

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1233 OF 2004

Asad Ali Mohd Ali Deshmukh. .. Petitioner
Vs
State of Maharashtra and Another. .. Respondents

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Shri V.C. Ghosalkar for the Petitioner.
Shri V.S. Gokhale, AGP for the Respondent No.1 State.
Shri V.R. Dhond, Senior Advocate i/by Shri Sandeep K. Shinde for
Respondent No.2.
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CORAM : A.S. OKA &
REVATI MOHITE DERE, JJ
DATED : 10TH JULY 2015

ORAL JUDGMENT (PER A.S. OKA, J)

. The Petitioner who was a Judicial Officer has taken an exception by filing this Petition under Article 226 of the Constitution of India to an order of compulsory retirement. The order of compulsory retirement has been passed in exercise of powers under clause (i) of Sub-rule 4(a) of Rule 10 of the Maharashtra Civil Service (Pension) Rules, 1982. The case of the Petitioner was placed before a Review Committee of this Court consisting of the Hon'ble the Chief Justice and three senior most Judges of this Court on 3rd October 2003. The Review Committee recommended discontinuation of his service on the basis of which the impugned order has been passed.

2. The learned counsel appearing for the Petitioner pointed out that the Petitioner was initially appointed on 19th May 1984 as a Civil Judge, Junior Division-cum-Judicial Magistrate, First Class on probation. After the completion of probation period, on 3rd December 1990, an advance increment was granted to the Petitioner on the basis of the Notification dated 1st October 1989. On 20th December 1996, the Petitioner was promoted to the post of 2nd Joint Civil Judge, Senior Division and Judicial Magistrate, First Class. On 9th May 2001, the Petitioner was posted on Ad hoc basis as the Additional District Judge and Assistant Sessions Judge under the Central Government Sponsored Scheme of Fast-track Courts. He pointed out that the Petitioner was conferred with the powers of the Additional District and Sessions Judge. He also pointed out that on 8th October 2003, the Petitioner was reverted to the post of Civil Judge, Senior Division and Chief Judicial Magistrate. He invited our attention to the service record of the Petitioner and in particular copies of the Annual Confidential Reports of the Petitioner. Inviting our attention to the minutes of the meeting of the Review Committee, he pointed out that though the Review Committee has observed that in the year 2002-2003, the Petitioner was rated as "Average", in fact his grading was "Good". He pointed out that though the Review Committee had relied upon the fact that for the years 2001-2002 and 2002-2003, the integrity of the Petitioner has

been shown as “Average”, in fact for the year 2002-2003, the Petitioner was rated as “Good”. He pointed out that from the years 1997-1998 to 2000-2001, the net result assigned in the Annual Confidential Reports of the Petitioner is satisfactory. He invited our attention to the fact that the Petitioner was promoted to the post of Ad hoc Additional District Judge.

3. He relied upon a decision of the Apex Court in the case of *Swami Saran Saksena v. State of Uttar Pradesh*¹. He pointed out that this was a case where an order of compulsory retirement was passed after the Appellant before the Apex Court was considered to have worked with distinct ability and integrity beyond question for the purpose of crossing the efficiency bar. He also relied upon a decision of the Apex Court in the case of *the Registrar, High Court of Madras v. R. Rajiah*². He invited our attention to the Paragraph 26 of the said decision. He pointed out that this was a case of the Judicial Officer who was confirmed on 1st January 1976. The Review Committee had relied upon the events which had happened right from the month of March 1954. He pointed out that the Apex Court observed that the events which had happened in the year 1954 were not taken to be of any significance while appointing the Judicial Officer to the post of District Munsif and therefore, the same cannot be relied upon. He

1 (1980)1 SCC 12

2 (1988)3 SCC 211

invited our attention to a decision of the Apex Court in the case of *Nand Kumar Verma v. State of Jharkhand and Others*³. He submitted that the facts of the present case are similar to the said case. He urged that relevant material has been ignored by the Review Committee while dealing with the case of the Petition. His submission is that considering the meritorious service rendered by the Petitioner, the order of compulsory retirement is vitiated.

4. The learned senior counsel representing the High Court Administration has placed on record copies of the material placed before the Review Committee. He also invited our attention to the record of the Vigilance Department which was placed before the Review Committee.

5. We have given careful consideration to the submissions. It will be necessary to make a reference to the law laid down by the Apex Court in the case of *R.C. Chandel. V. High Court M.P. and Another*. In Paragraph 29 of the said decision, the Apex Court held thus:

“29. Judicial service is not an ordinary government service and the Judges are not employees as such. Judges hold the public office; their function is one of the essential functions of the State. In discharge of their functions and duties, the Judges represent the State. The office that a Judge holds is an office of public trust. A Judge must be a person of impeccable

3 (2012)3 SCC 580

integrity and unimpeachable independence. He must be honest to the core with high moral values. When a litigant enters the courtroom, he must feel secured that the Judge before whom his matter has come, would deliver justice impartially and uninfluenced by any consideration. The standard of conduct expected of a Judge is much higher than an ordinary man. This is no excuse that since the standards in the society have fallen, the Judges who are drawn from the society cannot be expected to have high standards and ethical firmness required of a Judge. A Judge, like Caesar's wife, must be above suspicion. The credibility of the judicial system is dependent upon the Judges who man it. For a democracy to thrive and rule of law to survive, justice system and the judicial process have to be strong and every Judge must discharge his judicial functions with integrity, impartiality and intellectual honesty."

