

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

SWP No.2916/2015
MP No.1/2016

Date of order: 31.08.2017

Mohd. Iqbal	Versus	State of J&K and ors.
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Coram:

Hon'ble Mr. Justice Tashi Rabstan, Judge

Appearance:

For the petitioner(s):	Mr Mohd. Arif and Mr Mehmood Rizvi, Advocates.
For the respondent(s):	Ms Seema Shekhar, Sr. AAG.

Whether approved for reporting? Yes/No.

1. Petitioner, initially appointed as Patwari in respondent-department in the year 1984, was promoted as Girdawar in the year 2009. FIR No. 02 of 2013, Police Station, Vigilance Organization Jammu, lodged against the petitioner, was followed by his suspension vide Order No.SQ/1302-06 dated 23.01.2013 and thereafter his premature retirement vide Order No.877-GAD of 2015 dated 30.06.2015 impugned herein.
2. Petitioner challenges order impugned on various grounds, including the one that order is bad in law as the same has been passed without due and proper application of mind and in utter disregard and total violation of constitutional protections available to him, and in absence of any enquiry, the said order *de hors* the rules. Neither any enquiry is said to have been conducted nor has petitioner been given any chance to participate in the same prior to passing of impugned order. It is also averred that the order impugned has been made in gross violation of principle of natural justice as the same, on the face of it, is contrary to the principle of natural justice. Another ground set out by the petitioner is that FIR No.02/2013, registered by Vigilance Organization Jammu, has remained pending for a long time and challan was presented against him on 10.08.2015, i.e. much

after registration of FIR, and also the order impugned has been issued prior to filing of challan, therefore, the order impugned has been passed in a mechanical manner without due and proper application of mind and in *mala fide* exercise of powers. Registration of FIR itself, as maintained by petitioner, cannot be a ground for making compulsory retirement, that too when investigation is pending. Further ground of challenge to impugned order, is that order impugned is stigmatic and punitive in nature, to say the least, and respondents have taken harsh, hasty and penal action against the petitioner. The next ground of challenge is that order impugned has been passed in total violation of provisions contained in Section 126(2) of Constitution of Jammu and Kashmir read with Article 311(2) of Constitution of India, therefore, the same is liable to be quashed.

3. Reply has been filed by respondent No.1, in which he contends that the Government has to perform multitude of tasks in order to implement various welfare measures in the public interest. The paramount task is that of providing clean and effective administration to the people of the State. It is also contended that in order to make the administration effective, periodic review of all of its officers is taken by the State Government to encourage honest and efficient Government servants and simultaneously weed out the inefficient and corrupt officers from the services in the public interest. At the same time, various measures are being taken to deal with unscrupulous, inefficient and corrupt officers to instill the faith of public in the administration. While as various incentives and awards are given to honest and efficient officers, recourse is being taken to the provisions of Article 226(2) and (3) of J&K Civil Services Regulations, 1956, for removal of such Government servants from State service, who have become deadwood on account of having indulged in corrupt practices. It is insisted that compulsory retirement in

terms of Article 226(2) of J&K Civil Service Regulations, 1956, is designed to infuse the administration with initiative for better administration and augmenting efficiency, so as to meet the expanding horizons and cater to new challenges faced by the State to provide speedy, sensitivity, probity, non-irritative public relation and enthusiastic creativity, which can be achieved by eliminating the deadwood. It is further insisted that in order to consider the cases of officers/ officials, who have indulged in corrupt practices, enjoy bad reputation in public and have created impediments in delivery of services to the general public in a smooth and effective manner, and in terms of Government Order No. 17-GAD (Vig.) 2015 dated 20.05.2015, sanction was accorded to the constitution of Committee to consider the cases of officers/officials for premature retirement and the committee, so constituted, held its various deliberations and the matter was posted for further discussions from time to time and on 11.06.2015, the Committee deliberated upon the charges against each employee. The Committee finally met on 26.06.2015 and, amongst others, also considered the case of the petitioner. In the said meeting, the Secretary to the Government, Revenue Department, also participated as co-opted member. The committee, on consideration of the record, observed that petitioner did not enjoy good reputation in the public due to his inconsistent conduct over a period of time and also noticed that he was caught red handed by the Vigilance team, accepting bribe of rupees seven thousand from the complainant-Mr. Abdul Qayoom, for issuance of copy of Khasra Girdawari of land, falling under Khasra No.131/1, measuring 10 kanals and 07 marlas, situated at Village Simbli Darhal. In this regard, FIR No.02/2013 under Section 5(2) of Jammu and Kashmir Prevention of Corruption Act, Samvat 2006 and Section 161-RPC at Police Station, Vigilance Organization Jammu was registered against the petitioner. It is asserted that the Committee, while

considering the case of the petitioner for compulsory retirement, observed that Annual Confidential Reports (ACRs) of the petitioner were incomplete. The Committee also took the notice of the fact that the petitioner, holding the post in the Revenue Department, was caught red handed while demanding and accepting the bribe in lieu of issuance of copy of Khasra Girdawari to the complainant, thereby, substantiating the fact that he has outlived his utility to the public. The Committee, therefore, recommended for retirement of the petitioner under Article 226 (2) of Jammu and Kashmir Civil Service Regulations and the recommendations, so made, were accepted by the competent authority which culminated into issuance of order impugned, therefore, the respondents have defended their case that order impugned is legal and in accordance with law.

