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Court : Rajasthan

Decided On : Feb-20-1980

Reported in : 1980WLN(UC)44

Judge : M.C. Jain J.

Appeal No. : SB Civil Writ Petition No. 1009 of 1979

Appellant : The State of Rajasthan and ors.

Respondent : Bhanwarlal and anr.

Advocate for Def. : Shri. A. K. Mathur

Judgement :

M.C. Jain, J.

1. This writ petition has been filed by the State of Rajasthan and the three officers of the State challenging the validity of the Rajasthan Civil Services Appellate Tribunal, Jaipur, dated January 9, 1979, whereby the Tribunal set aside the order of compulsory retirement dated March 30, 1977, of respondent No. 1 and further directed the petitioners to take over the charge of the valuable jewellery itemwise in the presence of the Special Committee formed for that purpose without avoidable delay.

2. Respondent No. 1 Bhanwarlal Shreemali was an employee of the erstwhile Bikaner State and on formation of Rajasthan his services were taken over by the Rajasthan Government. He was selected by the Rajasthan Public Service Commission as an Assistant Inspector, Devasthan in 1956 and was promoted in 1957 as Inspector Grade I. In 1972 he was promoted as Assistant Commissioner, Devasthan, Jodhpur and Bikaner Division and was thereafter selected in the cadre of the R. A.S. and continued to serve in that capacity and was granted regular grade increments. According to him he served the State to the best of his ability, honesty and in his service career, no adverse entry has been ever communicated. His service record has been excellent and during his tenure the revenue was also increased considerably. There were fifteen big residential houses and eighty four middle class houses belonging to the Devasthan Department in the city of Jodhpur. These houses were in occupation of certain very important persons and they were paying much less rents. He mentioned their names and designations in para 4 of his appeal filed by him against the order of his compulsory retirement. His case is that he made several efforts for their eviction and for increase of rents, but he could not succeed due to interventions from the high officials. Notices of eviction, were served on them. However, he could not achieve succees either in eviction of the houses or in increase of rent. Being prejudiced they some how succeeded and he was made to compulsorly retired during the period of emergency on August 22, 1975. He submitted his representation explaining the entire circumstances and ultimately after consideration of his representation the Government was pleased to withdraw the order of compulsory retirement on October 30, 1975, but again all of a sudden he received an order retiring him compulsorily dt. March 30, 1977. This order was served on him on March 31, 1977, accompanied with a Bank Draft of Rs 3,090/- in respect of three months' pay and allowances. The respondent No. 1 then filed an appeal before the said Tribunal. His case before the Rajasthan Civil Services Appellate Tribunal Jaipur (hereinafter referred to as 'the Tribunal') was that he had the charge of the valuable ornaments, diamonds, Rupees etc. the total cost of which was several crores of rupees. He was asked to hand over the charge of these valuables to the Assistant Commissioner, Devasthan, Headquarters Udaipur, in the presence of the Special Committee & some charge was taken from him in piecemeal. He was

writing persistently for making necessary arrangements to take over the entire charge of each individual item so that no liability can be fastened on him subsequently, but it was not done. According to him once physical verification was done by one Shri Balender Sharma, a rented officer of the State, but he left the charge and keys with the respondent No. 1 in 1972 The valuable property remained in his custody and change since 1956. He stated that he still holds the keys of the valuables as d charge of properties amounting to rupees five crores. He stated that on 5-1-1977 an order was issued by the Commissioner Devasthan authorising the Assistant Commissioner Devasthan for bringing out the boxes and verity the same. The Assistant Commissioner Devasthan (Head-quarters) directed him to hand over the keys on January 15, 1977. The respondent No. 1, however, resisted it and submitted that he is prepared to hand over the charge, but not the keys. The Commissioner Devasthan thereafter withdrew his earlier order and thus itemwise charge was not taken of the remaining valuables costing about rupees five crores. He challenged his order of compulsory retirement on the grounds stated in paras 11 to 20 of his memo of appeal. According to him the order of compulsory retirement was arbitrary, malafide and was actuated by ill will and malice and was not in public interest It was a clear abuse of authority, having regard to his unblemished record of thirty one years' of service.

