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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.P.No.34999 of 2023

S. Padmanabhan

... Petitioner

Vs.

1. The Principal Secretary,
Home Department, Secretariat,
Fort St. George,
Chennai – 600 009.

2. The Registrar General,
Madras High Court,
Chennai – 600 104.

3. The Principal District Judge,
Thiruppur.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the production of the records relating to the second respondent in his order: ROC No. 82698/2020/C1 dated 25.02.2022 and the confirmed order dated 06.11.2020



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made in A.No. 255 of 2020 passed by the third respondent herein and quash the same and direct the third respondent and second respondent to pass orders for reinstatement of the petitioner in service under Tamilnadu Judicial Ministerial Service.

For Petitioner : Mr.S.Shanmuga Sundaram

For R1 : Mrs.P. Raja Rajeswari
Government Advocate

For R2 & R3 : Mr.M.Santhanaraman

ORDER

(Order of this Court was made by S.M.SUBRAMANIAM,J.)

The order of compulsory retirement made on public interest under Fundamental Rules 56(2) in proceeding dated 06.11.2020 confirmed by the Appellate Authority in proceeding dated 25.02.2022 are under challenge in the present writ proceedings.

2. The petitioner was originally appointed as Office Assistant on compassionate grounds. He was promoted to the post of Junior Bailiff in the Sub-Court, Udumalaipettai. The departmental disciplinary proceedings were initiated in D.P.Nos.4 and 5 of 2013. The charge against the petitioner was



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that he was having the habit of sending anonymous letters against the Judicial Officers and the Staff members and he used to threaten those Staff Members under the guise of sending anonymous letters. Domestic Enquiry was conducted. The charges against the petitioner were held proved and the punishment of stoppage of one increment for 3 years without cumulative effect was imposed in both the departmental disciplinary proceedings separately in D.P.Nos.4 and 5 of 2013 dated 30.04.2015.

3. Mr.S.Shanmuga Sundaram, learned Counsel for the petitioner would submit that mere punishment in the departmental disciplinary proceedings in the year 2015 would be insufficient to invoke FR 56(2) to compulsorily retire an employee in public interest. In the present case, the petitioner was appointed on 18.01.2001 and there were no adverse remarks against him throughout his service except the two departmental disciplinary proceedings initiated in D.P.Nos.4 and 5 of 2013. The petitioner has not chosen to prefer an appeal against the punishment imposed. After imposing punishment in the departmental disciplinary proceedings also, there was no adverse remark against the petitioner for about 5 years till the date of impugned proceedings issued by the 3rd respondent. In the absence of any materials available on



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record for forming an opinion and to compulsorily retire an employee in public interest, the order impugned is untenable.

4. Learned Counsels for the respondents would oppose the said contention by stating that the materials available on record would be sufficient to form an opinion that the petitioner has involved in an act of serious misconduct of threatening Judicial Officers and Staffs under the guise of sending anonymous allegations.

5. The two charges framed against the petitioner are held proved and punishments were imposed and no appeal has been filed. The learned Principal District Judge has made adverse entries while sending proposals to the High Court to compulsorily retire the petitioner under FR 56(2) in Proforma-III. Proforma-III would indicate that the petitioner suffer two charges of stoppage of one increment for 3 years without cumulative effect in proceedings dated 30.04.2015. In the column 'Lack of Integrity' it is recorded as 'Yes, there is lack of integrity'. Except by stating that there is a lack of integrity, there is no *prima facie* evidence to form an opinion that the petitioner should be compulsorily retired by invoking FR 56(2). Question



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arises whether the punishment imposed in the proceedings dated 30.04.2015 would be sufficient to compulsorily retire the petitioner under FR 56(2)?

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6. Fundamental Rights 56 unambiguously stipulates about the Government servants who have completed 50 years of age or 30 years of qualifying service to be retired in the public interest. The object of the scheme of compulsory retirement is to weed out the dead wood in order to maintain high standard of efficiency and integrity in the State services.

7. 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 3 months in writing or 3 months pay and allowances in lieu of such notice at any time after he has attained the age of 50/55 years in case of basic servants as the case may be or after he has completed 30 years of qualifying services.