4. Heard learned counsel for the parties and considered the matter.
5. It is advantageous to extract the order of compulsory retirement, which reads thus:-

“Government Order No.877-GAD of 2015 dated 30.06.2015

Whereas the Government is of the opinion that it is in the public interest to do so.

Now, therefore, in exercise of the powers conferred by article 226 of the Jammu and Kashmir Civil Services Regulations, the Government hereby gives notice to Shri Mohd. Iqbal, Girdawar, Attached with Teshil Office Thanamandi, that he having already rendered 22 years of service, shall retire from service w.e.f forenoon of 01/07/2015.

He is allowed three months of pay and allowances in lieu of three months notice.

By order of the Government of Jammu and Kashmir.”

The relevant provision of law under which an order of compulsory/premature retirement can be passed, is Article 226(2) of the Jammu and Kashmir Civil Services Regulations which reads thus:-

“226 (2). Notwithstanding anything contained in these Regulations Government may, if it is of the opinion that it is in public interest to do so, require any Government servant other than the one working on a post which is included in Schedule II of these Rules, to retire at any time after he has completed 22 years/44 completed completed six monthly period of qualifying service or on attaining 48 years of age; provided that the appropriate authority shall give in this behalf a notice (in one of the forms prescribed in annexures A and B hereto as the case may be), to the Government servant at least 3 months before the date on which he is required to retire or 3 months of pay and allowance in lieu of such notice. Such a Government servant shall be granted pensionary benefits admissible under these rules on the basis of qualifying service put in by him on the date of such retirement.

Explanation-A Government servant who is retired immediately after allowing him pay and allowance in lieu of notice will be entitled to pension from the date of such retirement and the pension shall not be deferred till after the expiry of the three months for which he is paid pay and allowances.”

6. On perusal of impugned order *qua* Regulations, it is evident that not only APRs are to be considered but entire service record should be taken into consideration before coming to a conclusion to retire a person prematurely. It is admitted case of parties that while considering case of petitioner for compulsory retirement, annual confidential reports of the petitioner were incomplete. Petitioner has placed on record photocopy of service book which reveals no adverse orders recorded in service book of

petitioner, except the note that petitioner was placed under suspension vide order dated 23.01.2013 of Deputy Commissioner, Rajouri.

7. Learned counsel for petitioner has argued that impugned order is a result of non application of mind inasmuch as APRs of petitioner have not been considered. He further states that neither any departmental enquiry was initiated against petitioner nor has any adverse entry ever been recorded in his service book or communicated to him. It is also argued that issuance of order impugned is merely on the basis of registration of FIR and filing of challan.
8. In order to further strengthen his arguments, learned counsel for petitioner has produced a copy of judgement dated 22.12.2016 passed by a coordinate Bench in SWP No.2914/2015, wherein similar issue has been decided, which is taken on record.
9. *Per contra*, Mrs. Seema Shekhar, learned Sr. AAG, submits that petitioner was caught red handed, accepting bribe for issuance of copy of Khasra Girdawari, she vehemently argues that it is within the domain of the State Government, to compulsorily retire an employee in public interest, in exercise of powers vested under section 226(2) of Civil Service Regulations, therefore, the employee has no right to continue as the decision taken by the Committee and approval of competent authority has been taken *bona fide* and no *mala fide* has been alleged in the case. It is further argued that the scope of judicial review with regard to the decision of an employer to compulsorily retire an employee, in public interest, is limited and is confined to cases where the order is passed on either no evidence or suffers from the *vice* of non-application of mind or is totally perverse. Learned counsel avers that the APRs of an employee would only reflect his performance primarily and, besides APRs, other material, which was placed before the Committee, was also to be considered and there cannot be any concrete material with regard to

integrity of an employee. She, therefore, prays for dismissal of writ petition.

10. It is pertinent to mention here that law, in respect of premature retirement, is well settled by the Supreme Court in *State of Gujarat Vs. Suryakant Chunilal Shah*, (1999) 1 SCC 529. For facility of reference, paragraph 26 thereof is quoted hereunder:-

“26. The whole exercise described above would, therefore, indicate that although there was no material on the basis of which a reasonable opinion could be formed that the respondent had outlived his utility as a Govt. servant or that he had lost his efficiency and had become a dead-wood, he was compulsorily retired merely because of his involvement in two criminal cases pertaining to the grant of permits in favour of fake and bogus institutions. The involvement of a person in a criminal case does not mean that he is guilty. He is still to be tried in a court of law and the truth has to be found out ultimately by the court where the prosecution is ultimately conducted. But before that stage is reached, it would be highly improper to deprive a person of his livelihood merely on the basis of his involvement. We may, however, hasten to add that mere involvement in a criminal case would constitute relevant material for compulsory retirement or not would depend upon the circumstances of each case and the nature of offence allegedly committed by the employee.”

