

SUPREME COURT OF INDIA

Shakti Kumar Gupta

Vs.

State of Jammu and Kashmir & Ors.

W.P.(Civil.)No. 355 of 2014

(Jagdish Singh Khehar and J. R. Banumathi, JJ.)

11.12.2015

JUDGMENT

Jagdish Singh Khehar, J.

1. The petitioner was selected by the Jammu and Kashmir Public Service Commission for appointment to the Kashmir Civil Service (Judicial) on 5.1.1987. He joined as Munsif (-cum-Judicial Magistrate, First Class) at Basohli in District Kathua. He was thereafter promoted as a Subordinate Judge (-cum- Chief Judicial Magistrate) on 18.11.1996. And thereafter, as an adhoc District & Sessions Judge on 8.8.2002. While in the cadre of District & Sessions Judge, he was placed in the selection grade on 15.06.2011.

2. For the controversy in hand, some of the Annual Confidential Reports recorded in respect of work and conduct of the petitioner are important. A brief summary thereof is recorded hereunder:

Sl.No. Annual Confidential Reports Remarks for the period

1.	1.1.2002	to	31.12.2002	Good
2.	1.1.2003	to	31.12.2003	Average
3.	1.1.2004	to	31.12.2004	Average
4.	1.1.2005	to	31.12.2005	Good
5.	1.1.2007	to	31.12.2007	Very Good
6.	1.1.2008	to	31.12.2008	Very Good
7.	2.1.2009	to	31.12.2009	Average

3. So far as the present controversy is concerned, it pertains to the compulsory retirement of the petitioner. Compulsory retirement is regulated under the provisions of Higher Judicial Service Rules, 2009 (issued vide SRO 339, dated 27.10.2009, Law Department). Rule 24 of the aforesaid rules pertains to the subject of premature retirement. The same is being extracted hereunder:

"24. Premature retirement The High Court shall assess and evaluate the record of the members of the service for his/her continued utility before he/she attains the age of 50 years, 55 years and 58 years by following the procedure for compulsory retirement under the service rules applicable to him/her and if he/she is not found fit and eligible he/she will compulsorily retire on his/her attaining the age of 50 years, 55 years and 58 years, as the case may be."

4. A perusal of the aforesaid rule reveals, that it is open to the High Court to evaluate the record of a judicial officer, before he attains the ages of 50, 55 and 58 years, for ordering his premature retirement. In evaluating the record of the concerned judicial officer, the High Court is to follow the procedure for compulsory retirement under the service rules applicable to him. In the event of a judicial officer being found unfit to continue in service, it is open to the High Court to prematurely retire him, on attaining the ages of 50,55 and 58 years.

5. In conjunction with the rule of premature retirement, it is also essential for us to refer to the criteria/norms for continuity in service after the ages of 50,55 and 58 years. The criteria/norms were adopted by a resolution of the Full Court of the High Court of Jammu and Kashmir on 3.6.2013. Some parts of the resolution are relevant for the present controversy, and are being extracted hereunder:

"While considering the cases of the Judicial Officers for their continued utility in service at 50, 55 and 58 years of age in terms of the judgment of the Hon'ble Supreme Court in All India Judges Association Vs. Union of India AIR 1993 SC 2493 and (2011) 10 SCC. I, the following criteria/norms shall be taken into account by the High Court in its administrative capacity.A. Assessment Standards: Following are the factors to be taken into consideration individually/collectively to assess the officer.

1. Over all past service record of the Officer shall be examined and considered with emphasis on the last 5 years' record to assess his potential for continued utility in the service beyond 50,55 and 58 years.

2. The quality of the judgments delivered by the officer, whether or not assailed before the High Court, in suits, appeals, Session cases, Revisions and other proceedings during the past ten years of his service tenure. The quality of judgments will be determined by its content, the legal acumen it reveals, the nature of approach adopted, the language employed and the results achieved etc. etc.

3. Rate of disposal of the case by the officer in the light of the separate criteria prescribed by the High Court for this purpose.

4. Material reflecting the character of the officer, including the complaints, enquiries and vigilance reports lodged against him. The fact that the officer was superseded in the last promotion shall also be taken into consideration

“B. Annual Confidential Reports (A.C.Rs.)

1.General

- a) The ACRs for the last five years should be taken into account.
- b) If the other record of the officer is at Variance with ACRs.

Provided, however, that if the ACR of the officer for a particular year has not been recorded or approved by the High Court, as can be the situation in case of a deputationist, the other record of the officer for that year would be considered for rating him.

