

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 4910 of 2017**

Ram Kumar Vishwakarma S/o Late Gopal Prasad Vishwakarma,
Aged About 59 Years R/o Sector-2, Block-III, Room No.80, Kashiram
Nagar, Raipur, District Raipur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Finance, Mantralaya Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh
2. Director, Local Fund Audit, Directorate Block-I, Second Floor, Indrawati Bhawan, Naya Raipur, District Raipur, Chhattisgarh
3. Deputy Director, Local Fund Audit Jagdalpur, District Jagdalpur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Pawan Kesharwani, Advocate
For State	:	Ms. Sunita Jain, G.A.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****08/11/2019**

1. The challenge in the present writ petition is to Annexure P/1 dated 05.09.2017, whereby the petitioner was issued with an order of compulsory retirement.
2. The facts of the case is that the petitioner was appointed as an Assistant Grade-III in the respondents-Department way back on 09.06.1983. In due course of time, the petitioner was promoted from Assistant Grade-III to Assistant Grade-II and finally was promoted from Assistant Grade-II to Assistant Grade-I on 04.03.2005, since then the petitioner has been working as an Assistant Grade-I in the respondents-Establishment.
3. The petitioner had an unblemished carrier with no major or minor punishments being imposed upon the petitioner and the services of

the petitioner was also to the satisfaction of the higher authorities in the Department. Yet the petitioner vide the impugned order dated 05.09.2017 has been given a compulsory retirement. It is this order which is under challenge in the present writ petition.

4. The contention of the petitioner is that, the plain reading of the impugned order Annexure P/1 does not show any reason whatsoever for placing the petitioner under compulsory retirement. The only observation made in the impugned order is that it is being made in the public interest.
5. The counsel for the petitioner assailing the impugned order submits that if we look into the ACRs (Annual Confidential Reports) of the petitioner for the last 10 years, which the petitioner has enclosed along with the writ petition, it would clearly reflect that the entries made in the ACRs of the last 10 years, there is absolutely no adverse comments made or an adverse grading given to the petitioner, which could have been the reason for placing the petitioner for compulsory retirement.
6. Another ground that the petitioner has raised in the present writ petition assailing the impugned order is that the impugned order is in total contravention to the guidelines framed by the State Government itself based upon which the order of compulsory retirement had to be passed. According to the counsel for the petitioner, the respondents-State Government had issued a circular on 25.04.2017 issued to all the Departments under the State Government to verify the credentials of the employees working under them and who have crossed the age of 50 years and have

also put more than 20 years of service and assess whether their services are required by the State Government or whether the employees have become a deadwood considering their service record and in case if the employees have become a deadwood, then the employees could be placed under compulsory retirement.

7. According to the petitioner, the said circular of the State Government dated 25.04.2017 specifically laid down the parameters, which should be taken into consideration by the Department or the Committee considering the cases of the respective employees in the Department. According to the petitioner, none of the parameters so laid down by the State Government was found against the petitioner for being placed under compulsory retirement. According to the petitioner, there has been no major punishment imposed upon the petitioner, nor was there any minor punishment imposed upon the petitioner in the recent past, nor is there any adverse entry or an adverse grading given to the petitioner in the last 10 years of his career, which could have being a ground for considering the petitioner to be not useful for the Department any further or for declaring him to be a deadwood.
8. According to the petitioner, for the last about 10 years of the ACRs, the petitioner all along has got the grading of "A" i.e. "Good" and that itself is sufficient to show that there was nothing adverse available against the petitioner and the performances of the petitioner also was never on the decline or to the dissatisfaction of the higher authorities in the Department. For the aforesaid reason, the counsel for the petitioner submitted that the impugned order is not

sustainable and the same deserves to be set-aside and the petitioner should be entitled to be taken back in service with all consequential benefits.