11. It would be appropriate to reproduce paragraph No. 32, Sub Para (iv), of decision rendered in *“Baikunta Nath Das. Vs. Chief District Medical Officer”*, reported as AIR 1992 SC 1020, here under:-

“(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.”

- 12.** In *S. Ramachandra Raju V. State of Orissa*, (1994) Supp (3) SCC 424, it is held:-

“On total evaluation of the entire record of service if the Government or the governmental authority forms the opinion that in the public interest the officer needs to be retired compulsorily, the court may not interfere with the exercise of such bona fide judicial review not as a court of appeal but in its exercise of judicial review to consider whether the power has been properly exercised or is arbitrary or vitiated either by mala fide or actuated by extraneous consideration or arbitrary in retiring the government officer compulsorily from service.”

- 13.** In *“State of J&K and ors. Vs. Janak Singh”*, 2010 (4) JKJ 89 (HC), the Division Bench of this Court has held:-

“Whether registration of an FIR, based upon specific complaint, can be made basis for formulation of an opinion for pre-mature retirement, is an issue which is no longer res integra. As already stated above, formulation of subjective opinion on the basis of the record of the respondent, will be a determinative factor to prematurely retire him. Registration of 2 FIRs is not part of the service record of the respondent on the basis of which opinion can be formulated by the Review Committee. These are merely allegations which are subject matter of investigation/trial and cannot become the basis for formulation of such an opinion, as rightly observed herein supra that the fate of these complaints has to be determined by the agency which is not a part of the Committee. We, accordingly, hold

that learned Single Judge was correct in rejecting the contention of the appellants in this behalf.”

- 14.** The Supreme Court again in **High Court of Judicature of Patna Vs. Shyam Deo Singh and ors.**, (2014) 4 SCC 733, considered a similar issue regarding non-extension of service of a Judicial Officer up to the age of 60 years and in fact upheld the order of the High Court setting aside the order of denying the extension in service on the ground that the entire service record of the Judicial Officer was not assessed by Administrative Committee as well as the Full Court. Thus it is evident that the entire service record of the person, who is to be compulsorily retired, is mandatory requirement to find out the utility of the person or not. Even in respect of promotion, overall assessment of service record of candidates by the selection committee is mandatory as held by the Supreme Court in **G. Mohanasundaram V. R. Nanthagopal and ors.**, **AIR 2015 SC 141**. In **Punjab State Power Corporation Ltd. and ors. Vs. Hari Kishan Verma**, **AIR 2015 SC 2456**, the said position is also reiterated.
- 15.** In the present case, the only reason to justify the compulsory retirement, as argued by Mrs. Seema Shekhar, learned Sr. AAG, is that petitioner was caught red handed while accepting bribe for issuance of copy of Khasra Girdawari of land measuring 10 Kanals and 07 Marlas, falling under Khasra No. 131/1, situated at Village Simbli Darhal and in this regard a complaint filed by one Abdul Qayoom, followed by FIR No.02/2013 under Section 5(2) of Jammu and Kashmir Prevention of Corruption Act, Samvat, 2006 and 161-RPC at Police Station, Vigilance Organization, Jammu against petitioner and the challan was also filed, which is pending before competent court of law, therefore, the Government thought it fit to weed out petitioner.

16. Mere registration and filing of chargesheet or alleged to have proof of certain alleged irregularities itself, cannot be a ground to retire a person compulsorily when there is no adverse entries recorded in his APRs.
17. Admittedly, impugned order issued by respondents is on the basis of APR entries and assessment of integrity, but subsequently it is solely based on the ground of registration of FIR and presentation of challan against petitioner. Respondents' justification over the stand to retire petitioner prematurely that petitioner does not have good reputation in the public because of lodging of FIR and therefore, in view of the fact that petitioner having indulged in wrong-doing while performing his duties and also bad reputation in society, the Committee, therefore, recommended the case of the petitioner for premature retirement after completing 22 years of service.
18. From the above stated submission, the decision to compulsorily retire petitioner, has been taken merely on the ground of registration of FIR and without following the mandate of law and principles of natural justice.
19. For all what has been discussed above, the writ petition is disposed of and order impugned, quashed. Respondents are directed to reinstate the petitioner and award him all the consequential benefits within a period of one month from the date certified copy of this order is made available to them.
20. Disposed of as above along with connected MP.

Jammu,
31.08.2017
Surinder

(Tashi Rabstan)
Judge