

(1993) 02 MP CK 0006
Madhya Pradesh High Court
Case No: M.P. No. 1914 of 1986

Mahipal Singh

APPELLANT

Vs

M.P. Grih Nirman Mandal and
Others

RESPONDENT

Date of Decision: Feb. 8, 1993

Acts Referred:

- Madhya Pradesh Civil Services (Pension) Rules, 1976 - Rule 12(2), 42
- Madhya Pradesh Lokayukt Evam Up-Lokayukt Adhiniyam, 1981 - Section 2, 7

Citation: (1993) ILR (MP) 109 : (1993) 2 LLJ 1139 : (1993) 38 MPLJ 524 : (1993) MPLJ 524

Hon'ble Judges: S.K. Jha, C.J; P.P. Naolekar, J

Bench: Division Bench

Advocate: Y.S. Dharmadhikari, for the Appellant; N.C. Jain, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P.P. NAOLEKAR, J.

The petitioner was initially appointed as a Sub-Overseer on July 11, 1957 in the Madhya Pradesh Public Works Department (B. and R.), Bhopal Division, Bhopal. His appointment was later on regularised as Overseer with effect from July 18, 1957. The petitioner was confirmed on the post of Overseer in the Public Works Department with effect from January 1, 1971 by order of the Chief Engineer. By order No. 1630 dated November 2, 1968 the services of the petitioner were entrusted to the Housing Department of the State of Madhya Pradesh as an Assistant Engineer for a period of six months. Vide order No. 1536 dated November 14 1969 of the Department of Housing, his period of temporary posting as an Assistant Engineer in the M.P. Housing Department was extended until further orders. Subsequently, concurrence to his promotion as an Assistant Engineer was also accorded on November 20, 1973, vide Annexure-P/8, issued by the Under

Secretary to Government Housing Department, addressed to the Secretary, Public Service Commission, M.P., Indore, intimating that the petitioner Mahipal Singh should be deemed to have been absorbed in the Housing Department.

By another order No. 3817 dated November 27, 1973 of the Housing Department, the Government directed that the services of all the officers in the Housing Department be provisionally placed at the disposal of the Madhya Pradesh Housing Board with effect from January 1, 1974, on the same terms and conditions of service which were applicable to them on or before January 1, 1974. It was further mentioned therein that their services under the M.P. Housing Board from January 1, 1974 shall be treated by the Board as continuous for all purposes, such as, leave, pension etc. and the transfer of an employee in accordance with that order shall not amount to a break in service. It was further mentioned that in the event of any dispute about the terms and conditions of service as applicable to an individual employee immediately before January 1, 1974, the decision of the State Government shall be final and binding on the Board as well as the employee. That is how the petitioner's services have been placed at the disposal of the M.P. Housing Board.

Rule 42 of the M.P. Civil Services (Pension) Rules, 1976 (hereinafter called the Pension Rules) confers power on the appropriate authority to order premature retirement of a Government servant. By virtue of Section 15 of the M.P. Griha Nirman Mandal Adhiniyam, 1972, the Pension Rules of 1976 are applicable to the petitioner in relation to his remuneration and other conditions of service which reads as under:-

42. Retirement on completion of 20/25 years" qualifying service.

(a) A Government servant may retire at any time after completing 20 years" qualifying service, by giving a notice in form 28, to the appointing authority atleast three months before the date on which he wishes to retire or on payment by him of pay and allowances for the period of three months or for the period by which the notice actually given by him falls short of three months:

Provided that where the Government servant giving such notice is under suspension, he shall not be allowed to retire from service without the prior permission in writing of the appointing authority.

(b) The appointing authority may in the public interest require a Government servant to retire from service at any time after he has completed 25 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 them immediately before his retirement or, as the case

may be, for the period by which such notice falls short of three months.

In exercise of the powers conferred under Rule 42 (b) of the Pension Rules, the petitioner was compulsorily retired from service by the respondent No. 1 by order dated April 21, 1986 (Annexure-P/20) in public interest by giving him three month's salary in lieu of notice vide Bank Draft No. 151015 for Rs. 7,735/-. The petitioner was accordingly prematurely retired by the appropriate authority on the ground that he has completed 25 years of qualifying service.

