

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 24.09.2019

Orders Pronounced on : 05.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.P.No.16874 of 2018

R.Naraja .. Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home (Courts 1A) Department,
Fort St.George,
Chennai-600 009.

2. The Registrar General,
High Court,
Madras-600 104.

. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the proceedings dated 31.05.2018 in G.O.(2D).No.189, Home (Courts-I) Department of the first respondent and R.O.C.No.13047-A/2017/B1/Spl.Cell, dated 22.06.2018 of the second respondent herein and quash the same and consequently direct the respondents herein to reinstate the petitioner as Chief Judicial Magistrate, Tiruvannamalai.

For petitioner : Mr.AR.L.Sundaresan, Senior Counsel,
assisted by Mr. AR. Karthik Lakshmanan
for M/s.AL.Ganthimathi

For respondents : Mr.V.Shanmuga Sundar
Special Government Pleader for R-1
Mr.M.Santhanaraman for R-2

ORDER

R.SUBBIAH, J

The present Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the first respondent in G.O. (2D). No. 189, Home (Courts-I) Department dated 31.05.2018 and R.O.C.No.13047-A/2017/B1/Spl.Cell dated 22.06.2018 of the

second respondent herein and quash the same and consequently direct the respondents herein to reinstate the petitioner as Chief Judicial Magistrate, Tiruvannamalai.

2. Brief facts of the case are as follows:

(a) The petitioner had been appointed as Civil Judge (Junior Division/Judicial Magistrate First Class) in the Tamil Nadu State Judicial Service by G.O.(4D).No.66, Home (Courts-1A) Department, dated 25.07.2000 and he joined duty on 18.08.2000. His probation was declared on 10.12.2002. His services were regularised by the proceedings of the High Court, in R.O.C.No.4493/2002/F1, dated 06.01.2003.

(b) During the course of his service, the petitioner was transferred and posted at various places. While the petitioner was in Judicial Service, to his shock and surprise, for the first time, by Memorandum dated 09.12.2013, the second respondent informed the petitioner that while recording the Annual Confidential Report (for short, 'the ACR') as Judicial Magistrate No.III, Erode, for the period from 02.05.2012 to 16.10.2012, the High Court had recorded his reputation as to honesty, integrity and impartiality as 'not satisfactory' and under special remarks column, it was stated that "officer is to avoid close contact with Advocates". Immediately, on receipt of the said Memorandum, the petitioner made a representation on 18.12.2013 requesting the High Court to review and expunge the said adverse remarks. On a consideration of the said representation, the second respondent, by order dated 23.01.2014, informed the petitioner that the High Court had considered the representation, dated 18.12.2013 submitted by the petitioner and expunged the remarks.

(c) While so, he came to know from the reports published in English daily-The Times of India, dated 21.03.2018 that he had been sent out of service at the age of 50 years for misconduct pursuant to a resolution passed by the Full Court of this Court. Immediately, the petitioner made a representation to the second respondent on 26.03.2018 stating that he had worked as a Judicial Officer in several Districts for more than 18 years without any allegations and he had also reached the norms fixed by the High Court. Further, he discharged his duties sincerely with utmost honesty, integrity and impartiality without any complaint or any adverse remarks against him. He had also enclosed along with the said representation, the consolidated work done statement for the year 2017 and requested the second respondent to consider his case sympathetically and permit him to continue in service. However, without considering the said representation, the first respondent, by the impugned order dated 31.05.2018, passed an order stating that the case of the petitioner, who was completing the age of 50 years during the month of April 2017, was placed before the Administrative Committee of the High Court, which had considered the ACR, work done statement, quality of judgments, leave availed

particulars, vigilance and other service particulars, and resolved to continue the services of the Judicial Officer beyond the age of 50 years subject to approval of the Full Court. It was further stated that when the above matter was placed before the Full Court, it was unanimously resolved not to extend the service of the petitioner beyond the age of 50 years with the further direction to the Registry to address the State Government to issue necessary orders in that behalf. Based on the decision of the Full Court, the first respondent passed the order compulsorily retiring the petitioner from service "in public interest". Further, by the said order, three months' pay and allowance was directed to be paid to the petitioner in lieu of three months' notice in that regard.

(d) The petitioner thereafter sent another representation on 13.06.2018 to the second respondent reiterating the aforesaid facts and requested the second respondent to consider his case sympathetically and permit him to continue to serve in the Judiciary beyond 50 years. However, the second respondent had passed the impugned order dated 22.06.2018 directing the petitioner to hand over the charge of the post of Chief Judicial Magistrate, Tiruvannamalai, to the Principal Sub-Judge, Tiruvannamalai immediately. The above orders dated 31.05.2018 of the first respondent and order dated 22.06.2018 of the second respondent are under challenge in this Writ Petition.

