

IN THE HIGH COURT OF ORISSA AT CUTTACK

WRIT PETITION (CIVIL) No.19322 OF 2014

(An application under Articles 226 & 227 of the Constitution of India)

Ashok Kumar Agarwala

.....

Petitioner

Versus

Registrar General of Orissa

High Court, Cuttack and others

.....

Opposite Parties

Advocate(s) appeared in this case:-

For Petitioner

:

Mr. Manoj Kumar Mohanty, Advocate

For Opposite Parties

:

Mr.P.K.Muduli, A.G.A.

**CORAM : THE CHIEF JUSTICE
JUSTICE B.P. ROUTRAY**

JUDGMENT

19.01.2022

B.P. Routray, J.

1. The Petitioner – a Judicial Officer, has challenged the order of compulsory retirement dated 23rd August, 2012 under Annexure-1 and prayed for consequential reliefs.

2. The Petitioner was given compulsory retirement on attaining the age of 50 years in terms of Rule 44 of the OSJS and OJS Rules, 2007. He was an Officer in the cadre of Civil Judge and last worked as JMFC, Motu.

3. The Petitioner initially joined as Probationary Munsif, OJS-II on 17th November, 1997. He then worked in different capacities as Civil Judge (Jr. Division) and Judicial Magistrate First Class at different places in Odisha. On 21st June, 1999 the Petitioner joined as Civil Judge (Jr. Division)-cum-JMFC, Sorada in the judgeship of Ganjam–Gajapati and relieved on 6th May, 2002. He joined as JMFC, Daringibadi on 10th May, 2002 in the judgeship of Kandhamal-Phulbani and relieved from Daringibadi on 13th June, 2005. He served as Munsif at Sambalpur, Additional Civil Judge-cum-JMFC at Bhubaneswar, Sorada, Daringibadi, Cuttack and lastly at Motu. He also served as Inspector of Process-cum-JMFC at Dhenkanal and Sambalpur.

4. While serving at Sorada, an inquiry was conducted by the then District Judge, Ganjam in respect of the allegations regarding passing of discriminatory orders. The High Court directed that he should be let off with a warning to be careful in future and guard against such type of mistake. This was duly communicated to him.

5. Further while serving at Daringibadi, similar allegations were received against him. Based on the report of the District Judge, Kandhamal–Phulbani and the explanation offered by the Petitioner, disciplinary proceeding No.10 of 2006 was initiated against him as per the charges communicated in letter No.4428 dated 3rd July, 2007. In the said disciplinary proceeding, four charges were framed. Those were to the effect that the Petitioner dealt with bail petitions indiscriminately in different cases showing favour to a particular advocate. Secondly, he rejected the prayer for bail of an applicant arbitrarily and again granted

him bail after one day. Thirdly, the Petitioner passed orders for release of property in a particular case arbitrarily. Fourthly, the Petitioner advanced the date in a criminal case, framed charges, examined witnesses, dispensed with accused examination, heard arguments and posted for judgment in one single day without giving any notice to the prosecutor.

6. The disciplinary proceeding continued and the District Judge, Kandhamal was appointed as the Inquiry Officer. As the order of compulsory retirement was issued during pendency of said proceeding, the same was dropped.

7. During his entire service career, the Petitioner was graded as “Good” in the year 1999, 2004 and second part of the year 2010 only. For rest of the periods from 1997 to 2010, he was rated with average grading. The details as found from the personal file and CCRs of the Petitioner are as follows:

<u>Year</u>		<u>Grading</u>
1998	-	Average
1999	-	Good
2000	-	Average
2001	-	Average
2002	-	Average
2003	-	Average
2004	-	Good
2005	-	Average
2006	-	Average
2007	-	Average
2008	-	Average

2009	-	Average
2010(I)	-	Average
2010(II)	-	Good

8. The Petitioner was not found suitable for promotion on repeated consideration by the Standing Committee. He was also not found suitable to get ACP-II scale and only granted ACP-I scale in the year 2002.

9. These are the admitted facts on record.

10. It is contended on behalf of the Petitioner that neither District Judge, Ganjam nor District Judge, Kandhamal have ever reported anything touching on the integrity of the Petitioner during his incumbency at Sorada and Daringibadi respectively. It is also submitted that such allegations against him with regard to irregularity and illegality are not correct and no adverse remark in the confidential report has ever been communicated to him.

11. Shri Mohanty, learned counsel for the Petitioner submitted that in absence of any adverse remark in the confidential report of the Petitioner touching on his integrity or about his inability to achieve the prescribed yardstick, the recommendation of the Full Court for his compulsory retirement is arbitrary. It is also submitted that such uncommunicated entries in the CCRs cannot be relied upon for compulsory retirement of the Petitioner as held in ***Deb Dutt v. Union of India AIR 2008 SC 2513***. It is further contended that the recommendation of the Full Court has been concurred with by the Government mechanically without an independent assessment.

