

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.12369 of 2016

AFR

Nilakantha Tripathy *Petitioner*
-versus-
State of Odisha and others *Opposite Parties*

Advocates appeared in this case:

For the Petitioner : Mr. Budhadev Routray,
Senior Advocate assisted by
Mr. J. Biswal, Advocate

For the Opposite Parties : Mr. P. K. Muduli,
Additional Government Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK**

**JUDGMENT
05.08.2022**

Dr. S. Muralidhar, CJ.

1. In this petition, the Petitioner, who was working as a Chief Judicial Magistrate (CJM), has questioned the decision of the High Court not to continue him in service after crossing the age of 58 years.

2. It must be mentioned at the outset that the entire service record of the Petitioner was produced before the Court and perused by it. By an order dated 7th July 2022, the Court permitted the Petitioner to peruse his service record in the chamber of Registrar (Judicial).

The Petitioner perused the record and after the submissions of the counsel for the parties were heard, order was reserved on 27th July, 2022.

3. The background facts are that the Petitioner was successful in the examination conducted by the Odisha Public Service Commission and by a Notification dated 28th January, 1987, he was appointed as Munsif (on probation) in Orissa Judicial Service (OJS)-II, Puri and joined in that post on 16th February, 1987. He became a Judicial Magistrate First Class on 14th March, 1989 and served in various locations in the State of Odisha. He was promoted as Senior Civil Judge in 2005 and posted at Rourkela by an order dated 28th October, 2005.

4. In terms of the relevant provisions of the Orissa Superior Judicial Service and Orissa Judicial Service Rules, 2007 ('the 2007 Rules'), the Petitioner was continued in service after attaining the age of 50 years. By a Notification dated 7th July 2010, he was posted as CJM, Baripada. In 2012, on attaining the age of 55 years, he was allowed to continue as CJM, Baripada. He was then transferred as CJM, Jharsuguda by a Notification dated 18th July, 2013. At the meeting of the Review Committee held on 6th October 2015, it was decided to recommend to the High Court the Petitioner's compulsory retirement in public interest. The Full Court accepted the recommendation at its meeting on 15th October, 2015. The consequential notification compulsory retiring the Petitioner was issued by the Government on 5th November, 2015.

5. This Court heard the submissions of Mr. Budhadev Routray, learned Senior Counsel appearing for the Petitioner and Mr. P.K. Muduli, learned Additional Government Advocate for the State.

6. Mr. Routray submitted that throughout the career of the Petitioner his performance was found satisfactory and that is why he continued in service on attaining the ages of 50 and 55 years in terms of Rule 44 of the 2007 Rules. Mr. Routray submitted that in terms of Rule 41 of the 2007 Rules, the provisions of the Orissa Civil Services [OCS] (CCA) Rule, 1962 shall *mutatis mutandis* apply to the members of the OSJS and OJS. He further submitted that as far as the Petitioner is aware, there is not a single adverse entry in his CCRs, so as to hold that his continuation in service would be against public interest. He further submitted that if at all the Review Committee was of the view that the continuance of the Petitioner beyond 58 years was against public interest and, therefore, he should be removed from service prematurely then in terms of Rule 41 of the 2007 Rules, he ought to have been given a hearing.

7. In the petition, it is mentioned how in 2011, a disciplinary proceeding was initiated against the Petitioner and a memorandum of charge was served on him on 30th July, 2012 to which he replied. An enquiry was conducted but the Petitioner was never asked to appear before the Disciplinary Authority and he was never supplied a copy of the Inquiry Report. Mr. Routray submitted that although the scope of judicial review in such

matters is limited, in the present case there does not appear to be material to justify the decision of the High Court not to continue the Petitioner in service.

8. Mr. P.K. Muduli, learned Additional Government Advocate appearing for the State-Opposite Parties, on the other hand, submitted that the service record of the Petitioner would show that the recommendation of the Review Committee, which was accepted by the Full Court is justified. While it was correct that the Petitioner was retained in service on attaining the ages of 50 and 55, it is not correct that there was no allegation at all against him during that period. He submitted that although an Inquiry Report was submitted in the Departmental Enquiry, it was never acted upon since it was decided to prematurely retire the Petitioner. The action taken under Rule 44 is not a punishment unlike disciplinary action taken under [OCS] (CCA) Rule, 1962. He submitted that the Rule 44 of the 2007 Rules was an independent provision and did not contemplate the giving of an opportunity of hearing. Further, the order of compulsory retirement is not a punishment and, therefore, principles of natural justice were not attracted.