8. The guidelines to compulsory retire a Government Servant in public interest issued in G.O.Ms.No.623, Personnel and Administrative Reforms Department dated 14.07.1983, states that the following types of cases may be



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put up before the Review Committee for review:

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- (1) In cases where Authority have reasonable cum belief that an Officer is lacking any integrity, this would be an appropriate ground to consider him for compulsory retirement, irrespective of an assessment of ability or efficiency in work.
- (2) In cases where Government have reason to believe that habitually takes bribes but there is no definite proof of a specific anti-corruption or where the Officer has a bad reputation and where the abundance suspicion against him even though the guilt may not have established in criminal case, such case can be brought up for Review.
- (3) In cases where an Officer's integrity is not in doubt but his physical or mental condition in such as to make him inefficient for further surrender him unfit to discharge his duties properly.
- (4) In the case of Officers against whom there are repeated complaint corruptions.
- (5) In the case of Government Servants who although have done lower grades are not considered adequate for the responsibilities of they occupy or will not be able to perform efficiently in their post for 3 or 5 years.



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9. As per the guidelines, the Review Committee has to consider the reason for recommending the compulsory retirement should be recorded clearly. Mere pendency of an enquiry against an Officer should not be taken into consideration for recommending the cases for compulsory retirement.

10. The personal file of an Officer should be brought up to date. Importantly, the reason in the proposal is mentioned crisply as 'public interest'. The Review Committee should indicate clearly in detail in separate record of the deliberations and the grounds on which the Committee has come to a conclusion that the employee should be compulsorily retired so that the record of deliberation of the Review Committee will be available for perusal of the High Court, while considering the Review Petitions of the employees compulsorily retired.

11. In the present case, we have perused the records/proposals submitted by learned Principal District Judge. The reasons recorded in Proforma-III would indicate only about punishment awarded in the proceedings dated 30.04.2015 i.e. stoppage of one increment for 3 years



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without cumulative effect. The proved charges were that the petitioner sent anonymous complaints against the Judges and Staff Members. In column '8', the Authority as stated that there is lack of integrity. There is no material available on record to establish that the petitioner suffered any adverse remarks in between the years 2015 – 2020. Even prior to the punishment from the date of appointment there was adverse remarks against him. Therefore, we are of the considered opinion that formation of opinion lacked adequate materials warranting the petitioner to retire compulsorily under Fundamental Rights 56(2).

12. However, we are aware of the fact that some employees are frequently cause obstructions or nuisance to the Judicial Administration. It is in practice that in all those circumstances, the disciplinary proceedings are not initiated. On some occasions orally they are warned. However, all those circumstances are to be recorded if any proposal is submitted for invoking Fundamental Rights 56(2) to compulsorily retire an employee in public interest. It is needless to state that whenever misbehaviour, misconduct or act of unbecoming of an employee is noticed, the Authority competent is expected to issue a memo, which is to be properly recorded in the Registers



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and those instances, allegations and misconducts entered in the Registers are to be properly communicated at the time of review of cases under Fundamental Rights 56(2). Such procedures as contemplated are to be scrupulously followed by the administration/establishment for the purpose of efficient Judicial administration. A separate register in this regard, is to be maintained by the District Judicial Administration and if necessary Court wise Registers are to be maintained.

LEGAL POSITION:

13. The Principles on the scope of judicial review are settled:-

- (1) An order of compulsory retirement is not a punishment. It implies no stigma of misbehaviour.
- (2) The order has to be passed on forming the opinion that it is in public interest to retire a Government Servant compulsorily and the order has to be passed on subjective satisfaction of the Government.
- (3) The principles of natural justice have no place.
- (4) The High Court can interfere only if it is satisfied that the order of compulsory retirement has been passed (a) mala fide (b) it is based on no evidence (c) that it is arbitrary and found to be perverse.



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14. The guidelines to compulsorily retire a Government Servant in public interest issued in G.O.Ms.No.623, Personnel and Administrative Reforms Department, dated 14.07.1983, states that the following types of cases may be put up before the Review Committee for review:-

“4. (i) In cases where the Government have reasonable cum believe that an officer is lacking in integrity, this would be an appropriate ground to consider him for compulsory retirement irrespective of an assessment of his ability or efficiency in work.