12. Opposite Party No.1, the Registrar General of High Court of Orissa is the main contesting party. Mr.Muduli, learned counsel for Opposite Parties 1 and 2 submitted that the Full Court after taking into account the totality of the circumstances, the CCRs and the report of the review committee has recommended the Petitioner's premature retirement in public interest after forming an opinion that the Petitioner does not possess the standard efficiency required to discharge the duty of the post held by him. The Petitioner, a Judicial Officer, during his service carrier failed to earn even three consecutive 'Good' ratings. He was also found unsuitable for promotion and ACP-II scale. It is not that only CCRs for a particular period of performance was taken into consideration. An overall assessment was made of the performance of the Petitioner during his entire service period and he was found unsuitable for being continued as such. It is also submitted that the scope of judicial review in matters of compulsory retirement is limited.

13. In support of his submissions Mr. Mohanty, learned counsel for the Petitioner relies on the decisions in *Indramani Sahu v. State of Orissa 2017 (II) ILR-CUT-1289*, *Epari Vasudeva Rao v. State of Odisha 2014 (II) OLR-381*, *Subhendra Mohanty v. High Court of Orissa 2017 (II) OLR 628*, *Dev Dutt v. Union of India AIR 2008 SC 2513*, *Dr. Durga Prasanna Choudhury v. State of Orissa 2012 (Supp.-II) OLR-689*, *Sukhdev Singh v. Union of India (2013) 9 SCC 566*, *Baikuntha Nath Das v. Chief District Medical Officer, Baripada (1992) 2 SCC 299*, *J. D. Shrivastava v. State of M.P. AIR 1984 SC 630*, *S. Ramachandra Raju v. State of Orissa AIR 1995 SC 111*, *Narasisingh Patnaik v. State of Orissa JT 1996 (3) S.C.754* and *Brij*

Behari Lal Agarwal v. Hon'ble High Court of Madhya Pradesh (1981) 1 SCC 490.

14. Mr. Muduli, learned counsel for the Opposite Parties relies on the decisions in ***Baikuntha Nath Das v. Chief District Medical Officer, Baripada (1992) 2 SCC 299, State of U.P. v. Vijay Kumar Jain (2002) 3 SCC 641, Chandra Singh v. State of Rajasthan (2003) 6 SCC 545, Nawal Singh v. State of U.P. (2003) 8 SCC 117 and Punjab State Power Corporation Limited v. Hari Kishan Verma (2015) 13 SCC 156.***

15. The entire personal record of the Petitioner including his CCRs have been produced before this Court and have been perused.

16. Rule 44 of the OSJS and OJS Rules 2007 (hereinafter referred to as '2007 Rules') authorizes the High Court to retire in public interest any member of the service who has attained the age of 50 years. Such consideration for all the Officers in service shall be made at least three times i.e., when he is about to attain the age of 50, 55 & 58 years.

17. Judicial Officers of the subordinate courts in the State are under the administrative control of the High Court and such power of the High Court on administrative jurisdiction to recommend compulsory retirement of a member of judicial service in accordance with the Rules framed have been reiterated by the Supreme Court in ***Registrar, High Court of Madras v. R.Rajiah, (1988) 3 SCC 2011***. The Supreme Court has further observed that the High Court while exercising its power of control over the subordinate judiciary is under a constitutional obligation to guide and protect Judicial Officers from being harassed.

18. The object of compulsory retirement is to weed out the dishonest, the corrupt and the deadwood. It is true that if an honest Judicial Officer is compulsorily retired it might lower the morale of his colleagues and other members in the service. In matters of compulsory retirement in public interest, the Supreme Court has laid down the governing legal principles in ***Baikuntha Nath Das v. Chief District Medical Officer, Baripada*** (*supra*) as under:

“34. The following principles emerge from the above discussion:

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) *mala fide* or (b) that it is based on no evidence or (c) that it is arbitrary – in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

(iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter – of course attaching more importance to record of and performance during the

later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.

Interference is permissible only on the grounds mentioned in (iii) above. This aspect has been discussed in paras 30 to 32 above.”

19. In *Rajasthan State Road Transport Corporation v. Babulal Jangir* (2013) 10 SCC 551, it was held that;

“27. It hardly needs to be emphasised that the order of compulsory retirement is neither punitive nor stigmatic. It is based on subjective satisfaction of the employer and a very limited scope of judicial review is available in such cases. Interference is permissible only on the ground of non-application of mind, mala fide, perverse, or arbitrary or if there is non-compliance with statutory duty by the statutory authority. Power to retire compulsorily the government servant in terms of service rule is absolute, provided the authority concerned forms a bona fide opinion that compulsory retirement is in public interest.”

