

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.9567 OF 2022

Balasaheb Dyandeo Kumawat

Age : 56 years, Occu : Service (peon),

R/o : Garkehda Parisar Shambhu Nagar,

Kalawati Niwas, Aurangabad.

... **PETITIONER**

VERSUS

1. The Principal District and Sessions Judge,
Aurangabad in Administrative Capacity,
District Court Building Aadalat Road, Aurangabad

2. The State of Maharashtra
through Law and Justice Department,
Mantralaya Mumbai.

... **RESPONDENTS**

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Mr. Gaurav L. Deshpande, advocate for the petitioner

Mr. C.K. Shinde for respondent No. 1

Mr. P.K. Lakhotiya, AGP for respondent No.2

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**CORAM : MANGESH S. PATIL AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 05.06.2023

FINAL ORDER :

The petitioner who was working as a peon in the District Court at Aurangabad since 05.09.1990 is impugning the order passed by the Principal District Judge, Aurangabad dated 15.09.2022 whereby, by resorting to Rule 10(4)(c) and Rule 65 of the Maharashtra Civil Services (Pension) Rules, 1982 with the relevant Government Resolutions mentioned therein he has been retired in public interest.

2. The learned advocate for the petitioner vehemently submits that the petitioner has been compulsorily retired on the ground of his absence from duty. There were genuine and personal reasons which had prevented him from discharging his duties. He had elaborately submitted these grounds while making a representation to the respondent No.1 – the

Principal District and Sessions Judge. The petitioner is seeking mercy since he is the only bread earner and his family depends on his income.

3. Per contra, learned advocate Mr. Shinde for the respondent No.1 and learned AGP Mr. Lakhotiya would submit that the petitioner has been compulsorily retired by resorting to the rules which enable such a decision in public interest. Without there being any requirement still the petitioner was given an opportunity to submit the representation. It was duly considered objectively as mentioned in the affidavit-in-reply as per the resolution dated 29.03.2022 by the Review Committee comprising of three judicial officers of the rank of District Judge, Chief Judicial Magistrate and the Registrar of the District and Sessions Court. It is after due consideration of the entire service record, the petitioner has been compulsorily retired. It is not by way of punishment. The order is not stigmatic. This Court cannot undertake objective scrutiny of the grounds which prevailed with the respondent No.1. There are no *mala fides* attributed to the respondent No.1 and the petition be dismissed.

4. We have carefully considered the rival submissions and perused the papers. As has been rightly submitted by the learned advocate Mr. Deshpande for the petitioner, the petitioner has inherent limitations in seeking the relief and is merely approaching this Court by way of mercy.

5. There cannot be any dispute about the powers of the appointing authority to compulsorily retire an employee appointed by him, in public interest pursuant to the provisions of Rule 10 (4)(c) and Rule 65 of the MCS (pension) Rules.

6. The order of compulsory retirement is not stigmatic in the peculiar facts and circumstances of the case. Merely because the review committee has considered the entire service record objectively and had pointed out several circumstances which demonstrated that continuing the

petitioner in the employment would not be in public interest, it cannot be said that the impugned order has been passed by way of some punishment.

7. Obviously, whether continuation of an employee in the government service would be in public interest or otherwise would make it imperative for the appointing authority to consider the service record. If several circumstances are examined and borne in mind and indicated for taking a decision to retire an employee compulsorily, it would certainly be an appropriate exercise of the powers.

8. It is further pertinent to note that admittedly, even the petitioner was given an opportunity and had made a representation which was also objectively considered.

9. The impugned decision is preceded by objective scrutiny of the performance of the petitioner and which according to us stands substantiated by the reasons mentioned in the resolutions of the review committee dated 05.02.2022 and 29.03.2022.

10. The Writ Petition is dismissed.

(S.G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)