

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2017

CORAM

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.604 OF 2012

L.Amutha

.. Petitioner

-vs-

1. The Chief Secretary
Government of Tamil Nadu
Fort St.George, Chennai 600 009.
2. The Principal Secretary to Government
Home (Courts-I) Department
Fort St.George, Chennai 600 009.
3. The Secretary
Public Department
Fort St.George, Chennai 600 009.
4. The Registrar General
High Court of Judicature at Madras
Chennai 600 104.

.. Respondents

Writ Petition filed under 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records pertaining to the proceedings in G.O.(2D) No.326 Home (Courts I) Department dated 15.09.2011 and the consequential notice issued by the 4th respondent in ROC No.1337-B/2010/B1 dated 30.09.2011 so as to quash the same by directing the respondents herein to reinstate the petitioner into the Tamil Nadu State Judicial service as the petitioner was serving earlier with attendant benefits.

For Petitioner : Mr.N.Jothi, Senior Counsel
for Mr.M.C.Govindan

For Respondents: MrP.S.Sivashanmugasundaram-R1to3
Spl.Govt. Pleader

Mr.V.Ayyadurai, - R4
Senior Counsel

O R D E R
NOOTY.RAMAMOHANA RAO, J.

The writ petitioner challenges the validity of the orders passed by the State Government in their G.O.(2D) No.326, Home (Courts-I) Department dated 15.09.2011 and the consequential proceedings dated 30th September, 2011, issued by the Registrar General of the High Court of Madras.

2.The writ petitioner was selected on regular basis for appointment to the post of Junior Civil Judge, in the year 1995. She joined service as II Additional District Munsif, at Trichy, on 27.11.1995. She was promoted as a Subordinate Judge and posted at Sankaran Koil on 08.08.2007. At the relevant point of time, the writ petitioner was serving as the Secretary, District Legal Services Authority, Dindigul. She has been placed under suspension on 21st April 2011, pending enquiry into certain allegations, which surfaced during her tenure of service at Tirupur, Krishnagiri and Gudalur. No enquiry was however conducted into the allegations that surfaced, touching upon the integrity of the officer. The order of suspension was lifted on 27th September, 2011 and she was posted back as the Secretary, District Legal Services Authority, Dindigul. The impugned order compulsorily retiring the writ petitioner from service invoking the power under Fundamental Rule 56(2) has been passed and served on her. Challenging the said order of the State Government contained in G.O.(2D) No.326, Home (Courts) Department dated 15.09.201, and the consequential Notification No.187, the present Writ Petition is instituted.

3.Heard Mr.Jothi, learned Senior Counsel appearing for the writ petitioner and Mr.Ayyathurai, learned Additional Advocate General on behalf of the respondents.

4.The learned Senior counsel for the writ petitioner would submit that the power under F.R.56 has been misused in the case of the writ petitioner. Though she was recruited as a District Munsif in 1995, but based on her merit and ability she was promoted as a Subordinate Judge on 08.08.2007, however, uncorroborated allegations have been made the basis for compulsorily retiring the writ petitioner from service. It is also contended that the petitioner was initially placed under suspension, pending enquiry into the allegations, but, no such enquiry was ever conducted. Obviously, realising the lack of

tenability behind the allegations, the writ petitioner was reinstated back into service. But, immediately, thereafter, the writ petitioner has been compulsorily retired from service. Thus, the writ petitioner has been penalised by way of compulsory retirement, than otherwise.

5.No punishment could have been inflicted, much less a major punishment, without following the procedure prescribed under the Discipline and Appeal Rules and also without adhering to the principles of natural justice. Thus, the impugned order, which is a punitive. One was passed without following any procedure or adhering to principles of natural justice.

6.The learned Senior Counsel has also pointed out that on two different occasions, counter affidavits have been filed by the Registrar General of the High Court and there were glaring improvements made reflecting lack of correlation. That apart, no charges have ever been framed against the petitioner that she was indulging in corrupt practices. Therefore, if ever there was any adverse material gathered against the writ petitioner, the same ought to have been made available to the writ petitioner, duly providing her an opportunity to explain the true and correct facts and demonstrate as to how the allegations have been trumped up against her.

