HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
AT JAMMU

Reserved on 06.10.2022
Pronounced on 19.10.2022

LPASW No.183/2017
CM No.8530/2019
IA No.1/2017

State of J&K .....Appellant(s)

Through: Mr. Amit Gupta, AAG

Vs.

Bhumesh Sharma ..... Respondent(s)

Through: Mr. Z.A. Shah, Sr. Advocate with Mr. Jagpaul Singh, Advocate

Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

Tashi Rabstan – J

1. This Letters Patent Appeal is directed against the judgment and order dated 07.02.2017 delivered by the learned Single Bench in SWP No.2140/2015, whereby the learned Single Judge, while allowing the writ petition, quashed the impugned order, bearing No.868-GAD of 2015 dated 30.06.2015 compulsory retiring the writ petitioner from service in public interest with effect from 01.07.2015 in exercise of powers under Article 226(2) of the Jammu and Kashmir Civil Services Regulations.

2. Heard learned counsel appearing for the parties, considered their rival contentions, perused the appeal file as well as the record so produced by the learned counsel for State.

3. The term or phrase "compulsory retirement" in service law has been generally used in relation to cases where an employee has been directed that his services are no longer required before he reaches the normal age of retirement prescribed by the rules. In other words, in substance, there is a premature end of the relationship of master and servant before the servant reaches the prescribed age of retirement or superannuation. Premature retirement is, therefore, a more apt expression to convey the concept with which the petitioner has been subjected. The purpose and object of premature retirement of a Government employee is to weed out the inefficient, the corrupt, the dishonest or the dead-wood from Government service. In Tara Singh and others v. State of Rajasthan and others, (1975) 4 SCC 86, their Lordships of the Supreme Court summed up the concept of premature retirement in following words:

> "26. The right to be in public employment is a right to hold it according to rules. The right to hold is defeasible according to rules. The rules speak of compulsory retirement. There is guidance in the rules as to when such compulsory retirement is made. When persons complete 25 years of service and the efficiency of such persons is impaired and yet it is desirable not to bring any charge of inefficiency or incompetency, the Government passes orders of such compulsory retirement. The government servant in such a case does not lose the benefits which a government servant has already earned. These orders of compulsory retirement are made in public interest. This is the safety valve of making such orders so that no arbitrariness or bad faith creeps in."

4. It is well settled that when an order is challenged as arbitrary or mala fide in the petition under Article 226 of the Constitution of India, it is the governmental duty to provide documents for inspection of court. In the matter of State of Uttar Pradesh v. Chandra Mohan Nigam and others, AIR 1977 SC 2411, the Supreme Court has ruled out in paragraph 36 as under:

> "36. … when an order of compulsory retirement is challenged as arbitrary or mala fide by making clear and specific allegations, it will then be certainly necessary for the Government to produce all the necessary materials to rebut such pleas to satisfy the court by voluntarily producing such documents as will be a complete answer to the plea. It will be for the Government also to decide whether at that stage privilege should be claimed with regard to any particular document. Ordinarily, the service record of a Government servant in a proceeding of this nature cannot be said to be privileged document which should be shut out from inspection."

5. Not only the employer is obliged to produce the materials, but the onus of establishing that the order was made in public interest is also on the employer. In Baldev Raj Chadha v. Union of India and others, (1980) 4 SCC 321, the Supreme Court has clearly held that "it is a terminal step to justify which the onus is on the Administration, nor a matter where the victim must make out the contrary".

6. Admittedly, a perusal of the file as well as the record clearly reveals that compulsory retiring the writ petitioner from service was based on no material, in as much as the writ respondent even did not conduct any departmental inquiry with respect to the act of alleged misconduct on the part of writ petitioner. Further, the writ respondent did not deny in the writ petition the claim of writ petitioner that his APRs from the years 2001-2002 till 2013-2014 have either been good or outstanding, more so the learned Single Judge had specifically opined that a perusal of the APRs of writ petitioner clearly reveals that no departmental inquiry was pending against him; meaning thereby the writ petitioner had a satisfactory employment record. Further, the State has failed to explain why the Vigilance Department gave clearance to the writ petitioner and why he was selected to the Kashmir Administrative Service in the year 2010 when he has done the act of alleged misconduct and his performance as an officer was not up to the mark. It seems

the APRs of writ petitioner, which were reproduced by him, have not been taken into account by the respondents. Even the writ petitioner has specifically claimed in the writ petition that the Transport Commissioner vide communication dated 11.07.2011 had recommended his name for gold medal for his honesty, integrity and meritorious service. In such a situation, the reputation of writ petitioner cannot be termed as doubtful, as projected, nor could his conduct be determined only on spoken words in the absence of any material on record, which was the fundamental flaw in the order issued against the petitioner compulsory retiring him from service. Since the State has failed to disclose the material forming the basis for compulsory retiring the writ petitioner from service, as such it can be said to be a case of no material or no evidence and the same can certainly be held to be arbitrary or without application of mind.

