

State of M. P.

Vs

Ganekar Motghare

Civil Appeal No. 4756 of 1989

(M. H. Kania, Kuldip Singh, K. N. Singh JJ)

21.11. 1989

JUDGMENT

K. N. SINGH, J. –

1. Special leave granted.

2. This appeal is directed against the order of the High Court of Madhya Pradesh, Jabalpur, Gwalior Bench dated September 6, 1985 quashing the State Government's order dated August 21, 1984 prematurely retiring the respondent from service.

3. The respondent was holding the post of Deputy Director of Geology and Mining in the State of Madhya Pradesh. The State Government constituted a committee for screening the service roll of its employees for considering the question of compulsory retirement on attaining the age of 55 years. The Screening Committee which included Shri S. S. Dave, Director of Geology and Mining Department of the Government of Madhya Pradesh, on examining the service records of the respondent made recommendation to the government for his premature retirement. Pursuant to the Screening Committee's recommendation the State Government by its order dated August 21, 1984 retired the respondent compulsorily from service under Rule 56 of the Fundamental Rules. The respondent challenged the validity of the State Government's order by means of a writ petition under Article 226 of the Constitution before the High Court (Gwalior Bench). The High Court quashed the State Government's order on the finding that the participation of Shri S. S. Dave in the deliberation of the Screening Committee vitiated its recommendation and also consequently order of the State Government on the doctrine of bias. The High Court further held that since Shri S. S. Dave had on an earlier occasion awarded adverse remarks against the respondent he was biased in law and therefore he was disqualified to be a member of the Screening Committee and his participation in the Screening Committee rendered his recommendation invalid. The High Court placed reliance on the decision of this Court in A. K. Kraipak v. Union of India ((1969) 2 SCC 262 : (1970) 1 SCR 457).

4. After hearing learned counsel for the parties at length we are of the opinion that this appeal must succeed. The object and purpose of Fundamental Rule 56 conferring power on the government to prematurely terminate the service of a government servant is to ensure efficiency in the administration by weeding out dead-wood officials who may have outlived their utility as observed by this Court in J. N. Sinha v. Union of India ((1970) 2 SCC 458 : (1971) 1 SCR 791). While exercising this power the State Government constituted a high-powered committee consisting of senior officials of the State Government and S. S. Dave being the Head of Department of Geology and Mining was a member of the Screening Committee. As Head of Department he was the best

person to assess the efficiency and utility of employees working in the Department of Geology and Mining. His presence in the Committee was necessary to have a fair and correct assessment of the work and conduct of the employees of that department for the purposes of making recommendations to the government. While it is true that as Head of Department he had awarded adverse remarks to the respondent on an earlier occasion but that does not mean that he had any malice against the respondent, in fact no malice had been pleaded by the respondent against S. S. Dave. As Head of Department Dave had performed his duty in recording his opinion in the respondent's character roll as no other person was entitled under the rules to adjudge his work and conduct. No doubt bias and malice both vitiate decision of an authority. But by no stretch of imagination Dave could be held to have been biased against the respondent merely because on an earlier occasion he had in the performance of his duties awarded an adverse remark to the respondent.

5. The High Court committed serious error in holding that malice in law was writ large on the face of the proceedings of the Screening Committee although no malice in fact had been pleaded against him. In coming to that conclusion the High Court placed reliance of Kraipak case ((1969) 2 SCC 262 : (1970) 1 SCR 457). As a member of the Screening Committee Shri Dave was performing duty assigned to him under the rules and government order for screening records of the officers. He had no personal interest in the matter and there was no conflict between his personal interest and his duties as member of the Screening Committee, therefore there could not be any question of bias or malice in law. In Kraipak case ((1969) 2 SCC 262 : (1970) 1 SCR 457) an officer who was himself a candidate for selection was a member of the selection committee and selection was held to be vitiated on the ground that there was a conflict between that officer's personal interest and his duties as he was judge of his own cause. The principles laid down in Kraipak case ((1969) 2 SCC 262 : (1970) 1 SCR 457) do not apply to the facts of the instant case.

6. We are therefore of the opinion that Dave's presence in the Screening Committee did not vitiate the recommendation made by the Committee in any manner, consequently the State Government's order could not be quashed. The High Court had no valid reason to hold that the Screening Committee was not properly constituted and that its recommendation were unconstitutional. We accordingly allow the appeal, set aside the order of the High Court, and dismiss the respondent's writ petition but we make no order as to costs.

7. Although we have upheld the State Government's order but we would like to observe that since the respondent had been reinstated in service after the High Court order and he has now retired from service on attaining the age of superannuation, the State Government should not take any steps for reducing his pension by treating him to have retired with effect from August 21, 1984.

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