2.Special Considerations:

A Judicial Officer shall be permitted to continue beyond 50, 55 and 58 years of age if he fulfills the following conditions:

- i) The Officer has on the basis of the prescribed criteria earned seventy five per cent or more (‘A’ Grading) of his total ACR entries in ‘Very Good’ or ‘Good’ gradings.
- ii) If the officer has not earned any adverse or average entry in his ACRs after his last promotion.

C. Other relevant factors:

Besides above standard and recording of ACR, following factors shall also be taken into account while evaluating all round potential of the officer:

- i) His integrity, honesty and judicial conduct shall be kept in view and utmost importance be attached;
- ii) His relations with the Bar and his administrative capacity should also be considered;
- iii) His dealing with the finance shall also be taken into account while evaluating the all round potential of the officer;
- iv) The ACRs shall not constitute the sole guiding factor but shall be given due weightage along with other equally relevant factors;

v) The institutional integrity being in larger public interest is the uppermost and shall be preferred to individual interest. These are guidelines for internal use of the High Court. However, it would not limit the power of the High Court vested by Article 235 of the Constitution of India read with Article 104 of the J&K Constitution."

It is therefore apparent, that Rule 24 has to be read in conjunction with the Resolution dated 3.6.2013, in order to determine, whether or not a judicial officer should be prematurely retired.

6. Before we venture to deal with the evaluation of the record of the petitioner in terms of the Instructions/Resolution dated 3.6.2013, it is imperative for us to notice, that the afore- stated Resolution constituted the basis for determining the retain- ability of the petitioner in service. In the Resolution dated 3.6.2013, emphasis was placed on the immediately preceding five years record, to assess the potentiality and utility of the employee under consideration. Likewise, the Instruction dated 3.6.2013, postulated in addition to the consideration of the quality of his judgments, his institutional integrity in larger public interest, his judicial conduct, his administrative capacity, the rate of his disposal of cases, the character of the officer, the complaints, the enquiries and the vigilance reports lodged against him, his dealing with financial matters, and the like. Since the issue of premature retirement of the petitioner came up for consideration in the year 2013, mainly the annual confidential reports for the years 2008 to 2012 were to be taken into consideration. In the summary, extracted hereinabove, it is apparent, that for the period from 1.1.2008 to 31.12.2008, the petitioner was assessed as "Very Good", whereas for the period 2.1.2009 to 31.12.2009, he was assessed as "Average". In terms of the Resolution dated 3.6.2013 since no annual confidential report was recorded after the year 2009, assessment made for the previous year, i.e., for the year 2009 was taken into consideration as the assessment for the years 2010, 2011 and 2012. It is therefore, that the High Court arrived at the conclusion, that the work and conduct of the petitioner was merely "Average", as his annual confidential report from the year 2009 to the year 2012 reflected him and having been graded as "Average".

7. The first question that arises for our consideration, is about the veracity of the Annual Confidential Report for the period from 2.1.2009 to 31.12.2009. In fact, this was the main and emphatic submission of the learned counsel for the petitioner. In the above report, the learned Administrative Judge on 29.05.2013 recorded as under:

"Note: It is being brought on record that when this Judicial Officer did not choose to send his self Assessment Report for year 2009 ending 31st December, 2009, Registry was informed by the Secretary vide letter dated 06.10.2012 addressed to R/G asking him to send his S.A.R. at the earliest and in turn he was duly informed by Registry vide Commn. No.6474-80/GS dated 11.10.2012 which was received by him on 16.X.2012. Despite that this Judicial Officer has not cared to respond/comply with the direction. Even vide Commn. No.2507/GS dated 24.5.2013, this Judicial Officer once again has been asked by R/G to send his S.A.R. for the year 2009, but till date no

response has been sent by him. Keeping all these aspects into consideration, I am awarding his A.C.R. as AVERAGE only.

Sd/-
Administrative Judge
29.5.013"

It would be pertinent to mention, that a Annual Confidential Report evaluates a judicial officer on a variety of aspects. To highlight the subjects on which an officer is assessed, it is considered just and appropriate to extract hereunder relevant parts of the annual confidential report of the petitioner, for the period from 2.1.2009 to 31.12.2009. This would also permit a closer examination of the above report:

1.Knowledge of Law & Procedure

Since Self Assessment Report has not been sent by the Judicial Officer, I cannot comment upon it

2. Impression during inspection (how he conducts the Court, his behaviour with advocates and litigants, his clarity in understanding and appreciating the arguments adjudged from his interaction with advocates during arguments. Whether he is able to dictate in Court, at least in miscellaneous applications).

