

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27th DAY OF JUNE, 2024

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

WRIT PETITION NO.25744 OF 2023 (S-CAT)

BETWEEN:

1 . UNION OF INDIA
BY ITS REVENUE SECRETARY
DEPT OF REVENUE
MINISTRY OF FINANCE
128-A, NORTH BLOCK
NEW DELHI-110 001

2 . THE CENTRAL BOARD OF DIRECT TAXES
REPRESENTED BY ITS CHAIRMAN
DEPARTMENT OF REVENUE
NORTH BLOCK
NEW DELHI-110 001

... PETITIONERS

(BY SRI. HANUBBASKAR, PANEL ADVOCATE A/W.
SRI. B. PRAMOD, CGC)

AND:

SHRI. B. ARULAPPA
S/O P. BALASUBRAMANIAN
AGED ABOUT 59 YEARS
COMMISSIONER OF INCOME TAX
(COMPULSORY RETIRED)
R/AT. NO.75, 2ND CROSS
KALIDASA LAYOUT

YELAHANKA
BENGALURU-560 064

...RESPONDENT

(BY SRI. K.N. PHANINDRA, SENIOR COUNSEL A/W.
SRI. SIJI MALAYIL, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE ORDER DATED 05.06.2023 (ANNEXURE-A) PASSED BY THE CENTRAL ADMINISTRATIVE TRIBUNAL, BENGALURU BENCH, BENGALURU IN OA.No.170/01184/2019 BY DECLARING IT TO BE ILLEGAL, ARBITRARY AND PERVERSE AND ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 05.06.2024 AND COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, **ANU SIVARAMAN J.**, PRONOUNCED THE FOLLOWING:

ORDER

This writ petition is filed by the Union of India and the Central Board of Direct Taxes against the order of the Central Administrative Tribunal, Bangalore Bench (hereinafter referred to as 'the Tribunal' for short) in Original Application No.170/01184/2019 dated 05.06.2023 filed by the respondent herein.

2. The Original Application No.170/01184/2019 had been filed by the respondent seeking the following reliefs:-

- "a) *To quash the impugned order No. A. 152/2019 in No. A - 38012/34/2015-Ad.VI (A) dated 10.06.2019 (Annexure A1) vide which the applicant has been compulsorily retired under clause (j) of Rule 56 of the Fundamental Rules from the afternoon of 11.06.2019;*
- b) *To quash the impugned order in F. No. A - 38012/25/2019-Ad.VI (A) dated 19.08.2019 (Annexure-A3) vide which the Representation Committee after consideration of his representation have arrived at the conclusion that no interference is required to be made in the order passed by the Central Government. The Appropriate Authority has accepted the observations of the Representation Committee and disposed of the representation of the applicant dated 26.06.2019 accordingly.*
- c) *Issue a consequent direction to the respondents to reinstate the applicant into service with effect from 11.06.2019, the date on which he was retired under FR 56(j) with consequential benefits in full;*
- d) *Issue a consequential direction to the respondents to implement the orders of this Tribunal dated 19.02.2019 in OA No.380/2018 vide which the respondents had been directed to consider the application for VRS if any,*

applied for by the applicant on any date with effect from the date of these orders favourably.

- e) *Grant such other relief/s as this Tribunal deems fit to grant to the applicant in the facts and circumstances of the case."*

3. The first respondent herein had filed the application before the Tribunal challenging the decision taken to retire him prematurely under Rule 56(f) of the Fundamental Rules.

4. The learned counsel appearing for the petitioners submits that the respondent had joined the Income Tax Department on 16.09.1991 and had been posted as Assistant Commissioner, Joint Commissioner and Commissioner of Income Tax. To the last of such posts, he was promoted in December 2012. It is contended that certain allegations of corruption were raised against the respondent with regard to an assessment of M/s. Vasan Healthcare Pvt. Ltd., which was reopened under Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the IT Act' for short) in respect of the assessment year 2009-2010. It was found in audit that the respondent, while

