

Court No. - 29

Case :- WRIT - A No. - 12020 of 2022

Petitioner :- Ramesh Kumar Yadav

Respondent :- High Court Of Judicature At Allahabad And
2 Others

Counsel for Petitioner :- Sr. Advocate, Udayan Nandan

Counsel for Respondent :- Ashish Mishra, C.S.C.

Hon'ble Ashwani Kumar Mishra, J.

Hon'ble Donadi Ramesh, J.

(Delivered by Hon'ble Ashwani Kumar Mishra, J.)

1. Petitioner is a Judicial Officer. He was initially appointed as Munsif/Civil Judge (Junior Division) on 24.03.2001. He was promoted as Civil Judge (Senior Division) on 16.10.2006. He was granted further promotion to the Higher Judicial Service under rule 22(1) of the U.P. Higher Judicial Service Rules, 1975 on 02.07.2015. His date of birth is 05.02.1966 and would have attained the age of superannuation in the month of February, 2026. His tenure, however, has been curtailed on account of order impugned passed by the State Government on 29.11.2021 compulsorily retiring him from service by resorting to powers under the Financial Hand Book (Vol. II, Part II to IV) read with amended fundamental rule 56(C). At the time of passing of such order the petitioner was posted as Special Judge (Scheduled Caste and Scheduled Tribe Prevention of Atrocities Act) at Kaushambi. The order of compulsory retirement dated 29.11.2021 is thus assailed in the present writ petition.

2. The record reveals that a Screening Committee was constituted to examine the service record of Judicial Officers in order to chop the deadwood, which met on 11.06.2020 and

(2)

15.06.2020. Apart from other Judicial Officers the service records of the writ petitioner was also placed for consideration by the Screening Committee. The Screening Committee upon overall evaluation of the service records recommended compulsory retirement of the petitioner. This report of the Screening Committee was placed before the Full Court on 25.11.2021. The Full Court agreed with the recommendation made by the Screening Committee and recommended compulsory retirement of the petitioner. This decision of the Full Court was communicated by the Registry to the State Government on 26.11.2021. It is on the strength of this recommendation of the Court that the petitioner has been compulsorily retired from service vide order impugned. It may also be noticed that the judicial and administrative work was also withdrawn from the petitioner w.e.f. 26.11.2021 on the basis of recommendation made by the Full Court in its meeting dated 25.11.2021.

3. The petitioner has appeared in person and has urged that there existed no adverse material on record on the basis of which the order of compulsory retirement could be passed. The petitioner, during course of argument, has submitted that the Screening Committee has erred in recommending the petitioner's compulsory retirement on account of following reasons:-

(i) Material which was not available to form adverse opinion against the petitioner has been taken into consideration;

(ii) Material in the form of continuous satisfactory working of the petitioner has been omitted from consideration and, therefore, the decision of the Screening Committee, as

(3)

affirmed by the Full Court and acted upon by the State Government, is wholly erroneous and perverse and consequently, the order impugned compulsorily retiring the petitioner is liable to be set aside. Petitioner has relied upon following judgments in support of his contention:-

1. Baikuntha Nath Das vs. Chief District Medical Officer, Baripada, (1992) 2 SCC 299;
2. High Court Punjab and Haryana vs. Ishwar Chand, (1999) 4 SCC 579;
3. Madan Mohan Chaudhary vs. State of Bihar, (1993) 3 SCC 396;
4. Nand Kumar Verma vs. State of Jharkhand and others, (2012) 3 SCC 580;
5. State of Gujrat vs. Umedhai M. Patel, 2001 AIR (SC) 1109;
6. The Registrar High Court of Madras vs. R. Rajiah, (1988) 3 SCC 211; and
7. Brij Behari Lal Agrawal vs. Hon'ble High Court of Madhya Pradesh, (1981) 2 SCC 297."

4. Petitioner has also placed reliance upon judgment in the case of Yoginath D. Bagde vs. State of Maharashtra, (1999) 7 SCC 739 as well as Division Bench Judgment of this Court in the case of Vijendra Pal Singh vs. State of Uttar Pradesh, 2001 (4) AWC 2738.

