

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

WRIT PETITION (CIVIL) No.19435 OF 2010

(An application under Articles 226 & 227 of the Constitution of India.)

Rama Chandra Mohanty Petitioner

Versus

State of Orissa & another Opposite Parties

Advocate(s) appeared in this case:-

For Petitioner : Mr. J. Patnaik, Senior Advocate.

For Opposite Parties : Mr. M.S. Sahoo,
Additional Government Advocate

**CORAM : THE CHIEF JUSTICE
JUSTICE B.P. ROUTRAY**

JUDGMENT

17th March, 2021

B.P. Routray, J.

1. The Petitioner, a Judicial Officer, has sought the quashing of an order of compulsory retirement and for all consequential service benefits.

2. The Petitioner joined as a Probationary Munsif on 2nd January, 1985 at Dhenkanal being selected as such in due process of selection.

On 7th March, 1987, he was posted as J.M.F.C., Soro and then at different places from time to time. In the year 1992, while serving as J.M.F.C., Aska, his service was appreciated by the then Hon'ble Chief Justice of Orissa, who recommended his promotion out-of-turn. The Petitioner was promoted out-of-turn as S.D.J.M., Kuchinda on 8th July, 1994. By efflux of time he was transferred to Jharsuguda as S.D.J.M., to Cuttack as 2nd Munsif and then promoted to the cadre of Civil Judge (Sr.Division) and posted as Registrar, Civil and Sessions Court, Bolangir on 27th September, 1999. He was then transferred as Civil Judge (Sr. Division), Kamakhyanagar, Civil Judge (Sr.Division), Dharmagarh and as Civil Judge (Sr.Division), Koraput. While serving at Koraput he was directed to retire in public interest with effect from 22nd March, 2010 vide Notification dated 9th March, 2010 of Government of Orissa in Law Department under Annexure-1.

3. During his tenure two departmental proceedings bearing D.P.No.9/03 and 4/07 were initiated against the Petitioner. In the first proceeding, in the year 2003, five charges were framed relating to unauthorized retention of Government quarters, deliberate delay in making payment of bills towards purchase of law journals for Bolangir Judgeship, illegal counting of leave in his own leave account in the year 2000-2001 and lesser deduction of rent towards occupation of Government quarters, touching to gross misconduct and failure in due discharge of duties under Rules 3 and 4 of the Orissa Government Servant Conduct Rules, 1959.

4. In respect of D.P.No.4 of 2007, the charge against the Petitioner was that, he availed a loan in the name of one of his Class-IV

servants without his knowledge and consent and did not repay the same till a complaint was made by the said Class-IV employee.

5. It is stated by the Petitioner that except those two disciplinary proceedings, there is no adverse entry in his ACR/CCR, which has been communicated to him. Of course, he was formally cautioned to be careful over some trivial issues. Further as a matter of fact, the Petitioner's out of turn inter se seniority over his senior colleagues has been quashed in a writ application by this Court. It is stated by the Petitioner that pending such departmental proceedings, he was removed by way of premature retirement as per Rule 44 of the O.S.J.S. and O.J.S. Rules, 2007 (hereinafter referred to as 'Rules, 2007') without recognizing his commendable service as appreciated by the then Hon'ble Chief Justice under Annexure-2. It is further stated that no adverse entry in his service record has ever been communicated to him, except for the tenure at Kamakshyanagar and Dharmagarh and without offering him any single opportunity to explain his stance, he was removed prematurely from service at the age of fifty inflicting the stigma for no fault of his. He was not even viewed a show cause notice and without any opportunity of being heard, the order of compulsory retirement was passed within a few days of his confirmation in the substantive post of Civil Judge (Sr. Division).

6. Opposite Party No.2, the Register General of High Court of the Orissa, has filed a counter reply denying all the allegations made by the Petitioner. It is stated that the entire personal file of the Petitioner was placed before the Full Court on the administrative side and a conscious unanimous decision was taken to prematurely retire the

Petitioner. Pursuant to the recommendation of the High Court, the State Government issued the impugned notification under Annexure-1. The High Court after considering the CCRs, overall work and conduct of the Petitioner, recommended his premature retirement in the interests of general public in terms of Rule 44 of 2007 Rules.

7. It is stated in the reply that there are adverse entries against the Petitioner in his CCRs which have been duly communicated to him from time to time. Such adverse entries touching on the honesty and integrity of the Petitioner, duly communicated to him, was not the only factor taken into consideration. Multiple factors which played a vital and important role for recommending premature retirement of the Petitioner, were also considered. It is further stated that in the matter of compulsory retirement, as a result of review in terms of Rule 44, no opportunity of hearing or issuance of a show cause notice prior to the decision being taken is envisaged.

