



2024:CGHC:47399

NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WPS No. 2547 of 2020**

Nagendra Bahadur Singh S/o Late Ramdas Singh Aged About 58 Years Driver

**... Petitioner**

**versus**

1. State Of Chhattisgarh Through Secretary, Health And Family Welfare Department,
2. The Controller Food And Drugs,
3. Director Treasury And Pension Indrawati Bhavan

**... Respondents**

|                        |   |                                  |
|------------------------|---|----------------------------------|
| For Petitioner         | : | Mr. Manoj Kumar Sinha, Advocate  |
| For Respondents/ State | : | Mr. Suyash Dhar Badgaiya, Dy.G.A |

**Hon'ble Shri Justice Rakesh Mohan Pandey**  
**Judgment On Board**

**02/12/2024**

**1)** By way of this petition, the petitioner has sought the following relief(s):-

**10.1** That, the Hon'ble Court be pleased to call for the entire records in connection of the petitioner's cases.

**10.2** That, the Hon'ble Court be further pleased to quash the impugned order dated 16.01.2019 (An. P/1) and order dated 17.11.17 (Ann.P/2) passed by the respondent authority regarding compulsory retirement of the petitioner.

**10.3** That, the Hon'ble Court be further pleased to direct the Respondent No. 2 to re-instate service of the petitioner with all consequential benefits under the department.

**10.4** Any other order that the Hon'ble Court deems fit and

necessary in the circumstances of the case be also passed.

**10.5** That, the cost of the petition be also awarded to the petitioner.

- 2) Facts of the present case are that the petitioner was appointed as a daily-rated employee vide order dated 30.11.1993 under respondent No. 2. On 29.01.2005, the petitioner was appointed on the post of Driver against the vacant and sanctioned post and vide order dated 27.08.2010; services of petitioner were confirmed on the post of Driver. On 11.06.2012, the nomenclature of the post of the petitioner was changed from Driver to Driver (Heavy Vehicle) and thereafter, the petitioner was extended the benefit of the 5th pay-scale as recommended by the committee. The petitioner obtained ACRs from 01.04.2011 till 31.03.2017 and the same are annexed to this petition. It is also pleaded that though the petitioner had not completed seven years of regular service, vide order dated 17.11.2017 (Annexure P/2) the petitioner was compulsorily retired from service on account of attaining 50 years of age. By way of this petition, the petitioner has challenged the orders Annexure P/1 and P/2 dated 16.01.2019 & 17.11.2017, respectively.
- 3) Learned counsel for the petitioner submits that the respondent authorities failed to assess the ACRs of the entire service while passing the order of compulsory retirement against the petitioner. He further submits that the conduct of the petitioner remained good during his service career and there were no complaints against him. He contends that the respondent authorities have not complied with the requirement as given in the Fundamental Rule 56(2)(a). He further contends that the petitioner was inflicted with punishment of stoppage

of one increment with non-cumulative effect and the order is under challenge before the appellate authority. He argues that the order of punishment cannot be made the basis for the punishment of compulsory retirement. In support thereof, he placed reliance on the judgment rendered by the Hon'ble Supreme Court in the matter of ***Baikuntha Nath Das & Anr. Vs. Chief District Medical Officer, Baripada & Ors., (1992) 2 SCC 299***. He also placed reliance on the reportable judgments rendered by co-ordinate Benches of this Court in the matters of ***Amritlal Vs. Chhattisgarh State Renewable Energy Development Agency (CREDA) & Ors., WPS No. 2303/2012*** and ***Smt. V. Prabha Rao Vs. State of Chhattisgarh & Ors., WPS No. 6889/2017***.

- 4) On the other hand, learned State counsel opposes. He submits that compulsory retirement is not a punishment. He further submits that according to Fundamental Rule 56(2)(a), the State can take the decision of compulsory retirement of any government servant either after attaining 50 years of age or completion of 20 years of service. He contends that the petitioner attained 50 years of age and his overall ACRs were below average. He would also submit that the overall conduct of the petitioner was taken into consideration by the reviewing committee while passing the order of compulsory retirement against the petitioner. He further contends that the decision was taken by the respondent authorities strictly in accordance with the law. He argues that a criminal case was registered against the petitioner for the commission of offences punishable u/s 186, 294, 353 and 506 of IPC. He further argues that in a departmental inquiry, punishment of stoppage of one increment with cumulative effect was inflicted upon the

petitioner. In support of his submissions, he placed reliance on the judgment rendered by the Hon'ble Supreme Court in the matter of **Baikunth Nath Das (supra)**. He prays that this petition deserves to be dismissed.