holding charge as CIT-II, Trichy had notified the case of M/s. Vasan Healthcare Pvt. Ltd., for the assessment year 2009-2010 to the junior most ITO, which resulted in minor penalty proceedings being initiated against him on 26.03.2018. It is submitted that the respondent had submitted an application dated 29.09.2017 seeking voluntary retirement under FR56(k) with effect from 28.12.2017. The request was rejected on account of withholding of vigilance clearance and the approval of the Finance Minister. Thereafter, the respondent sought for grant of 1096 days Extraordinary Leave with effect from 16.04.2018 to 15.04.2021, which was also not sanctioned since he did not submit supporting documents. Thereafter, another notice dated 30.05.2018 seeking VRS with effect from 01.09.2018 was submitted by the respondent. The same was rejected by Office Order dated 27.08.2018. The respondent approached the Tribunal in O.A.No.170/00380/2018, which was allowed on 19.02.2019. It was directed that in case the respondent submits an application for voluntary retirement, the said application would be considered favourably. It is stated that

thereafter, respondent again applied for voluntary retirement on 29.03.2019 with effect from 30.04.2019. However, since the petitioners had decided to compulsory retire the respondent from service by order dated 10.06.2019, it was decided by the order dated 18.06.2019 that no further action was required on his VRS application dated 29.03.2019. It is submitted that while so, the respondent was transferred from Bengaluru to Kochi, which was challenged in O.A.No.170/01664/2018, which was also allowed on 03.06.2019, noting that the application for voluntary retirement was pending consideration by Annexure 'C'. Thereafter, the Review Committee considered the case of the respondent for compulsory retirement and found that:

- "i. The respondent proved to be ineffective as a Supervisory Officer as he failed to ensure assignment of important cases having large tax implication to senior and experienced officers.*
- ii. That the respondent proved to be ineffective as a Supervisory Officer as he failed to ensure that pending major audit objections are duly answered and settled.*

- iii. *The respondent proved to be ineffective as a Supervisory Officer as he failed to monitor whether the re-opened assessment involving major RAP objection.....*
- iv. *That the Assessment completed by the ITO, Ward 3(3), Trichy on 31.03.2015 in the case of M/s. Vasan Healthcare Pvt. Ltd., for the assessment year 2009-2010 was closed by accepting the income returned and without discussion any of the issues raised in the audit objections."*

5. It is stated that the Review Committee, after considering the entire service record of the respondent recommended that the respondent may be retired under FR 56(j). The Minutes of the meeting of the Review Committee are produced as Annexure E. Following which, the order dated 10.06.2019 was passed. The respondent filed the representation before the Representation Committee, which was also considered and disposed of as Annexure 'G'.

6. The respondent submitted detailed statement of objections. The Tribunal proceeded to consider the matter on merits. Taking note of the earlier order of the Tribunal also the fact that the voluntary retirement application was

pending and after calling for the records and perusing the minutes of the meetings of the Review Committee and the Representation Committee, the Tribunal came to the conclusion that the Review Committee had relied only on the charges in the pending minor penalty proceedings against him, which alleges supervisory lapses to pass the order of compulsory retirement. It was found that the committee had referred to "all materials available on record *interlia*, including those relating to charge sheets in departmental enquiries and records of prosecution, sanction of criminal proceeding lodged by Central Bureau of Investigation." However, the Tribunal found that there were no disciplinary proceedings or criminal proceedings indicated as pending against the applicant, except for the minor penalty proceedings. It was found that there was nothing to suggest that the committee had taken a holistic view of the entire service record or that it had examined the entire service record of the applicant. The Tribunal found that there is no plausible reason for the respondent to compulsory retire the applicant under the provisions of FR 56(j) when the

voluntary retirement application under Rule FR 56(k) was pending before it and was directed to be considered in Annexure 'D'. It was in the above circumstances that the order impugned was passed.

7. We have heard the learned counsel appearing for the petitioners. FR 56(j) clearly provides that the appropriate Government shall have the absolute right to retire any Government Servant by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice. It is submitted that a Government Servant does not have any indefeasible right to claim voluntary retirement, even if he meets all the contingencies provided in sub-rule 56(k) and the grant of voluntary retirement is purely at the discretion of the appropriate authority. Compulsory retirement under FR 56(j) is an absolute right of the employer and does not visit the employee with any civil consequences. He would be entitled to all the benefits that would have accrued to him, had his application for voluntary retirement been accepted. It is further contended that the respondent being a person, who

was faced with disciplinary enquiries and had submitted an application for voluntary retirement only to get over the said proceedings, cannot contend that he has a claim for his application for voluntary retirement, being considered favourably nor does he have any sustainable ground to challenge the compulsory retirement awarded to him. It is further contended that an FIR has thereafter being registered against the respondent as the allegations which focus the subject matter of the minor penalty proceedings.

