

Secretary to the Government, Harijan and Tribal Welfare Dept., Bhubaneswar (Orissa)

Vs

Nityananda Pati

Civil Appeal No. 4074 of 1992

(L. M. Sharma, S. Mohan, N. Venkatachala JJ)

22.09.1992

JUDGEMENT

SHARMA, J.:-

1. The respondent was appointed as Junior Welfare Extension Officer in the Year 1967. He was compulsorily retired under Rule 71 of the Orissa Service Code by order dated 25-4-1984, which he challenged by filing a writ petition before the High Court. The case was later transferred to the Orissa Administrative Tribunal and was allowed by the impugned judgment. The State of Orissa has challenged the same in the present case.

2. Heard the learned counsel for the parties. Special leave is granted.

3. According to the case of the appellants the respondent was born on 4-3-1931. The respondent alleged that the correct date of his birth was 4th March, 1934 and that the assumption made by the appellants was erroneous. He raised several arguments in support of his case. The Tribunal went into the question deeply and rejected the case of the respondent. We have examined the impugned judgment and are satisfied with the conclusion of the Tribunal on this point.

4. So far the order to retire the respondent prematurely is concerned, the Tribunal, while rejecting several arguments of the respondent, agreed with him that the Review Committee, which had considered the case of the respondent and recommended his retirement, had taken into consideration certain adverse entries against the respondent communicated to him later. According to it, the adverse entries must be treated not to have been communicated to the respondent at all for the purpose of his early retirement and this has vitiated the order of retirement.

5. The learned counsel for the appellant State has contended that while taking a decision to retire the respondent prematurely all the relevant facts and circumstances were considered, and the decision was not taken solely on the basis of the aforesaid adverse entries. Relying upon the decision in *Baikuntha Nath Das v. Chief District Medical Officer, Baripada*, (1992) 2 SCC 299 : (AIR 1992 SC 1020), it has been argued that the impugned order of compulsory retirement was not liable to be quashed on the ground that while passing the same certain uncommunicated adverse remarks were also taken into consideration. The learned counsel appears to be right.

6. 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 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. Appeal allowed.

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