5. Shri Ashish Mishra, learned counsel appearing for the respondent nos.1 and 2 has controverted the submissions of the petitioner by stating that sufficient material did exist on record to form the opinion that petitioner is a deadwood and that no extraneous material has been relied upon to compulsorily retire the petitioner. It is submitted that the order of compulsory retirement merits no interference in the present writ petition. Shri Mishra has also relied upon

(4)

judgment of the Supreme Court in the case of Baikunth Nath Das (supra) on which reliance is also placed by the petitioner. In addition, the respondents rely upon following judgments of the Supreme Court:-

- “1. Syed T A Nashqbandi and others vs. State of J & K, (2003) 9 SCC 592;
2. Rajendra Singh Verma vs. Lt. Governor (NCT Delhi), (2011) 6 SCC 1;
3. Arun Kumar Saxena vs. High Court of Judicature at Allahabad, 2018 SCC Online All 5728 (All HC-DB);
4. Anupati Ram Yadav vs. State of U.P., 218 SCC Online All 4472 (All HC-DB);
5. Ram Murti Yadav vs. State of U.P., (2020) 1 SCC 801; and
6. Pyare Mohan Lal vs. State of Jharkhand, (2010) 10 SCC 693.”

6. We have heard the petitioner in person and Shri Ashish Mishra, learned counsel for respondent nos.1 and 2 and learned Standing Counsel for respondent no.3 and have carefully gone through the materials on record in light of the judgments relied upon by the parties.

7. The short question that arises for consideration in the facts of the present case is as to whether the respondents are justified in compulsorily retiring the petitioner? Implicit in this question is the issue as to whether formation of opinion by the Screening Committee is based on consideration of relevant materials or not?

Adverse Material

8. The minutes of the Screening Committee have been furnished to the petitioner on the strength of which the petitioner is compulsorily retired. For proper adjudication of the controversy we intend to reproduce hereinafter the

(5)

material relied upon for such purpose by the Screening Committee:-

A. In the year 2008-09 the Administrative Judge, Mirzapur gave following adverse remark to the officer/petitioner:

"Integrity not certified/doubtful.

On overall assessment, he is not a good officer."

The petitioner submitted a representation against such adverse remarks on 08.01.2010 which was rejected by the Representation Committee on 20.04.2010. The Administrative Committee vide its resolution dated 24.05.2010 also rejected such representation. A second representation was then made by the officer on 20.12.2012, which was rejected by the Representation Committee on 17.09.2013 and approved by the Administrative Committee vide its resolution dated 13.11.2013. This adverse remark for the year 2008-09 has attained finality with the rejection of representation made against it by the petitioner. The adverse remark has not been challenged any further.

B. On the basis of complaint made by the Special Secretary, Vidhan Sabha, Sachivalaya on 16.06.2010 an advisory was issued to the petitioner by the Administrative Committee vide minutes dated 14.10.2011, which is reproduced hereinafter:-

".....Resolved that officer, namely Sri Ramesh Kumar Yadav, the then Civil Judge (Senior Division) Mirzapur presently Civil Judge (Senior Division) Kanpur Dehat be advised to be more careful in future."

This advisory has also attained finality.

C. A vigilance enquiry bearing V.B. Enquiry No.33/2009 was

(6)

initiated against the petitioner wherein a report was submitted on 23.07.2012 by the Officer on Special Duty (Enquiry). The comments of the officer were invited and the matter was considered by the Administrative Committee in its meeting held on 11.10.2012. Upon consideration of the explanation submitted by the petitioner the Administrative Committee awarded censure entry in the character roll of the petitioner, which is reproduced hereinafter:-

"Sri Ramesh Kumar Yadav-I, the then A.C.J.M., Mirzapur is inflicted punishment of censure for violation of U.P. Government Servants Conduct Rules, 1956 in the matter of selling a revolver no. C-5856 NPB 32 Bore, to a private person named Sri Mehtab Alam in Rs. 80,000 and also purchasing a new revolver worth Rs.1,14,912 on 30.03.2012 against License No. 220/PS-GS/2001, without seeking permission of the Hon'ble Court and for denying release of vehicle No. U.P. 63 F 9130 in a case under Sections 307, 420, 468, 272, 273 I.P.C., read with Section 60 Excise Act, P.S. Kotwali Dehat, District Mirzapur on 20.1.2009 on the ground of the continuance of confiscation proceeding before District Magistrate, Mirzapur whereas on 2.3.2009 the same vehicle has been released without mentioning any ruling or any special circumstance which did not exist at the earlier stage. Such conduct is against judicial propriety and unbecoming of a responsible judicial officer of the cadre of A.C.J.M. Also has mentioned in the enquiry report dated 23.7.2012, the officer had not yet complied the order dated 18.04.2008 of the Court passed by Hon'ble Justice Imtiyaz Murtaza requiring him to furnish details of his monthly expenses and its reminder dated 17.07.2008."

