

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2017

CORAM

THE HON'BLE Mr. JUSTICE RAJIV SHAKDHER
and
THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE

W.P.No.18257 of 2006

Tmt. Pushpa Duraiswamy

... Petitioner

v.

1. The High Court of Judicature at Madras
Rep.by Registrar General
Chennai - 600 104.

2.The Government of Pondicherry,
(Law Department)
represented by the chief secretary,
Pondicherry.

... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of Certiorarified Mandamus calling for entire records relating to G.O.Ms.18/06-L.D.dated 26-04-2006 on the file of the 2nd respondent and consequential orders in notification No.79/2006 in Roc.2A/2006 con.B2 dated 28-04-2006 on the file of the 1st respondent and quash the same and direct the respondent to reinstate the petitioner in service with all consequential and attendant benefits.

For Petitioner : Mr.R.Singaravelan, Senior Counsel
for Mr.N.S.Sivakumar

For Respondents: Mr.Syed Mustafa
Government Pleader (Pondicherry)

O R D E R

(Order of the Court was made by RAJIV SHAKDHER, J.)

1. This is a writ petition, which has been preferred against the following orders: G.O.Ms.No.18/06-LD dated 26.04.2006, passed by respondent No.2 and a consequential notification bearing No.79 of 2006 in R.O.C.No.2A/2006-Con.B2 issued by respondent No.1.

2. The brief background, in which the instant writ petition has been filed, is as follows:

2.1. The writ petitioner entered service via Puducherry Judicial Service as a Civil Judge (Junior Division) on 23.02.1977. Thereafter, the writ petitioner was promoted as Additional District and Sessions Judge on 13.12.1999. The writ petitioner avers that on 05.06.2002, she was posted as Second Additional Principal Judge, Family Court, Chennai. It is the writ petitioner's assertion that her consent was obtained for elevation to the Judge of this Court in and about January 2003. It is also the writ petitioner's case that for the extension of her service beyond the age of 58 years, she was directed to undergo a medical fitness test, which she did and obtained a certificate in that behalf in and about February 2006.

3. The writ petitioner claims that given the aforesaid background, she was surprised to receive an order dated 26.04.2006, passed by respondent No.2, requiring her to retire from service, in public interest on payment of three months pay and allowances in lieu of notice.

4. To be noted, the aforementioned order passed by respondent No.2 was followed by a notification issued by respondent No.1, relieving the writ petitioner from judicial service.

5. The writ petitioner, being aggrieved, has challenged her retirement, essentially, on the following grounds : First, that the impugned orders, whereby the writ petitioner was compulsorily retired is stigmatic. Second, that the writ petitioner prior to the issuance of the impugned orders had spent 29 blemishless years in service and therefore, her compulsory retirement was unlawful and unfair. Third, the writ petitioner's consent was obtained in January 2005 for elevation as a Judge to this Court. Fourth, that the writ petitioner was directed to undergo a medical fitness test in furtherance of consideration of her case for extension of service beyond 58 years. Lastly, the writ petitioner has disposed of many cases on merits and enabled the parties to arrive at a settlement in matrimonial disputes via conciliation. In sum, there was no material available on record with regard to the lack of diligence and efficiency in conducting cases by the Writ Petitioner.

6. Upon notice being issued in the writ petition, counter affidavit has been filed on behalf of respondent No.1. In the counter affidavit, it is, inter alia, stated that in consonance with the decision of the Supreme Court dated 13.11.1991, passed in W.P.(C)No.1022 of 1989 read with order dated 24.08.1993, rendered in Review Application No.249/1992, filed in W.P.(C) No.1022/1998, the Administrative Committee of this Court reviewed the case of the writ petitioner for continuing her in service beyond the age of 58 years. In doing so, the Administrative Committee considered the confidential reports concerning the

writ petitioner for the period spanning between 2002-2004. In this behalf, not only the work done statement was perused, but also the details of leave taken and vigilance reports, which were generated during the writ petitioner's service, were also examined.

