

(1996) 06 GAU CK 0022

Gauhati High Court

Case No: Civil Rule No"s. 1597 and 1698 of 1994

Jugal Chandra Saikia and

Another

APPELLANT

Vs

State of Assam and Another

RESPONDENT

Date of Decision: June 14, 1996

Acts Referred:

- Assam Fundamental Rules - Rule 56
- Constitution of India, 1950 - Article 311

Citation: (1998) 3 LLJ 343

Hon'ble Judges: J.N. Sharma, J

Bench: Single Bench

Advocate: H. Roy, B.D. Das, H.K. Sarma, Patha and H. Rahman, for the Appellant; A. Sarif, Government Advocate, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

J.N. Sharma, J.

In both the petitions, the orders of compulsory retirement of the petitioners have been challenged. The petitioners in both the cases were officers of the Veterinary Department.

2. In Civil Rule No. 1597/1994, the petitioner is Mr. J.C. Saikia. The order passed is at Annexure-K to the writ application by which the petitioner was retired compulsorily. That is quoted below:

"In exercise of the powers conferred under FR 56(b) the Governor of Assam hereby requires Dr. Jugal Chandra Saikia, Director, Institute of Farm Management, Rani (under suspension), a Member of the Assam Animal Husbandry, Veterinary and Dairying Service, who has already attained the age of 50 years, to retire from service

with immediate effect, in public interest.

A Banker's Cheque bearing No..... dated April 11, 1994 for Rs. 19,470/- (Rupees Nineteen Thousand Four Hundred Seventy) only, being three months" gross salary which is admissible to Dr. Jugal Chandra Saikia, is enclosed."

3. In Civil Rule No. 1698/1994, the petitioner is Mr. Hem Kanta Phukan. In this writ petition the impugned order by which the petitioner was retired compulsorily is at Annexure-V. That is quoted below:

"In exercise of the powers conferred under FR 56(b), the Governor of Assam hereby requires Dr. Hem Kanta Phukan, O/C, ICDP, Tezpur (under Suspension), a member of the Assam Animal Husbandry, Veterinary and Dairying Service, who has already attained the age of 50 (fifty) years, to retire from service with immediate effect, in public interest.

A Bank Draft bearing No. MOLA/38-722657 dated April 11, 1994 for Rs. 17,364.00 (Rupees Seventeen thousand three hundred sixty four) only, being 3 (three) months" gross salary which is admissible to Dr. Hem Kanta Phukan is enclosed."

4. Before we proceed further, let us have a look at FR 56(b) which is quoted below :

"56(b) Notwithstanding anything contained in these rules the appropriate authority may, if he is of the opinion that it is in the public interest to do so, retire a Government servant by giving him notice of not less than three months in writing or three months pay and allowance in lieu of such notice after he has attained fifty years of age or has completed: 25 years of service."

5. I have heard Mr. G.K. Bhattacharjee, learned Advocate for the petitioner in Civil Rule No. 1698/1994 and Mr. H. Rahman, learned Advocate for the petitioner in Civil Rule No. 1597/ 1994 and Sri Abu Sarif, learned Govt. Advocate for the respondents in both the cases. Mr. Sarif has also produced before me, the minutes of the meeting of the screening committee constituted by the State Government in the Department of, Personnel, vide Govt. notification. I have kept a photocopy of the minutes in my brief and have returned the original to Mr. Sarif.

6. The learned counsel for both the petitioners submit as follows :

(i) The impugned order is challenged as it is not in the Public Interest but it is punitive in nature and mala fide and arbitrary exercise of power.

(ii) The petitioners were placed under suspension pending drawal of the departmental proceeding under the Assam Services (Discipline and Appeal) Rules but the said Departmental proceeding was not initiated and the impugned order of compulsory retirement was issued by the Govt. which clearly proves that the order of compulsory retirement is not in public interest but it is by way of punishment and therefore provisions of Articles 311 and 14 of the Constitution were violated and the order is liable to be set aside.

(iii) That in arriving at a decision regarding compulsory retirement, the authority must take into consideration the confidential record more particularly the latest, and also the entire service record of the person in order to arrive at the correct finding that the person is a dead wood for the department and continuance in the department would be a menace in public service and injurious to public interest.