3. The respondents have filed counter affidavit and additional counter affidavit was also filed by the second respondent detailing the facts and circumstances under which the impugned orders are passed, to which the petitioner has also filed rejoinder reiterating the factual aspects of the matter.

4. The learned Senior Counsel appearing for the petitioner submitted that while the petitioner was serving as Judicial Magistrate-III, Erode, he was served with an Office Memorandum, dated 09.12.2013 by the second respondent informing that while recording the ACR for the period from 02.05.2012 to 16.10.2012, the High Court had recorded the reputation of the petitioner as to honesty, integrity and impartiality as "not satisfactory" with a further observation that the petitioner shall avoid close contact with Advocates. Such adverse remarks subsequently were expunged by the second respondent on 23.01.2014. While so, when the petitioner was serving as Chief Judicial Magistrate, Tiruvannamalai, he came to know from Times of India newspaper, dated 21.03.2018 that he was compulsorily retired from service at the age of 50 years. On noticing the said news article, the petitioner made a representation on 26.03.2018 and 13.06.2018 to review the order of compulsorily retirement and permit him to continue in service.

5. The learned Senior Counsel appearing for the petitioner invited the attention of this Court to the letter dated 04.04.2018 of the second respondent, addressed to the first respondent, in which the Administrative Committee, in its meeting held on 18.04.2017 resolved to continue the services of the petitioner beyond the age of 50 years and directed the second respondent to place the matter before the Full Court for approval. Further, the learned Senior Counsel appearing for the petitioner relied on the Minutes of the Full Court meeting held on 19.03.2018 that the Full Court had unanimously resolved not to extend the services of the petitioner beyond the age of 50 years and further directed the second respondent to address the first respondent to issue necessary orders in that behalf. Accordingly, the second respondent requested the first respondent to issue necessary orders for compulsorily retiring the petitioner at the age of 50 years under the Tamil Nadu Fundamental Rules in F.R.56(2).

6. By relying upon F.R.56(2), the learned Senior Counsel appearing for the petitioner submitted the ingredients that constitute for resorting to compulsory retirement, are totally absent in the case on hand. He further submitted that in the Minutes of the meeting of the Full Court held on 19.03.2018, the words, "compulsory retirement", "is of the opinion" and "in public interest", are not found, which are the basic requirements and lifeline to invoke F.R.56(2), but the said words "public interest" are included only by the second respondent unilaterally in the letter dated 04.04.2018 for invoking F.R.56(2). Further, the Resolution of the Full Court Meeting states that it was passed unanimously with majority, which is contrary to each other, as there will not be an unanimous conclusion, if there is majority. Therefore, the impugned G.O., dated 31.05.2018, is illegal and invalid.

7. In the above context, the learned Senior Counsel appearing for the petitioner relied on a decision of a Division Bench of the Patna High Court reported in 2008 SCC Online Patna 1283 = 2009 (2) PLJR 88 (Hira Prasad Pandey Vs. The State of Bihar and others), wherein it was held as follows:

"32. In the instant case, the decision of the Standing Committee neither mentions Rule 74(b)(ii) of the Bihar Service Code, nor the words "public interest". However, in the communication of the decision of the Standing Committee to the State Government by the Registrar General, he included both of them. The Registrar General was not entitled either to add or to subtract any word from the decision of the Standing Committee. As aforesaid, the Government, which

ultimately passed the order of compulsory retirement, had no clue as to on what basis the said order was being passed, inasmuch as the High Court refused to divulge any thing pertaining thereto to the State Government as has come on records by way of an affidavit.

33. In the circumstances, the conclusion would be that the said decision of the Standing Committee dated 30th September, 2004 whereby the petitioner has been compulsorily retired is not sustainable in law and, accordingly, all follow up actions thereof are also not sustainable. The same are accordingly quashed."

8. Hence, the learned Senior Counsel appearing for the petitioner submitted that in the instant case, as the words "in public interest compulsorily retired" are not mentioned in the Full Court resolution but it was added by the second respondent/Registrar General in the letter dated 04.04.2018 addressed to the first respondent/Government, the entire proceedings are vitiated.