3. The present petitioners submitted parawise replies to the grounds of appeal. It was stated in the reply that the respondent No. 1 has been a mediocre and average worker with a very little educational background. Tie did not take appropriate steps to revise and increase the rents of the residential and commercial occupancies in accordance with the Government's instructions. It was stated that respondent No. 1 had charge of some valuables and ornaments of some temples of his jurisdiction at Bikaner ever since he was the Inspector at Bikaner and had not passed it on to his successor. He did not hold charge of the contents of nine boxes, which were deposited in. Treasury by Mr. Balendra Sharma in 1972 only the keys of the se boxes were kept with him, as they were to keep with some one or the other. After the with-drawal of order of compulsory retirement on October 30, 1975, he was required to make over the charge of all valuables and ornaments with, him to the Assistant Commissioner (Head quarters), who tried his best to relieve him of the charge as early as possible, but

he employed delaying tactics to gain time. According to the petitioners, the order of with drwal was only for the purpose of facilitating the proper charge of the valuables of which the respondent No. 1 was having the charge of the ornaments and valubles kept in safe custody in the double lock room in the temple of Shri Laxmi Nathji at Bikaner could only be passed on December 29, 1975. He fun stalled further action regarding handing over the change of the ornaments aid valuables kept in seated boxes in the strong room of the Treasury at Bikaner for safe custody by pressing for the formation of the Special Committee to supervise the process of handing taking over. Even after the formation of the Special Committee, process of delaying tactics were employed whereby the charge of eight boxes containing 867 items could be completed only by September 30, 1976, As regards the nine boxes deposited in Bikaner Tresuary in January 1972 it was stated that the Treasury Officer, Bikaner, did not accept the requisition dated September 14, 1976, of respondent No. 1 to take one of these bases on the ground that they were not deposited by him or his predecessor in office. The property was not in his custody to 1972 hence his requisition was not accepted by the Treausury Officer. It was, however, admitted by the present petitioners that the Commissioner Devasthan issued a letter on January 5, 1977, authorizing the Assistant Commissioner (Head-quarters) to conduct physical verification of the contents of sealed boxes lying in safe custody in Bikaner Treasury and deposited by the Officer on Special Duty in 1972 in accordance with the provisions of rule 77 of the Treasury Macula, but the operation of that order was stayed for administrative reasons on January 24, 1977. The Assistant Commissioner (Head quarters) had in compliance with the order of the Commissioner dated January 5, 1977 issued a letter to respondent No. 1 on January 15, 1977, requesting him to make necessary arrangements and also to make available the keys which were said to have been passed on to him by the Officer on Special Duty as a representative ot the Assistani Commissioner, Bikaner, while he was working as Inspector. The State Government denied that respondent Nil was holding charge of the property lying in the nine boxes deposited in the Treasury, Bikaner. The present petitioners, however, denied the ground on which the order of compulsory retirement was challenged, and it was stated that the respondent No. 1's service record and his inefficiency warranted such an action and the order was issued in

public interest and without malic. It was stated that the subjective assessment of the Government that a Government servant is not fit to be retain in Government service any mire in exercise of the power vested with the Government under Rule 244 (2) of the Rajasthan Service rules, cannot be assailed.

4. The Tribunal heard the respondent No. 1 in person and the standing counsel respresenting the State and set aside the order of compulsory retirement. From the impugned order it appears that during the pendency of the proceedings before the Tribunal an offer was made that the respondent No. 1 may either be required to hand-over the charge itemwise or a certificate may be issued to him that he will not be held responsible for any shortage of valuables. At one stage, it appears that the Government was prepared to issue the required certificate, but ultimately the Government was not prepared to issue any such certificate. Respondent No. 1 continued to insist for taking item wise charge. On certificate being issued, the necessity of taking itemwise charge would not have arisen. The respondent No. 1 attained the age of superannuation during the pendency of the appeal. Thus, despite attaining the age of superannuation, the respondent No. 1 continued to hold the charge of keys containing the valuables held by him. As per observations of the Tribunal, the Government did not choose to take over the charge in manner in which it was handed over to respondent No. 1 and it insisted upon the keys being handed over to its respresentative. From the order of the Tribunal it appears that the appeal was not resisted by justifying the action of the Government and the Tribunal proceeded to set aside the order of the compulsory retirement on the ground that when the earlier order of compulsory retirment was withdrawn on October 30,1975, for the purpose of taking over charge of the valuables and jewellery from respondent No. 1 and that position remained unchanged till the fresh order of the compulsory retirement dated March 30, 1977. The submission of respondent No. 1 found favour with the Tribunal that the circumstances attending the earlier order of withdrawal have not changed and when the earlier compulsory retirement order was not in public interest, the subsequent order of compulsory retirement is not in public interest. This position emerges from the penultimate para of the Tribunal In these circumstances aggrieved by the order of the Tribunal the present writ petition has been filed.