A representation was made by the officer against the censure entry which came to be rejected by the Administrative Committee on 07.04.2014. A review representation was also made which too came to be rejected by the Administrative Committee on 15.10.2014. With the rejection of representation the censure entry awarded to the officer has attained finality.

(7)

D. In the year 2018-19 the District Judge, Chandauli has given following adverse remark in the confidential roll of the petitioner, which reproduced hereinafter:-

"The presiding officer of the court of Chief Judicial Magistrate Chandauli i.e. Sri Munna Prasad by referring the record including the reports received from police officers/officials reported me in writing with several enclosures (in order to get further instructions) that this officer Sri. R. K Yadav is first informant/complainant of a criminal case bearing case crime no. 53/2019 State versus Deepak Sharma etc. offence under section 406, 409,420,467,468,471,120B I.P.C. Police Station and District Chandauli registered on 13.03.2019. Hon'ble Allahabad High Court vide order dated 30.03.2019 passed in Criminal Misc. Writ Petition No. 7837 of 2019 Deepak Sharma and three others versus State of U.P. and three others, has ordered to take no coercive action against Petitioners (accused of that case) till the next date of listing. Even then in that case, Sri R.K. Yadav has continuously moved several applications against police officers/officials of district Chandauli i.e. S.P., Addl. S.P., S.H.O. Police Station Chandauli, Investigating Officer and even against him (Sri Munna Prasad) raising serious false and baseless allegations that they in collusion with the accused persons, are committing the conspiracy to commit murder of Sri R.K. Yadav and his son Sri Trivesh Yadav and if in future the murder of Sri R.K. Yadav or Sri Trivesh Yadav is committed or any loss of property is caused to them, these police officers/officials and Chief Judicial Magistrate should be held responsible for that and Sri R.K. Yadav has made several telephonic calls and sent several messages in order to pressurize them so that he may get the investigation conducted and orders passed as choiced by him. Sri R.K. Yadav on being directed by me to submit his comments, submitted five different comments along with several enclosures. In which he accepted that he has moved such applications containing such allegations and has made such telephonic calls and sent the messages and further asserted that in future also he will continue to do the same, if required, but he could not specify the proper justification of doing so. He questioned even my authority to call for his comments and behaved in an arbitrary, indisciplined, objectionable and illegal manner. All these facts in details were reported by me to the Hon'ble High Court vide letter No. 790/I dated 24.08.2019 with a prayer to proceed further in the matter by conducting an enquiry and to

(8)

transfer him from district Chandauli. A copy of that letter is enclosed herewith. After that Sri R.K. Yadav has been transferred to district Kaushambi in the month of September 2019.”

The aforesaid adverse remark is not shown to have been interfered with by any higher forum.

Explanation in respect of Adverse Material at 'A'

9. Keeping in view the allegation against the petitioner of passing bail orders for extraneous consideration the petitioner's integrity was held doubtful. The petitioner submits that a vigilance enquiry was also ordered against him on the complaint made by one Rajesh Kumar, Advocate and Vinay Kumar Baghat, Advocate. The vigilance enquiry report was submitted on 29/30.07.2009 wherein the charge of passing bail orders for extraneous reasons was not found proved. The vigilance enquiry report also stated that though notices were issued to the alleged complainants for submitting evidence against the petitioner but both the notices returned with the endorsement that no such advocates were found practising in the District Court, Mirzapur. Yet, another vigilance enquiry report was submitted on the same charge on 23.07.2012 wherein also the charge of granting bail for extraneous consideration was not found proved. On the strength of the vigilance report dated 29/30.07.2009 (Annexure-11 to the writ petition) as well as the vigilance enquiry report dated 23.07.2012 (Annexure-12 to the writ petition) the petitioner submits that the charge of passing bail orders on extraneous consideration is not made out. It is also submitted that the adverse remark of the Administrative Judge for the year 2008-09 since is not substantiated in the vigilance enquiry and no adverse material otherwise existed on record,

(9)

therefore, the adverse remark made against the petitioner and withholding of his integrity could not have been relied upon by the Screening Committee and the contrary view taken by the Screening Committee is unsustainable, and renders the order of compulsory retirement bad in law.