It is argued by the learned counsel for the petitioner that the petitioner has not at all completed 25 years of qualifying service and thus the respondent No. 1 could not have exercised the powers of compulsorily retiring him from service. It is further argued that the order of compulsory retirement was passed without reaching the requisite opinion as to the public interest and has been passed on collateral grounds and thus the order Annexure-P/20 compulsorily retiring the petitioner is illegal and is liable to be set aside.

Rule 42(b) of the Pension Rules, 1976 confers power on the appropriate authority to retire an employee if it is of the opinion that it is in the public interest to do so on the date on which he completes 25 years of qualifying service. This power of premature retirement of an employee could be exercised, firstly, in the public interest and, secondly, on completion of 25 years of qualifying service and, therefore, it is necessary for the appropriate authority to make up its mind that it is in the public interest to retire the employee and also to find out that he has completed 25 years of service. It is clear from Rule 42 of the Pension Rules 1976 that 25 years of service should be the qualifying service which must have been completed by an employee before he is retired compulsorily. The expression "qualifying service" has been defined in Rule 42 of the Pension Rules, 1976, which means.

"Qualifying service" means the period between the date of joining pensionable service under the State Government and retirement therefrom which shall be taken into account for purpose of the pension and gratuity admissible under these rules and includes the period which qualifies under any other order or rules for the time being in force.

To be a qualifying service, it is therefore necessary that it must be a pensionable service from the date of joining till the date of retirement and that period can be taken into account for the purpose of pension and gratuity admissible under pension rules and may also include the period which qualifies under any other order or rules for the time being in force. Rule 12 (2) of the Pension Rules, 1976 reads as under:

12. Commencement of qualifying service -

(1) xxxxx xxxxxxxx xxxxxx

(2) Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity.

Under this Rule, "qualifying service" commences from the date an employee takes charge of the post to which he is appointed either substantively or in an officiating or temporary capacity. Temporary or officiating appointment to the post in a pensionable service shall be qualifying service of any employee and it is not necessary that employee is appointed to the post substantively.

The petitioner was appointed as a temporary Sub-Overseer in the Public Works Department on July 11, 1957 and his appointment was regularised with effect from July 18, 1957 and was sent to the Housing Department on November 2, 1968. On November 20, 1973, order (Annexure-P/8) was issued stating that the petitioner shall be deemed to have been absorbed in the Housing Department. In the meanwhile the State Government of Madhya Pradesh established the Madhya Pradesh Housing Board with effect from November 21, 1972 on coming into force of the M.P. Griha Nirman Mandal Adhyadesh, 1972 in exercise of the powers conferred u/s 3 of the Adhyadesh (which was later on repealed by M.P. Girha Nirman Mandal Adhiniyam, 1972). Later on orders were issued on November 27, 1973 (Annexure-P/9) whereby the services of all the officers of the Housing Department were provisionally placed at the disposal of the M.P. Housing Board with effect from January 1, 1974 on the same terms and conditions of service as were applicable to them immediately before January 1, 1974 and the transfer of services of an employee in accordance with this order shall not amount to a break in his service. On account of this order, the petitioner's services stood transferred from the Housing Department of the State Government to the M.P. Housing Board without any break in service on the same terms and conditions of service as were applicable to him before his transfer.

As a necessary corollary of this order, the petitioner's service continued to be pensionable without any break in service and continues to be in the Madhya Pradesh Housing Board till the order of compulsory retirement was issued on April 21, 1986 (Annexure-P/20). The petitioner's qualifying service thus commenced from July 18, 1957 when he was initially appointed as Sub-Overseer in the M.P. Public Works Department and continues to be so till he was compulsorily retired by the impugned order dated April 21, 1986. The petitioner's qualifying service being more than 25 years, the appropriate authority was well within its power and jurisdiction to pass orders of compulsory retirement of the petitioner under Rule 42 of the Pension Rules, 1976. Accordingly, we hold that the order of compulsory retirement of the petitioner was passed under lawful authority by the respondent No. 1.

