

SUPREME COURT OF INDIA

Swaran Singh Chand

Vs.

Punjab State Electricity Board

C.A.No.3298 of 2009

(S.B. Sinha and Dr. Mukundakam Sharma JJ.)

06.05.2009

JUDGEMENT

S.B. Sinha, J.

1. Leave granted.

2. The core question, in this appeal, arising out of a judgment and order dated 17.08.2006 passed by the High Court of Punjab and Haryana in CWP No. 10549 of 2004, is as to whether an order of compulsory retirement being a stigmatic one would be valid in law.

3. Appellant was directed to be compulsorily retired on attaining the age of 55 years in terms of a circular letter dated 14.08.1981 laying down guidelines for compulsory retirement, the relevant portion whereof reads as under:

"(i) Although the entire service record of an employee has to be considered, premature retirement should not be ordered if during the last 5 years the work and conduct of the employee has been good or better than that.

(ii) Ordinarily, no retirement should be ordered within a period of one year preceding the date of superannuation of the Government employee.

(iii) If an adverse entry relating to integrity exists in the confidential reports during the 10 years preceding the review, or if after its recording there has been no change in the class, status or the post of the officer, that single entry should be considered sufficient for ordering premature retirement.

(iv) If the adverse report on integrity relates to the distant past or is more than 10 years old, the subsequent record of the employee should be scrutinized carefully. If the subsequent reports vouch-safe the integrity of the employee in unambiguous terms, the inference is that he has improved his conduct and it should not be necessary

to order his premature retirement. A similar view can be taken if an employee has been promoted after the recording of the adverse remarks."

4. Admittedly, the said order of retirement dated 29.09.2003 was based on the aforementioned circular letter. It reads as under:

"Whereas Shri Swaran Singh Chand, UDC S/o Sh.

Gurbachan Singh presently working in the office of Sr.Xen, Focal Point Spl. Division, Ludhiana has attained the age of 55 years on 14.10.01 because his date of birth is 15-10-1946.

Whereas as per PSEB Services (Premature Retirement) Regulations, the case of Shri Swarn Singh Chand UDC was considered on 17.9.2003 by the High Empowered Integrity Committee (HEIC) which has been set up to screen the cases of non-gazetted employees of Central Zone for retention in service beyond the age of 50/55 years.

The Committee took note of ACRs, disciplinary Cases, personal record and his reputation.

Report of disciplinary cases of above noted employee (as derived from his personal file) is as under:- CE/Op/Central Zone, Ludhiana stopped one increment without future effect vide this office order 81 dated 5.2.96 in the case of charge sheet No.C-653 dated 30.5.95 issued to him for embezzlement of Board's Cash of Rs.3069/- from M/s Falcon Industry having A/C No.J537.

The assessment of ACRs of the above official was scrutinized and observed that the following ACRs are below average with adverse remarks:

(1) 28.10.93 to 31.3.94 below average integrity doubtful with adverse remarks of the following nature i) Trust worthy Not Good ii) Habits Not Good iii) Knowledge of work Not Good iv) Knowledge of rules/Codes Less knowledge v) Relations with Co-employees and other Sections of the office and with Public Not Good vi) Integrity Doubtful vii) Overall Assessment Below Average viii) Capable for next Promotion No (2) 1.4.94 to 20.10.94 Below Average with adverse of following nature :

i) Control over subordinate employees No ii) Relations with employees & Public No iii) Knowledge of work No iv) Capable of next Promotion No v) Not Good in Office Work.

5. Appellant indisputably preferred an appeal thereagainst. In the Memorandum of Appeal, he questioned the legality of the said order inter alia contending:

“(i) Although a disciplinary proceeding for imposing major penalty had been initiated, a minor punishment was imposed without holding a departmental proceeding.

(ii) ACRs of the relevant period had been recorded within a period of 11 = months only for the purpose of upholding the chargesheet.

(iii) He, having been promoted to the post of Upper Division Clerk by an office order No. 135 dated 6.11.2001, the Appointing Authority could not have taken into consideration his ACRs prior to the said period.

