(2014) 12 MP CK 0100

Madhya Pradesh High Court

Case No: Writ Petition(S) No. 12387/2004

Shailendra Singh Nahar		APPELLANT
	Vs	
State of M.P. and Others		RESPONDENT

Date of Decision: Dec. 5, 2014

Citation: (2015) 144 FLR 801 : (2015) 1 MPHT 181 : (2015) 1 MPLJ 560

Hon'ble Judges: A.M. Khanwilkar, C.J; Vandana Kasrekar, J

Bench: Division Bench

Advocate: Sankalp Kochar, Advocates for the Appellant; Piyush Dharmadhikari, Govt. Advocate, Advocates for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Vandana Kasrekar, J.

The petitioner has filed the present writ petition challenging the order, dated 27-11-2004 passed by respondent No. 1 thereby compulsorily retiring the petitioner with immediate effect. The said order is purportedly passed under Rule 42(1)(b) of M.P. Civil Services (Pension) Rules, 1976 (hereinafter referred to as "the Rules of 1976"), Rule 1-A of the M.P. District and Sessions Judges (Death-cum-Retirement Benefits) Rules, 1964, Rule 56(2)(a) of Fundamental Rules and Rule 14 of the M.P. Higher Judicial Service (Recruitment and Service Conditions) Rules, 1994. At the time when order of compulsory retirement was passed, the petitioner was working on the post of Additional District Judge. The petitioner was selected for appointment on the post of Civil Judge Class II on 21-7-1978. Thereafter, on 10-8-1978, he joined the post of Civil Judge Class II. He was confirmed on the said post on 30-6-1982. The petitioner was thereafter, promoted to the post of Civil Judge Class I on 3-8-1984. Thereafter, the petitioner was selected and appointed to the post of Chief Judicial Magistrate and then promoted and appointed as Officiating District and Sessions Judge in higher judicial service in the year 1991. The petitioner was confirmed on the post of District and Sessions Judge by the Full Court on 6-9-1995. The Administrative Committee No. 1 in its meeting on 3-9-2001, found the

petitioner suitable to continue in service and this recommendation was further unanimously approved in the Full Court meeting held on 3-11-2001. Thereafter, selection grade was given to the petitioner vide order dated 7-12-2001 w.e.f. 3-11-2001.

2. The petitioner has contended that his case was not considered for the purpose of compulsory retirement by the Full Court in its meeting in the year 2002-03. On 27-8-2004, however, the case of the petitioner was again considered for compulsory retirement and the Administrative Committee No. 1 during the next screening in accordance with Clause 3(b) of the State Guidelines, opined that the petitioner is found suitable to continue in service. However, the Full Court took a contrary view. As a result, on 11-9-2004, the High Court, i.e., respondent No. 2 recommended to the State Government for compulsorily retiring the petitioner. On the basis of the said recommendation, respondent No. 1 passed an order, dated 13-9-2004 thereby retiring the petitioner compulsorily. That decision is the subject matter of this writ petition. The petitioner then filed SLP (Civil) No. 7294/2011 challenging the interlocutory order passed in this writ petition, before the Apex Court. That SLP was withdrawn by him vide order dated 25-7-2012 with a liberty to pursue his present writ petition pending before this Court.

3. Learned Counsel for the petitioner has assailed the order of compulsory retirement on the following grounds:--

(i) The service record of the petitioner is quite satisfactory and he has received four grade "C" and one grade "B" during his preceding five years of service.

(ii) That the petitioner was served with two adverse entries in the years 1994-95 and 1998-99, however, these two adverse entries are wiped out as he was granted the selection grade vide order dated 7-12-2001 w.e.f. 3-11-2001. The contention of the petitioner is that for the adverse entry of the year 1994-95, he submitted a representation, which was rejected vide order dated 17-5-1995. So far as the adverse entry for the year 1998 is concerned, it is submitted that the petitioner submitted a representation against the same adverse entry and the said representation was rejected vide order dated 15-7-1999, however, his subsequent representation was allowed by Hon"ble the Chief Justice on 7-3-2002 and he has been upgraded from Grade "C" to Grade "B".