7. Furthermore, at the relevant time, the Rule in vogue, which applied to the writ petitioner, was Rule 14 of Puducherry Judicial Service (Cadre and Recruitment) Rules, 1996. The said Rule provided that a person covered under the Rule would retire on completion of 58 years of service and that his/her service could be extended up to the age of 60 years, subject to his/her performance being screened by this Court i.e, the High Court.

8. It is, thus, submitted that the writ petitioner's case was considered by the Administrative Committee in the meeting held on 04.04.2006 along with that of two other officers i.e., one, Mr.Tvl.S.Murugaboopathy and Mr.R.Venkatavaradhan. The Administrative Committee, after considering the case of all three officers, which included the writ petitioner, came to the conclusion that they were not fit to be continued in service beyond the age of 58 years.

8.1. It is further averred by respondent No.1 that this decision of the Administrative Committee was placed before the Full Court and approval thereto was obtained via circulation.

9. The defence of the respondents, which has been advanced by Mr.Syed Mustafa, is that the writ petitioner having been found unfit to be continued in service, she was compulsorily retired by invoking powers under Fundamental Rule 56 (j) read with Rule 7 and 26 of the Puducherry Judicial Service (Cadre and Recruitment) Rules, 1996.

10. On behalf of the writ petitioner Mr.R.Singaravelan, learned Senior Counsel, vigorously assails the impugned orders and argues in line with the grounds taken in the writ petition. In sum, learned Senior Counsel contends that the impugned orders contain no reason and therefore, deserve to be set aside. It is also the contention of the learned Senior Counsel that there was no material available on record, which would show that the writ petitioner could be categorized as "deadwood". The learned Senior Counsel also submits that the writ petitioner's abrupt retirement from service, albeit, compulsorily, has left a stigma and therefore, the impugned orders deserve to be quashed.

11. Though, a compilation of judgments has been filed by the learned Senior Counsel, he relies on the decision rendered by the Supreme Court in Pyare Mohan Lal Vs. State of Jharkhand and others, (2010) 10 Supreme Court Cases 693, as according to him,

the principle of law based on which, the writ petitioner seeks to challenge her compulsory retirement being the same, the said decision would suffice.

12. We have heard the learned counsel for the parties and perused the service record of the writ petitioner, which, the counsel for the respondents had brought to Court.

13. A perusal of the record shows that in the preceding four years, that is, between 2000 and 2004, the writ petitioner's work has been just about satisfactory. Furthermore, the writ petitioner appears to have taken leave frequently. In addition to this, qua the period spanning between 01.01.2003 and 31.12.2003, the following is noted :

"Reputation as to:

- | | | |
|-----------------|---|-----------------|
| a) Honesty | } | "to be watched" |
| b) Integrity | } | |
| c) Impartiality | } | |

14. Therefore, having regard to the record concerning the service of the writ petitioner, we are of the view that no interference is called for, as apart from anything else, the writ petitioner's efficiency as an Officer was just about satisfactory. The Administrative Committee appears to have been taken into account the entire service record of the writ petitioner and then arrived at the conclusion that she need not be given extension in service beyond the age of 58 years. The extension in service beyond the age of 58 years, at the relevant point in time, was not a matter of right.

15. The matter, as indicated above, was put to the Full Court, whereby, by a majority, comprising of 20 Hon'ble Judges, the decision of the Administrative Committee was sustained. In so far as the argument of the learned Senior Counsel for the writ petitioner is concerned as to the impugned orders not setting out any reasons, we are of the view that since the impugned order and notification requiring the writ petitioner to be retired compulsorily is predicated on Fundamental Rule 56 (j) read with Rule 7 and 26 of the Puducherry Judicial Service (Cadre and Recruitment) Rules, 1996, no reasons are required to be given, as long as sufficient material on record is found, which is indicative of the fact that continuation of the Officer, in service, beyond the age of 58 years is not in public interest. Furnishing reasons in a matter of this kind, as against having material on record, which projects the reasons as to why an Officer is compulsorily retired are two different aspects. Where, an officer alleges that the order to retire him/her compulsorily is a ruse, the veil can always be lifted by a Court. Having examined the record, to our minds, this is not one of

those cases. The aspect is that the writ petitioner's continuation in service beyond the age of 58 years is not in public interest, is stated in the order passed by respondent No.2. Respondent No.1's notification is only a consequent act based on the order of respondent No.2.