7.It is also contended that she was promoted to the Office of the Subordinate Judge only on 08.08.2007, in recognition of her merit and ability. The promotion to a selection post can be awarded only if the merit and ability of the candidate is upto the grade required and expected, and seniority in the feeder category will only play a minor or insignificant role. In between August 2007 and September 2011, in a span of four years period, the writ petitioner could not have come for such an adverse notice requiring her to be weeded out.

8.It is contended by the learned Senior counsel for the writ petitioner that holding Judicial Office is increasingly becoming a difficult proposition. Whenever an Order or a Judgment is passed, the party whose interests have been impacted in that process is likely to feel aggrieved and develop grudge against the Judicial Officer. Added to it, some of the learned Counsel who do not stick to the value based practice are prone to indulge in unethical practices as well and hence uncorroborated material ought not to have been made the basis for retiring the writ petitioner compulsorily.

9.The learned Additional Advocate General per contra would contend that it is the overall performance of the writ petitioner which has been taken into account and consideration and based upon the available inputs, an appropriate decision has

been taken to retire the writ petitioner. The learned Additional Advocate General would point out that relevant material has been placed for consideration of the Hon'ble Administrative Committee, which met on 20th January 2011, and based upon assessment of the overall record of service of the writ petitioner and after objective evaluation, a decision has been taken to retire the writ petitioner compulsorily, under F.R.56(2) of the Constitution of India.

10.The learned Additional Advocate General has drawn the attention to the contents of paragraph No.4 of the counter affidavit filed by the Registrar General of the High Court, wherein it was pointed out that cases of thirteen Judicial Officers, including the writ petitioner who are crossing the age of 55 years in the period between January and June 2011, were placed for consideration of the Hon'ble Administrative Committee at its meeting held on 20th January 2011, whereat, a decision has been taken by the Hon'ble Administrative Committee, to retire the writ petitioner after considering the Annual Confidential Reports, Quality of Judgments, Work Done Statements, past service record and overall performance of the writ petitioner. It was further pointed out that the decision of the Hon'ble Administrative Committee was placed for consideration of the Full Court at its meeting held on 20th April 2011. The Full Court after due deliberations, approved the Minutes of the Hon'ble Administrative Committee dated 20th January, 2011. That is how the State Government was requested to obtain the necessary orders of the Appointing Authority for retiring the writ petitioner compulsorily in public interest.

11.In paragraph No.8 of the counter affidavit, the adverse remarks recorded in her Annual Confidential Record for the period between 10th January 2005 upto 20th February, 2005 and from 20th March 2005 upto 31st December, 2005, which have been communicated to her, reflected that the writ petitioner was lacking Industry, Aptitude for hard/heavy work and Readiness to take up responsibility. The Officer was also instructed to take part in the activities of the Legal Services Authority without fail. Though the writ petitioner sought for explaining the said adverse remarks, upon considering the request, the same was rejected by the High Court on 02.07.2007. Hence, to the knowledge of the petitioner, there was an adverse report against her.

12.It is contended by the learned Additional Advocate General that the order of compulsory retirement cannot be construed as a punishment as it does not carry any stigma with it. It was hence contended that the scope for judicial review of any such order of compulsory retirement which is non punitive is extremely limited and confined to grounds such as non-application of mind, malafide, perverse or failure to comply

with any statutory provision. The right of the Government to compulsorily retire a Government servant is absolute, subject only to the condition that such decision is based upon a bonafide opinion that compulsorily retiring such a Government servant would sub-serve the larger public interest.

