

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 4639 of 2007**

Subhash Sinha, 59 years. S/o Late Shri Munnalal Sinha, Near
Gondwana Bhawan, Siddartha Chowk, Tikrapara, Raipur C.G.

---- Petitioner**Versus**

1. State Of Chhattisgarh through Secretary, Health & Family Welfare Deptt., Mantralaya, Raipur.
2. Dean, Pt. JNM Medical College, Raipur
3. Dr. N.K. Goyal, Retd. Dean, Medical College Colony, Raipur C.G.
4. Mr. A. K. Baheti, Posted at Pt. JNM Medical Collged, Raipur, C.G.

---- Respondents

For Petitioner	:	Mr. Ishan Verma, Advocate
For State	:	Mr. Jitendra Pali, Dy. AG

Hon'ble Shri Justice P. Sam Koshy
Order on Board

21/02/2019

1. The challenge in the present writ petition is to the order (Annexure P-1) dated 14/07/2006 whereby the petitioner has been inflicted with an order of compulsory retirement. The challenge to the order of compulsory retirement is on the ground that the order of compulsory retirement has been made with malafide intentions and has been issued only to favour to the respondent No. 4 to replace the petitioner.
2. The contention of the petitioner is that the respondents in their reply have not been able to provide sufficient cogent materials with which it could be said that the compulsory retirement was an order which was

inevitable in the light of the service track record of the petitioner. Moreover, the contention of the petitioner is that the petitioner's last five year's of service record particularly his ACR's does not have any adverse entries nor there is any adverse communication reflected in any of these last five years of ACR's of petitioner. Moreover, there is no any adverse communication made during his entire service period. Therefore, the impugned order so far as issuance of compulsorily retirement is concerned is bad in law.

3. Perusal of the writ petition and the contentions of the petitioner what reveals is that the petitioner in fact had on 14/06/2006 submitted application for voluntarily retirement w.e.f. 31/08/2006. Since the notice period was not clear 90 days notice period as was required under the rules, the petitioner subsequently moved another application on 29/06/2006 stating clearly that since earlier application did not provide for 90 days clear notice period, the petitioner has moved second application as a revised application and giving clear 90 days notice time till 30/09/2006. According to the petitioner since instead of taking a decision by the respondents on his application for voluntary retirement, rejecting the same, respondents have on the contrary imposed an order of compulsorily retirement to the petitioner which is bad in law. According to the petitioner once when an application for the voluntary retirement had been moved, respondent authorities ought not have inflicted the petitioner with compulsory retirement. It was also the contention of the petitioner that the application showed that the retirement period would be from 30/09/2006, the petitioner had sufficient opportunity in his hand to

withdraw the same on or before 30/09/2006 but since the respondents have inflicted the petitioner with an order of compulsory retirement the scope of withdrawal of the said application for voluntary retirement was lost and the petitioner therefore after an order of compulsory retirement being quashed has to be treated in service till the age of retirement and he should also be given his retiral benefits accordingly.

4. The State counsel on the contrary referring to the reply and the documents enclosed along with their reply opposing the petitioner submitted that the order of compulsorily retirement and the basis on which compulsorily retirement was issued is by itself self explanatory. According to State counsel, petitioner's service was not at all satisfactory in as much as there were irregularities committed by the petitioner while in service spread over a long period of time and therefore it was not advisable any further for the petitioner to be continued in service and with that motive of weeding out the dead wood, the order of compulsory retirement was imposed upon the petitioner. Writ petition therefore does not have any strong grounds for interfering with the impugned order and the writ petition accordingly be dismissed.
5. Having heard the contentions put forth on either side and perusal of the records particularly taking note of the documents which have been enclosed along with the writ petition, the rejoinder and the reply of the respondents, what clearly reflects is that the petitioner in the year 2006 was working under the respondents as Assistant Office Superintendent. The petitioner was previously promoted in the year

2004. The respondent department had constituted a Committee for considering the cases of the employees for compulsorily retirement who have crossed the age of 55 years and who have completed 20 years of service.

