

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION
WRIT PETITION NO.9763 OF 2013

Mr.Anilkumar K.P. for the petitioner
Ms M.P.Thakur, AGP for the respondent No.1
Mr.S.K.Talsaria, Senior Advocate a/w Mr.Vishwajeet
Shreemantrao Kapse for respondent Nos.2 to 4.

P.C.:

1 Heard the learned counsel for the petitioner.
By this petition under Article 226 of the
Constitution of India, the petitioner who was a
Judicial Officer has challenged the order dated 30th
April 2013 passed by the State Government by which
the petitioner was ordered to retire compulsorily in
exercise of powers under Rules 17 and 19 of the
Maharashtra Judicial Service Rules, 2008 read with
sub-rule 4 of Rule 10 of the Maharashtra Civil
Services (Pension) Rules, 1983. The order of
compulsory retirement was passed in public interest.
The order of compulsory retirement is based on
recommendations made by the Review Committee of this
Court in its meeting held on 21st February 2013.

2 The learned counsel for the petitioner submitted that from what is observed on the second page of the Resolution passed by the Review Committee, it appears that the Review Committee was impressed by the allegations of corrupt practices against the petitioner. He urged that there was no disciplinary enquiry held against the petitioner and no opportunity of being heard was granted to the petitioner. He urged that in any event, there was no material before the Review Committee to justify the observations made regarding the integrity of the petitioner. He relied upon the decision of the Apex Court in the case of Baidyanath Mahapatra vs. State of Orissa and another¹. He urged that without following the elementary principles of natural justice, an order which is ex-facie illegal has been passed. He pointed out that an entry made only against one column in the Annual Confidential Report of the petitioner for the year 2010-2011 is picked up though all other entries did not show anything adverse against the petitioner. He urged that though the recommendation of the Review Committee records that the petitioner was rated as an 'Average' Officer for several years, in fact, for the years 1999-2000 and 2000-2001, the petitioner was not rated as an Average Officer. He urged that in any event, subsequently, the petitioner has been promoted. He pointed that the petitioner was promoted as Ad hoc Civil Judge (Senior Division) in January 2004. He pointed out that even thereafter, the petitioner was regularly promoted. He submitted

1 AIR 1989 SC 2218.

that there was no material before the Review Committee to come to the conclusion that the petitioner does not deserve to continue in the judicial service. He urged that apart from the fact that the order is not based on any material, it is arbitrary in the sense that no reasonable person could have come to the conclusion on the available material that the petitioner does not deserve to continue in judicial service. The submission is that the petitioner who was a Judicial Officer having a clean record cannot be thrown out of service especially when he has rendered good service for 21 long years.

3 The learned senior counsel representing the High Court Administration has produced the record of the learned Judge which was placed before the Review Committee. He relied upon the decision of the Apex Court in the case of Baikuntha Nath Das and another vs. Chief District Medical Officer, Baripada and another². He also relied upon the decision of the Apex Court in the case of Rajendra Singh Verma (Dead) through Lrs and others vs. Lieutenant Governor (NCT of Delhi) and others³. Lastly, he relied upon the decision of the Apex Court in the case of R.C.Chandel vs. High Court of Madhya Pradesh and another⁴.

4 We have considered the submissions. It will be necessary to make a reference to the minutes of the

2 SCC 299; 1992

3 (2011) 10 SCC 1

4 (2012) 8 SCC 58

meeting of the Review Committee held on 21st February 2013. What is recorded in the minutes while considering the case of the petitioner can be summarized as under:

- (i) In the year 1993-94 and 1994-95, his knowledge of law and procedure was found to be average;
- (ii) In the year 1993-94, the quality of the Judgments of the petitioner was found to be poor;
- (iii) In the year 1994-95, the Judgments were not up to the mark in terms of clarity, poor in terms of language and average in terms of application of law;
- (iv) The quality of Judgments in the year 1998-99 and 1999-2000 was not found up to the mark.
- (v) He was rated as an "Average" Officer in the years 1992-1993, 1994-1995, 1998-1999, 1999-2000, 2000-2001;
- (vi) His disposal was shown as inadequate in the years 1993-1994, 1994-1995, 1995-1996 and 1997-1998;
- (vii) The disposal was shown as Adequate in the year 2005-2006 and 2006-2007 and was again inadequate in the year 2011;
- (viii) In the year 2010-2011, the petitioner was found to be slow in the work;
- (ix) His supervision and control over the staff was not proper; and
- (x) There were complaints against the petitioner doubting his integrity and the general reputation

as to his conduct and integrity was not found to be good.

