

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 261 of 2005**

1. Smt. Krishna Bai W/o Late Kashinathji Shukla, Aged About 72 Years (House Wife) R/o House No. 25, Mahendra Nagar, Lal Bagh, Ward No.19, Rajnandgaon, C.G.
2. Shri Surendra Kumar Shukla, S/o Late Kashinathji Shukla, Aged About 54 Years L I C Agent, R/o House No. 25, Mahendra Nagar, Lal Bagh, Ward No. 19, Rajnandgaon, C.G.
3. Shri Narendra Kumar Shukla, S/o Late Kashinathji Shukla, Aged About 48 Years L I C Agent, R/o House No. 25, Mahendra Nagar, Lal Bagh, Ward No. 19, Rajnandgaon, C.G.
4. Shri Devendra Kumar Shukla, S/o Late Kashinathji Shukla, Aged About 40 Years Computer Programmer, R/o House No. 25, Mahendra Nagar, Lal Bagh, Ward No. 19, Rajnandgaon, C.G.
5. Smt. Pooja Atre, D/o Late Kashinathji Shukla, Aged About 31 Years House Wife, House No. 329 B, Suryadev Nagar, Near Hawa Bungla, Indore (M.P.)

---- Petitioners

Versus

1. The State Of Madhya Pradesh Through The Secretary Revenue Department, Vallabh Bhawan, Bhopal
2. The Commissioner, Raipur Division, Raipur
3. The Collector, Rajnandgaon

---- Respondents

Shri U.N.Awasthi, senior counsel along with Ms. Raksha Awasthi, counsel for the petitioner/s.
Shri Ramakant Mishra, Dy.A.G. for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****08/03/2017**

The petitioner was compulsorily retired under F.R.56 (3) of the

Fundamental Rules vide impugned order dated 31/03/1987. The petitioner filed an original application before the then existing M.P. State Administrative Tribunal, Bench at Jabalpur. Upon abolition of Tribunal, the case has been transferred to this Court.

2. Relevant factual backdrop giving rise to this instant petition and necessary for decision of controversy involved in this petition, stated briefly, are that the petitioner was initially appointed on 15/11/1953 as Lower Division Clerk in the Government Service and was working as officiating First Grade Clerk since 20/04/1975. A departmental enquiry was initiated against the petitioner in respect of the incident of the year 1979 which culminated in imposition of penalty of withholding two increments with cumulative effect vide order dated 04/11/1986. After about four months, impugned order dated 31/03/1987 came to be passed by which the petitioner was compulsorily retired from service. It is this order which is under challenge.

3. During the pendency of the petition, the original petitioner died and his legal representatives have been allowed by this Court to be substituted in place of the original petitioner and prosecute the petition as in the event of petition being allowed, monetary benefit would come to legal representatives of the petitioner.

4. Learned senior counsel for the petitioner contended before this Court that the impugned order, apart from being punitive, seeks to impose punishment for the same misconduct for which the petitioner was already punished, therefore a case of double jeopardy. It is argued that the object and purpose of compulsory retirement of an employee is only to weed out dead wood who has outlived his utility in service, after completion of a minimum period of service and attaining age of 55 years. For this purpose, the entire service records are required to be examined, though, with more attention to the records of recent past. In the entire career of 33 years of the petitioner, except one penalty dated 04/11/1986, no other penalty was ever imposed on the petitioner and the petitioner was never served with any adverse remarks, warning, censure etc. As a bolt from blue, soon after imposition of penalty in the departmental enquiry, order of compulsory retirement was issued which only leads to an inference that there was an ill motive to get rid of the petitioner, for reasons best known to the respondent authorities.

5. Per contra, learned State counsel sought to justify the action of compulsory retirement by submitting that the petitioner has been compulsorily retired, not by way of penalty but only on bonafide consideration of his service records and the conclusion that the petitioner has now become a deadwood and his further continuance in service, upon completion of 55 years of age, is not in public interest. He submits that the power to compulsorily retire an employee who has completed minimum period of service and age of 55 years is actuated by public interest so that after completing a minimum period of service, the employer may dispense with the service of those, who are found to be no longer interested in work and have become deadwood and unable to produce required minimum standards of efficiency of work. Continuing such employee would not be conducive to public interest. Therefore, in bonafide exercise of power, the decision was taken. The case of the petitioner, it is argued, was considered by a duly constituted committee, by applying the criteria laid down in Government circular dated 20/07/1984. The screening committee has recorded in minutes of meeting dated 25/03/1987 that annual confidential report for the period year 1984 and 1985 were recorded "Gha" (poor) which shows that the petitioner had become deadwood. On that basis, therefore, the petitioner has been rightly compulsorily retired.

6. During the course of hearing, on the last day, this Court noticed that in the minutes of meeting of the screening committee recorded on 25/03/1987, there is no reference to the ACRs of other three years, out of five years preceding the date of consideration and further that circular dated 20/07/1984 laying down the policy of compulsory retirement is also not on record. State was, therefore, directed to produce the same for perusal of the Court. It was also observed that as present is a case where an original application was filed by the employee way back in the year 1990, no further adjournment would be granted and in the event of non-production of records, adverse inference would be drawn. However, despite opportunity granted, information has not been placed before this Court.