13.The learned Additional Advocate General adverting to the additional counter affidavit filed by the Registrar General in paragraph No.3, it was pointed out that apart from Annual Confidential Records, other relevant records including Vigilance Reports, Work Done Statements, evaluation quality of Judgments and assessment of overall performance of the Officer, have been placed before the Government. It is also pointed out in paragraph No.2, therein as under:

"2.....Certain complaints alleging corruption, pertaining to her integrity which were enquired into by the Registrar (Vigilance) have disclosed that the allegations levelled against her therein have been prima facie made out. The complaints and in furtherance thereto the explanations obtained from her were pending to be placed before the Hon'ble Administrative Committee when her case was reviewed along with other Judicial Officers for her continuance beyond the age of 55 years in accordance with FR 56 (2)....."

It is contended by the learned Additional Advocate General that in fact there is no contradiction either in content or terms in between the first counter affidavit and the additional counter affidavit. In paragraph No.5 of the additional counter affidavit, the following statement of fact is also set out:

"5.....The Vigilance Particulars in seriatim 1 to 5 were also submitted. It is to be noted that out of 5 complaints, 3 complaints alleging corruption were pending in the Vigilance cell of the Madras High Court. The Registrar (Vigilance) had conducted discreet enquiry and submitted his enquiry report holding that the allegations have been found substantiated. The petitioner's explanations were obtained....."

14.It is urged that along with the complaints, the report of the Registrar (Vigilance) and the explanations of the petitioner were also placed before the Hon'ble Administrative Committee and upon considering that material, the Hon'ble Administrative Committee at its meeting held on 8th April, 2011, resolved to place the writ petitioner under suspension in

contemplation of disciplinary proceedings. It is therefore urged by the learned Additional Advocate General that on two different occasions i.e. once on 20th January 2011 and another time on 8th April 2011, the Hon'ble Administrative Committee, has taken two different decisions. Upon considering the relevant material, those facts have been brought out by way of additional counter affidavit filed on behalf of the Registrar General, but, that does not contain any variation with regard to the contents spelt out in the counter affidavit filed earlier. The learned Additional Advocate General therefore submits that for the purpose of assessing the validity of the order of compulsorily retirement, the relevant decision of the Administrative Committee was taken on 20th January, 2011, which was considered and approved by the Full Court at its Meeting held on 20th April, 2011. Therefore, it is urged that the contents of the counter affidavit and additional counter affidavit do not contradict each other in any manner.

15. Fundamental Rule 56 deals with Retirement on Superannuation. Clause (1) of F.R.56, declares that every Government servant in the superior service shall retire from service on the afternoon of the last day of the month in which he attains the age of 58 years. Whereas, Clause (2) of F.R.56 deals with compulsory retirement. It spells out that the appropriate authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice at any time after he has attained the age of fifty years or fifty-five years in the case of Basic Servants, as the case may be or after he has completed thirty years of qualifying service. Therefore, F.R.56(2) leaves no pale of doubt that it is the absolute right of the Government to retire any Government servant if it was of the opinion that it is in public interest that such a Government servant shall be retired compulsorily.

16. Various questions relating to exercise of power under F.R. 56(2) or a similar nature of provision have fallen for consideration over a very long period of time before the Hon'ble Supreme Court. It would be useful to refer to the Judgment of the Hon'ble Supreme Court in PYARE MOHAN LAL v. STATE OF JHARKHAND AND OTHERS [(2010) 10 SCC 693]. A three-Judge Bench of the Hon'ble Supreme Court has reviewed the various legal principles enunciated on several occasions in the past by the Hon'ble Supreme Court and crystallized the principles. In paragraph No.18, it has been held as under:

" 18. Thus, the law on the point can be summarised to the effect that an order of compulsory retirement is not a punishment and it does not imply stigma unless

such order is passed to impose a punishment for a proved misconduct, as prescribed in the Statutory Rules. (See *Surender Kumar Vs. Union of India & Ors.*, (2010) 1 SCC 158). The Authority must consider and examine the overall effect of the entries of the officer concerned and not an isolated entry, as it may well be in some cases that in spite of satisfactory performance, the authority may desire to compulsorily retire an employee in public interest, as in the opinion of the said Authority, the post has to be manned by a more efficient and dynamic person and if there is sufficient material on record to show that the employee "rendered himself a liability to the institution", there is no occasion for the Court to interfere in the exercise of its limited power of judicial review. "

