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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 263 of 2017**

{Arising out of order dated 03.04.2017 passed in Writ Petition (S) No. 1067 of 2005 by the learned Single Judge}

A.N. Dubey S/o Shri R. P. Dubey, Aged About 51 Years Occupation Service, Upper Division Clerk, Now Retired Compulsorily In The Office Of Assistant Soil Conservation Officer, Ambikapur, District Surguja Madhya Pradesh Now Chhattisgarh.

---- Appellant**Versus**

1. State of Madhya Pradesh Through Secretary, Department Of Agriculture, Vallabh Bhavan, Bhopal Madhya Pradesh Now State Of Chhattisgarh Through The Secretary Department Of Agriculture, Mahanadi Bhavan, Mantralaya Naya Raipur Chhattisgarh.
2. Joint Director, Agriculture, Bilaspur Division Bilaspur M. P. Now Chhattisgarh.
3. Assistant Soil Conservation Officer, Agriculture Ambikapur, District Surguja Madhya Pradesh Now Chhattisgarh.

---- Respondents**AND****Writ Appeal No. 266 of 2017**

{Arising out of order dated 03.04.2017 passed in Writ Petition (S) No. 1065 of 2005 by the learned Single Judge}

Gujarilal Sahu Through LRs:

1. Smt. Bimla Devi W/o Late Shri Gujaril Lal
2. Smt. Sushma Jaiswal D/o Late Shri Gujaril Lal
3. Smt. Sudha Gupta D/o Late Shri Gujaril Lal
4. Smt. Mradulla Gupta D/o Late Shri Gujaril Lal
5. Ku. Monika Jaiswal D/o Late Shri Gujaril Lal
6. Rajendra Kumar Jaiswal S/o Late Shri Gujarilal
7. Nikhil Kumar Jaiswal S/o Late Shri Gujarilal

All No. 1 to 7 are R/o Ambikapur Madhya Pradesh, Now Chhattisgarh.

---- Appellants**Versus**

1. State of Madhya Pradesh Through Secretary, Department Of Agriculture, Vallabh Bhavan, Bhopal Madhya Pradesh Now State Of Chhattisgarh Through The Secretary Department Of Agriculture, Mahanadi Bhavan, Mantralaya Naya Raipur Chhattisgarh.
2. Joint Director, Agriculture, Bilaspur Division Bilaspur M. P. Now Chhattisgarh.
3. Sub Divisional Officer, Agriculture, Ramanujganj, District Surguja Madhya Pradesh Now Chhattisgarh.

---- Respondents

For Appellants : Shri T.K.Jha, Advocate.
For Respondent/State : Shri Prasoon Bhaduri, Government Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per Ajay Kumar Tripathi, Chief Justice

11/12/2018

1. Heard learned counsel for the parties.
2. Two writ applications i.e. Writ Petition (S) No. 1065 of 2005 and Writ Petition (S) No. 1067 of 2005 were clubbed and heard together by the learned Single Judge.
3. Before the learned Single Judge, the issue was validity of the decision of the Respondent-State authorities to compulsorily retire the two government servants in exercise of power under Rule 42 of the Chhattisgarh Civil Services (Pension) Rules, 1976 (for short 'the Rules'). Such decision was upheld by the learned Single Judge, therefore, the appeals.
4. On 20.07.1984, the erstwhile State of Madhya Pradesh issued a circular to constitute a committee for scrutiny of cases of such government servant who had completed 25 years of service or 55 years of age, with the object and desirability of their continuance in service under Rule 42 of the Rules. The Petitioner in Writ Petition (S) No. 1065 of 2015, is dead. His legal heirs are on record.
5. In both the cases, the government employees in question were working as Lower Division Clerks. Based on the so-called recommendation of the Scrutiny Committee, an order under the signature of Joint Director, Agriculture, Bilaspur Division, dated 21.02.1995 was issued compulsorily retiring the two employees.