15.1. The judgment cited by the learned Senior Counsel also articulates the same principle, which is, as long as the entire service record of the officer is appraised, which leads to the conclusion that the Officer's continuation in service is not in public interest, he/she can be compulsorily retired from service. The Officer's appraisal need not be a part of the order, though, should form the basis of the order.

15.2. There is nothing in the impugned order or, the notification, which would have us come to the conclusion that the writ petitioner, as contended, stands stigmatized. Therefore, the contention advanced on behalf of the writ petitioner being untenable is rejected. The fact that the writ petitioner's name was being considered for selection as a Judge of this Court, or, that she was asked to undergo a medical fitness exam have no relevance, post the determination by the Administrative Committee qua the desirability of the writ petitioner, being continued in service beyond the age of 58 years. As indicated above, the Administrative Committee's decision, which stood approved by a majority in the Full Court is, evidently, based on the examination of the entire service record of the writ petitioner. Hence, these contentions as well as the assertion that the writ petitioner had a blemishless service record are rejected.

16. Thus, having regard to the foregoing discussion, we are of the view that no interference is called for. The writ petition is, accordingly, dismissed. There shall, however, be no order as to costs.

Sd/-

Asst.Registrar (CS VII)

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Sub Asst. Registrar

vsm/gg

To

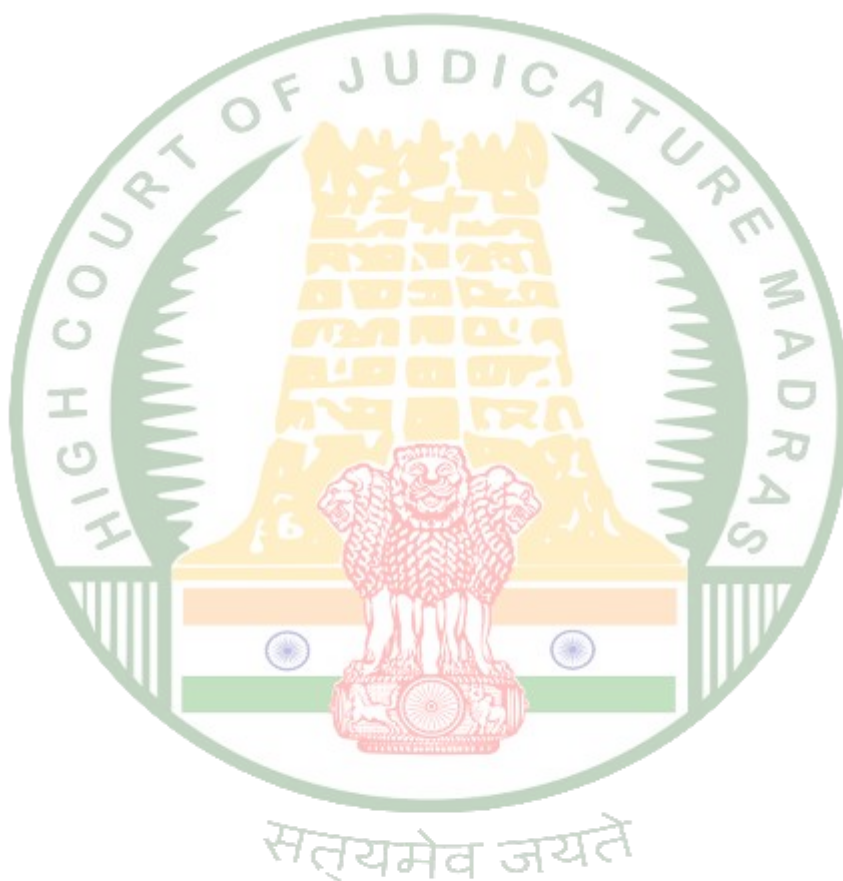
1. The Registrar General,
High Court of Judicature at Madras
Chennai - 600 104.

2.The Chief secretary,
Government of Pondicherry,
Law Department,
Pondicherry.

Copy to:
The Assistant Registrar,
Legal Cell,
High Court, Madras.

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