7. It is submitted by the counsel for the petitioner that all these things were not considered.

8. Mr. Bhattacharjee, in support of his contention relies on 1995 LLJ 1083 (S. Ramachandra Raju v. State of Orissa) wherein in paragraph 9 the Supreme Court after considering the earlier cases has laid down the law as follows:

"The entire service record or character rolls or confidential reports maintained would furnish the backdrop material for consideration by the Government or the Review Committee or the appropriate authority. On consideration of the totality of the facts and circumstances alone, the Government should form the opinion that the Government Officer needs to be compulsorily retired from service. Therefore, the entire service record more particularly the latest, would form the foundation for the opinion and furnish the base to exercise the power under the relevant rule to compulsorily retire a Government Officer. When an officer reaching the age of compulsory retirement, as was pointed out by this Court, he could neither seek alternative appointment nor meet the family burdens with the pension or other benefits he gets and thereby he would be subjected to great hardship and family would be greatly affected. Therefore before exercising the power, the competent appropriate authority must weigh pros and cons and balance the public interest as against the individual interest. On total evolution of the entire record of service if the Government or the Governmental authority forms the opinion that in the public interest the officer needs to be retired compulsorily, the Court may not interfere with the exercise of such bona fide exercise of power but the Court has power and duty to exercise the power of judicial review not as a Court of appeal but in its exercise of judicial review to consider whether the power has been properly exercised or is arbitrary or vitiated either by mala fide or actuated by extraneous consideration or arbitrary in retiring the Government Officer compulsorily from service."

9. Next case relied on by Sri Bhattacharjee is 1990 LLJ 601 (Ram Ekbal Sharma v. State of Bihar) wherein the Supreme Court in paragraph 28 pointed out as follows :

"Even if an order of compulsory retirement is couched in innocuous language without making any imputations against the Government servant who is directed to be compulsorily retired from service, the Court, if challenged, in appropriate cases can lift the veil to find out whether the order is based on any misconduct of the Government servant concerned or the order has been made bona fide and not with any oblique or extraneous purposes. Mere form of the order in such cases cannot

deter the Court from delving into the basis of the order if the order in question is challenged by the concerned Government servant."

10. The question which came for consideration before Supreme Court was that whether the order was passed by the authority in public interest or for any oblique motive or on extraneous consideration or by way of punishment causing stigma in the service career. That aspect of the matter shall be taken into consideration when we will consider the records of the minutes of the screening committee.

11. Next case relied on by Sri. Bhattacharjee is 1995 3 G LR 205 (LNK/297 Jogeswar Bordoloi v. State of Assam) where the single Judge of this Court pointed out that in a case of compulsory retirement, power must be exercised by forming an opinion that the compulsory retirement of the employee is in public interest. Public interest is the touchstone to decide the legality and validity of such an order. Exercise of power of compulsory retirement must not be a haunt on public servant but must act as the check and reasonable measure to ensure efficiency of service free from corruption and incompetence.

12. Next case is 1996 1 GLR 374 (Debendra Kumar Singh v. North Eastern Regional Medical College Society) where this Court pointed out that the compulsory retirement is not an order of punishment. It is prerogative of the Government. Orders should be based on materials and subjective satisfaction of the authorities, entire service records including ACRs if not considered before issuing the order of compulsory retirement is to be held arbitrary and quashed.

13. Before we proceed further, let us have a look at the minutes of the screening committee regarding Mr. H.K. Phukan and Mr. S.C. Saikia, Regarding Phukan it was found as follows :

"That he crossed fifty years of age and has already completed more than 25 years of service.

14. The committee also took into consideration the records made available by the department in respect of officer and viewed that he has indulged in serious malpractices in undertaking fraudulent transactions in the LOC scandal of the Animal Husbandry and Veterinary Department and was indicted in the report of the K.S. Rao Committee constituted to enquire into the said LOC scandal. The Committee was also convinced that Mr. H.K. Phukan has substantially contributed in bringing disrepute to the Government with his fraudulent activities and doubtful integrity. The Committee, therefore, was of the opinion that the Officer has both outlived his utility and is of doubtful integrity and his continuance in Government service any further would be detrimental to public interest, and accordingly, the Committee recommended that the Officer being of doubtful integrity and having outlived his utility for continuance in Government service in public interest, may be treated to have retired as provided under FR 56(b).