7. The object and purpose of compulsory retirement is to weed out deadwood. While in public employment, continuance in service up to the age of 55 years with completion of 25 years of service is guaranteed, further continuance in service is subject to considerations based on minimum required

standard of efficiency in service. These are considerations in public domain because those who are in public employment, are expected to discharge their duties and functions maintaining a minimum standard of efficiency. The object and purpose of framing rules of compulsory retirement as contained in F.R. 56 (3) of Fundamental Rules and Rule 42 of MP / CG Civil Services (Pension) Rules, 1976 (for short 'Pension Rules') is to strike a balance between public interest emanating from the concept of public employment and the interest of an employee. While a minimum period of service is guaranteed, beyond a particular age and completion of service, further continuance of service is dependant upon the standard of efficiency of the employee. It has been held in the case of [Baikuntha Nath Das and Another v. Chief District Medical Officer, Baripada and Another](#) [1992) 2 SCC 299] that the order of compulsory retirement is not punitive but only an administrative decision in public interest and is an essential attribute of public employment. In the service of the State Government in the present case also, similar scheme is applicable which is reflected from the provisions contained in F.R. 56 (3) of the Fundamental Rules read along with the provisions contained in Rule 42 of the Pension Rules. Therefore, the existence of power to compulsorily retire in public interest, was very much available to the respondents.

8. The question, however, which arises for consideration is whether the decision is illegal or arbitrary so as to warrant interference by this Court.

9. The scope of judicial review in the matter of challenge to the order of compulsory retirement, not by way of punishment but on the ground that the employee has become deadwood, is to see whether the decision has been taken upon due application of the entire service records of the employee though with more advertance to the records of the recent past. It has been emphasized again and again in plethora of decisions that in order to come to the conclusion whether the employee has become deadwood and outlived his utility in service to further continue in public employment, application of mind to the entire service records is necessary and consideration cannot be restricted to one or two solitary events. In a case, where there is specific allegation of misconduct, the proper course of action would be to hold a departmental enquiry. An opinion that the employee has become deadwood could be formed only upon comprehensive examination of entire service

records and not on any isolated incident. The test has been made by the Supreme Court in the case of **Baikuntha Nath Das (supra)**.

In Baikuntha Nath Das (supra), the Supreme Court held:

"32. The following principles emerge from the above discussion:

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the Government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) malafide or (b) that it is based on no evidence or (c) that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material in short; if it is found to be a perverse order.

(iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter - of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference."

10. In a later decision in the case of **Madhya Pradesh State Cooperative Dairy Federation Limited and Another vs. Rajnesh Kumar Jamindar and others, (2009) 15 SCC 221**, the principle laid down earlier were restated as below -

"44. The power of judicial review of a superior court although a restricted one, has many facets. Its jurisdiction is not only limited in

the cases where the administrative orders are perverse or arbitrary but also in the cases where a statutory authority has failed to perform its statutory duty in accordance with law. An order which is passed for unauthorized purpose would attract the principles of malice in law. [[See Government Branch Press and Another v. D.B. Belliappa](#) (1979) 1 SCC 477 : AIR 1979 SC 429, [Smt. S.R. Venkataraman v. Union of India and Another](#) (1979) 2 SCC 491 : AIR 1979 SC 49 and [P. Mohanan Pillai v. State of Kerala and Others](#) (2007) 9 SCC 497]”

Therefore, the legal position in this regard is crystal clear. The employee's service record is required to be looked into and clear opinion is required to be made that he had become a deadwood. Moreover, this Court is not oblivious of the settled legal position that even uncommunicated adverse remarks can also be taken into consideration as held in the case of **Baikuntha Nath Das (supra)**.

11. In the minutes of meeting dated 25/03/1987, while considering the case of the petitioner, all that has been stated is that in the ACRs of the year 1984-1985, grade 'Gha' (poor) has been awarded. Except this, there is no other material warranting decision to compulsorily retire. Despite opportunity granted to the respondent, preceding three years' ACR have not been placed before this Court. The minutes of meeting and records placed before this Court do not reflect upon performance of the petitioner during his entire service career. Therefore, except that there were two remarks of grade 'Gha' (poor) in the year 1984 and 1985, there is no adverse remark earlier reflected from the records to form a bonafide opinion that the petitioner had become a deadwood. Only on the basis of two years' ACRs, one cannot jump to the conclusion that the employee has become deadwood. Such a poor performance must have attained a regular feature over a fairly long time to form an opinion that an employee has become a deadwood. Imposition of penalty of withholding two increments cannot be a material by itself nor taken together with the ACRs of the year 1984-1985, is sufficient in itself, to come to the conclusion that an employee has become deadwood. Even circular dated 20/7/1984 is not placed before this Court. In the absence of there being affidavit satisfactorily explaining non-production of records, adverse inference

is liable to be drawn against the respondent.

12. In view of above, this petition is allowed. The order of compulsory retirement of the deceased - petitioner passed on 31/03/1987 is declared illegal and set aside.

As the impugned order itself states that the petitioner was to continue in service for another three years, therefore, the petitioner shall be deemed to have continued in service till he attained the age of superannuation of 58 years.

13. Considering that under the order of compulsory retirement, the legal representatives of the deceased- petitioner must be receiving pension w.e.f. 01/04/1987 and must have also received GPF, gratuity, leave encashment, group insurance and other admissible benefits, while working out consequential financial benefits, whatever has been paid to them, shall be appropriately adjusted.

Sd/-
(Manindra Mohan Shrivastava)
Judge