3. Areas in which he was counselled during inspection

4.Is he industrious and prompt in the disposal of cases and has be coped effectively with heavy work?

Average

5.Is he/she an efficient Judicial Officer

-do-

6. What is his/her reputation for honesty, integrity and impartiality. Whether Very Good, Average, Doubtful, bad or positively lacking.

Average

7.Remarks about his/her attitude towards his superiors, subordinates and colleagues.

8. Behaviour towards members of the Bar and the Public.

9. Remarks about Administrative capability.

10. How is his/her reputation for private life/character and does it tend to lower him/her in the estimation of public members of Bar and adversely affect the discharge of his/her judicial functions?

11. What degree of control does he/she exercise over the files in the matter of :

- a) Proper fixation of cause list
- b) Avoidance of unnecessary adjournments
- c) Disposal of old cases

12. Is he/she punctual in coming to the office and sitting in the court?

13. Did any incident/incidents, involving him/her occurred during the year which warrants or led to, recording of commendatory/critical remarks about his/her conduct/behaviour in relation to such incident/incidents?

14. Is his supervision and distribution of business among, and his control over the Subordinate Courts Good?

15. Are his judgments and orders well written and clearly expressed?

No comments as SAR not sent

16. Grading of Judgments

A-Outstanding

B-Very Good

C-Good

Average

D-Average

E-Below Average

17. Other remarks, if any

18. Overall assessment as per the grading given below:

Average

A-Outstanding

B-Very Good

C-Good

D-Satisfactory

E- Average

F-Poor

19. Convey the following remarks to the Officer, for his reply/explanation

Most of the columns in the annual confidential report were left blank. It is obvious, that the petitioner was not assessed for the columns left blank. In some columns, the Administrative Judge expressly mentioned, that it was not possible to record the remarks on account of the petitioner not having submitted his "self-assessment report". In five of the columns, the Administrative Judge recorded the assessment as "Average".

8. The question that arises for our consideration is, whether the petitioner can be deemed to have been graded for the period from 2.1.2009 to 31.12.2009 as "Average". It is not possible for us to accept the determination of the High Court, that the aforesaid annual confidential report should be treated as an assessment of the work and conduct of the petitioner. We are satisfied in concluding, that no assessment whatsoever was made at the hands of the Administrative Judge, insofar as the above annual confidential report is concerned. The same was recorded, on the apparent grouse, that the petitioner had not submitted his "self-assessment report". Even though, it was possible for the Administrative Judge to have filled up a number of columns based on the assessment of the judgments, and the record available to him otherwise, yet merely on account of the fact that the petitioner had not submitted his "self-assessment report", the Administrative Judge recorded the "Average" report. The above report being not a truthful assessment of the various constituents of the judicial officer's work and conduct, it could certainly not be taken as an assessment of his work for the period from 2.1.2009 to 31.12.2009. It may be mentioned illustratively, that on the basis of the record accessible and available to the High Court, it was not at all difficult to evaluate the petitioner (or for that matter any judicial officer) in respect of his knowledge of law and procedure, about impressions during inspection (how he conducts the Court, how he behaves with advocates and litigants, his clarity and understanding of the submissions made at the bar, and whether he is able to dictate from the dias - at least miscellaneous orders), whether he is industrious and prompt in disposal of cases, whether he is an efficient judicial officer. Without any inputs which a judicial officer would provide in a "self-assessment report", the Administrative Judge can also record his views on the judicial officer's reputation for honesty, integrity and impartiality, and his assessment about the officers attitude towards his superiors, subordinates and colleague, as well as, behaviour toward members of the Bar and public, and also, areas on which the judicial officer had been counselled. The "self-assessment report" would also not be necessary, while expressing the judicial officers reputation in his private life or his character in his private life, or for that matter, the estimation of the judicial officer in the perception of members of the Bar and the public. It is therefore apparent, that most of the columns of the proforma prescribed for recording the annual confidential report, could have been filled up, without any difficulty, in absence of the "self-assessment report". The annual confidential report being bereft of any assessment of the work and conduct of the petitioner for the period from 2.1.2009 to 31.12.2009, the same is liable to be treated as no report, for all intents and purposes. In view of the above conclusion, it is also imperative for us to further hold, that treating the work and conduct of the petitioner as "Average" for the years 2010, 2011 and 2012 on the basis of the report for the year 2009 is therefore, also not sustainable in law.