8. The Petitioner in his rejoinder reply reiterates that no adverse entry has ever been communicated to him. He adds that by way of an application under the Right to Information Act, he received information from the High Court regarding the entries made in his CCRs, which are advisory in nature.

9. Shri Pattnaik, learned Senior Counsel appearing for the Petitioner contends that, there is absolutely no allegation against the Petitioner with regard to his honesty and integrity during the long service career of twenty-five years and in absence of any single factor, the order of compulsory retirement is unjustified and uncalled for. The Petitioner was never questioned over his performance, efficiency or

competency during his unblemished service career and the Opposite Parties after taking a decision on 5th January, 2010 confirming the promotion of the Petitioner substantively in the cadre of Civil Judge (Sr. Division), without any reason and material placed on record have decided to recommend for premature retirement within twenty six days thereof. It is further submitted that, the so called adverse entries of which the Petitioner got information through R.T.I. application under Anenxure-4 series are not at all adverse in nature but advisory and instructive in nature. It is therefore urged that in absence of any material in justifying the order of compulsory retirement which has been passed even without granting any opportunity of hearing to the Petitioner, is not sustainable in the eye of law. On the whole, it is submitted that when the Petitioner was never suspended during his service period and no adverse report is communicated to him, the punishment of compulsory retirement, which is stigmatic in nature, has been passed without taking into consideration his entire service record of twenty five years.

The decisions in the case of *Swaran Singh Chand v. Punjab State Electricity Board and others in SLP (Civil) No.20202 of 2006*, *J. D. Shrivastava v. State of M.P. and others, A.I.R.1984 SC 630* and the decisions of this Court in *Suvendra Mohanty v. State of Orissa in W.P.(C) No.7398 of 2013*, *Epari Vasudeva Rao, Bhubaneswar v. State of Orissa and another in W.P.(C) No.11108 of 2013*, *Indramani Sahu v. State of Orissa and another in OJC No.6601 of 1995* have been relied on by the Petitioner to support his case.

10. Shri Sahoo, learned Additional Government Advocate for the Opposite Parties, submitted that, the order of compulsory retirement is neither punitive nor stigmatic. The Petitioner cannot claim any opportunity of hearing as the principles of natural justice have no application in such matters. The decision is based on the subjective satisfaction of the Full Court on the administrative side. It is further submitted that besides two disciplinary proceedings pending against the Petitioner for grave charges, the entire service record of the Petitioner has been taken into consideration before the decision of premature retirement was taken.

11. The entire personal record including his CCRs have been produced before this Court for its perusal.

12. Rule 44 of 2007 Rules authorizes the High Court to retire in public interest any member of the service, who has attained the age of fifty years. Such consideration, for all the officers in the service, shall be made at least three times i.e., when he is about to attain the age of fifty years, fifty-five years and fifty-eight years.

13. It is needless to observe that, judicial officers of the subordinate courts in the State are under the administrative control of the High Court in terms of Article 235 of the Constitution of India. They are different from other civil servants. A single blot in their service record makes them vulnerable. They are expected to have a good character in all respects. In the matter of compulsory retirement in public interest, the Hon'ble Supreme Court has laid down the

governing legal principles in *Baikuntha Nath Das vs. Chief District Medical Officer, Baripada*, (1992) 2 SCC 299 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.”

14. In *Registrar, High Court of Madras v. R. Rajiah*, (1988) 3 SCC 211, the Hon’ble Supreme Court has approved the power of the High Court, on its administrative jurisdiction to recommend compulsory retirement of a member of the judicial service in accordance with the rules framed in that regard. It has further observed that it cannot be arbitrary and there has to be materials to show that an officer has outlived his utility. The Supreme Court has further pointed out in that case that, the High Court while exercising its power of control over the subordinate judiciary, is under a constitutional obligation to guide and protect judicial officers from being harassed.

15. Needless to say that the object of compulsory retirement is to weed out the dishonest, the corrupt and the deadwood. It is true that if an honest and sincere judicial officer is compulsory retired, it might lower the morale of his colleagues. Equally, an officer having sound knowledge of the law but lacking in integrity or having a dubious character, is a great danger to the smooth functioning of the judiciary. What is to be weighed is the performance of the officer on an overall evaluation of his entire service period. Above all, his impartiality, reputation, integrity as well as moral character should be taken into account.

