

SUPREME COURT OF INDIA

Pyare Mohan Lal

Vs.

State of Jharkhand

Writ Petition (Civil) No. 382 of 2003

(J.M. Panchal and Deepak Verma and Dr.B.S.Chauhan JJ.)

10.09.2010

JUDGEMENT

Dr. B.S. CHAUHAN, J.

1. This writ petition has been filed against the order dated 20.5.2003, passed by the State of Jharkhand - Respondent No. 2, giving compulsory retirement to the petitioner, a Judicial Officer of the State of Jharkhand, on the recommendation of the High Court of Jharkhand - the respondent No. 3 on administrative side.

2. Facts and circumstances giving rise to this case are that the petitioner was selected in the Bihar Civil Services (Judicial Branch) in 1982 and was appointed to the post of Munsif by the State and was confirmed in the grade of Munsif vide order dated 11th March, 1987.

He was further promoted to the junior selection grade post in the cadre of Munsif of the Bihar

Judicial Service vide order dated 23rd September, 1994. The Patna High Court issued Notification dated 10th March, 2001 promoting the petitioner to the post of Subordinate Judge.

3. Consequent to the bifurcation of the State of Bihar and formation of the State of Jharkhand, the services of the petitioner were allocated to the Jharkhand State by the order of the Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training), New Delhi dated 28th March, 2001. The petitioner was appointed as a Sub-Judge, Ranchi, vide Notification dated 21st April, 2001, issued by the High Court of Jharkhand and, subsequently, the petitioner was placed at the disposal of the State of Jharkhand as Under Secretary-cum-Deputy Legal Remembrancer and Law Officer in the Law Department vide order dated 1st August, 2001.

4. The High Court of Jharkhand recommended the name of the petitioner along with others for promotion to the post of Additional District Judge on Ad hoc basis vide letter dated 21st October, 2001.

The petitioner was appointed as Additional District and Sessions Judge, (Fast Track), on ad-hoc basis and was posted at Ranchi vide order dated 14th December, 2001. The High Court of Jharkhand on administrative side vide order dated 12th May, 2003 recommended compulsory retirement of six judicial officers including the petitioner, and in pursuance thereof, the Respondent No. 2 issued a consequential order of compulsory retirement of the petitioner dated 20th May, 2003, in public interest, invoking the provisions of Rule 74(b)(ii) of the Jharkhand Civil Services Code (hereinafter called the Code) along with five other judicial officers. Hence, this writ petition.

5. Shri Sunil Kumar, learned Senior Advocate appearing for the petitioner, has submitted that the petitioner had unblemished service record and there was no adverse entry against him and he had even been promoted to the post of Additional District and Sessions Judge, (Fast Track), thus adverse entries, if any, stood washed off as the same had been prior to the date of his promotion. The order of compulsory retirement passed by Respondent No. 2 is arbitrary, unreasonable and unwarranted. The adverse entries on the basis of which the petitioner had been given compulsory retirement had not been communicated to the petitioner. The representation made by the petitioner against the said adverse entries has not been disposed of till date. The order of compulsory retirement as far as the petitioner is concerned cannot be held to be in public interest; there was no material whatsoever to support the conclusion reached by the High Court of Jharkhand. The recommendation made by the High Court is unreasonable and arbitrary. Order impugned casts stigma. Rule 74(b)(ii) of the Code empowers competent authorities only to get rid of and to do away with the services of employees, who have lost their utility, became useless and whose further continuance in service is not in public interest. There was no occasion for the respondents to pass an order of compulsory retirement of the petitioner in absence of any material to justify such an order. Thus, the order impugned is liable to be held to be illegal and invalid. Petition deserves to be allowed.

6. On the other hand, Shri Ashok Mathur and Shri Anil Kumar Jha, learned counsel appearing for the respondents, have vehemently opposed the petition contending that there had been large number of adverse entries against the petitioner and the said entries were not expunged; his disposal was very low; he did not enjoy a good reputation as several entries relating to his integrity being doubtful had been recorded. Thus, he could not claim himself to be fit to be retained in judicial service. The petition lacks merit and is liable to be dismissed.