6. The Committee constituted in this regard met on 05/06/2006 in which name of the petitioner also was considered by the Committee. The order dated 14/07/2006 as also in the minutes of the meeting that was held on 05/06/2006 refers to a large number of irregularities said to have been committed by the petitioner in course of time of his discharging the duties. Along with the rejoinder the petitioner has produced the ACR's of the petitioner for the period between 2002 to 2006. That the bare perusal of the ACR's showed that there is no adverse entries in any of these last five years ACR's of the petitioner. In all the five year's ACR's the grading of the petitioner is (ख) which is Grade 'B', at the same time in all the five year's ACR's the petitioner has been held to be suitable for promotion. The integrity and the honesty of the petitioner for the last five years also said to have been found to be good and also working capacity of the petitioner has been found to be good for the last five years.
7. On a query being put to the learned State counsel he expressed his inability to show any material whereby the petitioner at any point of time either being show caused or even subjected to disciplinary action in respect of any of those alleged irregularities which have been reflected against the petitioner in the minutes of meeting held on 05/06/2006 by the Committee constituted for granting of compulsory retirement. Learned State counsel also was unable to

disclose of any charge-sheet or disciplinary proceedings issued or initiated against the petitioner at any time during his service period, neither is it revealed of any punishment or number of punishments been imposed on the petitioner while in service.

8. All these aforementioned facts and circumstances of the case would clearly reflect that the ACR's of the petitioner as well as the service record of the petitioner there is nothing adverse which could be detected. The grading of the petitioner also are such which could not have been the basis for the purpose of granting compulsory retirement. So far as the law in respect of the compulsory retirement is concerned, it is by now well settled proposition that for sending a person on compulsorily retirement, there has to be certain clear cogent and strong materials available in the service record with which it could be said that the employee has become a dead wood.

9. In the case of **State of Gujarat Vs. UmedhiBhai M. Patel, (2001) 3 SCC 314**, in paragraph 11, the Supreme Court has held as under:-

“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. “

10. Supreme Court has laid down certain principles which have to be borne in mind while considering an employee for compulsorily retirement. Bare perusal of the aforesaid principles would reveal that the Supreme Court has taken note of the fact that while considering the case for compulsorily retirement, the entries in the confidential service records must be taken note of and given due weightage. Similarly it was also said that the uncommunicated adverse entries also be taken note of and at the same time the Supreme Court was also of the view that an order of compulsory retirement should not be resorted as a shortcut to avoid departmental enquiry where such courses are desirable. If the contents of the response of the State Government is taken note of there have been a list of irregularities alleged against the petitioner but in none of the cases they have initiated any disciplinary action or even show cause notice issued. Moreover none of these irregularities found place in the confidential records of the petitioner in any of the previous five years.

11. In the case of **High Court of Judicature at Patna Vs. Ajay Kumar Srivastava and Others**, (2017) 5 SCC 138, in the case of Supreme Court in paragraph 13 has held as under:-

“13. It all boils down to this that there are serious allegations of misconduct on the part of the first respondent. If that is the case, the appellant is always at liberty to take appropriate disciplinary action against the respondent which action according to us, the High Court

is duty-bound to take. If the officer whose conduct is questionable warranting his removal or compulsory retirement from the service, such an officer cannot simply be sent home with all the retiral benefits. But at the same time, if an officer is to be retired on the ground that his conduct is unwholesome, he is entitled to claim that the due process of law be followed.”

12. From the aforesaid ratio of law as has been laid down by the Supreme Court what clearly culls out is that before imposing an order of compulsory retirement against an employee, the authorities concerned should have subjective satisfaction, on the basis of adequate materials that is placed before the Committee or the authorities concerned. In the instant case, there does not seem to be any adequate or cogent materials produced before the Committee with which it could be said that retaining of the petitioner in the department would be unuseful, except, for the vague allegations which have been made which at no point of time was brought to the notice of the petitioner nor was he prosecuted for any of these irregularities if any.

