten years' services vide order dated 30.9.1992. Considering the satisfactory services of the petitioner, he was allowed superior pay scale vide order dated 12.3.1996 w.e.f. 7.2.1995.

4. Sri Ritu Raj Awasthi, learned Counsel for the petitioner has further submitted that on 31.1.2002, the petitioner was allowed an extra increment for completing 19 years satisfactory services. He was further allowed second promotional scale (Rs. 10,000/15,200/ meant for Executive Engineers) w.e.f. 2.4.2004. This promotional scale is allowed to the Junior Engineers who have 24 years

satisfactory services to their credit.

5. Sri Ritu Raj Awasthi has led this Court to the Annexure No. 7 which is copy of the order dated 2.4.2004. The first para of the said order is quoted below which shows that this promotional scale is allowed on the recommendation of the Selection Committee, taking into account the 24 years satisfactory services :

6. Sri Ritu Raj Awasthi has further submitted that the petitioner's work, conduct and performance during his service period has remained entirely satisfactory. He has earned increments on due dates and crossed E.B. at appropriate stages. He has also earned selection and promotional scale etc. after completing satisfactory services. However, one censure entry was awarded against the petitioner vide order dated 28.11.2001. The petitioner avoided to challenge it as it was recommendatory in nature and it related to the year 1986 while the petitioner was posted at Haridwar.

7. According to the learned Counsel for the petitioner, this entry related to the event, which took place around 1986 and the same cannot be relied upon by the appointing authority for retiring the petitioner compulsorily.

8. One more adverse order was passed on 25.1.2002 against the petitioner and a recovery amounting to Rs. 55,000/- was imposed on the petitioner. This order was passed by the Chief Engineer as such it was challenged by the petitioner by filing a representation to the Managing Director of U.P. Jal Nigam on 17.4.2002. The representation submitted against the said recovery order is still pending disposal before the Managing Director of the Nigam.

9. Sri Ritu Raj Awasthi has strenuously argued that there was no other material in the service record of the petitioner except a single censure entry, which was also advisory in nature. He has further challenged the competence of Sri A.K. Seth for issuing the order of compulsorily retirement. Sri A.K. Seth has already stood retired on 31.7.2005, while the order of compulsorily retirement was issued on 2.9.2005. Sri A.K. Seth was neither the Chief Engineer nor the appointing authority of the post held by the petitioner and the order of compulsory retirement is null and void. The learned Counsel for the petitioner has placed reliance on the following judgments in support of his submissions that the order of compulsory retirement cannot be passed on the basis of a single adverse entry and the entry, against which a representation is pending, had to be excluded from consideration :

1. (2005) 6 SCC 224, M.L. Binjolkar v. State of M.P.
2. (1992) 2 SCC 299, Baikunath Nath Das and another v. Chief District Medical Officer and another.
3. (2001) LCD 317, Chandra Shekhar Singh v. State of U.P.
4. (2002) LCD 545, Triloki Nath Maini v. State of U.P. and others
5. (2003) 9 SCC 217, Union of India and others v. R.C. Misra.

10. After allowing the promotion and crossing of E.B., adverse material prior to issuance of an order of promotion etc. should wash out. He has laid much stress on the fact that the petitioner's entry has always remained above Board. The censure entry was not of such kind on the basis of which an opinion could have been formed of throwing the petitioner out of employment at this stage of life, in the evening of his service career.

11. Sri I.P. Singh, learned Counsel for the U.P. Jal Nigam, has resisted the Writ Petition by filing a counteraffidavit. He has demonstrated before the Court that the petitioner was found unfit and unsuitable for further retention in the services of the Nigam. A High Level Screening Committee was constituted which had recommended petitioner's case for compulsory retirement. The petitioner was awarded a censure entry on 28.11.2001. This censure entry is in the nature of a minor penalty, which was awarded after following due procedure as prescribed in the relevant service rules. Since the petitioner did not choose to challenge the said censure entry, the unchallenged censure entry can very well form the basis of compulsory retirement. He has further drawn attention of the Court to an order of recovery which was issued on 25.1.2002 after calling an explanation from the petitioner and considering his reply, a warning was also inserted in the service record of the petitioner. Although the petitioner has submitted a representation to the Managing Director of the Nigam on 17.4.2002, but the same cannot create hindrance in the decision of the appointing authority in not compulsorily retiring the employee.

12. Sri I.P. Singh has further submitted that Sri A.K. Seth was posted as Chief Engineer on 30/31.7.2005. This Court had granted an interim order on 6.6.2005 and by virtue of the said order, Sri A.K. Seth was allowed to continue as Chief Engineer. He was fully empowered as Chief Engineer to issue an order of compulsory retirement on 30/31.7.2004. The decision of compulsory retirement was already taken, however, the order of the same was communicated on 2.9.2005. The delay in issuance has occurred due to Panchayat elections. The impugned order was signed on 30.7.2005 and after the Panchayat election, the same was issued on 2.9.2005. The decision of retirement was taken in public interest after obtaining recommendation of the Screening Committee. There is no infirmity or illegality in the order of compulsory retirement.