7. We have considered the rival submissions made by learned counsel for the parties and perused the record.

COMPULSORY RETIREMENT Officer, Baripada & Anr., AIR 1992 SC 1020, this Court has laid down certain criteria for the Courts, on which it can interfere with an order of compulsory retirement and they include mala fides, if the order is based on no evidence, or if the order is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material, i.e. if it is found to be a perverse order. The Court held as under:- "(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to retire a Government servant compulsorily. The order is passed on the subjective satisfaction of the Government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or the Court would not examine the matter as an appellate Court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary- in the sense that no reasonable person would form the requisite opinion on the given material : in short, if it is found to be a perverse order.

(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.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing

that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference." (Emphasis added).

9. Similar view has been reiterated by this Court in Posts and Ors., AIR 1999 SC 1661. This Court observed that there was a very limited scope of judicial review in a case of compulsory retirement and it was permissible only on the grounds of non-application of mind; mala fides; or want of material particulars. Power to retire compulsorily a Government servant in terms of Service Rules is absolute, provided the authority concerned forms a bona fide opinion that compulsory retirement is in public interest.

(1999) 1 SCC 529, this Court held that while considering the case of an employee for compulsory retirement, public interest is of paramount importance. The dishonest, corrupt and dead-wood deserve to be dispensed with. How efficient and honest an employee is, is to be assessed on the basis of the material on record, which may also be ascertained from confidential reports. However, there must be some tangible material against the employee warranting his compulsory retirement.

this Court held that if the general reputation of an employee is not good, though there may not be any tangible material against him, he may be given compulsory retirement in public interest and judicial review of such order is permissible only on limited grounds. The Court further held that:

".....What is needed to be looked into, is the bona fide decision taken in public interest to augment efficiency in the public service."

1345, this Court while dealing with the issue observed as under:

"Withholding of integrity of a government employee is a serious matter. In the present case, what we find is that the integrity of the respondent was withheld by an order dated 13-6-1997 and the said entry in the character roll of the respondent was well within ten years of passing of the order of compulsory retirement. During pendency of the writ petition in the High Court, the U.P. Services Tribunal on a claim petition filed by the respondent, shifted the entry from 1997-98 to 1983-84. Shifting of the said entry to a different period or entry going beyond ten years of passing of the order of compulsory retirement does not mean that vigour and sting of the adverse entry is lost. Vigour or sting of an adverse entry is not wiped out, merely it is relatable to 11th or 12th year of passing of the order of compulsory retirement. The aforesaid adverse entry which could have been taken into account while considering the case of the respondent for his compulsory retirement from service, was duly considered by the State Government and the said single adverse entry in itself was sufficient to compulsorily retire the respondent from service.

We are, therefore, of the view that entire service record or confidential report with emphasis on the later entries in the character roll can be taken into account by the Government while considering a

case for compulsory retirement of a government servant. (Emphasis added) 2003 SC 1362, this Court held that where the screening committee is consisting of responsible officers of the State and they have examined/assessed the entire service record and formed the opinion objectively as to whether any employee is fit to be retained in service or not, in the absence of any allegation of mala fides, there is no scope of a judicial review against such an order.

a similar view has been reiterated. The Court observed as under:

"At the outset, it is to be reiterated that the judicial service is not a service in the sense of an employment. Judges are discharging their functions while exercising the sovereign judicial power of the State. Their honesty and integrity is expected to be beyond doubt. It should be reflected in their overall reputation. Further, the nature of judicial service is such that it cannot afford to suffer continuance in service of persons of doubtful integrity or who have lost their utility. If such evaluation is done by the Committee of the High Court Judges and is affirmed in the writ petition, except in very exceptional circumstances, this Court would not interfere with the same, particularly because the order of compulsory retirement is based on the subjective satisfaction of the authority.

.....Further, it is impossible to prove by positive evidence the basis for doubting the integrity of the judicial officer. In the present-day system, reliance is required to be placed on the opinion of the higher officer who had the opportunity to watch the performance of the officer concerned from close quarters and formation of his opinion with regard to the overall reputation enjoyed by the officer concerned would be the basis.

.....the lower judiciary is the foundation of the judicial system. We hope that the High Courts would take appropriate steps regularly for weeding out the dead wood or the persons polluting the justice delivery system".