(ii) In cases where Government have reason to believe that habitually takes bribes but there is no definite proof of a specific anti corruption, or where the officer has a bad reputation and where the abundant suspicion against him even though the guilt may not have established in a criminal case, such case can be brought up for review. (G.O.(Ms).No.761, Public (Ser.A), dated:19th March 1973.).

(iii) Cases where an Officer's integrity is not in doubt, but his physical or mental condition is such as to make him inefficient for further



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surrender him unfit to discharge his duties properly.

(iv) Cases of Officers against whom there are repeated complaint corruption;

(v) Cases of Government servants who although have done whom lower grades, are not considered adequate for the responsibilities of they occupy or will not be able to perform efficiently in their post for the 3/5 years. (Circular Memo. No.39541/75-139, Pub. (Ser.M), dated: November 1976.).”

15. The guidelines for Review Committee are also issued. The principles relating to compulsory retirement in public interest has been broadly settled by the Supreme Court in the case of **J.D.Srivastava vs. State of Madhya Pradesh and Others [1984 (2) SCC 8]**, it has been held as under:-

“The law relating to compulsory retirement has now crystallised 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,



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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.”



16. It is also well settled that formation of opinion for compulsory retirement is based on the subjective satisfaction of the Authority concerned, but such satisfaction must be based on a valid material. It is permissible for the Courts to ascertain whether a valid material exists or otherwise, on which the subjective satisfaction of the Authority is based. The principles discussed above, were considered by the supreme Court in the case of **Arun Kumar Gupta vs. State of Jharkhand and another [2020 (13) SCC 355]**, it has been held as under:-

“9. Now coming to the express words of Fundamental Rule 56(j) it says that the appropriate authority has the absolute right to retire a government servant if it is of the opinion that it is in the public interest to do so. The right conferred on the appropriate authority is an absolute one. That power can be exercised subject to the conditions mentioned in the rule, one of which is that the authority concerned must be of the opinion that it is in public interest to do so. If that authority bona fide forms that opinion, the correctness of that opinion cannot be challenged before courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the



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decision is based on collateral grounds or that it is an arbitrary decision.

7.A three-Judge Bench in Baikuntha Nath Das v. District Medical Officer [Baikuntha Nath Das v. District Medical Officer, (1992) 2 SCC 299 : 1993 SCC (L&S) 521] dealing with the concept of compulsory retirement laid down the following principles : (SCC pp. 315-16, para 34)

“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)



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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.”



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17. In the present case, the entire service records of the petitioner has not been assessed by the Review Committee. A decision to compulsorily retire the petitioner in public interest was taken merely based on the punishment of stoppage of increment for three years without cumulative effect imposed in proceedings dated 30.04.2015. In another disciplinary proceeding also a similar punishment was issued. Thus, two punishments imposed in the service alone were considered for the purpose of retiring the petitioner compulsorily in public interest. It would be insufficient to form an opinion to invoke Fundamental Rules 56(2). The entire service records, integrity of the Government Servant are necessarily to be reviewed for the purpose forming an opinion to invoke Fundamental Rules 56(2). In the present case, there is no such materials available on record and thus, we find infirmity in forming an opinion and compulsorily retire the petitioner in public interest. In the absence of any such materials on record and in the event of non-consideration of entire service records of the Government Servant, one has to form an opinion that the Fundamental Rules 56(2) has been invoked to short-circuit the procedure to sack the employee. Thus, we are inclined to interfere with the orders.



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18. Accordingly, the following orders are passed;

- (1) The impugned orders passed in ROC No.82698/2020/C1 dated 25.02.2022 by the 2nd respondent and confirmed in order dated 06.11.2020 made in A.No.255 of 2020 by the 3rd respondent are quashed.
- (2) The respondents are directed to reinstate the petitioner without any backwages. The compulsory retirement monthly pension already paid to the petitioner shall not be recovered.
- (3) The petitioner is directed to deposit the terminal benefits received by him in the Government Treasury within period of three (3) months from the date of receipt of a copy of this order.
- (4) The respondents are directed to transfer and post the petitioner in any one of the available vacancies in Madurai District or any far of places in the interest of administration.



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19. With the above directions, this Writ Petition stands allowed.

However, there shall be no order as to costs.

[S.M.S.J.] [K.R.S.J.]
01.03.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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To

1. The Principal Secretary,
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