'B'

So far as the advisory issued by the Administrative Committee on the complaint of the Special Secretary, Vidhan Sabha, Sachivalaya is concerned, the petitioner submits that the advisory cannot be treated as an adverse material against him for passing the order of compulsory retirement. It is moreover pointed out that a transfer application was moved by one Samudra Devi before the District Judge, Mirzapur in Misc. Case No.13/08 (Savitri Devi and others vs. Samudra Devi and others) pending before the Civil Judge (Senior Division), Mirzapur, which came to be rejected by the said court vide order dated 19.02.2010 and a cost of Rs.1,000/- was also imposed. This order of District Judge, Mirzapur is contained in Annexure-13 to the writ petition. Since the order of District Judge was not complied with as such a direction was issued by the competent court to the District Magistrate, Mirzapur to recover such amount as arrears of land revenue from the concerned party. The District Magistrate, Mirzapur without complying with the said order deposited the amount of Rs.1,000/- through A.D.G.C. (Civil). When such fact was brought to the notice of the petitioner, he directed an enquiry to be held against the District Magistrate for not complying with the order of the District Judge, Mirzapur. It is thereafter that the Special Secretary, Government of U.P. made a complaint against the petitioner which formed the basis of the

(10)

advisory issued to the petitioner. It is contended that the advisory neither constitutes an adverse material to be taken note of for passing the order of compulsory retirement nor could it have been relied upon in the facts of the case, inasmuch as the petitioner had only acted in due discharge of official duties and since his order was not interfered with by any higher forum it could not have been relied upon as material adverse to the petitioner.

'C'

So far as the charge of buying and selling of revolver without permission of the Court is concerned, the Court had called for petitioner's explanation in the matter. Subsequently, a communication was issued by the Deputy Registrar, High Court, Allahabad on 15.04.2013 to the District Judge, Ramabai Nagar (Kanpur Dehat) requiring the petitioner to apply afresh for permission. It is thereafter that a fresh permission was applied whereafter nothing was heard in the matter. It is therefore submitted that this circumstance also could not have been treated adverse to the petitioner.

So far as release of vehicle UP63F9130 is concerned, it is submitted that the allegation was got enquired in the vigilance enquiry wherein the Vigilance Officer has clearly held that there was no error in entertaining the second release application and the charge of extraneous consideration was not proved. The petitioner also submits that the charge of not furnishing details of monthly expenses also cannot be a ground for passing order of compulsory retirement. It is, moreover, urged that letters dated 18.04.2008 and 17.07.2008 were never received by the petitioner and the details were subsequently submitted by him pursuant to the

(11)

communication of Deputy Registrar, High Court, Allahabad, dated 15.05.2008.

'D'

It is lastly urged that the adverse remark recorded against the petitioner by the District Judge, Chandauli for the year 2018-19 was uncalled for, inasmuch as charge sheet was submitted in Case Crime No.53 of 2019 under Sections 406, 409, 420, 467, 468, 471, 120B IPC. It is also urged that despite such remark the District Judge awarded overall assessment as "Good" to the petitioner and certified his integrity. It is contended that against the entry awarded to him for the year 2018-19 a representation has been made by the petitioner before the Administrative Judge on 17.12.2019, which is still pending and, therefore, by virtue of provisions contained in U.P. Government Servants (Disposal of Representation Against Adverse Annual Confidential Reports and Allied Matters) Rules, 1995 such material could not have been treated adverse when representation has not been decided.

ANALYSIS

10. So far as the adverse remark awarded by the Administrative Judge, Mirzapur to the petitioner for the year 2008-09 as well as representation made against it is concerned, such adverse remark has attained finality. Submission of the petitioner that in the vigilance enquiry conducted on the charge of passing bail orders for extraneous consideration no finding was returned against the petitioner would not be conclusive. The Administrative Judge in his adverse remark for the year 2008-09 has clearly noticed that complaints existed against the officer for passing bail orders

(12)

on extraneous consideration. The Administrative Judge has found the integrity of the officer to be doubtful/not certified and the officer has been assessed as "not good officer". It is not clear that the Administrative Judge had made adverse remark on the same material on which the vigilance enquiry was subsequently conducted against the petitioner. It has not been shown by the petitioner that the comments of the Administrative Judge for the year 2008-09 were based only upon the complaints of Vinay Kumar Bhaghat and Rajesh Kumar, Advocates. The mere fact that in the vigilance enquiry the allegations made by Vinay Kumar Bhaghat and Rajesh Kumar were not found proved, would not lead to an inference that there existed no material before the Administrative Judge for making the adverse remark against the petitioner in respect of the year 2008-09. Even otherwise, the adverse remark of the Administrative Judge has attained finality. The correctness or otherwise of the adverse remark of the learned Administrative Judge for the year 2008-09 cannot be commented upon in the present writ petition, particularly when adverse remark itself is not under challenge before us. In such view of the matter, we find that the adverse remark recorded by Administrative Judge against the petitioner for the year 2008-09 exists on record and was a relevant material to be taken note of by the Screening Committee for recommending compulsory retirement of the petitioner.

