

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 109 of 2022

Appellant :- Mohammad Naseem Ali

Respondent :- State Of U.P Thru. Its Addl. Chief Secy. Department Of Panchayatiraj And 3 Others

Counsel for Appellant :- Srideep Chatterjee, Sameer Kalia

Counsel for Respondent :- C.S.C., Umesh Kumar Srivastava

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Jaspreet Singh, J.

(Per: Arun Bhansali, CJ)

1. This special appeal is directed against the order dated 18.02.2022 passed in Writ A No. 17421 of 2020 whereby, the writ petition filed by the appellant against the order of compulsory retirement from service dated 15.09.2020 has been dismissed.
2. The writ petition was filed by the appellant *inter alia* with the submissions that he was appointed on the post of Second Grade Clerk on 20.12.1989; promoted as First Class Clerk in the year 1999 and was temporarily promoted as Section Head Clerk (Tax) in the year 2012 and was further promoted as Administrative Officer on 19.05.2015. It was further indicated that the appellant's integrity was not certified for the year 2016-17 and a recommendation dated 15.04.2017 was made for his premature retirement. It was alleged that in terms of the applicable provisions i.e. Circular dated 05.07.1988 (Page-277 of the Paper Book), the Screening Committee was required to be constituted for the purpose of consideration of matter regarding compulsory retirement, however, no such committee was constituted.
3. It is alleged that the meeting of the Board of Zila Panchayat was scheduled on 11.09.2020 for which agenda was published on

28.08.2020 wherein, there was no proposal to take action against the appellant, however, despite the issue being not in agenda, the Zila Panchayat in its meeting dated 11.09.2020 approved the resolution of the Board of Zila Panchayat for compulsory retirement of the appellant.

4. Submissions were made that no Screening Committee was constituted and, therefore, the consequential proceedings would be bad in law. The documents pertaining to the proceedings have been manipulated and fabricated.

5. An *ex-parte* interim order was granted by learned Single Judge on 19.10.2020. The respondents appeared and submitted that the petition was based on falsehood and incorrect and false averments have been made for obtaining interim order. The appellant had approached the Court with unclean hands and, therefore, the petition was liable to be dismissed.

6. Submissions were also made that the appellant had an alternative remedy of filing appeal. Submissions were made that the impugned order made reference to the proceedings dated 11.09.2020, which in turn had referred to the recommendation of the Screening Committee dated 14.07.2020 and, therefore, the statement was factually incorrect.

7. Further submissions were made that an amended agenda was issued for the meeting dated 11.09.2020 on 04.09.2020 and the plea raised was based on producing incomplete documents. Further submissions were made that an adverse entry for the year 2016-17, having serious implications, was made against the appellant against which he filed appeal before the Commissioner, Lucknow Division, which appeal was dismissed on 13.12.2018 and the adverse entry was confirmed and, therefore, the submissions made questioning the validity of the order of compulsory retirement had no substance.

After hearing the parties, learned Single Judge came to the following conclusion:

“17. Except for making bald allegations, the petitioner has not substantiated the said allegation of forging or antedating the official records. From perusal of the recommendation of the screening committee dated 14.07.2020, it is evident that after considering the work and conduct of the petitioner, the screening committee had recorded that the petitioner is indolent, quarrelsome, disturber of peace, religious bigot, harasser of females and scheduled caste people, malignant and wholly useless employee and, the same has been confirmed by the Commissioner, Lucknow Division, Lucknow.

18. The petitioner's misconduct has been taken note of in detail in the minutes and, need not to be further dwelled upon by this Court. From the pleadings, it is evident that the petitioner had approached this Court for exercising its extraordinary jurisdiction by adopting falsehood, misrepresentation and concealing the material facts and, thus, abusing the process of the Court. He obtained the interim order on the basis of false and misleading averments and concealing material facts. One, who approaches this Court, is expected to come with clean hands inasmuch this Court exercises writ jurisdiction to maintain rule of law. The petitioner has not approached this Court with clean hands and, thus, the writ petition is liable to be dismissed on this ground alone. Further, from looking at the service record of the petitioner, the petitioner has become 'dead wood' in the organization and, is wholly unuseful. The employer is entitled to remove the dead woods from service, if on consideration of the service record, it is found that the work of such an employee has not been upto the mark or he has become 'dead wood' for the organization. This Court does not find from the pleadings that the order has been passed as punishment and, therefore, the sole ground, urged by the petitioner, has no substance.