(iii) That the Administrative Committee No. 1 having considered the case of the petitioner for compulsory retirement and having found him to be suitable to continue in service, yet the order of compulsory retirement has been passed;

(iv) The petitioner has further raised a ground that he has not attained the age of 50 years and, therefore, the order could not have been passed under Rule 42(1)(b) of the Pension Rules.

4. On the other hand, the respondents have supported the order of compulsory retirement on the ground that the entire service record of the petitioner was perused by the Full Court and on the basis of the record, the respondents have issued the order of

compulsory retirement. The respondents have further contended that one adverse entry regarding integrity is sufficient to retire the petitioner compulsorily and the recommendation of the Administrative Committee is not binding on the Full Court. The respondents have further contended that overall performance of the petitioner was not satisfactory.

5. The respondent No. 2 in the reply-affidavit, to oppose this petition, has asserted that the petitioner was retired when he was working as Additional District & Sessions Judge keeping in mind the proviso to Rule 42(1)(b) of the Rules of 1976, which stipulates that the Appointing Authority in public interest may retire a Government servant after he has completed 20 years of qualifying service or 50 years of age, whichever is earlier. Indisputably, the petitioner had completed 20 years of qualifying service. Further, the decision was taken by the Full Court in its meeting held on 11-9-2004 after considering the case of the petitioner with reference to his entire service record. His overall performance was considered by the Full Court and the subjective satisfaction of the Full Court cannot be questioned by the petitioner much less the judicial review thereof is not open. The reply-affidavit refers to the ACR entries pertaining to the petitioner from the date he entered service and, in particular, for the year 1979-80 onwards, which reads as follows:--

6. The reply-affidavit also refers to the special report submitted by the District Judge (confidential note), which was directed to be kept in ACR of the petitioner. The petitioner''s integrity was also not good. The Portfolio Judge after inspection of the judicial record and on discussion with the senior members of the Bar had opined that the integrity of the petitioner was doubtful; his moral character was also challenged by anonymous complaint of a lady. In substance, the Full Court was of the opinion that the petitioner had become a dead wood and was required to be weeded out. It is stated that the fact that the representation made by the petitioner was allowed or that he was subsequently granted selection grade will be of no avail in the fact situation of the present case. The other adverse entries in the ACR and regarding the poor performance of the petitioner cannot be treated as having been wiped out for the purposes of consideration of his case for compulsory retirement. In the present case, the Full Court having considered the entire service record of the petitioner and having formed that subjective satisfaction, the same cannot be said to be irrational or founded on extraneous considerations.

7. The petitioner, no doubt, has filed rejoinder affidavit and has attempted to explain each of the entries noted in his ACR, to contend that the same were not sufficient to arrive at the decision that the petitioner deserved to be compulsorily retired having become a

deadwood and more so, keeping in mind his performance for the past preceding five years.

8. The petitioner has relied on decisions of the Apex Court in State of Uttar Pradesh Vs. Chandra Mohan Nigam and Others, , State of Uttar Pradesh Vs. Batuk Deo Pati Tripathi and Another, and Nand Kumar Verma Vs. State of Jharkhand and Others, .

9. The respondents in support of their contentions have relied on two decisions of the Apex Court in Pyare Mohan Lal Vs. State of Jharkhand and Others, and R.C. Chandel Vs. High Court of M.P. and Another, .