7. The power to retire compulsory a government servant in terms of service rules is absolute, provided the authority concerned forms a bona fide opinion that compulsory retirement is in public interest. Although the scope of judicial review is limited, it has repeatedly been held by the Apex Court that when an order of premature retirement is challenged, the authorities concerned must disclose the materials on the basis of which the order was made. Further, the order of compulsory retirement cannot be based on the sole basis of recommendations of the committee which has to be considered by the competent authority in accordance with law. Merely because the committee has made recommendations for retirement of writ petitioner, he cannot be compulsorily retired unless the competent authority comes to a conclusion after forming a bona fide opinion of its own that the writ petitioner can be subjected to compulsory retirement in the interest of the institution.

8. As regards FIR No.20/2005 dated 16.12.205 registered against the petitioner by the Vigilance Organization, which later on transferred to the Central Bureau of Investigation, the file reveals that the CBI after conducting investigation submitted the closure report before the Special Judge Anti-Corruption, which came to be accepted by the trial Court vide order dated 22.03.2007. In FIR No.13/2012 the writ petitioner had not been named as an accused. In our view compulsory retirement cannot be sustained merely because an FIR was lodged against the writ petitioner by the Vigilance Organization. The practice followed by the State in directing compulsory retirement of the writ petitioner was completely unwarranted because that would violate the basic maxim of 'innocent until proved guilty'. Thus, via the impugned order of compulsory retirement, the State has applied this principle in the reverse.

9. In State of Gujarat v. Suryakant Chunilal Shah, (1999) 1 SCC 529, their Lordships of the Supreme Court held as under:

> "27. The whole exercise described above would, therefore, indicate that although there was no material on the basis of which a reasonable opinion could be formed that the respondent had outlived his utility as a government servant or that he had lost his efficiency and had become a dead wood, he was compulsorily retired merely because of his involvement in two criminal cases pertaining to the grant of permits in favour of fake and bogus institutions. The involvement of a person in a criminal case does not mean that he is guilty. He is still to be tried in a court of law and the truth has to be found out ultimately by the court where the prosecution is ultimately conducted. But before that stage is reached, it would be highly improper to deprive a person of his livelihood merely on the basis of his involvement. We may, however, hasten to add that mere involvement in a criminal case would constitute relevant material for compulsory retirement or not would depend upon the circumstances of each case and the nature of offence allegedly committed by the employee."

10. In the said case it was also held by their Lordship that the annual character roll of the Government Servant would give an appropriately objective assessment of his integrity and job performance since adverse remarks on such rolls would be warning signs of the absence of such a person's job integrity. Their Lordships further held that merely being involved in a criminal case wouldn't per se establish the person's guilt and hence, a compulsory retirement based on such a factor wouldn't stand.

11. Similarly, the Supreme Court in the matter of Nand Kumar Verma v. State of Jharkhand and others, (2012) 3 SCC 580, has held that the formation of opinion for compulsory retirement is to be based on the subjective satisfaction of the authority concerned but such satisfaction must be based on a valid material and it is permissible for the courts to ascertain whether a valid material exists or otherwise, on which the subjective satisfaction of the administrative authority is based. It has been observed by their Lordships of the Supreme Court in paragraphs 34 and 36 of the report as under: -

> "34. It is also well settled that the 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 administrative authority is based. In the present matter, what we see is that the High Court, while holding that the track record and service record of the appellant was unsatisfactory, has selectively taken into consideration the service record for certain years only while making extracts of those contents of the ACRs. There appears to be some discrepancy. We say so for the reason that the appellant has produced the copies of the ACRs which were obtained by him from the High Court under the Right to Information Act, 2005 and a comparison of these two would positively indicate that the High Court has not faithfully extracted the contents of the ACRs.
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> 36. The material on which the decision of the compulsory retirement was based, as extracted by the High Court in the impugned judgment, and material furnished by the appellant would reflect that totality of relevant materials were not considered or completely

> ignored by the High Court. This leads to only one conclusion that the subjective satisfaction of the High Court was not based on the sufficient or relevant material. In this view of the matter, we cannot say that the service record of the appellant was unsatisfactory which would warrant premature retirement from service. Therefore, there was no justification to retire the appellant compulsorily from service."

12. The judgments cited by the learned counsel for writ respondent have no applicability to the facts of present case.

13. Viewed thus, we are not inclined to take a view other than the one taken by the learned Single Judge. Accordingly, the appeal is dismissed along with connected CM/IAs upholding the judgment and order of learned Single Judge.

14. However, as regards the allegations leveled by the writ respondent against the writ petitioner, the State and its officers at the helm of affairs if are fair enough and have a will, and do not intend to provide a safe passage either to writ petitioner or the then officials/officers of Vigilance Organization, are free to go ahead with such inquiry, if they deem fit, and complete the same in a time bound manner without any excuse on the part of officers holding such inquiry.

15. The record so produced by the learned counsel for appellant/writ respondent be returned against proper receipt.

Jammu (**Sindhu Sharma)** **(Tashi Rabstan)**
19.10.2022 **Judge** **Judge**
(Anil Sanhotra)

Whether the order is reportable ? Yes/No
Whether the order is speaking ? Yes/No