19. In view of aforesaid, for making false and incorrect averments and misrepresenting this Court, concealing material facts from the Court, the writ petition is dismissed and a cost of Rs. 25,000/- (Rupees twenty five thousand) is imposed upon the petitioner to be deposited in the 'Army Battle Casualties Welfare Fund' within a period of four weeks, failing which the District Magistrate concerned shall recover the same, as arrears of land revenue and, deposit in the account of Army Battle Casualties Welfare Fund.

20. Let a copy of this order be forwarded to the District Magistrate concerned for compliance.”

8. Learned counsel for the appellant reiterated the submissions as was made before the learned Single Judge indicating that no meeting of Screening Committee was held on 14.07.2020, the proceedings have been manipulated/fabricated. The minutes of the meeting of the Administrative Committee dated 01.09.2020, which

has allegedly considered the minutes of the Screening Committee was incompetent as the minutes were signed by two persons only and that the agenda circulated for the meeting of Zila Panchayat dated 18.08.2020 did not contain the agenda pertaining to appellant's compulsory retirement, however, the same has been shown having been passed on the said date and reference was made to the Circular dated 05.07.1988 pertaining to constitution of the Screening Committee and that the respondents have dealt with the matter in a hush-hush manner.

9. Submissions have been made that the allegations have been levelled by the Committee without providing any opportunity affecting the integrity of the appellant and, therefore, the order impugned is bad in law.

10. Reliance was placed on the judgement of **Ram Ekbal Sharma Vs. State Of Bihar And Another: (1990) 3 SCC 504, Madhya Pradesh State Cooperative Dairy Federation Ltd. And Another Vs. Rajnesh Kumar Jamindar And Others: (2009) 15 SCC 221, Shobha Ram Raturi Vs. Haryana Vidyut Prasaran Nigam Limited And Others: (2016) 16 SCC 663 & State of Gujarat And Another Vs. Suryakant Chunilal Shah: (1999) 1 SCC 529.**

11. Learned counsel for the respondents made vehement submissions that the entire petition was based on falsehoods pertaining to not holding the meeting of the Screening Committee on 14.07.2020 and that the issue of compulsory retirement was not in agenda of the meeting of Zila Panchayat dated 11.09.2020. It is submitted that the documents placed on record clearly substantiate the holding of the meeting by the Screening Committee on 14.07.2020 and that the agenda of the meeting dated 11.09.2020 was duly amended on 04.09.2020 whereas the appellant was relying on agenda circulated on 28.08.2020.

12. Submissions have been made that the adverse entry of the year 2016-17 was duly communicated to the appellant against which, his appeal was dismissed by the Appellate Authority and no further appeal is provided. Submissions were made that even as per the Circular dated 01.07.1988, the Screening Committee has no legal status and the same is meant only for the purpose of assisting the appointing authority and that the decision pertaining to compulsory retirement can be taken even in a case where the matter has not been placed before the Screening Committee.

13. Further submissions have been made that no plea has been raised in the writ petition/rejoinder pertaining to the alleged defect in holdings of meetings and that the appellant has failed to show that the material available before the appointing authority was insufficient for visiting the order of compulsory retirement. It was emphasized that the order of compulsory retirement, even otherwise is not an order of punishment and, therefore, there is no question of providing any opportunity of hearing in this regard. Reliance has been placed on the judgement of **Jugal Chandra Saikia Vs. State of Assam And Another (2003) 4 SCC 59 & State of Gujarat Vs. Umedbhai M. Patel: (2001) 3 SCC 314.**

14. We have considered the submissions made by learned counsel for the parties and have perused the material available on record.