5. I have heard Shri M. D. Purohit, learned Additional Government Advocate, for the petitioners and Shri A. K. Mathur, learned Counsel for the respondent No. 1.

6. Shri M. D. Purohit vehemently contended that the Tribunal did not consider the question as to whether the Government passed the order of retirement in public interest. He urged that at the time of passing of the withdrawal order dated October 30. 1975, the State Government did not examine the service record of respondent No. 1 The order was withdrawn for the purpose of facilitating the proper charge of the valuables. He urged that complete charge was taken over from respondent No. 1 with respect to the jewellery and valuables, which were in his custody. The respondent No. 1 was not at all responsible and the State Government was not making him liable or responsible for the nine boxes, which were in deposit with the Treasury Officer, Bikaner, and still the respondent No. insisted that he should be allowed to handover the charge of these boxes also. He is simply holding the keys of these boxes as the representative of the Devasthan Department and simply binding over of the keys of these boxes, is sufficient for the State Government while taking charge from respondent No. 1 He urged that the respondent No. 1 was subsequently ordered to retire compulsorily in the public interest The Screening Committee, after taking into consideration of the complete service record of respondent No. 1 and after a careful consideration of his annual confidential reports, forwarded his case to the State Government for passing the order of compulsory retirement and the State Government, after applying its mind and after being duly satisfied, came to the conclusion that respondent No. 1 should be compulsorily retired Merely because the State Government withdrew the first order on the ground of the charge of eight boxes having not being taken over, it cannot be held that the respondent No. 1 could not be ordered to retire compulsorily after taking over the charge of eight boxes, though it took about one-half years to take over this charge. Shri Purohit stressed a good deal that this Court has ample power to look foot the entire service record of respondent No. 1 and the other record leading to the order of the compulsory retirement to satisfy itself as to whether respondent No. 1 has been ordered to be retired compulsorily in public interest. The Tribunal has not taken into consideration this aspect of the case at all. Reliance was placed by Shri purohit on a decision of the Supreme Court in Union India v. M. E. Reddy and Anr. 1979 (2) S.L.R. 792.

7. Shri A.K. Mathur, on the other hand, submitted that the petitioners cannot be allowed to raise a new point, which was not raised before the Tribunal The order of compulsory retirement was not justified before the Tribunal on the ground that the service record of respondent No. 1 justified the action of the Government and it was in public interest that respondent No. 1 was made to retire compulsorily. The only contention put forward by the petitioners before the Tribunal, was that respondent No. 1 was holding the charge of the nine boxes deposited in Bikaner Treasury in 1972, of which the keys were delivered to respondent No. 1 There was no charge of the contents-of the Erne boxes with respondent No. 1, so there was no question of taking over item wise charge. This contention did not find favour with the Tribunal and the Tribunal found that the position remained intact as regards taking over the entire charge till the fresh order of compulsory retirement. He submitted that if the action of the Government was justified, the question of issuance of any exoneration certificate was irrelevant and at one stage the Government would not have been aggregable for the issuance of such a certificate. Shri Mathur referred to toe proceedings of physical clarification made by Shri Balender Sharma in the year 1972 and submitted that from these proceedings it cannot be found that in fact there was no charge with respondent No. 1 and only the keys were delivered to him as a representative of the Asstt. Commissioner. He urged that after consideration of the documents the Tribunal has arrived at a finding of fact and on that basis considered the justifiability of the order of compulsory retirement. There is no error apparent in the order t f the Tribunal. That being so the order of the Tribunal is not liable to be interfered it. exercise of the or(sic)tkrari jurisdiction of this Court. In support of his contention, he cited Yakoob v. K.S Radha Krishnan and Ors. : [1964]5SCR64 , Bachan Singh und Ors. v. Gauri Sharkar Agarwal and Ors. : AIR 1971 SC1531 , Swarn Singh and Anr. V. State of Punjab and Ors. : AIR 1976 SC232 and Surajbali Ram and Anr. v. Dhani Ram and Ors. : AIR1979 Ori101 . Shri Mathur further urged that when the Government could not and did net defend its order of compulsory retirement on the ground that it was in public interest, it should beheld that the order was passed for a purpose wholly unwarranted and unauthorised by law and so has been lightly set aside. Reliance was placed by him on a decision of the Supreme Court in Smt. S.R. Venkataraman v. Union of India and Ors. 1979 (1)

SLR 130.