8. The learned senior counsel appearing for the respondent, on the other hand, contends that as on the date of submission of his last request for voluntary retirement, no criminal case was admittedly pending against him. The only proceeding pending against the respondent was a minor penalty proceeding, which would have abated, when he retired from service. It is submitted that a reading of the minutes of the Review Committee would show that the only aspect which weighed with the Review Committee to state that the respondent has to be compulsorily retired from service were the allegations, which formed the subject

matter of the minor penalty proceedings. It is submitted that, in the light of the fact that the application for voluntary retirement, which had been directed to be considered favourably was pending before the respondent as on the relevant date, it was imperative on them to have considered the same. It is submitted that the passing of the order of compulsory retirement without considering the same was illegal and invalid.

9. We have considered the contentions advanced. We notice that the Review Committee had specifically considered the complaints containing allegations of corruption against the first respondent. The allegations are specifically with regard to the re-opened assessment of M/s. Vasan Healthcare Pvt. Ltd., Trichy for the assessment year 2009-2010. It is clear that the said allegations are the subject matter of the minor penalty proceedings initiated against the respondent. The committee appears to have considered the said charges for arriving at a conclusion that continuance of the service of the first respondent would be against public interest. It was in the above circumstances

that the first respondent was compulsory retired in public interest under FR 56(j).

10. The Tribunal, on perusing the records of the proceedings found that the earlier rejection of the voluntary retirement application made by the first respondent was baseless and had specifically directed the consideration of the further application to be filed by the applicant. It would be pertinent to note that the direction in O.A.No.170/00380/2018 dated 19.02.2019, was as follows:-

"8. From the above, it is clear that as per the rule position, the applicant's application for voluntary retirement w.e.f. 28.12.2017 should have been accepted by the respondents. It is also true that the department was contemplating major disciplinary proceedings against the applicant on the same date when they rejected his application for voluntary retirement. Only subsequent to the CVC recommendations in February 2018, the proceedings are undertaken now as minor disciplinary proceedings. It is obvious that considering the facts and circumstances of the case, the respondents do not contemplate either removal or dismissal from service of the applicant as they have agreed to go ahead with the minor disciplinary proceedings. Even taking note of the case ordered by the Principal Bench and the DOPT

instructions in this regard, it is clear that the respondents can take a favourable decision with regard to the application for voluntary retirement given by the applicant. Since the period in question has already elapsed, we direct the respondents to consider the application for VR if any filed by the applicant on any date with effect from the date of these orders favourably. It is always open for the respondents to continue the proceedings after retirement as per rules if they deem fit unless, of course, the proceedings have already reached a finality."

11. The Tribunal considered the contentions of the parties and held that in the light of the above directions, the petitioners were duty bound to consider the application for voluntary retirement favourably. After examining the records relating to compulsory retirement, the Tribunal also came to the conclusion that there was no record to show that the Committee had taken up holistic view of the entire service record of the officer as is expected in a consideration under FR 56(j). It was found that when there was a specific direction to the petitioners herein to consider the claim of the respondent for voluntary retirement favourably; it was

not open to them to have passed the order impugned, that too, without a proper consideration of the entire service of the applicant.

12. The learned counsel appearing for the petitioners has relied on the following decisions:-

- **Shyam Lal v. The State of Uttar Pradesh and Others** reported in **AIR 1954 SC 369**;
- **Union of India v. J.N. Sinha & Others** reported in **(1970) 2 SCC 458**;
- **Union of India and Others v. M.E. Reddy & Others** reported in **(1980) 2 SCC 15**;
- **S. Ramachandra Raju v. State of Orissa** reported in **(1994) Supp (3) SCC 424**;
- **Vinod Kumar v. GNCTD & Others** in **OA No.3302/2019**;
- **Arun Kumar Gupta v. State of Jharkhand & Others** reported in **AIR 2020 SC 1175**;
- **Parbodh Sagar v. Punjab State Electricity Board & Others** reported in **(2000) 5 SCC 630**;
- **K. Kandaswamy v. Union of India** reported in **(1995) 6 SCC 162**;