15. The appellant was visited with adverse entry for the year 2016-17 (Page 67 of the Paper Book) wherein, serious comments were made pertaining to his conduct and working by the reporting officer, which was accepted by the superior officer and ultimately by the appointing authority. Against the said adverse entry, the appellant preferred an appeal, which came to be rejected by the appellate authority regarding which, there is no dispute. The order of compulsory retirement reads as under:

“अनिवार्य सेवानिवृत्त आदेश

श्री मो० नसीम अली, प्रशासनिक अधिकारी, जिला पंचायत हरदोई को वित्तीय वर्ष 2016-17 में कार्य अधिकारी, अपर मुख्य अधिकारी एवं अध्यक्ष महोदया, द्वारा सत्यनिष्ठा संदिग्ध करते हुये पंचायत हित में इनको अनिवार्य सेवा निवृत्त किये जाने की संस्तुति की गयी थी, जिसे मा० आयुक्त, लखनऊ मण्डल, लखनऊ द्वारा सही पाया गया। वर्ष 2017-18 में भी इनकी कार्यशैली में सुधार न आने के कारण एवं इनकी सेवाओं को पंचायत के लिये अनुपयुक्त बताया गया।

फाइनेशियल हैण्ड बुक, खण्ड 2 भाग (2 से 4 तक) में दिये गये अध्यावधिक संशोधित फान्डामेंटल रूल्स 56 के खण्ड “सी” के अधीन अधिकारों का प्रयोग करते हुये जिला पंचायत (जोकि उक्त पद के लिय नियुक्ति प्राधिकारी है) की बैठक दिनांक 11.09.2020 के प्रस्ताव संख्या-08 द्वारा श्री मो० नसीम अली, प्रशासनिक अधिकारी, जिला पंचायत को लोकहित/पंचायत हित में अनिवार्य सेवानिवृत्त करने का प्रस्ताव सर्व सम्मति से पारित किया गया, पारित प्रस्ताव के क्रम में मैं श्रीमती मीरा, अध्यक्ष, जिला पंचायत हरदोई, यह आदेश देती हूँ कि श्री मो० नसीम अली, जो प्रशासनिक अधिकारी जिला पंचायत हरदोई के पद पर आरुढ़ है इस आदेश के निर्गत होने के दिनांक के अपरान्ह से सेवानिवृत्त हो जायेंगे एवं तीन माह की अवधि के लिये उसी पद पर अपने वेतन और भत्ते यदि कोई हों की धनराशि के बराबर धन के दावेदार होने के हकदार होंगे, जिसे वह सेवानिवृत्ति के ठीक पहले पा रहे थे।

(श्रीमती मीरा)

अध्यक्ष,

जिला पंचायत हरदोई”

16. A perusal of above order would reveal that with reference to the working of the appellant, reference was made to the adverse entries and the resolution dated 11.09.2020 passed by the Zila Panchayat, the appointing authority. The resolution dated 11.09.2020 of the Zila Panchayat has been placed on record wherein under Agenda No. 8, the minutes of the meeting dated 01.09.2020 of the Administrative Committee were considered and the resolution was passed for affecting the compulsory retirement. The said resolution dated 11.09.2020 makes reference to the meeting of the Screening Committee dated 14.07.2020 and the minutes dated 01.09.2020 of the Administrative Committee. Further the minutes of the Screening Committee dated 14.07.2020, Administrative Committee dated 01.09.2020 and the Zila Panchayat dated 11.09.2020 have been placed on record (Pages 169 to 176).

17. In view of the fact that specific reference has been made to the meeting of the Screening Committee dated 14.07.2020 in the minutes of the Zila Panchayat dated 11.09.2020 and the Administrative Committee took the decision pertaining to compulsory retirement of the appellant, on 01.09.2020, apparently, the agenda for the meeting dated 11.09.2020, which was issued on 28.08.2020 as is evident from Annexure-22 (Page 136 of the Paper Book) an amended agenda was issued on 04.09.2020, after the meeting of Administrative Committee dated 01.09.2020 as is evident from Annexure CA-19 (Page 213 of the Paper Book), as such, the plea raised by the appellant pertaining to the manipulation of record pertaining to the meeting of the Screening Committee dated 14.07.2020 and that of Zila Panchayat dated 11.09.2020 dealing with appellant's case without there being any agenda in this regard apparently has no basis. Though it is seen from the record that the meeting of the Screening Committee dated 14.07.2020 was held, even if the plea raised by the appellant was to be accepted, the same apparently would have no implication as would be evident from Para 5 of the Circular dated 05.07.1988, which is relied on by the appellant himself for the purpose of holding of the meeting, which reads as under:

