

**HIGH COURT OF JAMMU AND KASHMIR AT  
JAMMU**

**SWP No.622/05**

**Hon'ble Mr Justice Nirmal Singh**

**Rajesh Gupta**

**Versus**

**State of J&K and others**

**Decided On :-29.01.2008**

Mr D.C. Raina, Sr.Adv. along with Mr Vikram Singh, Adv. for the Petitioner.  
Mr BS Salathia, AAG & Dy.AG for Respondent-State.

**JUDGEMENT**

1. Through the medium of present writ petition, the petitioner seeks a writ in the nature of certiorari quashing Government Order No. 471-GAD of 2005 dt. 26<sup>th</sup> of April'05 whereby the petitioner has been prematurely retired from service. Writ is also sought in the nature of mandamus commanding upon respondents to allow the petitioner to continue in service till he attains the age of superannuation and to grant him all the service benefits.

2. The case of the petitioner who was working as Executive Engineer, Rural Engineering Wing, Kathua, is that he was served a charge sheet on 11<sup>th</sup> of March'05 which was received by him on 11<sup>th</sup> of April'05. He submitted reply to the charge sheet on 16<sup>th</sup> of April'05. It is stated that the respondents instead of dropping the disciplinary proceedings against the petitioner removed him from service vide order impugned date 26<sup>th</sup> of April'05. It is this order, which as indicated above, is the subject matter of challenge in the present petition.

3. On notice, respondents have filed counter stating therein that in order to have a proper administration and functioning of the various departments of the State, the Government has taken effective measures to remove such officers/officials who have become deadwood and whose performance has become dis-satisfactory. It is stated that a Committee of Senior Officers headed by the Chief Secretary was constituted and the said Committee after considering

the reports from the concerned departments and various agencies as well as the opinion of the public in general held series of meetings and after scrutinizing the record of such officers/officials including the petitioner came to the conclusion that it is in public interest to remove such like officers from service and it was on this basis the petitioner who had attained 48 years of age and whose performance was not found satisfactory, was prematurely retired from service vide order impugned. It is stated that retaining such like officers in service is nothing but a liability on State exchequer. It is thus stated that the respondents have taken the said action in public interest, and therefore, the petitioner cannot have any grievance in this regard.

4. Learned counsel for the petitioner submits that when the respondents have not taken into consideration the reply furnished by the petitioner to the charge sheet and he has been removed from service without affording any opportunity of being heard, then the proceedings initiated by the respondents would be deemed to have been dropped. It is stated that the petitioner throughout his service career was not having any doubtful integrity, and therefore, cannot be declared as a deadwood. It is stated that the Committee constituted for the purpose should have taken into consideration the service record of the petitioner before recommending the case of the petitioner for premature retirement. It is stated that the Government, no doubt, has the power to retire a Government servant from service prematurely but this should be done only when the said official is having dissatisfactory performance and is proved to be an officer/official of doubtful integrity and this should be done taking into consideration the entire service record of the said officer and not the record of a particular period. Learned counsel for the petitioner has placed reliance on the judgments reported as (1984) 2 SCC 369 Anoop Jaiswal v. Government of India and anr, AIR 1996 SC 2436 State of Orissa v. Ramchandra Das, 1997(7) SCC 463, Union of India v. G.Ganayutham, 1998(7) SCC 310-M.S. Bindra v. UOI, 1999(1) SCC 529-State of Gujrat v. Suryakant Chuni Lal Shah, 2003(4)SCC 59 Jugal Chander Saikia v. State of Assam and anr, 2004(7) Supreme 94-Pritam Singh v. UOI and 1993 KLJ 352-Ghulam Rasool Azad v. State and ors.

5. I have heard learned counsel for the parties and perused the record. In the present case, before passing the order impugned, the State Government constituted a Committee of officers under the chairmanship of Chief Secretary for considering the cases of various officers/officials in terms of Article 226 of the Jammu and Kashmir Civil Service Regulations. The said Committee held meetings on 8<sup>th</sup> of Oct'04, 2<sup>nd</sup> of Dec'04, 4<sup>th</sup> of Jan'05, 21<sup>st</sup> of Feb'05, 24<sup>th</sup> of March'05, 28<sup>th</sup> of March'05, 1<sup>st</sup> of April'05 and 11<sup>th</sup> of April'05 and these meetings were attended by the Commissioner/Secretary, R&B, Secretary PHE, Irrigation and FC, Secretary, Power Development Department, Secretary School Education, Secretary Rural Development Department and Additional Secretary, Education Department. The case of the petitioner was also considered by the said Committee on the basis of the report submitted by the Additional DG, CID that the petitioner was having the property disproportionate to his known source of