8. I have given my earnest and anxious consideration to the arguments advanced before me by both the sides. It may be pointed out that this Court is examining the matter, after the matter has been agitated before the Tribunal. The order of compulsory retirement has not been directly challenged in this Court and as such this court is not called upon to examine the legality and justifiability of the order of compulsory retirement afresh. This court will have to take into account only that what was contended b fore the Tribunal, that which ought to have raised before the Tribunal and has not been raised before it, cannot be allowed to be raised for the first time in this writ petition. The petitioners ought to have defended the order of compulsory retirement on the basis that the service record of respondent No. 1 justified the action of the Government and the conclusion so reached, was in public interest and was not arbitrary, malafide or which can be said to be based on extraneous consideration. It has not been urged before me that the order of compulsory retirement was justified before the Tribunal on these grounds. Had the order been defended on that score the Tribunal would have dealt with that aspect, but the order is conspicuously silent, so it can be legitimately be taken that it was never argued before the Tribunal and this aspect of the case was not put forward by the petitioners before the Tribunal. Shri Purohit conceded that there is no such ground in the writ petition that this aspect of the case was argued before the Tribunal and was not dealt by it.

9. In Bachan Singh and Ors. v. Gauri Shankar Agarwal and Ors. (supra) it has been held that a new plea cannot be entertained in the writ proceedings In that case the question of ratification was not urged before the Board of Revenue. The Letters Patent Bench observed that the learned Single judge should not have aken into consideration a contention that had not been taken before the Board of Revenue and therefore the Appellate Bench was right in reversing his decision on that point.

10. As regards the exercise of certiorari jurisdiction it is well settled that a right of certiorari can be issued when order assailed suffers from any error of law apparent on the face of the record or to correct any jurisdictional error The finding of fact

arrived at by the Tribunal is not open to challenge in proceedings for writ of certiorari. As regards the scope of certiorari jurisdiction reference may be made to the decisions cited by Shri Mathur (supra).

11. In Union of India v. M.E. Reddy and Anr. (supra) their Lordships of the Supreme Court have considered the jurisprudential philosophy behind the rule relating to compulsory retirement and have observed that compulsory retirement is neither a punishment nor a stigma so as to attract the provisions of Article 311(2) of the Constitution. The object of the Rule is to wiped out the dead wood in order to maintain high standard of efficiency and initiative in the State Services It is not necessary that a good officer may continue to be efficient for all times to come. It may be that there may be some officers who may possess a better initiative and higher standard of efficiency and if given chance the work of the Government might show marked improvement. In such a case compulsory retirement of an officer is undoubtedly in public interest. Similarly, there may be cases of officers who are corrupt or of doubtful integrity and who may be considered fit for being compulsory retired in public interest. Since they have almost reached the lag end of their career and their retirement would not cast any aspersion nor does it entail any civil consequences The rule gives an absolute right to the Government and not merely discretion. Thus, it expressly excludes the application of rule of natural justice. It was further observed as under:

The safety valve of public interest is that most powerful and strongest safeguard against any abuse or colourable exercise of power under this Rule. Moreover, when the Court is satisfied that the exercise of power under this Rule amounts to a colourable exercise of jurisdiction or is arbitrary or malafide it can always be struck down. While examining this aspect of the matter the Court would have to act only on the affidavits, documents, annexures, notifications and other papers produced before it by the parties. It cannot delve deep into the confidential or secret records of the Governments to fish out materials to prove that the order is arbitrary or mala fide The Court has, however, the undoubted power subject to any privileges or claim that may be made by the State, to send for the relevant confidential personal file of the Government servant and persue it for its own satisfaction without using it as evidence.