(Underlines supplied)

6. While dealing with the facts of the case before it, in Paragraph 26, the Apex Court observed thus:

"26. It is true that the Appellant was confirmed as District Judge in 1985; he got lower selection grade with effect from 24.03.1989; he was awarded super time scale in May, 1999 and he was also given above super time scale in 2002 but the confirmation as District Judge and grant of selection grade and super time scale do not wipe out the earlier adverse entries which have remained on record and continued to hold the field. The criterion for promotion or grant of increment or higher scale is different from an exercise which is undertaken by the High Court to Assess a judicial officer's continued utility to the judicial system. In Assessing potential for continued useful service of a judicial officer in the system, the High Court is required to take into account the entire service record. Overall profile of a judicial officer is the guiding factor. Those of doubtful integrity, questionable reputation and wanting in utility are not

entitled to benefit of service after attaining the requisite length of service or age.”

(Underlines added)

7. It will be also necessary to consider what is held by the Apex Court in the case of *Pyare Mohan Lal v. State of Jharkhand and Others*⁴ and in particular Paragraph 29 thereof, which reads thus:-

“29. 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.”

(Underline added)

8. Another decision of the Apex Court which is relevant is in the case of *Rajendra Singh Verma (Dead) Through Lrs and Others vs. Lieutenant Governor (NCT of Delhi) and Others*⁵. In Paragraph 183, the Apex Court held thus:-

⁴ (2010)10 SCC 693

⁵ (2011)10 SCC 1

“183. It is well settled by a catena of decisions of this Court that while considering the case of an officer as to whether he should be continued in service or compulsorily retired, his entire service record upto that date on which consideration is made has to be taken into account. What weight should be attached to earlier entries as compared to recent entries is a matter of evaluation, but there is No. manner of doubt that consideration has to be of the entire service record. The fact that an officer, after an earlier adverse entry, was promoted does not wipe out earlier adverse entry at all. It would be wrong to contend that merely for the reason that after an earlier adverse entry an officer was promoted that by itself would preclude the authority from considering the earlier adverse entry. When the law says that the entire service record has to be taken into consideration, the earlier adverse entry, which forms a part of the service record, would also be relevant irrespective of the fact whether officer concerned was promoted to higher position or whether he was granted certain benefits like increments etc.”

(Underlines added)

9. It is well settled that the order of compulsory retirement made under Sub-rule 4(a) of the Rule 10 of the Maharashtra Civil Services (Pension) Rules, 1982 does not operate as any stigma.

10. In the light of the law laid down by the Apex Court, it will be necessary to make a reference to the minutes of the Review Committee which recommended the compulsory retirement of the Petitioner. The relevant part of the minutes of the Review Committee reads thus:-

“On perusal of record it was found that for the years 1991-92, 1992-93, 1994-95, 1995-96, 2001-02 and 2002-03, he was rated as an “Average” Judicial Officer. Against the column “Quality of Judgment”, for the years 1991-92 and 1994, the remark is “Average”. For the years 2001-02 and 2002-03, his reputation and integrity is “Average” and for the year 1995-96, it is stated “Suspicious”. In SID File Nos.WM/85/95 and WM/15/96, he was warned to be careful in future. He was reported to be “Below average” at the Workshop held on 12th October, 1997. Considering the record and overall performance of the Judicial Officer, the Committee unanimously decided to discontinue his service.”

(Underlines added)

11. The Review Committee consisted of the then Hon’ble the Chief Justice and three Senior Most Hon’ble Judges of this Court. It is true that in the Annual Confidential Report for the year 2002-2003, the net result of the Petitioner is found to be “Good”. However, in the same Annual Confidential Report, his reputation and integrity is found to be “Average”. Even for the year 2001-2002, his reputation and integrity is found to be “Average”. In the Annual Confidential Reports for the years 1991-1992, 1992-1993, 1994-1995, 1995-1996 and 2001-2002, the net result of the Petitioner was “Average”. Another factor which is considered by the Review Committee is that earlier, the Hon’ble Chief Justice and the Hon’ble Administrative Judges of this Court had ordered a warning to be issued to the Petitioner.

12. We must also note here that though the Petitioner is relying upon his appointment as the Ad hoc Additional District Judge and

Additional Sessions Judge (initially the Assistant Sessions Judge), the said appointment of the Petitioner was on ad hoc basis. It is pertinent to note that on 16th September 2003, the said appointment was cancelled and the Petitioner was reverted to the post of Civil Judge, Senior Division and Chief Judicial Magistrate. The appointment of the Petitioner to the post of Ad hoc Additional District Judge was not by way of a regular promotion, but it was purely on ad hoc basis.

13. Considering the law laid down by the Apex Court in the case of *Pyare Mohan Lal*, which is a judgment rendered by the Bench consisting of three Hon'ble Judges of the Supreme Court, the decision in the case of ***Swami Saran Saksena*** relied upon by the Petitioner cannot be considered as a binding precedent. As far as the decision in the case of ***Registrar, High Court of Madras v. R. Rajiah*** is concerned, what is held in Paragraph 26 is in the facts of the said case. This was a case where, while passing an order of compulsory retirement, the Review Committee considered the events which happened in the year 1954. The Apex Court observed that the said events were not considered to be of any significance in appointing the Judicial Officer to the post of District Munsif in the year 1974 and while confirming him in the said post in the year 1976.

14. Coming back to the facts of the case, during the years 2001-2002 and 2002-2003, the integrity of the Petitioner was found to be "Average". Therefore, in the present case, the Review Committee had taken into consideration the adverse remarks regarding integrity of the Petitioner for immediately preceding two years.

15. Therefore, the Review Committee has considered all relevant aspects. After considering the entire service record, the Review Committee came to the conclusion that the Petitioner does not deserve to continue in the judicial service. Therefore, in this Petition under Article 226 of the Constitution of India, it is not possible to interfere with the impugned order of compulsory retirement.

16. The Writ Petition is rejected. The Rule is discharged with no orders as to costs.

(REVATI MOHITE DERE, J)

(A.S. OKA, J)