11. Similarly, correctness or otherwise of the advisory issued to the petitioner cannot be commented upon in the present writ when such advisory is not under challenge. Though the advisory in itself may not constitute material adverse to pass order of compulsory retirement but when the entire service record of the petitioner is being examined, such material can

(13)

be looked into for the formation of opinion regarding desirability to compulsorily retire the petitioner.

12. Similarly, the vigilance enquiry report dated 23.07.2012 has been examined by the Administrative Committee and a censure entry has been awarded to the petitioner. This censure entry has attained finality with rejection of representation and review representation submitted against it by the petitioner. The censure entry, moreover, is not under challenge before use. In such circumstances, we would not be justified in embarking upon a factual enquiry, as is sought to be canvassed by the petitioner, so as to adjudicate whether there existed any material on record to award censure entry. This censure entry admittedly is a material which could be relied upon against the petitioner by the Screening Committee.

13. So far as the adverse remark of District Judge, Chandauli is concerned, the petitioner has contended in para 52 of the writ petition that he had submitted representation against it which has not been considered. This paragraph is relied upon in para 44 of the counter affidavit. It is averred in the counter affidavit that the Administrative Judge, Chandauli has expunged the adverse remark of the District Judge for the year 2018-19 vide order dated 25.08.2022. This material, therefore, could not have been relied upon by the Screening Committee for recommending compulsory retirement. On this aspect, we find substance in the petitioner's contention that as the representation against adverse remark was pending when the Screening Committee met as such by virtue of rule 5 of the Rules of 1995 this adverse remark could not have been looked into for recommending compulsory retirement.

(14)

Analysis of the material on record, therefore, persuades us to come to the conclusion that out of material relied upon against the petitioner for passing order of compulsory retirement first three circumstance mentioned as 'A', 'B' & 'C' were available for passing the order impugned.

14. The petitioner, moreover, has submitted that his character roll entries for other years have not been taken into consideration while recommending his compulsory retirement. This contention of the petitioner is not correct, inasmuch as respondents in the counter affidavit have clearly stated that entire service record of the petitioner was placed before the Screening Committee. Screening Committee specifically noticed the adverse material existing on the service record of the petitioner and on the strength of it alone it came to the conclusion that the petitioner is not suitable to be retained in employment and is liable to be compulsorily retired. The Screening Committee, moreover, was not required to specifically refer to each of the Annual Confidential Reports in favour of the petitioner. What was required to be noticed was the material adverse in the service record of the petitioner so as to recommend his compulsory retirement.

15. Upon overall evaluation of the material placed on record, we are of the considered view that the Screening Committee had taken note of adverse material on record against the petitioner so as to recommend his compulsory retirement. Out of three material referred to above as 'A', 'B' & 'C' we find that the adverse remark of Administrative Judge for the year 2008-09 as also the censure entry awarded to the petitioner by the Administrative Committee on 11.10.2012 in itself, were sufficient to come to the conclusion that continuance of

(15)

petitioner in employment is not warranted and he be compulsorily retired.

16. Learned counsel for the parties have placed reliance upon judgments referred to above in support of their submissions. The judgment of Supreme Court in *Bainkuntha Nath Das (supra)* is an authority for the proposition that even an uncommunicated adverse remark can be considered for compulsory retirement. The Court held that opinion of the authority regarding compulsory retirement is based on the subjective satisfaction formed on the basis of entire records of service of employee. It has also been conclusively held that an order of compulsory retirement does not amount to an order of punishment and principles of natural justice are not required to be observed in passing the order of compulsory retirement. Scope of judicial review is limited to grounds of malafide, arbitrariness and perversity. Observations made by the Supreme Court in paras 31 to 33 of the judgment in *Baikunth Nath Das (supra)* are reproduced hereinafter:-

“31. Another factor to be borne in mind is this: most often, the authority which made the adverse remarks and the authority competent to retire him compulsorily are not the same. There is no reason to presume that the authority competent to retire him will not act bona fide or will not consider the entire record dispassionately. As the decided cases show, very often, a Review Committee consisting of more than one responsible official is constituted to examine the cases and make their recommendation to the government. The Review Committee, or the government, would not naturally be swayed by one or two remarks, favourable or adverse. They would form an opinion on a totality of consideration of the entire record — including representations, if any, made by the government servant against the above remarks — of course attaching more importance to later period of his service. Another circumstance to be borne in mind is the unlikelihood of succession of officers making unfounded remarks against a

(16)

government servant.