income. The said property included a house at Krishna Colony, Kathua built over 3 kanals of land, two shops in Kathua, six kanals of land in Kathua town, one kanal of land at Trikuta Nagar, Jammu, two kanals of land at Trikuta Nagar (Extension), three kanals of land at Greater Kailash Colony, Jammu, 10 marlas of plot at Bhatindi, Jammu, besides having bank accounts and lockers in United Commercial Bank, Raghunath Bazar, Jammu and Vijay Bank, Purani Mandi, Jammu. In addition to the above, the Committee concerned also took into consideration the information provided by the administrative department in which the petitioner was working and as per this report, the petitioner was attached in the head office vide Government Order No. 112-RD of 2004 dated 9<sup>th</sup> May'03 for issuing back dated sanctions relating to the execution of departmental works, passing of bills and estimates in Jammu district and other matter related thereto. A departmental enquiry was also ordered against the petitioner vide Government Order No. 125-RD of 2004 dated 22<sup>nd</sup> of May'03. It was further provided in the report of the department concerned that the petitioner is having a bad reputation.

6. On the basis of the aforesaid material, the Committee scrutinizing the cases of different officials of the various departments of the State, recommended the case of the petitioner for premature retirement. Therefore, taking into consideration the above facts and circumstances, it can be said that the respondents have rightly passed the order impugned and this has been done in public interest after taking into consideration the fact that the petitioner's performance was dis-satisfactory and his integrity was doubtful.

7. The judgments cited by the learned counsel for the petitioner are not applicable to the facts of the present case. In the aforesaid cases, it has been held that judicial review is permissible in a case of compulsory retirement when the State has not provided sufficient material before the court to justify its action in passing such an order and the order is either arbitrary or malafide. In the present case, however, the petitioner has not alleged any malafide against any of the officer of his department, rather, the decision to remove the petitioner from service prematurely has been taken by the Committee constituted for the purpose by the State and the said Committee before taking the decision has considered the material placed before it which, as noticed above, clearly speaks of doubtful integrity of the petitioner.

8. In *Baikuntha Nath Das v. Chief District Medical Officer*, (1992) 2 SCC 299, the Apex Court has held as under:-

*“.....(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 any 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. The circumstance by itself cannot be a basis for interference."*

9. In Allahabad Banks Officers Association v. Allahabad Bank, (1996) 4 SCC 504, it has been held as under:-

*"The power to compulsorily retire a government servant is one of the facets of the doctrine of pleasure incorporation in Article 310 of the Constitution. The object of compulsory retirement is to weed out the dead wood in order to maintain efficiency and initiative in the service and also to dispense with the services of those whose integrity is doubtful so as to preserve purity in the administration.....While misconduct and inefficiency are factors that enter into the account where the order is one of dismissal or removal or of retirement, there is this difference that while in the case of retirement they merely furnish the background and the enquiry, if held- and there is no duty to hold an enquiry-is only for the satisfaction of the authorities who have to take action, in the case of dismissal or removal they form the very basis on which the order is made....."*

10. Again in Union of India v. Dulal Dutt, (1993) 2 SCC 179, the Apex Court has held that an order of compulsory retirement is not an order of punishment. It is actually a prerogative of the Government but it should be based on material and has to be passed on the subjective satisfaction of the Government. On inquiry by the court, the Government, however, may disclose the material on the basis of which the decision is taken to compulsorily retire a government servant.

11. In the present case, as noticed above, a Committee was constituted by the State Government to consider the cases of various officers/officials of the various departments of the State in terms of Article 226 of the J&K Civil Service

Regulations on the basis of their performance. The case of the petitioner was also considered by the said Committee on the basis of the reports furnished by the Additional Director General, CID. The petitioner was found to have possessed the property disproportionate to his known sources of income. The information provided by the concerned Department was also taken into consideration by the said Committee. As per this information, as noticed above, the petitioner was found to have misappropriated the funds by issuing back dated sanctions relating to the execution of various departmental works and passing of bills fraudulently. It was also found that the petitioner is having a bad reputation. All this material available with the authorities concerned resulted in their subjective satisfaction that the petitioner is an officer of doubtful integrity and it was on the basis of this satisfaction, the order impugned has been passed and rightly so and in my opinion, no interference is called for.

12. For the reasons mentioned above, this petition is found to be without merit and is dismissed. Record produced by the State Counsel is returned to him in the open court.