The said appeal was rejected by the appellate authority, stating:

"I have gone through the relevant record/ comments of field officers and it is found that there is no point in his pleading that he was promoted as UDC recently. In promotion cases, different criteria are followed. In promotions on seniority-cum-merit, incumbent is required to qualify only minimum bench marks on the basis of ACRs of last 5 years and punishment awarded in disciplinary cases. In cases for extension in service, past 10 years' record of the concerned employee is put to be screened by the HEIC constituted for the purpose. The appellant has mostly average record including his ACR for 28.10.93 to 31.3.94 as Below Average with Integrity as 'Doubtful'. Further his ACR for 1.4.94 to 20.10.94 was also below average. In the disciplinary case relating to embezzlement of Rs.3069/-, his one AGI without future effect, was stopped. Therefore, the decision of the competent authority is found to be based on facts and record and there is no justification to intervene in the recommendations made by HEIC of Central Zone, with regard to his extension in service being not approved on the basis of which, the competent authority, viz CE/Op. (Central), Ludhiana has ordered his premature retirement.

Appeal rejected."

6. Indisputably, therefore, not only a minor punishment inflicted on him had been taken into consideration while passing the impugned order, but it was also based inter alia on the premise that his integrity was doubtful.

7. Before the High Court, appellant had inter alia raised a contention that the appellate authority had not taken into consideration the contentions raised by him before it. By reason of the impugned judgment, a Division Bench dismissed the said writ petition opining that the action taken by the respondents could not be held to be unconscionable, stating:

"An employee who reaches the age of 55 years can only be permitted to continue in service beyond the aforesaid age on the basis of the assessment of the work by the competent authority. The view taken by the respondent is neither arbitrary nor contrary to any statutory rules."

8. The law relating to compulsory retirement is no longer res integra.

An order of compulsory retirement inter alia can be passed when the officer concerned is found to be a dead wood. [See *M.P. State Co-op. Dairy Fedn. Ltd. & Anr. v. Rajnesh Kumar Jamindar & Ors.*¹]

9. Although for the said purpose, the principles of natural justice are not required to be complied with and even adverse entries made in the confidential record including uncommunicated entries may be taken into consideration but the same should not be passed in place of or in lieu of a disciplinary proceedings. If an order of compulsory retirement is stigmatic in nature, the same would be bad in law.

10. It is furthermore well-settled that when the State lays down the rule for taking any action against an employee which would cause civil or evil consequence, it is imperative on its part to scrupulously follow the same.

Mr. Justice Frankfurter in *Vitarelli v. Seaton*² stated:

"An executive agency must be rigorously held to the standards by which it professes its action to be judged. ... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. ... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword."

[See also *H.V. Nirmala v. Karnataka State Financial Corporation*³]

11. The guidelines issued by the State are binding on it. Appellant had been compulsorily retired with effect from 29.09.2003. Salary for three months from the said date was paid, i.e., upto December, 2003. His actual date of retirement was 31.10.2004. The impugned order, therefore, was passed although not strictly within a period of one year preceding the date of superannuation but near about the same. Thus, spirit of Clause (ii) of the guidelines issued by order dated 14.08.1981 should have also been taken into consideration. So far as Clause (iii) of the said guidelines is concerned, there is a change of post as he had been promoted to a higher post in 2001.

As he had been promoted despite recording of the adverse remarks, the said fact also should have been taken into consideration. If adverse report on integrity relates to a distant past or more than ten years old, yet again it should not have been considered.

12. This Court in *Baikuntha Nath Das and Another v. Chief District Medical Officer, Baripada and Another*⁴ laid down the law inter alia as under:

"(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."

13. It is a well-settled principle of law that an order of compulsory retirement would be held to be stigmatic inter alia, in the event the employer has lost confidence [See *Chandu Lal v. Management of M/s. Pan American World Airways Inc.*⁵ at 730, para 8], or he has concealed his earlier record [See *Jagdish Parsad v. Sachiv, Zila Ganna Committee, Muzaffarnagar and Another*⁶ at 342-343, para 9].

He can, however, be subjected to compulsory retirement inter alia if he has outlived his utility [See *The State of Uttar Pradesh v. Madan Mohan Nagar*⁷ at 1262].