32. We may not be understood as saying either that adverse remarks need not be communicated or that the representations, if any, submitted by the government servant (against such remarks) need not be considered or disposed of. The adverse remarks ought to be communicated in the normal course, as required by the rules/orders in that behalf. Any representations made against them would and should also be dealt with in the normal course, with reasonable promptitude. All that we are saying is that the action under F.R. 56(j) (or the rule corresponding to it) need not await the disposal or final disposal of such representation or representations, as the case may be. In some cases, it may happen that some adverse remarks of the recent years are not communicated or if communicated, the representation received in that behalf are pending consideration. On this account alone, the action under F.R. 56(j) need not be held back. There is no reason to presume that the Review Committee or the government, if it chooses to take into consideration such uncommunicated remarks, would not be conscious or cognizant of the fact that they are not communicated to the government servant and that he was not given an opportunity to explain or rebut the same. Similarly, if any representation made by the government servant is there, it shall also be taken into consideration. We may reiterate that not only the Review Committee is generally composed of high and responsible officers, the power is vested in government alone and not in a minor official. It is unlikely that adverse remarks over a number of years remain uncommunicated and yet they are made the primary basis of action. Such an unlikely situation, if indeed present, may be indicative of malice in law. We may mention in this connection that the remedy provided by Article 226 of the Constitution is no less an important safeguard. Even with its well known constraints, the remedy is an effective check against mala fide, perverse or arbitrary action.

33. At this stage, we think it appropriate to append a note of clarification. What is normally required to be communicated is adverse remarks — not every remark, comment or observation made in the confidential rolls. There may be any number of remarks, observations and comments, which do not constitute adverse remarks, but are yet relevant for the purpose of F.R. 56(j) or a rule corresponding to it. The object and purposes for which this power is to be exercised are well stated in J.N. Sinha [(1970) 2 SCC 458 : (1971) 1 SCR 791] and other decisions referred supra.”

(17)

17. Petitioner has placed reliance upon judgment of Supreme Court in the case of High Court Punjab and Haryana Vs. Ishwar Chand (supra). In this case the Judicial Officer was a member of the Superior Judicial Service, who was on probation. Though his Inspecting Judge had found his working to be satisfactory, yet, the Full Court downgraded him and found his working to be not satisfactory and dispensed his engagement. This order was set aside by the High Court and SLP before the Supreme Court was also dismissed. The officer was continued in service. Certain complaints were made against the officer while he was working at Jind. He was placed under suspension and disciplinary enquiry proceeded against him. While such enquiry was pending the officer was compulsorily retired. The Division Bench of the High Court set aside the order of premature retirement primarily on the ground that the decision to retire the officer was based on the allegation of misconduct, which was subject matter of enquiry. This judgment of High Court was affirmed with dismissal of SLP. The principles laid down in this decision are peculiar to the facts of its own case and have no applicability in the facts of the present case. The order of compulsory retirement was founded on misconduct for which an enquiry was already pending. In view of the settled position in law that order of compulsory retirement cannot be passed as a means of punishment, whereas such order was founded on misconduct due to which the Court interfered in the matter. This judgment, therefore, cannot be of any help to the petitioner since the order of compulsory retirement is not founded on any allegation of misconduct.

18. The next judgment relied upon by the petitioner is in the case of Madan Mohan Chaudhary (supra). The Supreme Court

(18)

had noticed the facts of this case in para 29 of the judgment, according to which, no entries were recorded in the character roll of the officer for the year 1991-92, 1992-93 and 1993-94. The entries were made for these years in one go and were communicated to the officer on 11.09.1996. These entries were considered on 30.11.1996. The Supreme Court observed that these entries were recorded at the stage when Screening Committee had already made up its mind to compulsorily retire the officer from service. The fact that the officer had been promoted and no other material existed on record against him was noticed. The Court observed that no opinion could be reasonably formed that it was in public interest to retire the officer. The Supreme Court in para 37 observed that the officer was categorized as 'B+' in 1999 and for three years there was no communication of any adverse entry to the officer. It was only when anticipatory bail was granted under Section 307 IPC the officer was categorized as 'not fair' for three years in one go. The decision to compulsorily retire the officer was taken prior to his being assessed 'not fair'. It is in this factual backdrop that the Court found that the decision of compulsory retirement was not fair. We, therefore, find that the facts of the present case are entirely distinct and the observations made in Madan Mohan Chaudhary (supra) cannot be of any help to petitioner's cause.