9. As next fold of his submission, the learned Senior Counsel appearing for the petitioner submitted that the impugned G.O. dated 31.05.2018, compulsorily retiring the petitioner, is not on the basis of the subjective satisfaction of the Full Court, since the Resolution of the Administrative Committee, the Minutes of the Full Court and the deliberations and other concerned work done statements and ACR of the petitioner, have neither been referred to in the G.O., nor enclosed in the letter addressed to the first respondent by the second respondent on 04.04.2018. There are no records showing any deliberations and consideration to arrive at any such subjective satisfaction. The said order dated 31.05.2018 compulsorily retiring the petitioner had been passed by the first respondent only on the basis of the letters of the second respondent, dated 04.04.2018 and 13.04.2018. The second respondent had also admitted this fact in the counter affidavit, by stating that the ACRs, work done statement, quality of judgments, leave availed particulars, vigilance and other service particulars were placed only before the Administrative Committee and the Full Court and not before the Government. The additional counter affidavit is also silent on the aspect of the subjective satisfaction of the Government and the Full Court.

10. Further, the learned Senior Counsel appearing for the petitioner submitted that the impugned G.O. dated 31.05.2018 of the first respondent is passed not based on any material

and evidence and it is a non-speaking order by merely acceding to the request of the second respondent to compulsorily retire the petitioner from service. The Full Court did not give any weightage to the Resolution of the Administrative Committee. The second respondent, in paragraph 7 of the counter, had stated that the petitioner has not reached the norms fixed by the High Court for the relevant period. However, the fact remains that the petitioner had reached the norms during few months and the norms could not be reached during few months since he was transferred continuously from one Court to another within the City Civil Court, Chennai, that there was boycott for about four months, that there were less number of working days in lieu of Court vacation and that there were less number of cases ripe for trial. However, the learned Senior Counsel appearing for the petitioner submitted that only adverse remarks against the petitioner were for the period from 02.05.2012 to 16.10.2012 and it was also communicated to the petitioner. On receipt of the adverse remarks, the petitioner also submitted a representation dated 18.12.2013 to expunge the said remarks and accordingly, it was expunged on 23.01.2014. Further, the adverse remarks for the period from 02.05.2012 to 16.10.2012 were expunged on merits. Prior to the said period or subsequent to the said period, there have been no adverse remarks communicated to the petitioner. The remarks in the ACRs for the period earlier and subsequent were recorded as average, satisfactory or good. Therefore, in the absence of any adverse remarks against the petitioner, he cannot be termed as a dead-wood, poor performer or not useful to the institution by imposing an order of compulsory retirement. In the above scenario, the learned Senior Counsel appearing for the petitioner relied on a decision of the Supreme Court reported in 1994 Supp (3) SCC 593 (State of U.P. Vs. Bihari Lal), wherein, it is observed as under:

"4. The court has to see whether before the exercise of the power, the authority has taken into consideration the overall record even including some of the adverse remarks, though for technical reasons might be expunged on appeal or revision."

11. The learned Senior Counsel appearing for the petitioner further submitted that the only justification sought to be given in the counter affidavit is the allegation that the petitioner has not reached the norms for certain period. Such an allegation is unjustified, besides it cannot be the basis for imposing the punishment of compulsory retirement. There are various factors which contribute to a Judicial Officer not being able to achieve the norms for certain period and that by itself is not a ground to compulsorily retire a Judicial Officer. The learned Senior

Counsel appearing for the petitioner further contended that the impugned order should be justifiable only on the basis of the reasons contained therein and further reasons cannot be supplemented by way of counter affidavit/additional counter affidavit. In this case, it is admitted in the counter affidavit that the service records for the period between 2010 and 2016 alone were placed before the Full Court, and hence, it cannot be presumed that the Full Court would have gone through the entire service records of the petitioner. In fact, the second respondent in the counter, stated that the ACR for the period between 01.01.2012 and 31.12.2017 and work done statements for the period between 01.01.2011 and 31.12.2017 were placed before the Full Court, however, in the additional counter, it is stated that the ACR and work done statements for the period 2010 to 2016 alone were placed before the Full Court. Therefore, it is evident that the ACR and work done statement for the year 2017, which was recorded as "good" was not placed before the Full Court in the meeting held on 19.03.2018. Therefore, it is evident that the Full Court had no occasion to peruse the entire service records of the petitioner so as to arrive at a subjective satisfaction to impose the order of compulsory retirement. Thus, the impugned orders are passed based on total non-application of mind and there is an error of jurisdiction. The Resolution of the Full Court proceeds on the basis that the case was put up for consideration for extension of service of the Judicial Officer. The question of extension of service itself would not arise at the stage of crossing 50 years of age. At the age of 50, it is only a review and the said review is for the purpose of continuing the service or compulsorily retiring the Judicial Officer. Extension of service is contemplated under FR.56(2), where the High Court should form an opinion as regards the potentiality of the judicial officer. Whereas, for compulsory retirement under FR.56(2), the appropriate authority should form an opinion "in public interest". It is therefore not a question of extending the service. Hence, a wrong question had been placed before the Full Court, which in turn invited a wrong answer. In the note placed by the second respondent before the Full Court on 19.03.2018, it was wrongly stated that the adverse remarks were "recorded" instead of "expunged", and hence, the opinion of the Full Court was based on wrong materials placed before it. Further, the respondents have not considered the qualitative norms, but had only considered the quantitative norms also. Thus, the learned Senior Counsel appearing for the petitioner submitted that inasmuch as there is no appeal remedy to assail the orders in this Writ Petition, the Writ Petition under Article 226 of the Constitution of India is the only remedy available for the petitioner and this Court can very well re-appreciate and evaluate the material evidence on record to render substantial justice.