9. Per contra, the State counsel opposing the petition submits that from the reply filed in the writ petition, it appears that there have been complaints received against the petitioner time and again and therefore the working of the petitioner or the performance of the petitioner was doubtful. Likewise, the State counsel also referring to the reply and the documents enclosed along with the writ petition shows that there have been serious allegations made against the petitioner in respect of the services that he had rendered in the past and which includes certain allegations of financial irregularities or misappropriation. Thus, the order of compulsory retirement cannot be found to be a flawed one and thus it does not warrant interference at this stage. Moreover, according to the State counsel, the petitioner at the time of issuance of the impugned order was aged well over 59 years and therefore the petitioner as such had not much to have lost by virtue of being placed under compulsory retirement. Thus prayed for the rejection of the writ petition.
10. Having heard the contentions put forth on either side and on perusal of record, what has primarily to be seen is as to whether there are sufficient materials available in the service records of the petitioner on the basis of which the respondents have issued Annexure P/1, the order of compulsory retirement. All the documents which have been enclosed as Annexures along with the reply do not show any adverse order having being passed by the State Authorities against

the petitioner at any point of time in his service career. Some of the documents which are filed along with the reply are sheer complaints received against the petitioner. There is no further documents to show whether the Department has taken cognizance of these complaints and whether any inquiry at any point of time was conducted, neither does the reply show any order being passed either punishing the petitioner or atleast cautioning the petitioner or giving a warning to the petitioner in respect of any of the complaints. At the same time it is also important to take note of the fact that there is no record of any investigation, inquiry or verification of the contents of the complaint available or brought to the Court's notice or made part of the reply to the writ petition to substantiate their contention so far as the performance of the petitioner or the integrity of the petitioner to be doubtful.

11. Another aspect which needs to be considered is that none of the ACRs available in the writ petition i.e. for a period of last 10 years of services of the petitioner reflects an unsatisfactory performance of duties or the integrity of the petitioner to be doubtful or the grading given to the petitioner to be an adverse grading, neither does the gradings show that it is on the decline to draw an inference that the petitioner's services was not satisfactory.
12. Neither in the reply, nor in the records available with the State Government nor was any of the records produced before the Court to show that the petitioner in fact had become a deadwood so far as the respondents are concerned. Nothing adverse against the

petitioner could be brought on record or brought before the Court during the course of hearing.

13. Given the aforesaid undisputed factual matrix of the case, it would be relevant at this juncture to refer to the parameters that have been laid down by the State Govt. before passing of the order of compulsory retirement. The State Govt. vide circular dated 25.04.2017 took a policy decision to consider the service of all those employees in each of the department of the State Govt. who have completed 20 years of service and have also crossed the age of 50 years so as to assess their suitability for retention in the government service. The State had formulated 8 major conditions to be considered so far as an employee is concerned. Annexure P/3 is the said circular dated 25.04.2017, which lays down the conditions to be considered for placing an employee under compulsory retirement. None of these conditions are shown to have been considered by the respondents while assessing the case of the petitioner. From the reply and the documents enclosed along with the reply also there is no evidence which could show that any of these 8 conditions envisaged in the circular was attracted forcing the respondents to place the services of the petitioner under compulsory retirement.
14. Once when the State Government has issued the circular Annexure P/3 dated 25.04.2017 laying down certain parameters, it was incumbent upon the authorities to have scrutinized the service record of the petitioner, keeping in view the parameters laid down in the said circular. As has been stated in the preceding paragraphs, from the last 10 years of ACRs, there does not seem to be any

adverse entry or an adverse grading given to the petitioner rather for the whole 10 years of service the petitioner has received the grading of “A” i.e. “Good” with no comments or observation in respect of the integrity to be doubtful or the petitioner having being inflicted with either a minor or a major punishment during the last 10 years of service or even before that.

15. The average grading of the petitioner, if we take into account the ACRs that have been produced by the petitioner along with the writ petition would also remain at “A” i.e. “Good”, which again is not one which could have been taken as a ground for keeping a person under the compulsory retirement.
16. So far as law in respect of compulsory retirement is concerned, the Supreme Court as early as in **1998(7)SCC 310 in case of M.S. Bindra Vs. Union of India & Ors.** in paragraph 13 held as under :