19. Judgment of Supreme Court in Nand Kumar Verma (supra) relied upon by the petitioner also has no relevance in the facts of the present case. The controversy in the said case was noticed in para 33 of the judgment, which is reproduced hereinafter:-

"33. This Court in High Court of Punjab & Haryana v. Ishwar

(19)

Chand Jain [(1999) 4 SCC 579 : 1999 SCC (L&S) 881] , has discussed the purpose, importance and effect of the remarks made during inspection which ultimately become the part of the ACR of the judicial officer concerned. This Court has observed thus: (SCC pp. 597-98, para 32)

“32. Since late this Court is watching the spectre of either judicial officers or the High Courts coming to this Court when there is an order prematurely retiring a judicial officer. Under Article 235 of the Constitution the High Court exercises complete control over subordinate courts which include District Courts. Inspection of the subordinate courts is one of the most important functions which the High Court performs for control over the subordinate courts. The object of such inspection is for the purpose of assessment of the work performed by the Subordinate Judge, his capability, integrity and competency. Since Judges are human beings and also prone to all the human failings inspection provides an opportunity for pointing out mistakes so that they are avoided in future and deficiencies, if any, in the working of the subordinate court, remedied. Inspection should act as a catalyst in inspiring Subordinate Judges to give the best results. They should feel a sense of achievement. They need encouragement. They work under great stress and man the courts while working under great discomfort and hardship. A satisfactory judicial system depends largely on the satisfactory functioning of courts at the grass roots level. Remarks recorded by the Inspecting Judge are normally endorsed by the Full Court and become part of the annual confidential reports and are foundations on which the career of a judicial officer is made or marred. Inspection of a subordinate court is thus of vital importance. It has to be both effective and productive. It can be so only if it is well regulated and is workman like. Inspection of subordinate courts is not a one-day or an hour or a few minutes' affair. It has to go on all the year round by monitoring the work of the court by the Inspecting Judge. A casual inspection can hardly be beneficial to a judicial system. It does more harm than good.”

In para 32 the Supreme Court has noticed that the ACR entries referred to and relied upon against the officer were at variance with the actual entries contained in the annual roll. It was, therefore, observed that material on the strength of which officer was compulsorily retired was not the material

(20)

existing on record and, therefore, the decision was based upon irrelevant material. The subjective satisfaction of the High Court was, therefore, found vitiated. This is also not the case in hand.

20. Similarly, in the case of State of Gujrat vs. Umedbhai M. Patel (supra) the Supreme Court observed that in the absence of any other material on service record, the unproved allegations on the basis of which departmental proceedings were initiated, cannot be made the basis for passing order of compulsory retirement. In the facts of the present case, there was no disciplinary proceedings initiated against the officer and we have clearly held that adverse material did exist on record against the officer.

21. In the case of Registrar High Court of Madras (supra) the facts of the case have been noticed in para 21 by the Supreme Court. The finding by the High Court that no material had been placed before the Court to show that order of compulsory retirement has been passed in public interest was not put to any challenge. Although the High Court observed that adequacy or sufficiency of material to pass the order of compulsory retirement cannot be questioned, but in the facts of the case no such material existed on record. In such circumstances, passing of the order of compulsory retirement was not approved. This judgment is also distinguishable in facts of present case.

22. In Brij Behari Lal Agrawal (supra) the order of compulsory retirement was based upon two confidential reports which were contradicting each other. The Supreme Court observed that this aspect of the matter has escaped

(21)

attention of the Court when it considered the question of compulsory retirement. In such circumstances, the order of compulsory retirement has been set aside. This judgment again is based on facts of its own.