13. What also is clear from proceedings is that in spite of the these alleged irregularities available with the respondents they have themselves found the petitioner suitable for promotion just about two years back that is in the year 2004. That means those irregularities were not serious enough for the purpose of granting promotion and if that be so, the same could not be used against the petitioner for issuance of an order of compulsory retirement. The impugned order to that extent is not sustainable and the same deserves and is accordingly set aside.

14. However from the perusal of the pleadings of the which the petitioner has made it clearly reflects that the petitioner had already tendered his application for voluntary retirement on 14/06/2006 and in the said application he had said that he would stand retired w.e.f. 31/08/2006. Since the notice was not a clear 90 days notice, the petitioner again made an application on 29/06/2006 and clearly mentioned that since previous letter dated 14/06/2006 did not have clear 90 days period. The second application is being made thereof and, the same be treated as a fresh application for voluntarily retirement and the notice period would come to an end on 30/09/2006. These two correspondences made by the petitioner clearly reflects that the petitioner had put his papers with the department not interested any further for continuing in employment. This fact is also revealed from the pleadings of the petitioner wherein the writ petition also he has taken a stand with since the petitioner had applied for voluntarily retirement w.e.f. 30/09/2006, respondents ought to have issued an order of compulsorily retirement. The same pleading finds place in the representation which the petitioner has made against the order of compulsory retirement wherein also the petitioner had taken the same stand of his being sent on compulsorily retirement when he had already put his papers for seeking voluntarily retirement w.e.f. 30/09/2006.

15. Given the said stand that the petitioner has raised, this Court is of the opinion that since the impugned order dated 14/07/2006 stands quashed for the reasons mentioned in the preceding paragraphs ,the petitioner has to be treated in service till the period of 90 days before

going in for voluntary retirement comes to an end on completion of 90 days period from the date of application i.e. w.e.f. 30/09/2006.

16. So far as the fact that application for voluntarily retirement to have a deeming effect, it is necessary at this juncture to refer to the judgment of the Hon'ble Supreme Court in the case of State of Haryana & Ors. Vs. S. K. Singhal, [(1999) 4 SCC 293], where in paragraph 18, the Supreme Court has held as under :-

“18. In the case before us sub-clause (1) of Rule 5.32(B) contemplates a ‘notice to retire’ and not a request seeking permission to retire. The further “request” contemplated by the sub-section is only for seeking exemption from the 3 months period. The proviso to sub-clause (2) makes a positive provision that “where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in sub-rule (1), the retirement shall become effective from the date of expiry of the period specified in sub-rule (1), the retirement shall become effective from the date of expiry of the said period. The case before us stands on a stronger footing than Dinesh Chandra Sangma’s case so far as the employee is concerned. As already stated Rule 2.2 of Punjab Civil Service Rules Vol.II only deals with a situation of withholding or withdrawing pension to a person who has already retired.”

17. Again in the case of **Himachal Pradesh Horticulture Produce Marketing & Processing Corporation Ltd. .Vs. Suman Behari Sharma [(1996) 4 SCC 584]**, the Hon'ble Supreme Court dealing with the similar stand whether an employee would deem to stand retired beyond the notice period even if the employer does not accept his resignation. The opinion of the Supreme Court was that it is the rule which would be relevant. According to the Supreme Court if the rules provided for a provision or a clause envisaging that an employee

would stand retired only if his application for resignation has been accepted. This means that the deeming provision would not be applied if there is no provision under the rules requiring a permission for acceptance, otherwise it would be deemed to have been granted and the employee would stand deemed retired on completion of notice period.

18. Given the said notice since the petitioner's order of compulsory retirement stands quashed. He would be treated to have been taken back in service. However, the petitioner would stand voluntarily retired w.e.f. 30/09/2006 in the light of the repeated application that he had tendered in the department on two occasions that is on 14/06/2006 and again on 29/06/2006. The petitioner would be entitled for all consequential benefits that may accrue on his being declared voluntarily retired w.e.f. 30/09/2006

19. Accordingly, the writ petition stands partly allowed and disposed off.

Sd/-

**(P. Sam Koshy)
Judge**

Rohit