17. It is now beyond any doubt that an order of compulsory retirement does not bear any punitive element and it does not also contain a stigma. It is also now put beyond any doubt, the overall performance of the Officers concerned, but not isolated entries which would be taken into consideration. Where the overall performance of the Officer concerned has been assessed appropriately and the decision to compulsorily retire such a Government servant is arrived at, there will hardly be any occasion for the Court to interfere with any such exercise of powers, as part of judicial review. In Judicial Review Exercise, the Court is not so much concerned about the ultimate decision, but it is essentially concerned about the decision making process.

18. It is also appropriate to note that in the same Judgement in paragraph No.21, it has been held that entries containing adverse opinion about the Officer still remain part of the record for consideration to retire a Government servant compulsorily, notwithstanding the fact that the employee has subsequently been promoted. The 'Washed-off theory' has thus been declared not to have universal application and it would only have limited application for the purpose of assessing the suitability of the Officer and the adverse material forming part of the record prior to the earning of promotion of the servant concerned can still be taken into view and consideration.

19. Therefore, we are of the opinion that the adverse entries which have been found in the Confidential Record of the writ petitioner for the year 2005, which were declined to be expunged, on 02.07.2007, are liable to be taken into consideration for taking a decision of compulsory retirement, though the writ petitioner has earned a promotion to a selection post on 08.08.2007.

20.It will also be appropriate to notice another Judgment of the Hon'ble Supreme Court in RAJENDRA SINGH VERMA v. LIEUTENANT GOVERNOR (NCT OF DELHI) & ORS [(2011) 10 SCC 1]. Once again the question relating to exercise of power for compulsorily retiring a Judicial Officer has been extensively considered by the Hon'ble Supreme Court. Several Judgments rendered earlier thereto have been clinically analyzed. In paragraph No.77 of the said Judgment, the importance of the adverse entry and its consideration for the purpose of compulsory retirement has been brought out. In paragraph No.80, the principle enunciated in High Court of Judicature of Bombay V. Shirishkumar Rangrao Patil [(1997) 6 SCC 339], setting out the mandate of Article 235 of our Constitution is that the High Court has to maintain constant vigil on its subordinate judiciary has once again been forcefully brought out. It is noted that there is any amount of need to stem the rot by was surgical incision as part of doctrine of control enshrined in Article 235 of our Constitution. It was emphatically brought out that the nature of judicial service is such that it cannot afford to suffer continuance in service of persons of doubtful integrity or who have lost their utility.

21.In our opinion, the learned Additional Advocate General is right in placing reliance upon the principles enunciated in the aforementioned two cases.

22.When we perused the material placed before the Hon'ble Administrative Committee, in the column relating to the Vigilance particulars, five different counts are incorporated therein. The count Nos. 1 to 3 relate to allegations of corruption indulged in by the writ petitioner. With regard to the first count therein, it was noted that the report of the Registrar (Vigilance) was placed before the Hon'ble Administrative Committee and it was resolved to issue show cause notice to the delinquent officer and the officer has submitted her explanation and it was directed to be placed for consideration of the Hon'ble Administrative Committee separately. The same is true with regard to count Nos.2 & 3 also, concerning allegations of corruption. Count No.4 relates to allegation of favouritism shown by the Officer. It was noted therein that the enquiry was ordered to be conducted thereinto by the Hon'ble Acting Chief Justice. With regard to 5th count concerning unpunctual attendance, performance of duties and favouritism, the Hon'ble Chief Justice appears to have ordered for filing the said complaint.

23.When viewed in this back drop, we are of the opinion that there was some prima facie material available with the Hon'ble Administrative Committee to doubt the integrity and the sense of impartiality of the writ petitioner/Judicial

Officer.