10. Before we advert to the factual aspects of this matter, it may be useful to refer to the decision of the Apex Court in the case of R.C. Chandel (supra), directly on the point. It is held that the High Court has to maintain constant vigil on its subordinate judiciary. The power of the High Court to recommend to the Government to compulsorily retire a Judicial Officer on attaining the required length of service or requisite age and consequent action by the Government on such recommendation are beyond any doubt. Notably, the Court has held that the fact that the Judicial Officer was awarded selection grade would not wipe out the previous adverse entries, which have remained on record and continued to hold the field. For, the criterion for promotion or grant of increment or higher scale is different from an exercise, which is undertaken by the High Court to assess a Judicial Officer''s continued utility to the judicial system. In assessing potential for continued useful service of a Judicial Officer in the system, the High Court is required to take into account the entire service record and overall profile of a Judicial Officer is the guiding factor. The judicial officers of doubtful integrity, questionable reputation and wanting in utility are not entitled to benefit of service after attaining the requisite length of service or age. Moreover, compulsory retirement from service is neither dismissal nor removal. It differs from both of them. In that, it is not a form of punishment prescribed by the Rules and involves no penal consequences. Inasmuch as, the person retired is entitled to pension and other retiral benefits proportionate to the period of service standing to his credit. The Court went on to observe that the judicial service is not an ordinary Government service and the Judges are not employees as such. The Judges hold the public office and in discharge of their functions and duties, they represent the State. A Judge must be a person of impeccable integrity and unimpeachable independence. The standard of conduct expected of a Judge is much higher than an ordinary man.

11. In another decision of the Apex Court in the case of Pyare Mohan Lal (supra), the Court has restated the legal position that while considering the proposal of compulsory retirement of a judicial officer, the Authority has to consider "entire service record" of the officer irrespective that adverse entries had not been communicated to him and the officer had been promoted earlier in spite of those adverse entries. The ACR entries always remain part of record for overall consideration even when the employee has been subsequently promoted and the washed-off theory does not have universal application.

The washed-off theory may have relevance while considering the case of Government servant for further promotion but not in case where employee is assessed for retention in service or compulsory retirement, as suitability is to be assessed taking into consideration his "entire service record". Further, the Court went on to observe that even a single adverse entry about integrity of the judicial officer may be sufficient to compulsorily retire him from service.

12. Considering the settled legal position, the argument of the petitioner that his service record for preceding five years before the proposal was considered for compulsory retirement was "good", cannot be taken any further. In that, the entire service record of the petitioner was required to be considered and, as is found from the record, it was so considered by the Full Court. Similarly, the effacement of adverse entry for the year 1994-95 or of upgrading the petitioner to grade "C" for the period 1998-99 will be of no avail to the petitioner. The acceptance of representation of the petitioner by the Chief Justice and upgrading the petitioner from Grade "E" to Grade "C" has no effect of effacing the adverse remark about integrity of the petitioner for 1998-99. The subjective satisfaction of the Full Court having been reached on the basis of entire service record of the petitioner, which contained adverse entry and, more particularly of the year 1998-99, i.e., "there are some reports raising suspicion about his integrity" and the opinion of the Portfolio Judge that "on discussion with senior members of Bar and inspection of records he cannot be found to be an officer of integrity" by itself, was sufficient in the light of the abovesaid pronouncements. The fact that the case of petitioner was considered by the Full Court in its meeting dated 3rd November, 2001 and the entry about the integrity of petitioner for the year 1998-99 was part of the service record at that time, did not denude the Full Court from considering the entire service record of petitioner when the proposal was once again considered in 2004. In that meeting, if the Full Court decided to take the said entry into account and considered the proposal keeping in mind the entire service record of the petitioner, in law, no fault can be found with such decision of the Full Court. For, the theory of effacement of adverse entry is not attracted in respect of consideration of proposal for compulsory retirement.

13. Indeed, the Administrative Committee had recommended the petitioner as "suitable to continue in service". Since the said recommendation was placed for consideration before the Full Court, which is the Final Authority and the Full Court having opined that the petitioner had become a deadwood and required to be weeded out, that decision ought to prevail. The recommendation of the Administrative Committee was only recommendatory and not binding on the Full Court as such. It is not a case where the Administrative Committee was delegated with the power to take a "final decision" on the proposal. On the other hand, the Administrative Committee merely submitted its recommendation to the Full Court, which as aforesaid, after consideration of the entire service record of the petitioner, decided in favour of premature retirement of the petitioner. As the decision of the Full Court is founded on the entire service record, the fact that it differed from the recommendation of the Administrative Committee, will be of no avail to the petitioner. The

subjective satisfaction of the Full Court ought to prevail.

