HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
AT JAMMU

Reserved on 25.07.2023
Pronounced on 04.08.2023

LPA No.196/2018
IA NO. 1/2018

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

Through: Mr. Raman Sharma, AAG

Vs.

Narayan Dutt ..... Respondent(s)

Through: Mr. Anuj Dewan Raina, Advocate

Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE MOHAN LAL, JUDGE

Tashi Rabstan – J

1. This Letters Patent Appeal is directed against the judgment and order dated 02.07.2018 delivered by the learned Single Judge in SWP No.2550/2016, whereby the learned Single Judge, while allowing the writ petition, set aside the order, bearing No.1271-GAD of 2016 dated 21.11.2016 compulsory retiring the writ petitioner from service in public interest with effect from 22.11.2016 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 and perused the appeal file.

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 writ 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. Although it is claimed by the writ respondents that the writ petitioner was not enjoying good reputation and his integrity was doubtful, yet the writ respondents have not denied the claim of writ petitioner that there were no adverse remarks in his APRs; meaning thereby one can construe that the writ petitioner might have a satisfactory employment record and, perhaps, that is why the Committee while recommending the compulsory retirement of writ petitioner did not consider his APRs/ACRs on the plea that the same were not available. Thus, 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.

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. 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. In the present case, admittedly, except FIR No.92/2006, no other material was placed before the Committee on the basis of which the Committee could form a bonafide opinion that the writ petitioner can be subjected to compulsory retirement. Thus, without looking into the relevant record, the decision to compulsorily retire the writ petitioner was taken by the Committee only in view of registration of FIR No.92/2006 registered at Police Station, Nowshera.

8. 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."

9. 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. However, mere involvement in a criminal case would constitute relevant material for compulsory retirement or not would also depend upon the circumstances of each case and the nature of offence allegedly committed by the employee.

10. 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.

> 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."

11. 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 IA upholding the judgment and order of learned Single Judge.

12. As regards pendency of criminal case against the writ petitioner pursuant to registration of FIR No. 92/2006 under Section 5(2) Prevention of Corruption Act read with Sections 409, 420, 467, 468, 477-A and 120-B RPC at Police Station Nowshera, District Rajouri, it is directed that the concerned Court shall conclude the trial, if not already concluded, positively within a period of next six months from today without any excuse, and, if need arises, fix the hearing twice in a week as the matter is pending for the last about seventeen years.

13. Registrar (Judicial) is directed to forthwith send a copy of this order to the concerned Court holding trial pursuant to registration of FIR No.92/2006.

Jammu (**Mohan Lal)** **(Tashi Rabstan)**
04.08.2023 **Judge** **Judge**
(Anil Sanhotra)

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