It is now well settled by a catena of decisions of the Apex Court that compulsory retirement simpliciter in accordance with the terms and conditions of service does not amount to punishment, as the Government servant does not lose terminatory

benefits earned by him on account of service. The order of compulsory retirement can be issued if the authority reaches a bona fide conclusion that the retirement of the incumbent who with the passage of time, has prematurely ceased to possess the standard of efficiency, competence and utility expected of him in the office. (See [Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others,](#) ; [Gian Singh Mann Vs. High Court of Punjab and Haryana and Another,](#) , [Union of India \(UOI\) Vs. M.E. Reddy and Another,](#) It is also the settled principle of law that in order to pass an order of compulsory retirement, the authority should reach its bona fide opinion that such an order is necessary in the public interest and that such opinion of the authority should be based on relevant material and not on collateral grounds or in the arbitrary exercise of power see [J.D. Srivastava Vs. State of M.P. and Others,](#) and [Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another,](#) A Government servant is well within his rights to say that his compulsory retirement be set at naught if he can demonstrate to the Court that the requisite opinion has not been reached before passing the order of compulsory retirement, or the order is based on collateral grounds or that it is an arbitrary decision based on no material or it is based on material on which no reliance could be placed. It is equally open to the Court to unveil the mask in a proper case and go into the question whether apparently an innocuous order is passed on public interest to remove a dead-wood or the order was issued by way of punishment- see. Ramekbal Sharma v. State of Bihar 1990 11 LLJ 601 . In a recent decision in [Posts and Telegraphs Board and others Vs. C.S.N. Murthy,](#) the Supreme Court has laid down the scope of enquiry and probe to which Courts can go while adjudicating the question of satisfaction of the authority passing orders of compulsory retirement: "Whether the conduct of the employee is such as to justify such a conclusion is primarily for the departmental authorities to decide. The nature of the delinquency and whether it is of such a degree as to require the compulsory retirement of the employee are primarily for the Government to decide upon. The Courts will not interfere with the exercise of this power, if arrived at bona fide and on the basis of material available on the record."

In the light of the aforesaid principles enunciated by the Supreme Court, we have to see whether the order of compulsory retirement of the petitioner was passed on forming the requisite opinion, that it is in public interest and whether the order so passed is based on the subjective satisfaction of the authority or is based on materials which are not extraneous. The respondents have placed on record a report of the Up-Lokayukt, Madhya Pradesh, of an enquiry conducted by him on the complaints made against the petitioner. The Up-Lokayukt reported:

"If all the facts which have been brought on record are considered, it appears that Shri Mahipal Singh has acquired property Benami in the names of his relatives and, thus, an inference is inevitable that he has acquired disproportionate assets."

The report of the Up-Lokayukt was sent to the Housing Board with a direction to inform the office of Lokayukt about the action taken or to be taken by the Board on this report.

It is argued by the learned counsel for the petitioner that Up-Lokayukt has no jurisdiction to make enquiries on the complaints made against the petitioner, as, at the relevant time, the petitioner was not a Government servant but was an employee of the M.P. Housing Board, which is an autonomous body. We are afraid, we cannot accept the contention of the petitioner. A bare reading of Section 2(g) read with Section 2(g)(v) and Section 7 of the Madhya Pradesh Lokayukt Evam Up-Lokayukt Adhiniyam, 1981 reveals that the petitioner was a public servant within the meaning of Section 2(g)(v) of the Act and by virtue of Section 7(ii) of the Act the Up-Lokayukt was competent to make enquiries on the complaints made against the petitioner, as the petitioner being an employee of a local authority, i.e. the M.P. Housing Board constituted under the Madhya Pradesh Griha Nirman Man-dal Adhiniyam, 1976. Sections 2(g), 2(g)(v) and 7(ii) of the Act are reproduced as under:

2 (g) "Public servant" means persons falling under any of the following categories, namely:

xxxx xxxxxxxxxxxx xxxxxxxxxxxx

2 (g)(v) Any person holding any office in, or any employee of-

(i) A Government Company within the meaning of Section 617 of the Companies Act, 1956; or

(ii) A Corporation or Local Authority established by the State Government under a Central or State enactment.

7 (ii) The Up-Lokayukt may proceed to enquire into an allegation made against any public servant other than that referred to in Clause (i):

Provided that the Lokayukt may enquire into an allegation made against any public servant referred to in Clause (ii).