14. We are also not impressed by the argument that the petitioner could not have been compulsorily retired from service, as he had not completed the qualifying service. This argument is completely in ignorance of the proviso to Rule 42(1)(b) of the Rules of 1976. The proviso thereto enables the Authority to retire any Government servant at any time after he has completed 20 years qualifying service by giving him three months'' notice in Form 29. It is not the case of the petitioner that he had not completed 20 years of service. The fact that he had not attained the age of SO years, therefore, cannot be the basis to question the decision of the Authority, which otherwise is valid in terms of the above stated proviso.

15. That take us to the decision of the Supreme Court in the case of Chandra Mohan Nigam (supra), relied by the petitioner. Emphasis was placed on Paragraph 27 of this decision. In our opinion, the exposition in this decision will be of no avail to the petitioner as it was riot a case of review by the Full Court, but substantive decision taken by the Full Court after considering the entire service record of the petitioner and including being conscious of the recommendation made by the Administrative Committee. Even this decision reiterates the position that termination of service by way of premature retirement cannot be equated with the penal order of removal or dismissal and that when integrity of an officer is in question, that will be an exceptional circumstance for which the action can be resorted to, if other conditions of the Rule permitting compulsory retirement are fulfilled, apart from the choice of disciplinary action, which is also open to the Authority.

16. The decision of the Apex Court in the case of Batuk Deo Pati Tripathi (supra), in our opinion, will be of no avail to the petitioner as that decision is an authority on the exposition that the High Court can authorise an Administrative Judge or an Administrative Committee to act on behalf of the Court. As aforesaid, in the present case, the Administrative Committee merely made recommendation to the Full Court and the final decision on the proposal, therefore, vested in the Full Court. In the concluding part of Paragraph 18 of this judgment, similar argument has been rejected. The Court found that the recommendation made by the Administrative Committee that the respondent should be compulsorily retired cannot, therefore, be said to be suffer from legal infirmity.

17. Counsel for the petitioner, no doubt, made a feeble attempt to distinguish the exposition of the Apex Court in R.C. Chandel (supra), on the argument that, in that case, the service record of the officer was blemished and there was a clear remark as regards his integrity. In the present case, we have noticed that the remark regarding integrity of the petitioner in the service record pertaining to period 1998-99 has become final because of rejection of the representation in that behalf. Moreover, as observed by the Apex Court in the case of Pyare Mohan Lal (supra), even one entry about integrity against a judicial officer cannot be countenanced and can be reckoned for the purposes of compulsory retirement of such officer.

18. It was argued that in R.C. Chandel''s case (supra), the conduct of the judicial officer was found to be reprehensible as he attempted to influence the administrative decision by approaching the Member of Parliament and Law Minister. In our opinion, the legal position already adverted to above, has been restated in the said decision. That is not in the context of the facts of that case. That legal principle is binding on this Court.

19. For the reasons already recorded, even the decision in the case of Nand Kumar Verma (supra), will be of no avail to the petitioner. Even in this decision, the Apex Court has restated that there is very limited scope of judicial review of an order of compulsory retirement. The Court can examine where some ground or material germane to issue exists but cannot enter into the realm of sufficiency of material upon, which such order rests, that being the subjective satisfaction of the Authority concerned. In the present case, as is already noticed, the entire service record of the petitioner was considered by the Full Court. In that case, however, the High Court had taken decision of compulsory retirement on the basis of selective service record of the officer ignoring the totality of relevant material. In the facts of the present case, it is not open to argue that the Full Court considered only selective service record of the petitioner. Taking any view of the matter, therefore, this petition should fail being devoid of merits. Hence, dismissed with no order as to costs.