- 5) I have heard learned counsel for the parties and perused the documents / material available on record.
- 6) The petitioner was appointed as a daily-rated employee vide order dated 30.11.1993 under respondent No. 2. On 29.01.2005, the petitioner was appointed to the post of Driver against the vacant and sanctioned post on the pay-scale of Rs. 3050-75-3950-80-4590/-. The services of the petitioner were confirmed on the said post on 27.08.2010.
- 7) Admittedly, a criminal case was registered against the petitioner for the commission of offences punishable u/s 186, 294, 353 and 506 of IPC. Ultimately, it was settled between the parties and an acquittal order dated 11.06.2010 was passed, which has been placed on record by the petitioner in rejoinder. A departmental inquiry was instituted against the petitioner in 2009, in which punishment of stoppage of one increment with cumulative effect was inflicted upon him.
- 8) Learned State counsel has placed on record the ACRs of the petitioner pertaining to the years 2005 till 2011. The ACRs of the petitioner are as follows:-

| Period                       | Grade in ACR |
|------------------------------|--------------|
| From joining till 31.03.2005 | (ग)          |
| 01.04.2005- 31.03.2006       | (ग)          |
| 01.04.2006-31.03.2007        | (ग)          |
| 01.04.2007-31.03.2008        | (क)          |
| 01.04.2008-31.03.2009        | (ग)          |

|                        |     |
|------------------------|-----|
| 01.04.2009-31.03.2010  | (ख) |
| 01.04.2010-31.03.2011  | (ख) |
| 01.04.2011- 31.03.2012 | (ख) |
| 01.04.2012- 31.03.2013 | (क) |
| 01.04.2013- 31.03.2014 | (ग) |
| 01.04.2014- 31.03.2015 | (ख) |
| 01.04.2015- 31.03.2016 | (ख) |
| 01.04.2016- 31.03.2017 | (ख) |

- 9) The petitioner worked with the department for a period of 12 years but he attained the age of 50 years when the decision of compulsory retirement was taken by the respondent authorities on 17.11.2017. Fundamental Rule No. 56(2)(a) specifically states that if a government servant has completed 20 years of service or has attained 50 years of age, in that case, the State can take the decision to compulsorily retire such an employee. The State has to consider honesty, integrity, physical capability, work and conduct and there should be subjective satisfaction of the competent authority in this regard. According to this circular, it would not be necessary to communicate the adverse remarks to such a government servant.
- 10) The Hon'ble Supreme Court while dealing with a similar issue in the matter of **Baikuntha Nath Das (supra)** para 34 held 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 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."*

The Hon'ble Supreme Court In the matter of State of **Gujarat and another Vs. Suryakant Chunilal Shah, (1999) 1 SCC 529** in para 27

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."*

The Hon'ble Supreme Court In the matter of **Nand Kumar Verma Vs. State of Jharkhand & Ors., (2012) 3 SCC 580** in paras 34 and 36 held

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."*

The Hon'ble Supreme Court In the matter of **S. Ramachandra Raju**

**Vs. State of Orissa, (1994) Supp (3) SCC 424** in para 9 held as

under:-

**9.** *It is thus settled law that though the order of compulsory retirement is not a punishment and the government employee is entitled to draw all retiral benefits including pension, the Government must exercise its power only in the public interest to effectuate the efficiency of the service. The dead wood needs to be removed to augment efficiency. Integrity in public service needs to be maintained. The exercise of power of compulsory retirement must not be a haunt on public servant but must act as a check and reasonable measure to ensure efficiency of service and free from corruption and incompetence. The officer would live by reputation built around him. In an appropriate case, there may not be sufficient evidence to take punitive disciplinary action of removal from service. But his conduct and reputation is such that his continuance in service would be a menace in public service and injurious to public interest. The entire service record or character rolls or confidential reports maintained would furnish the backdrop 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 effected. 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."*

- 11)** Now coming to the facts of the present case, it is quite vivid that the overall grade of the petitioner was average or below average and the same is evident from the chart prepared in para No. 8. The decision could have been taken by the State authorities with regard to compulsory retirement as the petitioner had completed 50 years of age. The un-communicated adverse remarks cannot be made a basis to disturb the finding recorded by the competent authority. It is also a well-settled principle of law that an order of compulsory retirement is not a punishment and does not have any stigma attached to it. The decision with regard to compulsory retirement was taken by the State authorities in public interest and the order was passed on subjective satisfaction. It is also clear that principles of natural justice have no application in the context of compulsory retirement. There is no allegation with regard to malafide intention or biasness. The matter of the petitioner was considered by the review committee thoroughly and thereafter, the decision was taken.

- 12) Taking into consideration the law laid down by the Apex Court and the facts of the present case, in the opinion of this Court, no interference is required.
- 13) Consequently, this petition fails and is hereby **dismissed**. No cost(s).
- 14) Copies of ACRs from 2005 till 2017 supplied by the State counsel are taken on record.

**Sd/-**  
**Rakesh Mohan Pandey**  
JUDGE

*Ajinkya*