5 The Review Committee after considering the aforesaid factors was of the opinion that the petitioner is found to be not having potential for further useful judicial service.

6 The law is well settled. The order of compulsory retirement is never punitive and it never operates as a stigma. Only aspect which is required to be considered is whether a Judicial Officer is fit to be continued in service after considering his entire service record.

7 Though it is tried to be pointed out by the learned counsel for the petitioner that for the years 1999-2000 and 2000-2001 the Officer was not rated as Average, that is hardly of any relevance.

8 It will be necessary to make a reference to the decision of the Apex Court in the case of Rajendra Singh Verma (Dead) through Lrs and others and in particular paragraph 183 thereof which reads thus:

"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 up to 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 record, would also be relevant irrespective of the fact whether the officer concerned was promoted to higher position or whether he was granted certain benefits like increments, etc."

(underline supplied)

9 The law laid down in the said decision will have to be also read in the context of another decision of the Apex Court in the case of Pyare Mohan Lal vs. State of Jharkhand and others⁵. In paragraph 29 the Apex Court observed thus:

"29 The law requires the authority to consider the "entire service record" of the employee while assessing whether he can be

5 (2010) 10 SCC 693

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 different 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 the 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 fides."

(underline added)

10 Therefore, while considering the matter of compulsory retirement of a Judicial Officer, the concerned authority is required to consider the entire service record. It is held that a single adverse remark regarding integrity of the Officer made in remote past is also sufficient. The Judicial Officer is required to be examined treating him to be different from other wings of the society. Thus, the fact that the petitioner was promoted after

earlier adverse entries in the ACR is not at all relevant.

11 We have already recorded what has been observed and considered by the Review Committee. From the minutes, it appears that the Review Committee has taken into consideration the entire service record of the petitioner.

12 The Review Committee has observed that the complaints received against the petitioner create a doubt about the integrity of the petitioner. However, we must note here that there is no finding recorded by the Review Committee that there was a substance found in the complaints. From the record produced before us, we have noted the nature of the complaints. When the case was placed before the Review Committee, there were three complaints pending before the SID/Vigilance Department. In case of one complaint, a discreet enquiry was ordered. In the another case, a report of Principal District Judge was called for which was placed before the Administrative Judges. It is on the basis of this report that the matter was ordered to be placed before the Review Committee. What is mentioned in the minutes of the meeting of the Review Committee is a matter of fact. There were complaints pending against the petitioner doubting his integrity. What is observed by the Review Committee cannot be operate a stigma. Only as a matter of fact that the Review Committee has noted that there were complaints pending against the petitioner without

recording any adverse findings.

13 As far as the applicability of the principles of natural justice is concerned, the Constitution Bench of the Apex Court in the case of Baikuntha Nath Das and another has held that principles of natural justice have no place in the context of an order of compulsory retirement. Therefore, the decisions relied upon by the petitioner will have no application. It is well settled that even uncommunicated adverse remarks can be the basis of an order of compulsory retirement. There is no specific allegation of malafide made by the petitioner. It cannot be said that the order of compulsory retirement is based on no material. After having perused the record of the petitioner, we find that it cannot be said that no reasonable person would form a requisite opinion on the given material.

14 Therefore, we are of the considered view that there is no error in the impugned order of compulsory retirement. The order is not stigmatic. It will not operate as stigma.

15 Subject to what is observed above, petition is rejected.

(A.P.BHANGALE,J.)

(A.S.OKA,J.)