9. The further question, that still remains for our determination is, whether in the absence of the annual confidential report for the year 2009, the order of premature retirement of the petitioner, would remain sustainable in law. It was the contention of the learned counsel for the petitioner, that since the order of premature retirement of the petitioner, was based on the petitioner's work and conduct, for which reliance was mainly placed on the "Average" report for the year 2009, the impugned order was liable to be set aside, after the said report is held to be unsustainable in law.

10. Insofar as the issue of premature retirement of the petitioner is concerned, it is essential to notice, that the same was considered in the background of complaints made against him, by members of the Bar, more particularly, Advocates practicing in the District Consumer Forum, Srinagar, followed by another complaint, by the elected office bearers of the Bar Association, Srinagar, who had met the Chief Justice, specially in connection with their grievances and allegations against the petitioner. There was also a complaint at the hands of one Shyam Lal. In furtherance of the complaint made by the aforesaid Shyam Lal, the Chief Justice of the Jammu and Kashmir High Court had directed the Registrar(Vigilance) of the Jammu and Kashmir High Court, to conduct a preliminary enquiry. There were also other complaints which were shown to us, from the original record. One of the complaints was at the hands of Nissar Ahamd Khan, who had alleged, that the petitioner had required him to have his personal laptop of HP brand repaired. The complainant accordingly had got it repaired from "New A.S. Combines (Regd.)", an authorised HP service station, for which he had paid Rs.6,500/-, which the petitioner refused to reimburse. There were also complaints in respect of disproportionate assets held by the petitioner. We are not verifying the veracity of these complaints. We are merely noticing, that complaints were available in the record of the High Court, which could have been, and indeed must have been, taken into consideration, while taking the decision to prematurely retire the petitioner.

11. In conjunction with the factual position noticed hereinabove, it is necessary to record, that the Registrar General of the High Court had telephonically required the petitioner on 10.09.2012 to meet the Chief Justice of the Jammu and Kashmir High Court, at his residence, on 11.09.2012 at 6.00 p.m. The record also reveals, that the petitioner had met with the Chief Justice on the appointed day and time, and was counselled by the Chief Justice, with reference to the complaints received by the High Court, against the petitioner.

12. The decision to prematurely retire the petitioner, came up for consideration before the Full Court on 3.6.2013. The minutes of the Full Court meeting have been placed on the record of this case, along with the supplementary affidavit filed by the petitioner. A perusal thereof reveals, that the Administrative Committee of the High Court in its meeting held on 21/29.05.2013 had examined the past record, annual confidential reports, work done statements, and other relevant record/material pertaining to the petitioner, and had opined that he had lost his utility, and had become deadwood. The Administrative Committee accordingly recommended to the Full Court, that the petitioner was not fit to continue as District and Sessions Judge, after the age of 55 years. Based on the aforesaid recommendation of the Administrative Committee, the Full Court discussed the matter on

3.6.2013, and arrived at its conclusion based on the service record of the officer. Based on his "Average" report for the year 2009, and in conjunction with the Full Court Resolution dated 3.6.2013, his annual confidential reports for the years 2009 to 2012 were also treated as "Average". As such, he was not considered suitable, to be continued in service. Since we have already declared the annual confidential report for the year 2009, as no report in the eyes of law, and as such, nonest; none of the said reports of the petitioner (of 2009, 2010, 2011 and 2012) could have been taken into consideration for the purpose of passing the order of premature retirement.

13. In addition to the above, the Full Court in its meeting dated 3.6.2013 recorded as under:

"The Full Court has echoed the feeling that the officer is incorrigible and it is not in the public interest to continue him in service as credible complaints with regard to his judicial conduct keep pouring in. The officer has lost utility and has become deadwood."

It is apparent, that in addition to the annual confidential reports, it was concluded that the petitioner was incorrigible, and that, it was not in public interest to continue him in service. It was also recorded, that credible complaints with regard to his judicial work were being received periodically. On the basis of the above consideration, it was felt that the officer had lost his utility, and had become deadwood. Based on the aforesaid determination, the Full Court accepted the recommendation of the Administrative Committee on 11.6.2013. The Full Court's decision to prematurely retire the petitioner, was forwarded to the Government for approval. On 7.10.2013, the Cabinet approved the recommendations made by the High Court. On 11.1.2014, the Governor of the State of Jammu and Kashmir, accorded his approval, to the premature retirement of the petitioner. It is therefore, that the petitioner was issued an order dated 24.1.2014, intimating him of his premature retirement on attaining the age of 55 years.