In *Allahabad Bank Officers' Association and Another v. Allahabad Bank and Others*⁸ it was held:

"17. The above discussion of case-law makes it clear that if the order of compulsory retirement casts a stigma on the government servant in the sense that it contains a statement casting aspersion on his conduct or character, then the court will treat that order as an order of punishment, attracting provisions of Article 311(2) of the Constitution. The reason is that as a charge or imputation is made the condition for passing the order, the court would infer therefrom that the real intention of the Government was to punish the government servant on the basis of that charge or imputation and not to exercise the power of compulsory retirement. But mere reference to the rule, even if it mentions grounds for compulsory retirement, cannot be regarded as sufficient for treating the order of compulsory retirement as an order of punishment. In such a case, the order can be said to have been passed in terms of the rule and, therefore, a different intention cannot be inferred. So also, if the statement in the order refers only to the assessment of his work and does not at the same time cast an aspersion on the conduct or character of the government servant, then it will not be proper to hold that the order of compulsory retirement is in reality an order of punishment. Whether the statement in the order is stigmatic or not will have to be judged by adopting the test of how a reasonable person would read or understand it."

14. The question came up for consideration before a Division Bench of this Court in *State of Gujarat v. Umedbhai M. Patel*⁹ wherein Balakrishnan, J. (as the learned Chief Justice then was), summarized the law, thus:

"11. The law relating to compulsory retirement has now crystallised into definite principles, which could be broadly summarised thus:

(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure."

15. In a slightly different context, viz., in a case of probation, this Court in *Jaswantsingh Pratapsingh Jadeja v. Rajkot Municipal Corporation and Another*¹⁰ opined as under:

"24. In this case, however, the period of probation as provided for under the statute had expired and his misconduct had been taken note of. Such misconduct was not founded only upon absence from duty, but also upon carelessness, negligence on the part of the appellant and lack of devotion amongst others. Upon taking into consideration some precedents operating in the field, it was concluded:

"28. From the discussions made hereinbefore, it is evident that termination of services of the appellant purporting to discharge him simpliciter cannot be accepted, being stigmatic in nature. The form of the order terminating the services coupled with the background facts clearly leads to the conclusion that the order impugned in the writ petition by the appellant was punitive."

16. The learned counsel appearing on behalf of the respondent would contend that the principles of natural justice are not required to be complied with in a case of compulsory retirement, particularly, when no mala fide is alleged. Allegation against the delinquent was not only that he lacked integrity but also unfit to be retained in service. Those comments, in our opinion, are stigmatic in nature. It is also not a case where there had been a steady decline in the performance of the employee.

17. The learned counsel appearing on behalf of the respondent would contend that in this case malice has neither been alleged nor been proved. In support of his contention reliance has been placed on *Purushottam Kumar Jha v. State of Jharkhand and Others*¹¹ wherein Thakker, J. speaking for the Bench, stated the law, thus:

"23. It is well settled that whenever allegations as to mala fides have been levelled, sufficient particulars and cogent materials making out prima facie case must be set out in the pleadings. Vague allegation or bald assertion that the action taken was mala fide and malicious is not enough. In the absence of material particulars, the court is not expected to make "fishing" inquiry into the matter.

It is equally well established and needs no authority that the burden of proving mala fides is on the person making the allegations and such burden is "very heavy". Malice cannot be inferred or assumed. It has to be remembered that such a charge can easily be "made than made out" and hence it is necessary for the courts to examine it with extreme care, caution and circumspection. It has been rightly described as "the last refuge of a losing litigant". (Vide *Gulam Mustafa v. State of Maharashtra*; *Ajit Kumar Nag v. GM (PJ), Indian Oil Corpn. Ltd.*)"

18. In a case of this nature the appellant has not alleged malice of fact.

The requirements to comply with the directions contained in the said circular letter dated 14.08.1981 were necessary to be complied with in a case of this nature. Non-compliance whereof would amount to malice in law. [See *Managaer, Government Branch Press and Another v. D.B. Belliappa*¹², *Smt. S.R. Venkataraman v. Union of India and Another*¹³ and *P. Mohanan Pillai v. State of Kerala and Others*¹⁴]

19. Thus, when an order suffers from malice in law, neither any averment as such is required to be made nor strict proof thereof is insisted upon. Such an order being illegal would be wholly unsustainable.

20. For the reasons aforementioned, the impugned order is set aside. The appeal is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

¹2009 (6) SCALE 16

²359 US 535

³(2008) 7 SCC 639

⁴(1992) 2 SCC 299

⁵(1985) 2 SCC 727

⁶(1986) 2 SCC 338

⁷AIR 1967 SC 1260

⁸(1996) 4 SCC 504

⁹(2001) 3 SCC 314

¹⁰(2007) 10 SCC 71

¹¹(2006) 9 SCC 458

¹²(1979) 1 SCC 477

¹³(1979) 2 SCC 491

¹⁴(2007) 9 SCC 497