16. We have perused the service record of the Petitioner. The entries made in his CCRs during the entire service period have been carefully examined. The entries in the CCRs relevant for the purpose are reproduced below:-

“During his twenty five years of service career, his overall grading was poor for the year 2005-2006 so also his quality of work. The overall grading was average for the year 1987, 1988(P), 1989, 1990, 1991(P), 1993, 1994, 1995(P), 1999, 2000(P), 2001(P), 2003, 2004(P) & 2007(P). Further his overall grading was good for the year 1985, 1986, 1988(P), 1991(P), 1992, 1995(P), 1996, 1997, 1998, 200(P), 2001(P), 2002(P) & 2007(P).

Besides above, his integrity was suspicious and doubtful for the years 2005 and 2006.”

17. The personal file of the Petitioner reveals that several complaints were received against him, right from his posting as J.M.F.C., Soro till the end of his career as Civil Judge (Sr. Division), Koraput. Admittedly, two disciplinary proceedings have been initiated against him for grave charges.

18. The personal record of the Petitioner does not support his contention that he had an unblemished career as a judge. The appreciation of his work by the then Hon’ble Chief Justice resulted in his out-of-turn promotion is no doubt. But his track record subsequent thereto, leaves much to be described. Further, as a result of the order of this Court or at judicial side, he stood reverted to his original position. The pending disciplinary proceedings against him, the nature of charges framed thereunder, and the entries made in the CCRs, as well as the nature of complaints seen from the personal

file, all present a picture that at oddly with what the Petitioner has sought to project. Not only the adverse remarks, which were duly communicated to him, but at other materials on record justify the impugned order of compulsory retirement.

19. In ***Punjab State Power Corporation Limited vs. Hari Kishan Verma, (2015) 13 SCC 156***, the Hon'ble Supreme Court, after a discussion of the case law on the subject, observed as follows:

“14. In ***State of Orissa v. Ram Chandra Das, (1996)5 SCC 331***, a three-Judge Bench has emphatically held that object behind compulsory retirement is public interest and, therefore, even if an employee has been subsequently promoted, the previous entries do not melt into insignificance. To quote:-

“7.....Merely because a promotion has been given even after adverse entries were made, cannot be a ground to note that compulsory retirement of the Government servant could not be ordered. The evidence does not become inadmissible or irrelevant as opined by the Tribunal. What would be relevant is whether upon that state of record as a reasonable prudent man would the Government or competent officer reach that decision. We find that self-same material after promotion may not be taken into consideration only to deny him further promotion, if any. But that material undoubtedly would be available to the Government to consider the overall expediency or necessity to continue the Government servant in service after he attained the required length of service or qualified period of service for pension.”

15. The aforesaid dictum has been approved and followed in ***State of Gujarat v. Umedbhai M. Patel, (2001) 3 SCC 214***, wherein emphasis has

been laid on the factum that the entire service record of the Government servant is to be examined. Same principle has also been followed in another three-Judge Bench decision in ***Pyare Mohan Lal v. State of Jharkhand, (2010) 10 SCC 693***. Slightly recently, a Division Bench in ***Rajasthan SRTC v. Babulal Jangir, (2013) 10 SCC 551***, after discussing number of authorities, has held thus:-

“22. It clearly follows from the above that the clarification given by a two-Judge Bench judgment in *Badrinath v. State of Tamil Nadu* is not correct and the observations of this Court in *State of Punjab v. Gurdas Singh* to the effect that the adverse entries prior to the promotion or crossing of efficiency bar or picking up higher rank are not wiped off and can be taken into account while considering the overall performance of the employee when it comes to the consideration of case of that employee for premature retirement.”

20. It has been further held in the case of ***Rajasthan State Road Transport Corporation vs. Babulal Jangir, (2013) 10 SCC 551***, that;

“27. It hardly needs to be emphasised that the order of compulsory retirement is neither punitive nor stigmatic. It is based on subjective satisfaction of the employer and a very limited scope of judicial review is available in such cases. Interference is permissible only on the ground of non-application of mind, mala fide, perverse, or arbitrary or if there is non-compliance with statutory duty by the statutory authority. Power to retire compulsorily the government servant in terms of service rule is absolute, provided the authority concerned forms a bona fide opinion that compulsory retirement is in public interest.”

21. Upon a careful scrutiny of the entire service record of the Petitioner, and the materials produced before us, we do not see any

reason to view the order of compulsory retirement as mala fide, stigmatic or not warranted in public interest.

22. The writ application is dismissed. No order as to costs.

.....
B.P. Routray
Judge

.....
Dr. S. Muralidhar
Chief Justice

17th March, 2021.
//C.R. Biswal, Secretary//