24.It is altogether a different matter as to whether the substratum behind those allegations would ultimately result in inflicting grave punishment on her at any later point of time, as at present, we have absolutely no doubt in our mind that the Hon'ble Administrative Committee had reason to believe that the integrity of the officer is doubtful and her sense of impartiality is also shaky.

25.As was set out in various legal principles, the essence of which have been crystallized by the aforementioned two Judgements of the Hon'ble Supreme Court, the exercise of power under F.R.56(2) is not punitive in nature and content. Therefore, it is certainly not open to any one to debate about the adequacy, sufficiency or reliability of the material so far gathered against the Officer. We are therefore of the opinion that the decision of the Hon'ble Administrative Committee is bonafidely arrived at upon appropriate consideration of the overall performance of the officer.

26.The learned Senior counsel for the writ petitioner has placed reliance on the Judgments of the Hon'ble Supreme Court rendered in REGISTRAR (ADMINISTRATION), HIGH COURT OF ORISSA, CUTTACK v. SISIR KANTA SATAPATHY [AIR 1999 SCC 3265]; STATE OF GUJARAT v. UMEDBHAI M.PATEL [(2001) 3 SCC 314] and NAND KUMAR VERMA v. STATE OF JHARKHAND AND ORS [(2012) 5 MLJ 133 (SC)].

27.In NAND KUMAR VERMA's case (referred supra), the Officer has been reverted from the rank of Sub Judge to the lower post of Munsif by Notification dated 20th April 1998. Upon bifurcation of the composite State of Bihar and formation of a new State of Jharkhand, the Officer was posted as Judicial Magistrate (First Class) in the State of Jharkhand on 21st April 2001. While he was working as such, the State Government had issued notification dated 17.7.2001, compulsorily retiring him from service. When those notifications were challenged, the Hon'ble Supreme Court in paragraph No.27 has pointed out that there is no justification for conducting a second enquiry on the very charges, which have been dropped earlier and held that the order reverting the appellant from the post of Subordinate Judge to that of Munsif, cannot be sustained. While considering the sustainability of the order of compulsory retirement notified by the State of Jharkhand on 17.07.2201, in paragraph No.30, the following principle has been reiterated:

" 30. We are conscious of the fact that there is very limited scope of judicial review of an order of premature retirement from service.As observed by this

Court in Rajiah's case (supra) that when the High Court takes the view that an order of compulsory retirement should be made against a member of the Judicial Service, the adequacy or sufficiency of such materials cannot be questioned, unless the materials are absolutely irrelevant to the purpose of compulsory retirement. We also add that when an order of compulsory retirement is challenged in a court of law, the Court has the right to examine whether some ground or material germane to the issue exists or not. Although, the Court is not interested in the sufficiency of the material upon which the order of compulsory retirement rests."

In paragraph No.32 of the same Judgement it has been held as under:

"32. It is also well settled that the formation of opinion for compulsory retirement is based on the subjective satisfaction of the concerned authority but such satisfaction must be based on a valid material. It is permissible for the Courts to ascertain whether a valid material exists or otherwise, on which the subjective satisfaction of the administrative authority is based. In the present matter, what we see is that the High Court, while holding that the track record and service record of the appellant was unsatisfactory, has selectively taken into consideration the service record for certain years only while making extracts of those contents of the ACR's. There appears to be some discrepancy....."

The aforementioned principle clearly brings out that it is the subjective satisfaction based upon some relevant material and the sufficiency of such material cannot be doubted by the Court on the Judicial side in exercise of its judicial review power.

28. In UMEDBHAI M.PATEL's case, the Officer, while was working as an Executive Engineer in the Narmada Development Department of the State of Gujarat was compulsorily retired with effect from 13th February, 1987, while the Officer was due to retire on superannuation, by the end of August, 1988, 18 months thereafter. In paragraph No.11, the principles relating to compulsory retirement have been crystallized by the Hon'ble Supreme Court. They read as under:

" 11. The law relating to compulsory retirement has now crystallized into definite principles, which could be broadly summarised 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 due 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.