20. The Supreme Court in *S. Ramachandra Raju v. State of Orissa*, 1994 Supp.(3) SCC 424 further held as follows:

“9..... The entire service record or character rolls or confidential reports maintained would furnish

the back drop material for consideration by the Government or the Review Committee or the appropriate authority. On consideration of the totality of the facts and circumstances alone, the government should form the opinion that the government officer needs to be compulsorily retired from service. Therefore, the entire service record more particular the latest, would form the foundation for the opinion and furnish the base to exercise the power under the relevant rule to compulsorily retire a government officer. When an officer reaching the age of compulsory retirement, as was pointed out by this Court, he could neither seek alternative appointment nor meet the family burdens with the pension or other benefits he gets and thereby he would be subjected to great hardship and family would be greatly affected. Therefore before exercising the power, the competent appropriate authority must weigh pros and cons and balance the public interest as against the individual interest. On total evaluation of the entire record of service if the government or the governmental authority forms the opinion that in the public interest the officer needs to be retired compulsorily, the court may not interfere with the exercise of such bona fide exercise of power but the court has power and duty to exercise the power of judicial review not as a court of appeal but in its exercise of judicial review to consider whether the power has been properly exercised or is arbitrary or vitiated either by mala fide or actuated by extraneous consideration or arbitrary in retiring the government officer compulsorily from service.”

21. On a careful perusal of the record, it is seen that the authority was of the opinion that the Petitioner does not possess the standard efficiency required to discharge the duty of the post held by him. As per the notification of the State Government in G.A. Department dated 24th November, 1987, it is prescribed that it will not be in public interest to

retain an employee in service, if he lacks in the standard of efficiency required to discharge the duties of the post he presently holds.

22. On an overall assessment of the personal record of the Petitioner, the emerging picture is not favourable to him. During his service career spanning fourteen years and eight months, he was not able to get a 'good' grading for at least three consecutive years. He was earlier also let off with a warning to be careful in future. He was not found suitable either for promotion to the higher post or for getting higher pay in ACP-II scale. His performance was often rated 'average'. There have been allegations of his passing indiscriminate orders in particular cases or failing to maintain uniformity or consistency in passing judicial orders. Charges on the above score were framed against him in the departmental proceedings.

23. The overall assessment of the Petitioner's entire service career is that his performance failed to meet the expected standards of competency. The contention made on behalf of the Petitioner that no adverse entry is against him touching to his integrity or inefficiency is not found correct upon a perusal of the records. It is true that he was not retired compulsorily for being dishonest but for being inefficient and not meeting the required standards. The question therefore of non-communication of adverse entries in the CCRs does not, in the circumstances, arise.

24. The submission put forth with regard to lack of subjective satisfaction of the Governor in the process of consultation is not found convincing. Rule 44 of 2007 Rules postulates that, *the Governor shall in consultation with the High Court, if he is of the opinion that it is in the*

*public interest so to do, have absolute right to retire any member of the service who has attained the age of fifty years, by giving him/her notice of not less than three months in writing or three months pay and allowances in lieu of such notice. The scope, meaning and process of consultation between the High Court and the Governor has been explained in the decisions of the Supreme Court in **S.P.Gupta v. Union of India AIR 1982 SC 149**, **SC Advocates-on-Record Association v. Union of India AIR 1994 SC 268**, **The State of West Bengal v. Nripendra Nath Bagchi AIR 1966 SC 447**, **State of Bihar v. Bal Mukund Sah (2000) 4 SCC 640** and in **Supreme Court Advocates-on-Record Association v. Union of India (2016) 5 SCC 1**.*

25. Further, as stated earlier, in the case of **Registrar, High Court of Madras v. R.Rajiah** (*supra*), the Supreme Court held as follows:

“22. It is true that the High Court in its administrative jurisdiction has power to compulsorily retire a member of the judicial service in accordance with any rule framed in that regard, but in coming to the conclusion that a member of the subordinate judicial service should be compulsorily retired, such conclusion must be based on materials. If there be no material to justify the conclusion, in that case, it will be an arbitrary exercise of power by the High Court. Indeed, Article 235 of the Constitution does not contemplate the exercise by the High Court of the power of control over subordinate courts arbitrarily, but on the basis of some materials. As there is absence of any material to justify the impugned orders of compulsory retirement, those must be held to be illegal and invalid.”

26. The Petitioner is not correct in contending that only the entries in the CCRs have been taken into account by the authority. The overall assessment of all the materials including the ratings of performance in

the CCRs, the nature of allegations, charges in the pending disciplinary proceeding against him, the report of the review committee, his performance on judicial as well as administrative side, his reputation as such during entire service period are among the several factors considered by the authority before recommending his compulsory retirement. An overall consideration of all those factors, tested on the touchstone of the standard of efficiency of the Petitioner as a Judicial Officer reveals that the decision of authority cannot be said to be as mala fide or arbitrary or based on no evidence.

27. Considering the scope of judicial interference in such matters involving compulsory retirement, we do not find any reason to interfere. The writ petition is dismissed being without merit. No order as to costs.

28. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020, modified by Notice No.4798, dated 15th April, 2021, and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

(B.P. Routray)
Judge

(Dr. S. Muralidhar)
Chief Justice

//C.R.Biswal, Secy.//