14. Having given our thoughtful consideration, to the consideration of the Full Court, in respect of material other than the annual confidential report for the year 2009 (and of the years 2010 to 2012), we are of the view, that there was sufficient material justifying the premature retirement of the petitioner in terms of Rule 24, extracted hereinabove, specially when the same is read in conjunction with the Full Court resolution dated 3.6.2013. It may be noted that there cannot be concrete evidence in respect of allegations pertaining to integrity. If the competent authority arrives at a justifiable conclusion, on the basis of the record available in connection therewith, that itself would be sufficient to order the premature retirement of the concerned individual.

15. Herein it is apparent, that based on the complaints received against the petitioner, the Chief Justice of the High Court of Jammu and Kashmir, afforded him an audience on 11.09.2012. The Chief Justice counselled the petitioner, with reference to the complaints received against him. Few of the complaints received against the petitioner, have been referred to above. The complaints expressed aspersions on the petitioner's financial dealings,

and also, in respect of the petitioner's conduct during court proceedings. The petitioner's conduct was adversely commended upon by the members of the Bar of the District Consumer Forum, Srinagar, and by the Bar Association, Srinagar. A clear reflection that his behaviour with advocates and members of the Bar Association was unprofessional and/or indiscreet. There were vigilance enquiries pending against the petitioner. Besides all this, it is necessary to notice, that even though we have set aside the annual confidential report of the petitioner for the year 2009, since it was based on the non-submission of the "self-assessment report" by the petitioner, it is necessary to record, that the non-submission of the "self-assessment report" by the petitioner, also reveals his behaviour and temperament. A perusal of the note of the Administrative Judge dated 29.5.2013 (extracted above) reveals, that the officer was adamant about not submitting the "self-assessment report". The stand of the petitioner before us was, that the "self-assessment report", was to be furnished to the District Judge, who would then forward it to the Administrative Judge. This position adopted by the petitioner cannot be accepted, in view of the clear instructions circulated by the High Court of Jammu and Kashmir, to all Additional District Judge Courts, on 4.9.1995. Paragraphs 3 and 4 of the above circular are relevant and are being extracted below:

"3. The self assessment form should be completed by the Officer reported upon and submitted by him to his District Judge, along with the 12 months' statements of the work done for the whole year, before 28th February in the year following the period of reporting.

4. In case the Officer reported upon happens to be Addl. District Judge/District Judge the self assessment form, duly completed in all respects, along with the 12 monthly statements of the work done for the whole year, shall be submitted by the officer reported upon to the Private Secretary of the Administrative Judge concerned/Registrar, High Court before 28th February of the year following the period of reporting."

Paragraph 4 shows, that the position adopted by the petitioner is patently incorrect. That apart, the petitioner was repeatedly addressed letters by the Administrative Judge (dated, 11.10.2012 and 24.5.2013) as is apparent from the note dated 29.5.2013, but the petitioner remained steadfast in his resolve not to furnish the "self-assessment report" to the Administrative Judge. This also reveals his behaviour, which has relevance to the annual confidential report - specially the aspects referable to all serial nos. 7,9 and 13, i.e., his attitude towards his superiors. All this was also duly concerned, when the petitioner was recommended by the Administrative Committee for premature retirement on 21/23.5.2013. The matter was thereafter considered by the Full Court of the High Court. On each of the aforesaid considerations, the issue of incorrigibility of the petitioner was sought to be reiterated.

16. In the above view of the matter, we are satisfied, that the determination recorded in the minutes of the Full Court on 3.6.2013 (even if we were to exclude the consideration based on the annual confidential report for the year 2009), were sufficient to justify the order of

premature retirement of the petitioner. We therefore hereby uphold the order of premature retirement of the petitioner dated 3.6.2013/24.1.2014.

17. During the course of hearing, we were informed by the learned counsel for the petitioner, that the retiral benefits of the petitioner, had not yet been released to him. If the petitioner has submitted all papers connected to his pension, we direct the High Court to process and pay the petitioner all his retiral benefits within four months. In case, the petitioner has not submitted his pension papers, he may do so within two weeks from today, in which eventuality, he shall be released all his retiral benefits, within four months from the date of submission of all his pension papers.

18. The writ petition is disposed of in the aforesaid terms.