13. Sri I.P. Singh has placed reliance on the decisions of Hon'ble the Supreme Court of India as reported in (1998) 4 SCC 92, *State of Punjab v. Gurdas Singh*; (2002) 2 UPLBEC 1167, *State of U.P. and others v. Vijay Kumar Jain* and AIR 1994 SC 1261, *Union of India v. V.P. Seth and another*, in support of his submissions that even uncommunicated adverse entry can be considered for retiring an unsuitable employee. The compulsory retirement can be ordered even on a single entry as held by Hon'ble the Supreme Court of India in the case of *State of Punjab v. Gurdas Singh* (supra).

14. Sri I.P. Singh has tried to clarify that the petitioner was not formally regularly promoted. He was given senior scale and promotional scale in routine matter.

There was nothing special for allowing these benefits to the petitioner as well as other employees of the Nigam.

15. I have considered the arguments of the learned Counsel for the parties and perused the record.

16. The service record including the Screening Committee's Report and a chart prepared by the Chief Engineer, U.P. Jal Nigam has been placed before this Court for appreciating this case. As per report, last ten entries were taken into account for compulsorily retiring the petitioner. Interestingly, in the annual assessment the petitioner's services were rated as Good (SPBT), during the years 199596, satisfactory, during the years 199798 and 199899. He was rated as Very Good during the years 19992000 and in 20022001 he was declared Excellent. During the years 20022003 and 20032004, the petitioner was rated as and respectively.

17. The record further reveals that entries for the years 199697 and 20042005 and entry relating to four months during 199596, 199697 and 20042005 were not available. The mere remark "3TCIW has been shown in the chart of the entries. This service record has been placed before this Court today.

18. It is noteworthy that during the 8 years" period, from the year 199596, the petitioner has been rated as Good. I have also perused the other events which took place in the service career of the petitioner. He was confirmed on 26.6.1992 and was allowed higher pay scale on 30.9.1992. The petitioner was allowed extra increment on 31.1.2002 which is generally allowed to an employee who has completed 19 years of satisfactory services as per relevant provisions of Fundamental Rules contained in Financial Hand Book, Volume II to IV. An increment is allowed to an employee after completing satisfactory required service period generally one year in respect of Government servant, public servant. Allowing extra increments as a result of completing 19 years of services shows that earlier to the said date, the petitioner had worked satisfactorily in the Corporation.

19. Now coming to the next event, landmark, in the petitioner's service career is 2.4.2004 when he was allowed promotional scale for completing 24 years satisfactory services as has been indicated in the foregoing Paras, quoted in Hindi that this scale is allowed to an employee of Jal Nigam after satisfactorily serving for 24 years. This scale is allowed on the recommendation of a Selection Committee. The critria for allowing this scale is merit. To assess the same the Selection Committee consisting of superior officers of the Corporation is constituted. The Members of the Committee must have advised the appointing authority that the petitioner was fit and suitable for allowing him pay scale of Rs. 10,000 to 15,200/ which is certainly a much superior pay scale admissible to a Junior Engineer of U.P. Jal Nigam.

20. I have also gone through the service record of the petitioner. The petitioner was always issued integrity certificate. His integrity too was found above the Board. As far as the censure entry awarded on 28.11.2001 is concerned, the

subject matter of accusation against the petitioner was improper maintenance of the pump put on sewer treatment plant. Even the nature of this entry is not such on the basis of which no reasonable person would form an opinion to compulsorily retirement the Junior Engineer of the Corporation who had served the organization for the last 25 years. In the same year, for doing the same job, relating to maintenance of sewer treatment plant, the petitioner's work was appreciated. As far as recovery order dated 25.1.2002 is concerned, admittedly a representation is pending disposal before the Managing Director. There is nothing in the Screening Committee's Report as to whether this representation was also taken into account while forming the opinion of compulsorily retiring the petitioner. Since a representation was pending disposal this order cannot have that effect on the basis of which the Junior Engineer could have compulsorily retired. The Court is conscious of the fact that this order of compulsorily retirement cannot be analyzed or reviewed as an appellate authority. However in the totality of the circumstances and on the basis of material brought before the Court, I am of the opinion that material was not such which could have warranted compulsorily retirement of the petitioner. The order of compulsorily retirement appears to have been passed on solitary entry. After going through the service record of the petitioner especially for the last 10 years where the petitioner has been rated as good, very good excellent worker, it was not justified to retire him compulsorily. The material relied upon was neither relevant nor could constitute adverse material of such grave nature to throw the petitioner out of employment at the age of 52 years.

21. The Writ Petition is allowed.

22. A writ of certiorari is issued quashing the impugned order dated 2.9.2005 as contained in Annexure No. 1 of the Writ Petition. The petitioner shall be allowed to continue in the service till he attains the age of superannuation and be paid full salary and allowances.