“13. While viewing this case from the next angle for judicial scrutiny i.e. want of evidence or material to reach such a conclusion, we may add that want of any material is almost equivalent to the next situation that from the available materials no reasonable man would reach such a conclusion. While evaluating the materials the authority should not altogether ignore the reputation in which the officer was held till recently. The maxim "Nemo Fitur Repente Turpissimus" (no one becomes dishonest all on a sudden) is not unexceptional but still it is a salutary guideline to judge human conduct, particularly in the field of Administrative Law. The authorities should not keep the eyes totally closed towards the overall estimation in which the delinquent officer was held in the recent past by those who were supervising him earlier. To dunk an officer into the puddle of "doubtful integrity" it is not enough that the doubt fringes on a mere hunch. That doubt should be of such a nature as would reasonably and consciously be entertainable by a reasonable man on the given material. Mere possibility is hardly sufficient to assume that it would have happened. There must be preponderance of probability for the reasonable man to entertain doubt regarding that possibility. Only then there is justification to ram an officer with the label "doubtful integrity".

17. Again in case of **Bishwanath Prasad Singh Vs. State of Bihar & Ors., 2001(2)SCC 305** dealing on the issue of compulsory retirement held in paragraph 12 as under:

“12. Compulsory retirement in service jurisprudence has two meanings. Under the various disciplinary rules, compulsory retirement is one of the penalties inflicted on a delinquent government servant consequent upon a finding of guilt being recorded in disciplinary proceedings. Such penalty involves stigma and cannot be inflicted except by following procedure prescribed by the relevant rules or consistently with the principles of natural justice if the field for inflicting such penalty be not occupied by any rules. Such compulsory retirement in the case of a government servant must also withstand the scrutiny of Article 311 of the Constitution. Then there are service rules, such as Rule 56(j) of Fundamental Rules, which confer on the Government or the appropriate authority, an absolute (but not arbitrary) right to retire a government servant on his attaining a particular age or on his having completed a certain number of years of service on formation of an opinion that in public interest it is necessary to compulsorily retire a government servant.....So long as the opinion forming basis of the order for compulsory retirement in public interest is formed bonafide, the opinion cannot be ordinarily interfered with by a judicial forum. Such an order may be subjected to judicial review on very limited grounds such as the order being malafide, based on no material or on collateral grounds or having been passed by an authority not competent to do so.”

18. Similar view has been taken by the Supreme Court in case of **2001(3)SCC 314, State of Gujrat Vs. Umedbhai M. Patel**, where in paragraph 11 the parameters which have been crystallized by the Supreme Court and which is required to be taken note of while considering the case for compulsory retirement, has held as under:

“11. The law relating to compulsory retirement has now crystallized into definite principles, which could be broadly summarized 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 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 adverser 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 made 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.”

19. Similar view has again been taken by the Supreme Court in case of **MP Electricity Board Vs. Shree Baboo, 2002(9)SCC 704**, where taking into consideration the service records of the employee where there was nothing adverse and on the contrary the integrity of the employee was shown to be “Sound”, the Supreme Court affirming the order of the High Court setting aside the order of compulsory retirement, held as under :

“1.....The very service record and the annual character roll for the year 1991-92 that was placed before us record his integrity to be sound and yet the Screening Committee came to the conclusion that his integrity is also not beyond doubt. There is absolutely not an iota of material to support the aforesaid conclusion of the Screening Committee and a conclusion not based on any materials is obviously justiciable and could be interfered with by a court of law. This being the position, and in the facts and circumstances of the case, we are satisfied that the High Court rightly interfered with the order of compulsory retirement and we see no infirmity with the said order so as to be interfered with by this court in exercise of power under Article 136 of the Constitution. We therefore dismiss this appeal.”

20. The Supreme Court in case of **Madhya Pradesh State Cooperative Dairy Federation & Anr. Vs. Rajnesh Kumar Jamindar & Ors. 2009(15)SCC 221**, referring to all the previous decisions on the issue in paragraph 35 has summarized or laid down the situations under which the order of compulsory retirement could be interfered with, held as under :

“35. The law relating to compulsory retirement in public interest is no long res integra. The provisions had been made principally for weeding out dead wood. An order of compulsory retirement being not penal in nature can be subjected to judicial review inter alia :

- i. when it is based on no material;
- ii. when it is arbitrary ;
- iii. when it is without application of mind; and
- iv. when there is no evidence in support of the case.”