6. Since the learned Single Judge went by the principle that compulsory retirement is neither a punishment nor it is a stigma, therefore, the Courts will have to go by the subjective satisfaction of the State Government. Since the entire record of service is to be taken into consideration which was done by the Committee, the Court did not feel that a case for interference was made out.
7. The Court also repelled the argument that principles of natural justice was required to be adhered to.
8. In the two appeals, counsel representing the Appellants points out the loopholes in the impugned order of the learned Single Judge, more so, the decision of the Joint Director, Agriculture, dated 21.02.1995. His first submission is that in terms of Rule 42 of the Rules, the power to take a decision to compulsorily retire vests in the concerned departmental head and it is evident that the impugned order or decision to compulsorily retire the two employees was issued by the Joint Director and when the said infirmity was pointed out in the Original Application filed before the State Administrative Tribunal of Madhya Pradesh, process was initiated for taking post-facto approval. This, according to the counsel is not compliance of the Rules and makes the order vulnerable.
9. The other submission having significance to the impugned decision is that the order dated 21.02.1995 compulsorily retiring the Appellants was to take effect immediately; to be precise, from forenoon of 28.02.1995. Since the date from which the order was to take effect obviously there was no scope for three months notice. The gap between the impugned order issued by the Joint Director and the date from which it was to take effect was only seven days. If the Respondent authorities decided not to wait for three months, then there was an obligation to pay three months salary on the date from which the order of compulsory retirement was to take effect. There is no

evidence or assertion that there was compliance of the Rules in terms of payment of three months salary by the Respondents in lieu of notice. If it was not done, then the said decision falls foul of the Rules and has to go.

10. This stand or submission is based on a decision of the Hon'ble Supreme Court rendered in the case of **Chandra Singh v. State of Rajasthan & Another**; AIR 2003 SC 2889, where, while dealing with a similar provision which was Rule 56 of the Rajasthan Service Rules, 1951, the Hon'ble Supreme Court in paragraph 38 had this to say:

"38....It will bear repetition to state that in terms of R. 53 of the Pension Rules, an order for compulsory retirement can be passed only in the event the same is in public interest and/or three months' notice or three months' pay in lieu thereof had been given. Neither of the aforementioned conditions had been complied with."

11. The Hon'ble Supreme Court, applying the aforesaid principle, set aside the order of compulsory retirement. A similar issue came up for consideration before a Division Bench of the Patna High Court in the case of **Bihar State Food & Civil Supplies v. Prem Nath Thakur**; PATLJR 2008 (2) 376 : LAWS(PAT) 2008 (2) 132. In this case as well, the learned Division Bench while considering the decision in an appeal filed by the Corporation, upheld the Single Judge's order by placing reliance on similar rules which are kind of *pari-materia* where requirement of three month's pay in lieu thereof was obligated upon the employer. Since evidence was there that such payment had not been made in lieu of notice, the order of compulsory retirement was struck-down to be non-compliance.
12. No doubt, rules of compulsory retirement does vest power in employer to get rid of dead wood in public interest. But since such rules also create obligation, then they are required to be followed.
13. The order of compulsory retirement not having been issued by the State but effort at acquiring approval at a subsequent stage by communication dated

23.04.1995, a copy of which was brought on record as additional documents by the Petitioner-A.N.Dubey supports the contention of the Appellants. The said communication is at page 61 of the writ petition.

14. Evidence of any payment not having been made in lieu of notice of three months is also missing. Then keeping in mind the ratio laid down by the Hon'ble Supreme Court in the case of **Chandra Singh** (supra) as well as the Division Bench of the Patna High Court in **Prem Nath Thakur** (supra), not only the impugned order of the learned Single Judge dated 03.04.2017 but even the impugned order of compulsory retirement dated 21.02.1995 are required to be set aside.
15. The stand of the counsel for the State that the impugned order dated 21.02.1995 was by the head of the office of the Bilaspur Division, does not meet the requirement of the Rules nor is there any clear answer or evidence pointed out that any of these employees were paid their rightful due in lieu of three months' notice.
16. Both the appeals, therefore, stand allowed. The order of the learned Single Judge dated 03.04.2017 is set aside. As a consequence thereof, the order of compulsory retirement dated 21.02.1995 is also quashed. The Appellants would be required to be paid their consequential benefits as if the order of compulsory retirement was not passed in the very first place.

Sd/-
(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE