

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 3056 of 2012**

Heera Lal Verma , aged about 55 years, S/o late Shri Birikh Ram
Verma, R/o Shri Heera Sadan, near new Mandi Gate, Pandritarai,
Raipur (CG)

---- Petitioner**Versus**

1. State of Chhattisgarh, through Secretary, Department of Aawas
Avam Paryavaran Vikas, DKS Bhawan, Raipur (CG)
2. Raipur Development Authority through Executive Officer, near
Commissioner Office, G.E Road, Raipur (CG)

---- Respondents

For Petitioner	:	Shri Sudeep Johri, Advocate
For State/R-1	:	Shri Ratan Pusty, Govt. Advocate
For Respondent no.2	:	Shri Pankaj Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****22/10/2018**

The challenge in this writ petition is to the order Annexure P-1 dated 30.06.2012 wherein respondent no.2 has passed the order of compulsory retirement to the petitioner.

2. The facts of the case in brief are that the petitioner was appointed as a driver on contingency basis with the respondents in 1981 and in due course of time, the services of the petitioner stood regularized. However, vide impugned order dated 30.06.2012, the services of the petitioner were cut short by way of an order of compulsory retirement roughly 5 years before his actual date of retirement. It is this order which is under challenge in this writ petition.

3. Contention of the counsel for the petitioner is that the order of compulsory retirement is bad in law for more than one reason. Firstly the respondents first of all should not have thought of sending the petitioner on compulsory retirement on medical ground. On the contrary, they ought to have considered accommodating the petitioner by providing him an alternative job which he could have discharged in spite of his medical disability. The second reason is that as per the requirement of law, while imposing the order of compulsory retirement, the petitioner ought to have been given notice of retirement well in advance and if not should have been paid the salary in lieu of notice period simultaneously at the time of issuance of the notice of compulsory retirement itself. This in the instant case has not been followed with or complied with by the respondents and therefore, the order of compulsory retirement is bad in law. It was the contention of the counsel for the petitioner that the Govt. should also have thought of creating a supernumerary post against which the petitioner could have been accommodated instead of dispensing his services. According to the petitioner, the order of compulsory retirement could have been issued by the State Govt. only in public interest and in the instant case there was no such public interest involved and it was sheer a personal decision of the respondents which weighed more in the decision making process before issuance of the order of compulsory retirement. Counsel for the petitioner relying upon the decision of the Supreme Court in the case of Anand Bihari & Ors Vs. Rajasthan State Road Transport Corporation, (1991) 1 SCC 731 submits that the authorities also at this juncture now should be directed to provide necessary compensation with which the petitioner could be suitably

compensated for having been inflicted with the order of compulsory retirement without any basis.

4. Per contra, State counsel referring to the documents enclosed along with the writ petition submits that it is a case where the order of compulsory retirement got initiated because of the medical condition of the petitioner. According to the State counsel, the petitioner was discharging the duty of a driver and that for discharging the said duties, the necessity of a clear and strong eye sight is mandatory. The petitioner was detected of suffering from Glaucoma which led to the petitioner being subjected to medical examination by the District Medical Board, District Hospital, Raipur. The Medical Board found the petitioner to be suffering from bilateral operated Glaucoma with no perception of light in the left eye which means the petitioner was having vision only from one eye. It is this reason which led to the respondents to take a decision of sending the petitioner on compulsory retirement. It was the further contention of the respondents that the impugned order cannot be and should not be treated as if the petitioner has been punished with an order of compulsory retirement rather it is a case where the petitioner was unable to discharge his duties and that the medical condition did not permit him to work as a driver that called for the decision taken by the State Govt. invoking the provisions of Fundamental Rule 56 sending the petitioner on compulsory retirement. Thus, prayed for rejection of the writ petition.

5. Having heard the contentions put forth on either side and on perusal of the record so far as the admitted position as it stands is that the appointment of the petitioner on the post of driver was in the year 1981 and since then he was continuously working with the respondents till the

impugned order dated 30.06.2012 was passed. What is also not in dispute is the fact that only about 5 years of service of the petitioner was left for attaining the age of superannuation when he was placed under compulsory retirement. It is also not in dispute that the petitioner on being subjected to medical examination was found to be suffering from Bilateral Operated Glaucoma with no Perception of Light in Left Eye (One eyed).

6. Now it would be relevant to refer to the provisions of the Fundamental Rule 56 which deals with compulsory retirement. Rule- (2) (a) of Fundamental Rule-56 reads as under:

“(2) (a) A Government servant may, in the public interest, be retired at any time after he has completed 20 years qualifying service or he attains the age of fifty years, whichever is earlier, without assigning any reason by giving him a notice in writing.”

7. On perusal of the aforesaid statutory provision if we assess the factual matrix of the case as is reflected from the preceding paragraphs, it would reveal that the petitioner had put in more than 20 years of service and he had also crossed the age of 50 years which is all that is required for considering the case of an employee for compulsory retirement. It is relevant at this juncture to assess the element of public interest involved in the impugned action of the respondents in sending the petitioner on compulsory retirement. Undoubtedly, the petitioner was working as a driver with respondent no.2. The nature of duty he was discharging required that he should have proper vision from both his eyes. If a person with poor eye sight or with no vision in even one of his eyes is permitted to continue in discharging the duty of a driver, it would give rise to a great element of risk

both for the petitioner as well as the people travelling with him in the vehicle. It would also be equally unsafe for all those persons who would be commuting on the road and the petitioner would also find it very difficult for driving the vehicle at night when the surroundings become dark. Thus this Court has no hesitation in reaching to the conclusion that the petitioner was not in a position to discharge the duties of a driver.

8. Now coming on the issue of providing alternative job, one must not forget the fact that it is not a case where the petitioner lost his eye sight on account of some employment related injury neither is it a case where the nature of ailment suffered by the petitioner could be said to be one from the occupational hazard. It is also relevant to take note of the fact that the order of compulsory retirement cannot be said to be punitive order as there does not appear to be any malafide or bad intention on the part of the respondents in issuance of the order of compulsory retirement.

9. So far as the judgment of Anand Bihari (supra) is concerned, the reading of the facts of the said case and the ratio laid down by the Supreme Court therein clearly reflect that the said judgment was passed on entirely different contextual background and that the ratio laid down in the said case was also in the given set of facts which are not comparable with the facts of the present case. Hence, the said judgment is distinguishable on facts.

10. Given the total length of service that the petitioner had rendered, the age of the petitioner, the medical condition of the petitioner as certified by the District Medical Board and also taking into consideration the nature of duties discharged by the petitioner, all these relevant facts cumulatively are sufficient to reach to the conclusion that the decision of the State Govt. in sending the petitioner on compulsory retirement to be one which has been

taken in larger public interest and the same does not warrant any interference. The writ petition thus being devoid of merit deserves to be and is accordingly dismissed.

**Sd/-
(P. Sam Koshy)
JUDGE**