AIR 2003 SC 2889, this Court after examining the entire evidence on record came to the conclusion that the compulsory retirement awarded to the appellant therein, Chandra Singh, a Judicial Officer, was not in consonance with law. However, considering the report of the Committee and taking note of the adverse remarks made against him, the Court refused to grant him any relief. The relevant part of the judgment reads as under:

"It will bear repetition to state that in terms of Rule 53 of the Pension Rules, an order for compulsory retirement can be passed only in the event the same is in public interest and/or three months' notice or three months' pay in lieu thereof had been given. Neither of the aforementioned conditions had been complied with....

We have, therefore, no option but to hold that the actions on the part of the High Court or the State in compulsorily retiring the appellants herein were illegal.

Article 235 of the Constitution of India enables the High Court to assess the performance of any judicial officer at any time with a view to discipline the black sheep or weed out the deadwood. This constitutional power of the High Court cannot be circumscribed by any rule or order. We can usefully refer to some of the leading cases on Article 235:

1. State of Assam v. Ranga Mohd., AIR 1967 SC 903 (five Judges)
2. Samsher Singh v. State of Punjab, AIR 1974 SC 2192 (seven Judges)
3. High Court of Judicature at Bombay v. Shirishkumar Rangrao Patil, AIR 1997 SC 2631.

xxx xxx xxx In the instant case, we are dealing with the higher judicial officers. We have already noticed the observations made by the Committee of three Judges. The nature of judicial service is such that it cannot afford to suffer continuance in service of persons of doubtful integrity or who have lost their utility."

13 SCC 581, this Court examined the case of the compulsory retirement of a Judicial Officer and came to the conclusion that the Review Committee had made an overall assessment considering the entire service record of the said officer and came to the conclusion that continuance of the said officer in service would be a liability to the Department and adverse to public interest as his ACRs. revealed that he was poor in writing the judgments and was advised to improve the same. His judicial work was found unsatisfactory and he had been advised to improve the same. His integrity was found doubtful in the year 1983. He had earlier been superseded while being considered for promotion in 1983 and he had been given an adverse entry in 1993 that he failed to inspire confidence in subordinate staff and lawyers and had a low rate of disposal. On the basis of the aforesaid adverse entries, he was given compulsory retirement vide order dated 9.11.2000. This Court refused to interfere with the said order in view of the fact that he could not raise proper allegations of mala fides or establish that the order of compulsory retirement was passed without application of mind. While deciding the said case, the court placed reliance upon the judgment of this Court in Vijay Kumar Jain (supra).

Rajnesh Kumar Jamindar & Ors., (2009) 15 SCC 221, this Court held that judicial review of an order of compulsory retirement is permissible if the order is perverse or arbitrary, as also where there is non-compliance of statutory duty by statutory authority but the court should not go into the factual findings. The factors not germane for passing an order of compulsory retirement should not be taken into consideration. The criteria and rules adopted by the employer must be adhered to, to determine whether the employee had become liable for compulsory retirement. An authority discharging a public function must act fairly.

18. Thus, the law on the point can be summarised to the effect that an order of compulsory retirement is not a punishment and it does not imply stigma unless such order is passed to impose a punishment for a proved misconduct, as prescribed in the Statutory Rules. (See The Authority must consider and examine the over-all effect of the entries of the officer concerned and not an isolated entry, as it may well be in some cases that in spite of satisfactory performance, the authority may desire to compulsorily retire an employee in public interest, as in the opinion of the said Authority, the post has to be manned by a more efficient and dynamic person and if there is sufficient material on record to show that the employee "rendered himself a liability to the institution", there is no occasion for the Court to interfere in the exercise of its limited power of judicial review.

WASHED OFF THEORY a two-Judge Bench of this Court held that adverse entries regarding the dishonesty and inefficiency of the government employee in his ACRs have to be ignored if, subsequent to recording of the same, he had been allowed to cross the efficiency bar, as it would mean that while permitting him to cross the efficiency bar such entries had been considered and were not found of serious nature for the purpose of crossing the efficiency bar.

20. Similarly, a two-Judge Bench of this Court in Baidyanath taken a similar view on the issue observing that adverse entries awarded to the employee in the remote past lost significance in view of the fact that he had subsequently been promoted to the higher post, for the reason that while considering the case for promotion he had been found to possess eligibility and suitability and if such entry did not reflect deficiency in his work and conduct for the purpose of promotion, it would be difficult to comprehend how such an adverse entry could be pressed into service for retiring him compulsorily.

When a government servant is promoted to higher post on the basis of merit and selection, adverse entries if any contained in his service record lose their significance and remain on record as part of past history.

This view has been adopted by this Court in Baikuntha Nath Das (supra).

21. However, a three-Judge Bench of this Court in State of Orissa different view as it had been held therein that such entries still remain part of the record for overall consideration to retire a government servant compulsorily. The object always is public interest. Therefore, such entries do not lose significance, even if the employee has subsequently been promoted. The Court held as under:- "Merely because a promotion has been given even after adverse entries were made, cannot be a ground to note that compulsory retirement of the government servant could not be ordered. The evidence does not become inadmissible or irrelevant as opined by the Tribunal. What would be relevant is whether upon that state of record as a reasonable prudent man would the Government or competent officer reach that decision. We find that selfsame material after promotion may not be taken into consideration only to deny him further promotion, if any. But that material undoubtedly would be available to the Government to consider the overall expediency or necessity to continue the government servant in service after he attained the required length of service or qualified period of service for pension." (Emphasis added)

22. This judgment has been approved and followed by this court in emphasising that the "entire record" of the government servant is to be examined.

23. In Vijay Kumar Jain, (supra), this Court held that the vigour or sting of an entry does not get wiped out, particularly, while considering the case of employee for giving him compulsory retirement, as it requires the examination of the entire service records, including character rolls and confidential reports. 'Vigour or sting of an adverse entry is not wiped out' merely it relates to the remote past.

There may be a single adverse entry of integrity which may be sufficient to compulsorily retire the government servant.

Larger Benches' Judgment:

2547, this Court observed that it must be borne in mind that in cases where there is any conflict between the views expressed by larger and smaller Bench of this Court, the court cannot disregard or skirt the views expressed by the larger Bench.

this Court considered the issue and observed as under:

".....The practice over the years has been that a larger bench straightway considers the correctness of and if necessary overrules the view of a smaller bench. This practice has been held to be a

crystallised rule of law in a recent decision by a Special Bench of seven learned Judges. In *A. R. Antulay v. R. S. Nayak*, AIR 1988 SC 1531, Sabyasachi Mukharji, J., speaking for the majority said (at p. 1548 of AIR) :

‘The principle that the size of the bench whether it is comprised of two or three or more judges does not matter, was enunciated in *Young v. Bristol Aeroplane Ltd.*, (1944-2 All ER 293) (supra) and followed by Justice Chinnappa Reddy in *Javed Ahmad Abdul Hamid Pawla v. State of Maharashtra*, (AIR 1985 SC 231), where it has been held that a Division Bench of two judges, has not been followed by our Courts.

xxxx xxxx xxxx xxxx xxxx The law laid down by this Court is somewhat different. There is a hierarchy within the Court itself here where larger benches overrule smaller benches. See *Mattulal v. Radhey Lal*, AIR 1974 SC 1596, *Union of India v. K. S. Subramanian*, AIR 1976 SC 2433 at 2437; and *State of U.P. v. Ram Chandra Trivedi*, AIR 1976 SC 2547 at p. 2555. This is the practice followed by this Court and now it is a crystallised rule of law.’ The answer to the question posed in *Javed Ahmad* case thus stands concluded and it is now not open to any one to contend that a bench of two judges cannot be overruled by a bench of three judges. We must regard this as a final seal to the controversy.”

26. In view of the above, the law can be summarised to state that in case there is a conflict between two or more judgments of this court, the judgment of the larger Bench is to be followed. More so, the washed off theory does not have universal application. It may have relevance while considering the case of government servant for further promotion but not in a case where the employee is being assessed by the Reviewing Authority to determine whether he is fit to be retained in service or requires to be given compulsory retirement, as the Committee is to assess his suitability taking into consideration his "entire service record".

27. The instant case is to be examined in the light of the aforesaid settled legal propositions.

28. Some of the entries in the ACRs' of the petitioner of the last years, which are relevant for this purpose are being mentioned here as under:

Year Remarks 1996-97 (i) Knowledge - Average (ii) Promptness in disposal - Out turn Poor (iii) Net Result - Average 1997-98 (i) Promptness in Disposal - Average (ii) Efficiency - Average (iii) Net result - Average officer capable of improvement 1998-99 (i) Promptness in disposal - Average (ii) Efficiency - Average (iii) Net result - out-turn capable of improvement 1999-2000 (i) Promptness in disposal - Average (ii) Efficiency - Average (iii) Reputation - Not good Is he fit for exercise of any enhanced power - No Beside these, adverse remarks made by the inspecting Judge against the

petitioner are given as under:

Year Remarks 30.8.1997 (i) Knowledge - Average, extensive study required.

