

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.2555 OF 2014**

Vilas Sharadrao Patil .. Petitioner.  
Vs.  
The Hon'ble Governor  
(State of Maharashtra) & Ors. .. Respondents.

Mr.Shreehari Aney, Sr. Counsel a/w Mr.Pralhad Paranjape with  
Ms.Shilpa Madki for the Petitioner.  
Mrs.M.P. Thakur AGP for Respondent Nos.1, 2 and 4.  
Mr.Rajani Iyer, Sr. Advocate for Rebecca Gonsalvez for Respondent  
No.3.

**CORAM : A.S. OKA & A.K. MENON, JJ.**

**DATED : 12TH JANUARY, 2015**

**P.C.**

1. Heard learned senior counsel appearing for the petitioner, learned AGP appearing for the first, second and fourth respondents and the learned senior counsel appearing for the third respondent.

2. On 2nd July, 1992 the petitioner was appointed as a Civil Judge, Junior Division, in Maharashtra Judicial Service. The petitioner was subsequently promoted as a District Judge. The petitioner was served with the impugned order of compulsory retirement on 30th April, 2013. The Petitioner has challenged the impugned order dated 30th April, 2013 by this petition under Article 226 of the Constitution of India. The impugned order was issued in the name of the Hon'ble Governor of the State by which in exercise

of powers under Rule 19 of the Maharashtra Judicial Service Rules, 2008 (for short “the Judicial Service Rules”) read with sub-Rule (4) of Rule 10 of the Maharashtra Civil Services (Pension) Rules, 1982 (for short “Pension Rules”), an order of compulsory retirement was passed against the petitioner. Sub-Rule (1) Rule 19 of the Judicial Service Rules provides that “Notwithstanding anything contained in the said Rules, the Governor shall, on the recommendation of the High Court, if he is of the opinion that it is in the Public Interest so to do, have the absolute right to retire any member of the judicial service when he attains the age of 50 years, 55 years or 58 years by giving him a notice of not less than three months in writing or pay and allowance for a period of three months in lieu of such notice.

3. Sub Rule (2) of Rule 19 provides that whether a member of service should be retired in the public interest under sub Rule (1) shall be considered atleast three times, that is, when he is about to attain the age of 50 years, 55 years and 58 years. In the facts and circumstances of the present case, the petitioner was considered at the time of completion of 55 years of age.

4. Learned senior counsel appearing for the petitioner drew our attention to the representation dated 10th June, 2013 submitted by the petitioner addressed to the Hon'ble Governor, the Chief Secretary of the State Government and the Principal Secretary, Law and Judicial Department of the State Government.

5. Learned senior counsel appearing for the petitioner submitted that in a case like this when the petitioner has a legal right to continue in the judicial service till he attains the age of 60 years, an opportunity of atleast a post decisional hearing ought to have been given to the petitioner. He urged that though the order of compulsory retirement passed under Rule 19 may not operate as a stigma, but civil consequences flow from such order. He, therefore, urged that this is a fit case where a direction should be issued to give a post decisional hearing to the petitioner. He relied upon the decisions of this court in the *State of Maharashtra and Others vs. Doburg Lager Breweries Pvt. Ltd.*<sup>1</sup>, *Chandrapur Zilla Sahakari Krushi and Gramin Bahudeshiya Development Bank Ltd. Vs. State of Maharashtra & Ors.*<sup>2</sup>, *Avtar Bhogal Singh and Anr. Vs. The Joint Secretary, Ministry of Information and Broadcasting, Government of India and others*<sup>3</sup>. Lastly, he relied upon the law laid down in the case of *Kesar Enterprises Ltd. Vs. State of Uttar Pradesh and Others*<sup>4</sup>. He submitted that considering the practical effect of an order being made under Rule 19, the civil consequences follow and, therefore, the principles of natural justice will have to be read in Rule 19 of the Judicial Service Rules. He submitted that in any event, there is nothing under Rule 19 of the Judicial Service Rules or sub Rule 4 of Rule 10 of the Pension Rules which excludes applicability

---

1 1996 (5) Bom.C.R. 478

2 2004 (3) Bom.C.R. 889

3 1996 (1) Bom.C.R. 345

4 (2011) 13 SCC 733

of the principles of natural justice. The learned senior counsel representing the third respondent supported the impugned judgment.

6. We have considered the submissions. The issue whether the principles of natural justice are applicable in the case of a compulsory retirement is no longer *res integra*. The issue was dealt with by the Apex Court in the case of *Baikuntha Nath Das Vs. Chief District Medical Officer, Baripada and Anr.*<sup>5</sup> In paragraph 26 of the said decision, the Apex Court considered the issue. The Apex Court referred to its earlier decision including the decision in the case of *Union of India Vs. Col. J. N. Sinha*<sup>6</sup>. Ultimately, in paragraph 35 the Apex Court held thus :

“Any and every arbitrary action is open to judicial scrutiny. The general principle evolved in the said decision is not in issue here. We are concerned mainly with the question whether a facet of principle of natural justice --- audi alteram partem --- is attracted in the case of compulsory retirement. In other words, the question is whether acting upon undisclosed material is a ground for quashing the order of compulsory retirement. Since we have held that the nature of the function is not quasi-judicial in nature and because the action has to be taken on the subjective satisfaction of the government, there is no room for importing the said facet of natural justice in such a case, more particularly when an order of compulsory retirement is not a

---

5 (1992) 2 SCC 299

6 (1970) 2 SCC 458

punishment nor does it involve any stigma.”

(emphasis supplied)

7. The same issue again came for consideration in the case of *R.C. Chandel Vs. High Court of Madhya Pradesh and Anr.*<sup>7</sup> The Apex Court adverted to its earlier decisions including the decision in the case of Baikuntha Nath Das (supra). After considering all the earlier decisions, the Apex Court in paragraph 19, categorically held that an order of compulsory retirement being not an order of adverse consequence, the principles of natural justice have no application.

8. Though the learned senior counsel appearing for the petitioner tried to contend that subsequent decision in the case of *Kesar Enterprises* concludes the issue, we find that the decision in the case of Baikunth Nath Das was rendered by a larger bench of the Apex Court. Therefore, we find no merit in the submission that by reading the principles of natural justice into Rule 19, a post decisional hearing be ordered to be given to the petitioner.

9. At the end, the learned senior counsel appearing for the petitioner urged that the order of compulsory retirement may be converted into an order of voluntary retirement.

---

<sup>7</sup> (2012) 8 SCC 58

10. Rule 19 of the Judicial Service Rules provides for a retirement of the judicial officer in public interest. The basic object of enacting Rule 19 is to consider whether a Judicial Officer deserves to continue in judicial service till he attains the prescribed age of super-annuation. If on consideration of entire service record of the judicial officer, it is found that he is not fit to continue in judicial service, Rule 19 can be invoked. The petitioner has never applied for grant of voluntary retirement. After the entire service record of the petitioner was considered, it was found that he does not deserve to continue as a judicial officer. A request for converting the impugned order of compulsory retirement into the one of voluntary retirement cannot be considered.

11. We find that there is no merit in the petition and the same is accordingly rejected.

**(A.K. MENON, J.)**

**(A.S. OKA, J.)**