15. With regard to J.C. Saikia, the report of the Committee was that he has crossed 50 years of age and has already served the Government for more than twenty five years. The Committee perused the record made available by the department in respect of Dr. Jugal Chandra Saikia and had reasons to view that Dr. Saikia has indulged in serious malpractices in undertaking fraudulent transaction constituting the LOC scandal of the Animal Husbandry and Veterinary Department and was indicted in the report of the K.S. Rao Committee constituted to enquire into the said LOC scandal. That has convinced the Committee that Saikia has substantially contributed in bringing disrepute to the Government with his fraudulent activities and doubtful integrity, The Committee, therefore was of the opinion that Dr. J.C. Saikia has both outlived his utility and is of doubtful integrity and his continuance in Government service any further would be detrimental to public interest. In consideration of that, the Committee recommended for compulsory retirement of Dr. J.C. Saikia.

16. Mr. Sarif, learned Govt. Advocate has placed reliance on the following decisions :

(i) AIR 1992 SCW 3436 (Secretary to the Government, Harijan and Tribal Welfare Department, Bhubaneswar (Orissa) v. Nityananda Pati). That was a case where the review committee considered the case and recommended his retirement. The review committee took into consideration certain adverse remarks against the respondents and recommendation was made for retirement. The law has been laid down by the Apex Court in para 6 of the judgment. That is quoted below:

"The learned advocate, representing the respondent, has, besides challenging the correctness of the reported decision, contended that if the entire service record of the respondent is examined along with the other relevant materials, it would be found that the decision taken against the respondent was not called for. We are not in a position to agree with him. It appears from the records that the respondent was subjected to several departmental enquiries from time to time and had been placed under suspension for more than nine years and large sums of money were recovered from him by orders made in several proceedings. We have examined the matter thoroughly and we find that the Tribunal was not justified in interfering with the impugned order of retirement of the respondent. This appeal is accordingly allowed, the impugned judgment is set aside and the petition of the respondent originally filed in the High Court and later transferred to the Tribunal is dismissed. There will be no order as to costs."

(ii) 1996 LLJ 979 (K. Kandaswamy v. Union of India) wherein in paragraphs 8, 9 and 10 the Supreme Court pointed out as follows:

8. "Compulsory retirement does not amount to dismissal or removal from service within the meaning of Article 311 of the Constitution. It is neither punishment nor visits with loss of retiral benefits; nor does it cast stigma. The officer would be entitled to the pension that he has actually earned and there is no diminution of the

accrued benefits. The object of compulsory retirement of the Government employee is in public interest. If the appropriate authority bona fide forms that opinion, the correctness thereof on merits cannot be challenged before Court, though it may be open to the aggrieved employee to impugn it. But the same may be challenged on the ground that requisite opinion is based on no evidence or has not been formed or the decision is based for collateral grounds or that it is an arbitrary decision.

9. While exercising the power under Rule 56(j) of the Fundamental Rules, the appropriate authority has to weigh several circumstances in arriving at the conclusion that the employee requires to be compulsorily retired in public interest. The Government is given power to energise its machinery by weeding out dead wood, inefficient, corrupt and people of doubtful integrity by compulsorily retiring them from service, when the appropriate authority forms bona fide opinion that compulsory retirement of the Government employee is in the public interest, Court would not interfere with the order. In *S. Ramachandra Raju v. State of Orissa* (supra), a Bench of this Court to which one of us (K. Ramaswamy, J.) was a member, considered the entire case law and held that "the Government must exercise its power only in the public interest to effectuate the efficiency of the service. The dead wood needs to be removed to augment efficiency. Integrity in public service needs to be maintained. The exercise of power of compulsory retirement must not be a haunt of public servant but must act as a check and reasonable measure to ensure efficiency of service and free from corruption and incompetence. The officer would live by reputation built around him. In an appropriate case, there may not be sufficient evidence to take punitive disciplinary action of removal from service. But his conduct and reputation is such that his continuance in service would be a menace to public service and injurious to public interest. The entire service record or character rolls or confidential reports maintained would furnish the backdrop material for consideration by the Government or the Review Committee or the appropriate authority. On consideration of the totality of the facts and circumstances alone; the Government should form the opinion that the Government officer needs to be compulsorily retired from service. Therefore, the entire record more particularly, the latest, would form the foundation for the opinion and furnish the base to exercise the power under the relevant rule to compulsorily retire a Government Officer."

10. Higher the ladder the officer scales in the echelons of service, greater should be the transparency of integrity, honesty, character and dedication to duty. Work culture and self-discipline augment his experience. Security of service gives filling to accelerate assiduity to stay in line and measure up to the expected standard of efficiency by the Government employee. Thereby, they ultimately aid to achieve excellence in public service. The security of service provided by Article 311 of the Constitution and the statutory rules made under proviso to Article 309 would thus ensure to remove deficiency and incompetence and augment efficiency of public administration. The rights -- constitutional or statutory -- carry with them corollary

duty to maintain efficiency, integrity and dedication to public service. Unfortunately, the latter is being overlooked and neglected and the former unduly gets emphasised. The appropriate Government or the authority would, therefore, need to consider the totality of the facts and circumstances appropriate in each case and would form the opinion whether compulsory retirement of a Government employee would be in the public interest. The opinion must be based on the material on record; otherwise it would amount to arbitrary or colourable exercise of power."

17. In this particular case, the Supreme Court pointed out that the Govt. is given power to energise its machinery by weeding out dead wood, inefficient, corrupt and people of doubtful integrity by compulsorily retiring them from service, when the appropriate authority forms bona fide opinion that compulsory retirement of the Government employee is in the public interest. That is what has been done in the instant case as will be evident from the report of the screening committee. The screening committee has categorically found that in view of the report of the K.S. Rao, they found that these two officers, were corrupt and their integrity is absolutely doubtful and allowing them to continue in the department will bring disrepute to the Government and therefore, the committee recommended that these two Officers should be compulsorily retired. Whether that is correct or not that cannot be questioned before the Court, the only thing which can be questioned before the Court is that to focus the requisite opinion there is no evidence and/or no materials or that a reasonable man on the basis of the materials cannot form that particular opinion. It is the only limited scope which is available to the petitioner.

18. Next Case relied on by Sri Sarif is 1992 LLJ 784 (Baikuntha Nath Das v. Chief District Medical Officer, Baripada) wherein in paragraph 32 the Supreme Court pointed out that the same principle which emerges from the discussion of the earlier judgment and this is quoted below:

"The following principles emerge from the above discussion :

- (i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.
- (ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to retire a Government servant compulsorily. The order is passed on the subjective satisfaction of the Government.
- (iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate Court, they may interfere if they are satisfied that the order is passed (a) mala fide, or (b) that it is based on no evidence, or (c) that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material in short; if it is found to be a perverse order.

(iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter -- of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/ character rolls, both favourable and adverse. If a Government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstances by itself cannot be a basis for interference.

Interference is permissible only on the grounds mentioned in (iii) above. This object has been discussed in paras 29 to 31 above."

19. Next case is (Baikuntha Nath Das v. Chief Dist. Medical Officer, Baripada) (supra) wherein in paragraph 33, the Supreme Court pointed out as follows:

"Before parting with the case, we must refer to an argument urged by Sri R.K. Garg. He stressed what is called, the new concept of Article 14 as adumbrated in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, and submitted on that basis that any and every arbitrary action is open to judicial scrutiny. The general principle evolved in the said decision is not in issue here. We are concerned mainly with the question whether a facet of principle of natural justice--audi alteram partem -- is attracted in the case of compulsory retirement. In other words, the question is whether acting upon undisclosed material is a ground for quashing the order of compulsory retirement. Since we have held that the nature of the function is not quasi judicial in nature and because the action has to be taken on the subjective satisfaction of the Government, there is no room for importing the said facet of natural justice in such a case, more particularly when an order of compulsory retirement is not a punishment nor does it involve any stigma."

20. This being the position of law, in the instant case on the basis of materials the screening committee found that they are to be compulsorily retired and the committee further found that these two petitioners are corrupt persons with doubtful integrity and they are burden to the department, the opinion arrived at by the committee cannot be said to be unreasonable or perverse, as they are based on materials.

21. Accordingly, there is no merit in these writ applications and the same are dismissed. However, I leave the parties to bear their own costs.