23. On the other hand, respondents have placed reliance upon judgment of the Supreme Court in *Pyare Mohan Lal* (supra) where the Supreme Court has held that a single adverse remark touching on integrity was sufficient to impose an order of compulsory retirement in case of judicial officer. Observations made by the Supreme Court in para 29 of the report are relevant and are reproduced hereinafter:-

"29. The law requires the authority to consider the "entire service record" of the employee while assessing whether he can be given compulsory retirement irrespective of the fact that the adverse entries had not been communicated to him and the officer had been promoted earlier in spite of those adverse entries. More so, a single adverse entry regarding the integrity of an officer even in remote past is sufficient to award compulsory retirement. The case of a judicial officer is required to be examined, treating him to be different from other wings of the society, as he is serving the State in a different capacity. The case of a judicial officer is considered by a committee of Judges of the High Court duly constituted by the Hon'ble the Chief Justice and then the report of the Committee is placed before the Full Court. A decision is taken by the Full Court after due deliberation on the matter. Therefore, there is hardly any chance to make the allegations of non-application of mind or mala fides."

24. In *Ram Murti Yadav* (supra) the legality of the order of compulsory retirement in case of judicial officer came to be elaborately examined relying upon the judgment of the Supreme Court in *Union of India vs. K. K. Dhawan*, (1993) 2 SCC 56 and *Union of India vs. Duli Chand*, (2006) 5 SCC 680. The Supreme Court observed as under in para 13 & 14 of the judgment in *Ram Murti Yadav* (supra):-

(22)

"13. P.C. Joshi [P.C. Joshi v. State of U.P., (2001) 6 SCC 491 : 2001 SCC (L&S) 984] was a case relating to an order of punishment in a departmental proceeding held to be vitiated for want of any legally acceptable or relevant evidence in support of the charges of misconduct. Ramesh Chander Singh [Ramesh Chander Singh v. High Court of Allahabad, (2007) 4 SCC 247 : (2007) 2 SCC (Cri) 266] related to an order of bail dealing with exercise of discretionary powers specially when a co-accused had been granted bail by the High Court. An order of compulsory retirement not been a punishment, much less stigmatic in the facts and circumstances of the present case. Ram Ekbal Sharma [Ram Ekbal Sharma v. State of Bihar, (1990) 3 SCC 504 : 1990 SCC (L&S) 491] was dealing with the issue that the form of the order was not conclusive and the veil could be lifted to determine if it was ordered as punishment more so in view of the stand taken in the counter-affidavit with regard to grave financial irregularities, again has no relevance to the present controversy.

14. A person entering the judicial service no doubt has career aspirations including promotions. An order of compulsory retirement undoubtedly affects the career aspirations. Having said so, we must also sound a caution that judicial service is not like any other service. A person discharging judicial duties acts on behalf of the State in discharge of its sovereign functions. Dispensation of justice is not only an onerous duty but has been considered as akin to discharge of a pious duty, and therefore, is a very serious matter. The standards of probity, conduct, integrity that may be relevant for discharge of duties by a careerist in another job cannot be the same for a judicial officer. A Judge holds the office of a public trust. Impeccable integrity, unimpeachable independence with moral values embodied to the core are absolute imperatives which brooks no compromise. A Judge is the pillar of the entire justice system and the public has a right to demand virtually irreproachable conduct from anyone performing a judicial function. Judges must strive for the highest standards of integrity in both their professional and personal lives."

25. After analysing the facts of the case and the judgments referred to above, we have no hesitation in holding that there did exist adverse material in the service record of the petitioner on the strength on which subjective satisfaction could have been formed to come to the conclusion that the

(23)

petitioner is liable to be compulsorily retired. Law is well settled that sufficiency or otherwise of such material cannot be gone into in writ. Correctness or otherwise of the adverse material also cannot be examined when such entries have attained finality.

26. Having evaluated the material on record we hold that material adverse against the petitioner did exist on record to form an opinion by the Screening Committee that petitioner is liable to be compulsorily retired. The decision taken by the Full Court and the consequential decision of the State Government to compulsorily retire the petitioner, therefore, warrants no interference. This is particularly so, as the petitioner is a Judicial Officer, who acts on behalf of the State in discharge of its sovereign function. The ordinary litigant must have complete faith in the judicial system and no impression can be afforded to be given to a litigant which may even remotely create perception against the justice delivery system. There is otherwise no allegation of any bias or malafide against the members of Screening Committee nor is it shown that the subjective opinion of the Screening Committee is based upon no evidence. In such circumstances, the order impugned compulsorily retiring the petitioner merits no interference.

27. Writ petition is, accordingly, dismissed. No order is passed as to costs.

Order Date :- 22.04.2025
Ashok Kr.