21. Recently again in case of **Rajasthan State Road Transport Corporation and Ors. Vs. Babu Lal Jangir, 2013 (10) SCC 551** the Supreme Court held in paragraphs 23 & 24 as under:

“23. The principle of law which is clarified and stands crystallized after the judgment in *Pyare Mohan Lal v. State of Jharkhand and Ors.*; 2010 (10) SCC 693 is that after the promotion of an employee the adverse entries prior thereto would have no relevance and can be treated as wiped off when the case of the government employee is to be considered for further promotion. However, this ‘washed off theory’ will have no application when case of an employee is being assessed to determine whether he is fit to be retained in service or requires to be given compulsory retirement. The rationale given is that since such an assessment is based on “entire service record”, there is no question of not taking into consideration an earlier old adverse entries or record of the old period. We may hasten to add that while such a record can be taken into consideration, at the same time, the service record of the immediate past period will have to be given due credence and weightage. For example, as against some very old adverse entries where the immediate past record shows exemplary performance, ignoring such a record of recent past and acting only on the basis of old adverse entries, to retire a person will be a clear example of arbitrary exercise of power. However, if old record pertains to integrity of a person then that may be sufficient to justify the order of premature retirement of the government servant.

24. Having taken note of the correct principles which need to be applied, we can safely conclude that the order of the High Court based solely on the judgment in the case of *Brij Mohan Singh Chopra* was not correct. The High Court could not have set aside the order merely on the ground that service record pertaining to the period 1978-90 being old and stale could not be taken into consideration at all. As per the law laid down in the aforesaid judgments, it is clear that entire service record is relevant for deciding as to whether the government servant needs to be eased out prematurely. Of course, at the same time, subsequent record is also relevant, and immediate past record, preceding the date on which decision is to be taken would be of more value, qualitatively. What is to be examined is the “overall performance” on the basis of “entire service record” to come to the conclusion as to whether the concerned employee has become a deadwood and it is public interest to retire him compulsorily. 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.”

22. So far as the judgments relied upon by the counsel for the State is concerned, in both the judgments i.e. **AIR 1996 SC 2030, Allahabad Bank Officers Association & Anr. Vs. Allahabad Bank & Ors.** and

AIR 1992 SC 1020, Baikuntha Nath Das and Anr. Vs. Chief District Medical Officer, Baripada & Anr. there is no dispute so far as the ratio that has been laid down by the Supreme Court in those cases are concerned. So far as the contention of the State that once if the allegation of the employee/officer is that the order of compulsory retirement is one which has been passed without any basis or has been passed arbitrarily without proper appreciation of service records of the employee/officer and also the ground of challenge being there is no evidence or basis for the State to reach to the said conclusion, it is always open for this court under Article 226 of the Constitution of India exercising its power of judicial review to scrutinize and decide the veracity and legality of the order of compulsory retirement imposed upon the employee/officer.

23. Thus, the judgments which have been cited and relied upon by the State would not in the facts of the present case come to the rescue of the State justifying the action of compulsory retirement.
24. Perusal of the contents of the pleadings that have been brought on record by way of reply as well as the enclosures along with the reply, there does not appear to be any strong material produced by the State Government to show the basis on which respondents had reached to the conclusion that the services of the petitioner was no longer useful, productive or was in public interest not required and thereby the respondents were left with no other option, but to place the employees under compulsory retirement. In the absence of any strong cogent material which in the instant case there is none, the order of compulsory retirement is not sustainable at all and the same

is per se illegal and is also in total contravention to the circular of the State Government Annexure P/3 dated 25.04.2017.

25. The impugned order dated 05.09.2017 therefore being not sustainable deserves to be and is accordingly set aside/quashed. Consequently, it is ordered that the petitioner shall be reinstated in service and he would also be entitled for all consequential benefits. However, so far as monetary part is concerned, the petitioner would not be entitled for actual monetary benefits for the intervening period, but the entire benefits shall be given to the petitioner by giving him notional fixation.

26. The writ petition accordingly stands allowed. No order as to costs.

Sd/-
(P. Sam Koshy)
Judge

Ved