- **Pyare Mohan Lal v. State of Jharkhand & Others** reported in **AIR 2010 SC 3753**;
- **Nisha Priya Bhatia v. Union of India & Others** in **C.A. No.2365 OF 2020**;
- **Ram Murti Yadav v. State of Uttar Pradesh & Others** reported in **(2020) 1 SCC 801**;
- **Baikunthanath Das & Others v. Chief District Medical Officer, Baripada & Others** reported in **(1992) 2 SCC 299**;
- **Dalpat Abasaheb Solunke & Others v. Dr. B.S. Mahajan & Others** reported in **(1990) 1 SCC 305**;
- **Ashok Kumar Aggarwal v. UOI & Others** in **[WP(C) No. 11177/2020]**;
- **Alok Kumar Mitra v. UOI** in **OA No.332/450/2019**; and
- **Ajay Kumar Bassi v. CBI** in **OA No.3107/2022**.

The said decisions are the authority on the point that compulsory retirement under FR 56(j) is an absolute right conferred on the Government to retire a Government Servant, if it bonafide formed an opinion that it is in public interest to do so. Since the termination of service is not stigmatic and does not visit the Government servant with civil consequences, the principles of natural justice which are

sine qua has for stigmatic termination of service are not attracted in a case of premature retirement. All that is required therefore is that there must be a bonafide exercise of the power taking into account the entire service of the employee. From a dispassionate consideration the authority empowered must come to the conclusion that it is in public interest that the employee no longer remains in service. It is also held that the constitutional Courts exercising the power of judicial review cannot substitute their judgment for that of the appropriate Government.

13. However, it is also evident from the decisions relied on by the petitioners' counsel that judicial review of the decision taken to compulsorily retire a Government employee is not precluded and the constitutional Courts can indeed consider whether the power is properly exercised after taking note of the entire service of the employee and whether the decision is arrived at after following a due procedure and without being tainted by malafides or extraneous consideration. The Apex Court in ***Baikuntha Nath Das v. Chief Distt. Medical Officer*** reported in

(1992) 2 SCC 299, formulated the principles regarding exercise of power under FR 56(j) as follows:-

"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."

14. The learned senior counsel appearing for the respondent has relied on the following decisions:-

- **State of Gujarat v. Umedbhai M. Patel** reported in **(2001) 3 SCC 314;**

- **Captain Pramod Kumar Bajaj v. Union of India & Another** reported in **2023 SCC OnLine SC 234**; and
- **State of U.P. and Others v. Vijay Kumar Jain** reported in **(2002) 3 SCC 641**.

The Apex Court was clearly of the view that an instance of misconduct by itself would not be a justifiable reason for compulsory retirement since the employee could be proceeded against under the normal disciplinary proceedings. In ***Captain Pramod Kumar Bajaj***'s case, the Apex Court held that an order of premature retirement which is actually punitive in nature and is intended to short circuit the disciplinary proceedings and to ensure his immediate removal from service was tainted by institutional malice and could not be sustained. It is only when from the proper examination of the entire service of the employee, the authority comes to the conclusion that it is in public interest to prematurely retire the employee that the exercise of the power under Rule 56(j) would be justified.

15. We have given our anxious consideration to the decisions placed on record by both sides. In the instant

case, we notice that the only allegation against the employee was the one instance of misconduct on his part in respect of which minor penalty proceedings had already been initiated against him. It was after considering the said aspect also that the Tribunal had directed the favourable consideration of the application for voluntary retirement in Annexure-D. It is now submitted that a criminal case has also been registered against the petitioner. However, the registration of the First Information Report, by itself, that too long after the orders under challenge before the Tribunal were passed can make no difference since no adverse inference can be drawn on the basis of the same.

16. Having considered the contentions on record as well as the decisions on the point and in view of the fact that there was a binding direction by the Tribunal to consider the voluntary retirement application to be submitted by the respondent favourably, we are of the opinion that the present exercise was totally misconceived. Since the employee had already sought voluntary retirement from service, we fail to see how the union would be aggrieved by

the directions issued by the Tribunal since the employee would not have to be continued in service. The petitioners did not think it fit to challenge the direction of the Tribunal in O.A.No.170/00380/2018. The said direction having become final, it was not open to them to have subverted the same by passing orders of compulsory retirement, that too, on the same grounds which had been found against by the Tribunal in O.A.No.170/00380/2018.

17. In the above view of the matter, we are of the opinion that there was no error in the exercise of jurisdiction by the Tribunal. The writ petition therefore fails and is accordingly ***dismissed***.

Pending I.A.No.1/2024 for direction is hereby dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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