(ii) Promptness in disposal - Not upto mark (iii) Reputation - Some whispers are there but nothing concrete could be found.

2001-02 (i) Judgment - Average i.e. B (ii) Efficiency - Average (B) (iii) Integrity - Seriously Doubtful

29. It is evident from the aforesaid service record of the petitioner that he remained an average officer throughout his service career and could never improve. His out turn had been poor; he had been given adverse entries regarding his integrity/reputation as not good in the years 1999-2000 and remarks to that effect by the Inspecting Judges in 1997 and 2001-2002. The petitioner had made a bald assertion that the adverse entries have not yet been communicated to him. It has been repeatedly submitted by him that representations made by him against the said adverse entries had not been disposed of. Indisputably, uncommunicated adverse entries could be taken into account for the purpose of assessing an officer for compulsory retirement. The petitioner has not disclosed on what dates the representations against the adverse entries had been made. The petitioner had not challenged the said adverse entries, rather he considered it appropriate to challenge only the order of compulsory retirement which has been a consequential effect of such adverse entries. The law requires the Authority to consider the "entire service record" of the employee while assessing whether he can be given compulsory retirement irrespective of the fact that the adverse entries had not been communicated to him and the officer had been promoted earlier in spite of those adverse entries. More so, a single adverse entry regarding the integrity of an officer even in remote past is sufficient to award compulsory retirement. The case of a Judicial Officer is required to be examined, treating him to be differently from other wings of the society, as he is serving the State in a different capacity. The case of a Judicial Officer is considered by a Committee of Judges of the High Court duly constituted by Hon'ble the Chief Justice and then the report of the Committee is placed before the Full Court. A decision is taken by the Full Court after due deliberation on the matter. Therefore, there is hardly any chance to make the allegations of non- application of mind or mala fide.

30. Be that as it may, the service record of the petitioner revealed that he had not been promoted in the regular cadre of the District Judge as he was not found fit for the same because of the adverse entries. Petitioner was promoted as Additional District Judge on Ad hoc basis and posted in the Fast Track Court. It was definitely not a promotion on merit (selection). The High Court had objectively decided to recommend his compulsory retirement and the State Authorities acted accordingly. No fault can be found with the decision making process or with the decision.

31. We do not find any force in the submissions made by Shri Sunil Kumar, learned senior counsel appearing for the petitioner that the counter affidavit filed by the High Court and the State reveal that certain reports called for from the District Judge had been considered, though such reports were not even available, and therefore, the affidavit to that extent is mis-leading. In fact, it is evident from the record that at the time of making of the note by the Registry for the Full court, it had been mentioned that report was still awaited.

However, by the time the Full Court was held the report had been made available and was duly considered. Shri Ashok Mathur and Shri Anil Kr. Jha, learned counsel appearing for the respondents had placed before us the original record relating to the services of the petitioner and the report submitted by the Judicial Commissioner, Ranchi dated 5.4.2003, who after taking into consideration a large number of facts recorded the following conclusion:

"However, on confidential enquiry I have found that his general reputation is not so good, but still no one came to me with any specific case against his general reputation."

Thus, the aforesaid submission made on behalf of the petitioner is preposterous.

32. Placing reliance on the judgments of this Court in M.S. Bindra 1981 SC 70, it has been canvassed on behalf of the petitioner that adverse entries had not been made in bona fide manner and as per the requirement prescribed by circulars etc. Therefore, the consequential order of compulsory retirement is illegal. There is no factual foundation on the basis of which such an assertion can be examined, nor there is a challenge in the writ petition to the said adverse entries.

Petitioner sought quashing of order of compulsory retirement dated 20.5.2003 and not quashing of the adverse entries. Relief not specifically sought cannot be granted by the court. Therefore, there is no occasion for us to probe the issue further.

33. In view of the above, we do not find any cogent reason to interfere with the impugned order. The petition lacks merit and is accordingly dismissed. No costs.