It seems to us that the main object of this Rule is to instil a spirit of d' dedication and dynamism in the working of the State Services so as to ensure purity and cleanlless (sic-cleanliness?) in the administration which is the paramount need of the hour as the Services are one of the pillars of our great democracy 'Any element or constituent of the Service which is found to be lax or corrupt, inefficient or not up to the mark or has outlived his utility has to be weeded out Rule 16(3) provides the methodoly for achieving this object.' We must, however, hasten to add that before the Central Government invokes the poorer under Rule 16(3), it must take particular care that the Rule is not used as a ruse (sic Rule 7) for victimisation by getting rid of honest and unobliging officers in order to make way for incompetent favourites of the Government which is bound to lead to serious demoralisation in the Service and defeat the laudible object which the rule seeks to sub-serve. If any such case comes to the notice of the Government the officer responsible for advising the Government must strictly dealp with, Compulsory retirement contemplated by the aforesaid rule is designed to infuse the administration with initiative and inertia so that it is made poignant, and piquant, spacious and subtle so as to meet the expanding needs of the nation which require exploration of 'fields and pastures new'. Such a retirement involves no stain or stigma nor does it entail any penalty or civil consequences. In fact, the rule merely seeks to strike a just balance between the termination of the completed career or a tried employee and maintenance of top efficiency in the diverse activities of the administration.

12. So far as the present case is concerned, this Court need not travel beyond what has been considered by the Tribunal and should not examine for itself the question of leg lity and justifiability of the order of the compulsory retirement by making scrutiny into the service record of respondent No. 1. The Tribunal seems to have been persuaded to set aside the order of compulsory retirement on the basis that the position has not changed after the withdrawal of the earlier order of compulsory retirement. What made the Government to with 1raw the earlier order, the same appears to have actuated the Tribunal to set aside the subsequent order of the Government and on that basis it can be said that 'he retirement of respondent No. 1 was not in public interest and as such was not warranted under rule 242(2) of the Rajasthan Service Rules. In Smt. S.R. Venkataraman v. Union

of India (supra) his Lordship P. N. Shinghal, J, speaking for the Court, observed that 'it is trite law if a discretionary power has been exercised for an unauthorised purpose, it is generally immaterial whether its repository was acting in good faith or in bad faith'. It was further observed that 'it will be a gress abuse of legal power to punish a person or destory her service career in a matter not warranted by law by putting a rule which makes a useful provision for the premature retirement of Government servants only in the ''public interest', to a purpose wholly unwarranted by it, and to arrive at quite a contradictory result ' The circumstances of the case, s considered by ths Tribunal, lead only to this conclusion that the State Government has exercised its power under rule 244(2) of the Rajasthan Service Rules, not for the purpose of public interest, but for a wholly unauthorised and unwarranted purpose. Though the Tribunal has not considered the matter to this extent, but the position which emerges from the order of the Tribunal, comes to this and it can be said that the exercise of the power in the instant case was not In public interest and was a colourable exercise and was an abuse of power. It appears that what made respondent No. 1 to retire, was his insistence to hand over itemwise charge, as according to him he was h aiding item wise charge of the contents of the nine boxes lying in deposit with the Bikaner Treasury. The stand taken by the Government in this regard, appears to be beyond comprehension.

13. Shri Purohit next argued that the Tribunal acted in excess of its jurisdiction in directing the petitioners to take over the charge of the valuables, jewellery itemwise in the presence of Special Committee formed for that purpose without avoidable celay. There is some force in this contention of Shri Purohit. It was beyond the scope of the appeal before the Tribunal to have given the above direction. Respondent No 1 simply sought the relief of quashing or setting aside of the order of compulsory retirement It is the look out of the Government and not of the Tribunal how and in what manner the charge is to be taken from the respondent No. 1. In this view of the matter the direction deserves to be quashed.

14. In the light of the foregoing discussion the writ petition desc(sic)ves-to be dismissed, except with regard to the discretion part of the order of the Tribunal.

15 In the result the writ petition is partly allowed The direction given by the Tribunal to the petitioners in its impugned order to take over the charge from respondent No. 1 of the valuable jewellery itemwise in the prese nee of Special Committee formed for that purpose without avoidable delay, is quashed and set aside and the writ petition in respect to the main order of the Tribunal, is dismissed. In the cricumstances of the case these will be no order as to costs of this writ petition.

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