11A. Section 12 of the M.P. Lokayukt Evam Up-Lokayukt Adhiniyam, 1981 (hereinafter called the Act of 1981) further makes it incumbent on the Lokayukt or Up-Lokayukt, as the case may be, to send his report in writing communicating his findings and recommendations, along with relevant material and other evidence to the competent authority, if after enquiry he is satisfied that the allegations made against the public servant are established. Sub-section (2) of Section 12 of the Act of 1981 requires the competent authority to examine the report forwarded by the Lokayukt or the Up-Lokayukt, as the case may be, and intimate him within three months of the receipt of the report as to the action taken or proposed to be taken on the basis of the report. Sub-section (3) of Section 12 provides that if the Lokayukt or the Up-Lokayukt, as the case may be, is satisfied with the action taken or

proposed to be taken on his recommendations, he may close the case. But, if there is no satisfaction in a particular case, and if he considers that the case so deserves, he may make a special report upon the case to the Governor of the State of Madhya Pradesh. The aforesaid provisions of the Act of 1981 make it abundantly clear that the competent authority was duty bound in law to consider the report of the Up-Lokayukt which which was sent in respect of the complaints made against the petitioner and inform the Up-Lokayukt about the action taken or proposed to be taken against the petitioner. That is what has been done by the Commissioner, Housing Board, while assessing the case of the petitioner so as to arrive at the conclusion whether to retire him compulsorily or not. The report of the competent authority dated April 21, 1986 (Annexure-R/12) is placed on record. The Commissioner, M.P. Housing Board has abundans cautela non nocet independently applied his mind to the facts of the case and reached the conclusion "that it appears that quite substantial evidence exists to prove that Shri Mahipal Singh has surreptitiously acquired properties vastly disproportionate to his known sources of income and efforts have been made to give it a legal cover by using the names of his father, mother and other relatives etc, and accordingly the Board proposed that Shri Mahipal Singh, Executive Engineer, may be retired in public interest with immediate effect and three months" salary be paid to him in lieu of three months" notice required under the above Rule." We have perused the report (Annexure-P/12) and we are satisfied that there is sufficient material for making the recommendation as has been made by the Housing Commissioner and Secretary. The consideration or the report of the Up-Lokayukt by the Housing Commissioner (authorised officer) was in the exercise of lawful authority imposed upon him by the Act of 1981 and consideration of the report of the Up-Lokayukt cannot be said to be consideration of extraneous matters in placing reliance on them before making a recommendation for compulsorily retiring the petitioner. We are of the opinion that the competent authority has applied its mind before reaching the conclusion that the petitioner should be retired compulsorily and the opinion was not based on any extraneous consideration.

The respondent No. 1, M.P. Griha Nirman Mandal, has placed on record the annual confidential reports of the petitioner for the period April 1, 1975 to January 1976 (Annexure-R/VI) wherein remarks are given: "Competent, with initiative. However, has a tendency to use political pressure to achieve his own ends." For the period 1983-84 [Annexure-R/7(D)] the remarks of the countersigning officer are: "A very arrogant officer. Untrustworthy. Fit to be weeded out." For the year 1984-85 [Annexure-R/7(C)] the remarks are "In the absence of self assessment, it is difficult to give specific comment. From whatever I have seen of him and some records, he is an indisciplined officer, brings political pressure and is a liability to the Housing Board." These remarks were recorded on July 14, 1986 after the retirement of the petitioner and cannot be given much weight. However, the other remarks given by the reviewing officer regarding the petitioner make it clear that his continuation in

service was not in public interest and the satisfaction arrived at by the competent authority cannot be said to be arbitrary. In *Union of India v. M.E. Reddy* (supra) the Supreme Court has held that similarly there may be cases of officers who are corrupt or of doubtful integrity and who may be considered for compulsory retirement in public interest, since they have almost reached the fag end of their service and their retirement would not entail any civil consequences. Thus doubtful integrity of an employee is a ground for consideration as to the usefulness in service of an employee after 25 years of qualifying service.

On an overall consideration of the material placed on record, we are of the opinion that the order of compulsory retirement was passed by the competent authority on consideration of the legal evidence. We are also of the opinion that the petitioner was of a doubtful integrity and his continuation in service was not in public interest and, therefore, the order was issued only to weed out the dead-wood in order to maintain high standard of efficiency and initiative in the service and not as a punishment.

As a result thereof, the petition fails and is dismissed with costs. Counsel's fee Rs. 250/- if certified.