29. The learned Senior counsel for the writ petitioner has commended for our acceptance of the principles 6 & 8 (supra) and would urge that in the present case, the aforesaid principles should be applied.

30. It is true that an order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry, when such course is more desirable and the order of compulsory retirement shall also not be passed as a punitive measure. There is no difficulty for us to apply the two principles to the present case. The fact that serious allegations touching upon the integrity and lack of impartiality against the writ petitioner have surfaced and appropriate action has also been initiated in that regard by calling for the remarks of the Officer concerned is altogether a different matter. The High Court was never of the opinion that the disciplinary proceedings to which the writ petitioner should be subjected to on the above counts would be a long drawn affair and hence the power available under F.R.56(2) should be utilized instead. On the contrary, the occasion for making an assessment for the continued utility and usefulness of the officer concerned had occasioned. Hence, the relevant material has to

be considered, for assessing her continued utility. If, perhaps, she had still more years of service left, the Administrative Committee would not have considered the issue as to whether, she should be retired from service or not. Hence, it is not a case of short circuiting the lengthy process of disciplinary action. This apart, the case of writ petitioner has not been isolatedly taken up for consideration. As many as 13 Officers were attaining the age of 55 including the petitioner between January and June 2011, the cases of such officers have been taken up for consideration hence, on 20th January, 2011 and at that stage the adverse material thus far gathered has come to be considered. Therefore, in our opinion, the decision arrived at by the Hon'ble Administrative Committee on 20th January 2011, which was ultimately approved on 20th April 2011, by the Full Court is not with a view to short cut the disciplinary proceedings which could be initiated against the writ petitioner. But the present exercise is carried out only with the sole aim of weeding out the deadwood.

31. Dealing with the case of SISIR KANTA SATAPATHY, the Constitution Bench of the Hon'ble Supreme Court had occasion to consider the amplitude of the power available under Article 235 of our Constitution to the High Court over Subordinate Courts. In that context, the contours of Article 235, have been analysed and in paragraph Nos. 16 & 21, the relevant principle has been crystallized as under:

"16. We are clearly of the view that while the High Court retains the power of disciplinary control over the subordinate judiciary, including the power to initiate disciplinary proceedings, suspend them pending enquiries and impose punishment on them but when it comes to the question of dismissal, removal, reduction in rank or termination of the services of the judicial officer, on any count whatsoever, the High Court becomes only the recommending authority and cannot itself pass such an order [vide Inder Prakash Anand's case and Rajiah's case (supra)].

"21. After the recommendation of the Full Court was received, the Government on 2.12.91 chose not to proceed further on the plea that the matter was pending in the Supreme Court. They declined to act further on the recommendation. This, the Government could not have done. The course open to the Government was to forward the recommendation of the High Court to the Governor who would have passed an order in accordance with the recommendation made by the High Court as has been held in Inder Prakash Anand's case (supra) because the recommendation of the High Court was binding on the Government. By not making an order of compulsory retirement on the

recommendation of the High Court, a peculiar situation was created in the sense that the Judicial Officers were neither in service nor were they technically out of service. They, however, did not perform any work. The question, therefore, now arises as to what is the manner in which relief can be moulded to balance equities between the parties by this Court, so that the litigation itself is given a quietus."

We are of the firm opinion that, in the instant case, the principle enunciated in SISIR KANTA SATAPATHY has been faithfully followed.

32. We, therefore, do not see any merit in the present Writ Petition.

33. In the result, the Writ Petition stands dismissed. No costs.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Chief Secretary
Government of Tamil Nadu
Fort St. George, Chennai 600 009.
 2. The Principal Secretary to Government
Home (Courts-I) Department
Fort St. George, Chennai 600 009.
 3. The Secretary
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 4. The Registrar General
High Court of Judicature at Madras
Chennai 600 104.
- +1 CC to Mr. M.C. Govindan, Advocate sr 23589
+1 CC to Govt. Pleader sr 23845

W.P.No 604 of 2012

PPA (CO)
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