

Bani Singh Vs. State of U.P

Bani Singh Vs. State of U.P

SooperKanoon Citation : sooperkanoon.com/1115518

Court : Allahabad

Decided On : Oct-16-2012

Judge : D.P. Singh

Appeal No. : Writ - A No. 42332 of 2006

Appellant : Bani Singh

Respondent : State of U.P

Judgement :

1. HEARD learned counsel for the parties and perused the record.

2. WRIT Petition No. 42332 of 2006 is directed against an order of compulsory retirement dated 12.4.2006 and 4.7.2006. The connected writ petition is directed against an order dated 28.11.2002 punishing the petitioner by stoppage of three increments with cumulative effect and award of adverse entry and forfeiting his balance salary excluding the suspension allowance already paid.

The petitioner was working on the post of Collection Amin. Having reached the critical age of 50, his case was considered by the Screening Committee under Rule 56 of the Financial Handbook which submitted reports dated 24.3.2006 and 7.4.2006 recommending his compulsory retirement. Accordingly, the petitioner was issued a notice of compulsory retirement dated 12.4.2006 whereafter he was compulsory retired vide order dated 4.7.2006.

It is urged that the adverse entries taken into account had not become final as representations were pending and against the punishment order his appeal was pending and therefore, neither the Screening Committee nor the Appointing Authority could have acted upon those entries in passing the impugned order.

3. THIS being a factual issue for which sufficient pleadings were not available but, in order to do justice to the cause of the petitioner his entire service record was directed to be produced in original. After going through the record, learned counsel for the petitioner did not press the said argument as, admittedly neither any representation against the award of adverse entries was pending nor any appeal against the punishment orders.

It is then urged that the order of compulsory retirement is stigmatic and therefore ought to be quashed. In support thereof, he has relied upon the decision of the Apex Court rendered in the case of Allahabad Bank Officers Association and another Vs. Allahabad Bank and others [1996 (4) SCC 504].

4. NO doubt, if an order of compulsory retirement is stigmatic, it would amount to colorable exercise of power of compulsory retirement only to overcome the need of holding an enquiry to prove the allegations. However, reasons which may be mentioned in the order, in all circumstances cannot be termed 'stigmatic' merely because it states a fact which was considered by the authority in reaching the decision. In Allahabad Bank's case (supra) itself it has been held to the following effect in paragraph 17:

"17. The above discussion of case-law makes it clear that if the order of compulsory retirement casts a stigma on the government servant in the sense that it contains a statement casting aspersion on his conduct or character, then the court will treat that order as an order of punishment, attracting provisions of Article 311(2) of the Constitution. The reason is that as a charge or imputation is made the condition for passing the order, the court would infer therefrom that the real intention of the Government was to punish the government servant on the basis of that charge or imputation and not to exercise the power of compulsory retirement. But mere reference to the rule, even if it mentions grounds for compulsory retirement, cannot be regarded as sufficient for treating the order of compulsory

retirement as an order of punishment. In such a case, the order can be said to have been passed in terms of the rule and, therefore, a different intention cannot be inferred. So also, if the statement in the order refers only to the assessment of his work and does not at the same time cast an aspersion on the conduct or character of the government servant, then it will not be proper to hold that the order of compulsory retirement is in reality an order of punishment. Whether the statement in the order is stigmatic or not will have to be judged by adopting the test of how a reasonable person would read or understand it."

Further , a three Judge Bench of the Apex Court in the case of Baikuntha Nath Das and Another Vs. Chief District Medical Officer, Baripada and another [1992 (2) SCC 299], after considering large number of decisions, it has culled out certain principles, including whether uncommunicated entries could be taken into account while passing the retirement order. It formulated the following five principles in paragraph 34:

"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 any 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."

Recently in the case of National Aviation Company of India Vs. S.M.K. Khan [2009 (5) SCC 732], after considering a large number of decisions, including the case of Baikuntha Nath Das (supra) it has found that mere incidental reference to the unsatisfactory service of the incumbent or remarks on his performance cannot be termed 'stigmatic' in the following words in paragraph 14:

"14. The unsatisfactory service of the employee which may include any persistent misconduct or inefficiency furnishes the background for taking a decision that the employee has become a dead wood and that he should be retired compulsorily. Such "compulsory retirement" is different and distinct from imposition of a punishment of compulsory retirement (or dismissal/removal) on a specific charge of misconduct, where the misconduct is the basis for the punishment. The difference is on account of two factors; firstly, the employee on account of completing a particular age or number of years of service falls within the zone where his performance calls for assessment as to whether he is of continued utility to the employer or has become a dead wood or liability for the employer. Secondly, the record of service, which may include poor performance, unsatisfactory service or incidentally any recent conduct (which if separately considered may constitute a misconduct subject to punishment) when considered

as a whole, leads the reviewing authority to the conclusion that the employee in question is not fit to be continued in service and not of utility to the employer. Therefore, any incidental reference to unsatisfactory service, or any remarks in the context of explaining the reason for compulsory retirement under the relevant rule, in the letter of compulsory retirement will not be considered as stigmatic, even though read out of context, they may be capable of being construed as allegations of misconduct."

5. IN the background of the aforesaid decisions, let us now examine the retirement notice and the order.

6. THOUGH it was not required, but the petitioner was put to notice vide notice dated 12.4.2006 that on expiry of three months the petitioner would stand compulsorily retired from service. It refers to four instances where petitioner was suspended and punished for not improving his collection percentage, not taking interest in his work, remaining absent from the area, not being amenable to the advise of superiors and violating their orders etc. He was suspended on 15.11.1999 but reinstated vide order dated 1/3 January 2001 with punishment of stoppage of three increments with cumulative effect. Again he was suspended on 17/22-11-2001 but reinstated vide order dated 23.11.2002 after punishment of reversion to the basic pay and forfeiture of remaining salary except subsistence allowance. Yet again he was suspended on 24.1.2004 but reinstated on 14.9.2005 with punishments. These references of unsatisfactory work of the petitioner were a matter of fact and incidentally they were mentioned in the notice, mere reference to them while considering his suitability, would not render the order stigmatic. Similarly the retirement order dated 4.7.2006 refers to the various punishments meted out to the petitioner time and again but without any improvement in his performance, cannot be termed to be 'stigmatic'. Where an order merely notices the factum of punishment orders and adverse entries which had reached finality, would not render the order of compulsory retirement stigmatic. It only shows that the authority has taken into consideration the service record and bonafidely had formed its opinion that the petitioner was not fit to be retained in service till the age of superannuation. This in effect has been held by the courts in the aforesaid cases. Accordingly, the argument of learned counsel for the petitioner cannot be

accepted.

Lastly, it is urged that at least one entry, which is subject matter of connected Writ Petition No. 11630 of 2004 had not attained finality as it was under challenge before this court, could not have been taken into consideration and therefore, the order would stand vitiated.

The argument does not appear to be correct. In the said writ petition it is clearly mentioned that the impugned order had reached finality. No interim order was granted by the Court and after 2004 no effort was made by the petitioner to get the case decided. Once there was no interim order and the entry remained intact, the Screening Committee and the Appointing Authority were well within their domain to have considered it in the proceedings for compulsory retirement. According to the decision in Baikuntha Nath Das, this circumstance by itself cannot be a basis for interference. Thus, this argument also, cannot be accepted.

7. NO other point has been urged.

For the reasons above, this is not a fit case for interference under Article 226 of the Constitution and accordingly both the writ petitions are dismissed.

8. IN the circumstances of the case, no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com