12. Countering the above submissions, the learned counsel appearing for the second respondent, by filing counter affidavit/additional counter affidavit, submitted that the contentions raised by the petitioner for assailing the said orders of the first and second respondents, compulsorily retiring the petitioner from service, are not correct. The work done statement of the petitioner for the period from 2010 to 2017 reveals that during the majority of the period, he did not reach the norms. Similarly, in his ACR, though the entry as to his honesty, integrity and impartiality was mentioned as 'not satisfactory' and it was also subsequently expunged, there were some other entries such as 'he was advised to avoid close contacts with Advocates'. Further, for some period, his performance was recorded only as 'average'. In fact, the entire records of the petitioner along with other Officers' who crossed the age of 50/55 including the ACR, work done statement and Vigilance Report, were placed before the Administrative Committee for review as contemplated under FR.56(2). The Administrative Committee, in its meeting held on 18.04.2017, resolved to extend the service of the petitioner subject to approval of the Full Court. The above said records pertaining to the petitioner, were circulated to all the Judges of the High Court, as may be seen from the records. Thereafter, on 19.03.2018, in the Full Court meeting, a decision was taken based on unanimous Resolution by majority voting of the Judges to the effect that the services of the petitioner beyond the age of 50 need not be permitted. The review of the performance of the Judicial Officers at the age of 50/55 is only in the interest of public, pursuant to the powers conferred under FR.56(2), which contemplates compulsory retirement of Government servants "in public interest". The petitioner should not be allowed to take advantage of the usage of the language in the decision taken by the Full Court by contending that there is no reference to 'public interest' or 'compulsory retirement' for not extending the service beyond 50 years. The order of compulsory retirement had the same effect as it has been done in exercise of the powers under Article 235 of the Constitution of India read with FR.56(2). Therefore, the decision to retire the petitioner compulsory is based on subjective satisfaction arrived at by the Full Court based on the materials available on record. In support of his submissions, the learned counsel appearing for the second respondent relied on various decisions of the Supreme Court and prayed to dismiss the Writ Petition.

13. This Court also heard the submissions of the learned Special Government Pleader appearing for the first respondent in relation to the factual aspects and merits of the matter, by filing counter affidavit. The learned Special Government Pleader appearing for the first respondent adopted the arguments of the learned counsel appearing for the second

respondent and contended that when recommendations were made by the Full Court for passing an order of compulsory retirement, the Government has no other option but to comply with such a direction. Accordingly, the first respondent/Government had passed the order of compulsory retirement "in public interest" against the petitioner under FR.56(2). Thus the impugned Government Order cannot be called in question by the petitioner and therefore, the learned Special Government Pleader prayed for dismissal of the Writ Petition.

14. Keeping in mind the above submissions made on either side, we have carefully perused the materials available on record.

15. The sum and substance of the contentions urged by the learned Senior Counsel appearing for the petitioner is as follows:

(i) The necessary ingredients under FR.56(2) for resorting to compulsory retirement are totally absent in the present case, since, in the Minutes of the Full Court meeting held on 19.03.2018, the words "compulsory retirement", "is of the opinion" and "in public interest", are not found.

(ii) The compulsory retirement passed against the petitioner is not based on the subjective satisfaction of the Full Court, since there are no records to show that the work done statements and ACRs of the petitioner were placed or there were any deliberations said to have been made. Moreover, there is no reference with regard to the Resolution of the Administrative Committee also.

(iii) The impugned order is based on no materials to support the ultimate conclusion.