9. The entries for the years 2011, 2012, 2013 and 2014 were “average and unfit for promotion”, ‘good’, ‘good’ and ‘average’ respectively. It is pointed out that the Petitioner never had entries of ‘outstanding’ and ‘very good’ in his CCRs as such claimed by him. The impugned decision was taken on over all consideration of not only CCRs of the relevant period under review but the

entire record of service, the personal files, overall performance, the yardstick as well as vigilance inputs including the aspect of integrity and suitability before taking the decision in the matter. Public interest was definitely of paramount importance. The mere fact that he was allowed to cross the efficiency bar and granted ACP would not itself lead to the conclusion that his service was satisfactory and that there was no basis for the decision to retire him on his reaching the age of 58.

10. The above submissions have been considered.

11. As already mentioned, the service record of the Petitioner has been carefully perused by the Court. To begin with the CCRs of the Petitioner for the years 1989, 1990, 1991, 1993, 1994, 1998, 1999, 2006, 2011 and 2014 reveal that in all these years he got the 'Average' grading and an adverse remark in 1990 was communicated to him as were the adverse remarks for 1992, 1994 and 1995. In some of these years, the Reviewing Authority has remarked that his knowledge of law was 'Average' and that "he needs improvement" and also that he should "improve upon English". The conduct of departmental proceedings and the submission of the report of enquiry appear to have taken some time. By the time the inquiry report was placed before the Full Court, the Petitioner's case for continuation after the age of 58 came up for consideration and the impugned decision was taken.

12. Rule-44 of the 2007 Rules reads as under:

"44. Retirement in public interest-

(1) Notwithstanding anything contained in these rules 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.

(2) Whether any officer of these service should be retired in public interest under Sub-rule (1) shall be considered at least three times, that is, when he is about to attain the age of fifty years, fifty-five years, and fifty-eight years:

Provided that nothing in sub-rule (2) shall be construed in public interest as preventing the Governor to retire a member of the service at any time after he/she attains the age of fifty years on the recommendation of High Court under sub-rule (1)."

13. The decision whether to continue an officer in service after attaining the age of 50, 55 and 58 is taken at two levels: At the first level, there is a Review Committee comprising of Senior Judges of the High Court including the Chief Justice, which carefully peruses the entire service record of the officer. Thereafter it recommends to the Full Court whether such officer should be retained in service. At the second level, the recommendation of the Review Committee is deliberated in the Full Court and then a final decision is taken in that regard. This is the precise procedure followed in the present case. In taking the decision to compulsorily retire the Petitioner, the Full Court kept in view the legal principles as explained in ***S. Ramachandra Raju v. State of Orissa, 1994 Supp. (3) SCC 424*** in the following words:

“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.”

14. It is now well settled that compulsory retirement is not a punishment and the necessity of giving a hearing to the Petitioner prior to such decision being taken does not arise. This has been explained in a large number of cases including ***Baikuntha Nath Das v. Chief District Medical Officer, Baripada (1992) 2 SCC 299***, where the legal principles were summarized 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.

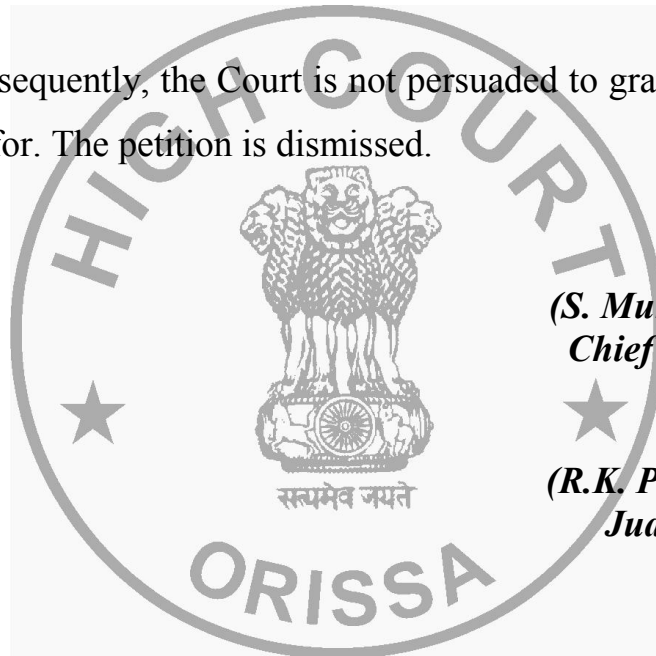
(iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter – of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include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

15. Having perused the entire service record of the Petitioner, the Court is satisfied that there were materials on record for the Full Court to have accepted the recommendation of the Review Committee that it was in public interest and in the interest of better administration of justice that the Petitioner should not be continued in service after attaining 58 years of age.

16. Consequently, the Court is not persuaded to grant the relief as prayed for. The petition is dismissed.



(S. Muralidhar)
Chief Justice

(R.K. Pattnaik)
Judge

M. Panda.