“5. स्क्रीनिंग कमेटी का कोई विधिक स्टेटस नहीं होगा वह केवल सम्बन्धित नियुक्ति प्राधिकारी की सहायता के लिए होगी तथा उसकी कार्यवाहियां भी अनौपचारिक होगी। वित्तीय हस्त पुस्तिका, खण्ड-2, भाग 2 से 4 के मूल नियम 56 में अनिवार्य सेवानिवृत्ति का निर्णय लेने का अधिकार नियुक्ति प्राधिकारी में सन्निहित है। अतः वे ऐसे कर्मचारी/अधिकारी की अनिवार्य सेवानिवृत्ति का निर्णय भी ले सकते हैं जिनके मामले में स्क्रीनिंग कमेटी के समक्ष प्रस्तुत न किए जा सके हों। मूल नियम 56 के तहत सेवानिवृत्ति के आदेश संलग्न प्रारूप के अनुसार ही जारी किए जाएंगे तथा अनिवार्य सेवानिवृत्ति के निर्णयों की सूचना शासन के पंचायती राज अनुभाग-2 को भी भेजी जाए।”

18. The above clause clearly provides that there would be no legal status of the Screening Committee and that the same would be only for the purpose of helping the appointing authority and that a

decision with regard to such employee or officer can also be taken by the appointing authority, whose cases have not been placed before the Screening Committee.

19. For the purpose of satisfying ourselves, we have also gone through the original record mainly for the purpose of ascertaining the case of the appellant and find whether his case did not form part of the agenda of the meeting dated 11.09.2020.

20. After going through the record, we find that after receiving the report of the Administrative Committee dated 01.09.2020, the agenda of the meeting dated 11.09.2020 was amended and agenda at item no. 8, pertaining to the appellant's case, was inserted and as such, the plea sought to be raised by the appellant pertaining to the manipulation of the record by the respondents, apparently cannot be sustained.

21. The judgements cited by the learned counsel for the appellant has no application to the facts of the present case as in the case of **Rajnesh Kumar Jamindar (Supra)**, the principle laid down pertains to binding effect of the procedure adopted for the purpose of passing order of compulsory retirement, and that the Court has jurisdiction to review whether administrative order is perverse or arbitrary. As noticed herein before, the plea raised pertaining to alleged non compliance, is apparently without any basis and is based on incomplete documents and apprehension only.

22. In the case of **Ram Ekbal Sharma (supra)**, the issue pertained to an ex-parte inquiry concerning grave charges of misconduct against the officer whereas, in the present case adverse entry, relied on, was duly communicated and an appeal was also filed, which also came to be rejected by the Appellant Authority, therefore, the said judgement also has no application to the case of the appellant.

23. The judgement in the case of **Shobha Ram Raturi (supra)**, deals with consequential relief in case the order of compulsory retirement is set aside. Similarly, in the case of **Suryakant Chunilal Shah (supra)**, the judgement turned on uncommunicated adverse entries and it was held that expression of opinion must not be based on extraneous reasons, which aspect apparently has no application to the facts of the present case.

24. The issue of compulsory retirement has been dealt with by Hon'ble Supreme Court in the case of **Umedbhai M. Patel (Supra)** wherein the following principles have been laid down while dealing with the matters pertaining to compulsory retirement:

“11. The law relating to compulsory retirement has now crystallized into a definite principle, which could be broadly summarized 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 the 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.”

25. Applying the above principles to the case in hand, looking to the nature of adverse entry for the year 2016-17 against the appellant and his integrity was not certified, the fact that his appeal

against the said adverse entry has been dismissed by the Appellate Authority and that the relevant aspects were taken into consideration by the Authorities while deciding to pass the order of compulsory retirement, we are firmly of the opinion that the order of compulsory retirement does not call for any interference by this Court.

26. The appeal has not substance and the same is, therefore, **dismissed.**

Order Date :- 14.05.2024
SK

(Jaspreet Singh, J)

(Arun Bhansali, CJ)