16. On a perusal of the records, we find that the case of the petitioner was dealt with by the Administrative Committee, so also the Full Court, along with the records pertaining to ACR, work done statement, leave availed particulars, vigilance and other service particulars. The Administrative Committee, though resolved to extend the service of the petitioner beyond the age of 50, such a decision was subject to the approval of the Full Court. When the matter was placed before the Full Court, it was resolved not to extend the service of the petitioner beyond 50 years. Such a review of the service particulars is contemplated under FR.56(2), which reads as follows:

"Chapter-IX

Retirement

56(1): Retirement on
superannuation:

....

(2) Compulsory Retirement:
Notwithstanding anything contained in
this rule, the appropriate authority

shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice at any time after he has attained the age of fifty years or fifty-five years in the case of Basic Servants, as the case may be, or after he has completed thirty years of qualifying service."

17. Further, on a perusal of the material records, we also find that the details of the service particulars like ACR, work done statement, leave availed particulars, vigilance particulars, etc., were circulated to the Judges comprising of Full Court and finally, on 19.03.2018, based on the above particulars and deliberations made in the meeting, a decision was taken by the Full Court by majority voting, specifically resolving not to extend the service of the petitioner beyond the age of 50 years. From the work done statement of the petitioner, it is clear that the petitioner had not reached norms for certain period. Therefore, it cannot be said that the decision taken by the Full Court is without any materials. This decision was taken only 'in public interest' pursuant to the power conferred under FR.56 (2) and Article 235 of the Constitution of India.

18. It is yet another submission of the learned Senior Counsel appearing for the petitioner that in the Minutes of the meeting of the Full Court, the words, "compulsory retirement", "is of the opinion" and "in public interest" were not found, which would show that the necessary ingredients for resorting to compulsory retirement are totally absent in the present case. But we are of the opinion that since such words were not mentioned in the impugned G.O. of the first respondent or the order passed by the second respondent, it will not ipso facto render the orders, which are impugned in this writ petition, vitiated. As observed above, the Full Court had laid its hand in exercising its jurisdiction under FR.56(2) and also Article 235 of the Constitution of India. Moreover, it is well settled that the order of compulsory retirement is neither a punishment nor a stigma and the principles of natural justice have no role to play in ordering compulsory retirement.

19. We are conscious of the fact that the scope of Judicial review in exercise of power conferred under Article 226 of The Constitution of India, is limited to test only the correctness or otherwise of adherence of the decision making process and not the decision of the respondents. While

exercising jurisdiction under Article 226 of The Constitution of India, we can only ensure as to whether the procedural formalities preceding the order of compulsory retirement have been adhered to in the touch stone of principles of natural justice. In other words, the conclusion arrived at by the respondents to compulsorily retire the petitioner from service cannot be interfered with by this Court, unless such conclusion is based on no evidence or irrelevant material. In this context, reference can be made to the decision of the Supreme Court in the case of High Court of Judicature at Bombay through its Registrar vs. Udaysingh and others, reported in AIR 1997 Supreme Court 2286, wherein it was held as follows, regarding the scope of the Court in regard to Judicial Review of cases:-

"10. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the Court or Tribunal when the conclusion reached by the authority is based on evidence..

13. Under the circumstances, the question arises: whether the view taken by the High Court could be supported by the evidence on record or whether it is based on no evidence at all? From the narration of the above facts, it would be difficult to reach a conclusion that the finding reached by the High Court is based on no evidence at all. The necessary conclusion is that the misconduct alleged against the respondent stands proved. The question then is; what would be the nature of punishment to be imposed in the circumstances? Since the respondent is a judicial officer and the maintenance of discipline in the judicial service is a paramount matter and since the acceptability of the judgment depends upon the credibility of the conduct, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the judicial officer, we think that the imposition of penalty of dismissal from service is well justified. It does not warrant interference."

20. Thus, it is evident from the above decision of the Honourable Supreme Court that this Court has no power to interfere with the decision taken by the respondents and to

substitute it's own conclusion. In such cases, judicial review is only meant to ensure that the conclusion which the respondents reached is based on semblance of evidence. In the present case, as mentioned above, there are evidences made available against the petitioner based on which the respondents have come to a conclusion to compulsory retire the petitioner from service in the form of service particulars of the petitioner like ACR, work done statement, vigilance enquiry report, leave particulars etc. While so, it cannot be gain said that there are no material at all for the respondents to arrive at a conclusion to pass the order of compulsory retirement against the petitioner.

21. Hence, for the reasons stated above, we find no merit in the present Writ Petition, which is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

cs
To

1. The Secretary to Government,
Home (Courts 1A) Department,
Fort St.George, Chennai-600 009.
2. The Registrar General,
High Court, Madras-600 104.

+lcc to M/s.AL.Ganthimathi , Advocate SR.No. 91877
W.P.No.16874 of 2018
A.SK(14/11/2019)