

J. D. SHRIVASTAVA

B STATE OF M. P. & OTHERS

January 24, 1984

[O. CHINNAPPA REDDY, E. S. VENKATARAMIAH AND R. B. MISRA, JJ.]

C *Fundamental Rules, Rule 56(3)(a) Compulsory Retirement—Adverse entries in confidential reports relating to a remote period—Reliance on—Whether valid.*

D The appellant was a State Judicial Service Officer in the grade of Additional District & Sessions Judge. Consequent upon the decision of the State Government to reorganise the Higher Judicial Service it was decided that a number of posts of the cadre of Additional District & Sessions Judges be abolished and the incumbents of those posts be absorbed as District & Sessions Judges. The High Court at one of the Full Court meetings held to screen the officers in the cadre of Additional District & Sessions Judges, decided to retire the appellant compulsorily on his attaining the age of 55 years under Rule 56(3)(a) of the Fundamental Rules. It was also decided not to recommend him for promotion to the cadre of District and Sessions Judges. The appellant was served with an order of compulsory retirement dated August 28, 1981.

E The Division Bench of the High Court dismissed the appellant's writ petition impugning his compulsory retirement.

F In the appeal to this Court, it was contended that the High Court had made the recommendation to retire the appellant compulsorily without applying its mind and that the decision was based on collateral considerations and was arbitrary. On behalf of the High Court it was contended that the personal confidential records of the appellant were considered by the Full Court Meeting and the decision to retire the appellant under Fundamental Rule 56(3)(a) was taken after due consideration of the entire record.

Allowing the appeal:

G HELD : 1. It would be an act bordering on perversity to dig out old files to find out some material to make an order against an officer. Dependence on entries about 20 years before the date on which the decision of compulsory retirement was taken cannot be placed for retiring a person compulsorily, particularly when such person concerned has been promoted subsequent to such entries. [474H; 475A]

D. Ramaswami v. State of Tamil Nadu, [1981] 2 S.C.R. 75 referred to.

H 2. The power to retire a Government servant compulsorily in public interest in terms of a service rule is absolute provided the authority concerned forms

an opinion *bona fide* that it was necessary to pass such an order in public interest. But if such decision was based on collateral grounds or if the decision was arbitrary, it is liable to be interfered with by Courts. [469 B-C]

Union of India v. Col. J.N. Sinha & Anr., [1971] 1 S.C.R. 791; *Union of India v. M.E. Reddy & Anr.*, [1980] 1 S.C.R. 736; *Swami Saran Saksena v. State of U.P.*, [1980] 1 S.C.R. 923; *Baldev Raj Chadha v. Union of India & Ors.* [1981] 1 S.C.R. 430; and *Brij Bihari Lal Agarwal v. High Court of Madhya Pradesh & Ors.* [1981] 2 S.C.R. 297; referred to.

In the instant case the High Court relied on some adverse remarks relating to 1959-60 or thereabouts. It was true that in the early part of the appellant's career the entries did not appear to be quite satisfactory. Some were good, some were not good and some were of a mixed kind. But being reports relating to a remote period, they are not quite relevant for the purpose of determining whether he should be retired compulsorily or not in 1981. The scrutiny should have been confined to the reports for about ten years prior to the date on which action was proposed to be taken. All the reports except for 1972-73 and 1973-74 were good and quite satisfactory. Even in the reports of the said years there was nothing to doubt his integrity. He was punctual in attending to his work. The reports for the years 1976-77 to 1980-81 speak in favour of the appellant and not against him. A perusal of the said reports showed that there was nothing against him. In these circumstances it was impossible to take the view that the appellant was liable to be compulsorily retired. [470 E-H]

3. The resolution of the High Court recommending to the Government that the appellant should be compulsorily retired and the impugned order passed under Fundamental Rule 56(3)(a) are quashed. The resolution of the High Court that the appellant was not fit for promotion to the cadre of District and Sessions Judges is also quashed. [474 E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3429 of 1982

Appeal by Special leave from the Judgment and Order dated the 29th July, 1982 of the Madhya Pradesh High Court in Misc. Petition No. 1169 of 1981.

G.L. Sanghi and *Ashok Srivastava* for the Appellant.

Dr. Y.S. Chitale, Mrs. A.K. Verma, D.N. Misra, A.M. Dittia and *A.K. Sanghi* for the Respondents.

The Judgment of the Court was delivered by

VENKATARAMIAH, J. The appellant is a judicial officer of the State of Madhya Pradesh, who would have ordinarily retired on January 31, 1984 on attaining 58 years of age. He was appointed

A as a Munsiff-Magistrate in the erstwhile State of Bhopal in 1953. On reorganisation of States on November 1, 1956, he became a member of the Judicial Service of the State of Madhya Pradesh. He was promoted as an Additional District & Sessions Judge on January 8, 1974 and was confirmed in that post with effect from November 25, 1974. Consequent upon the decision of the State Government to reorganise the Higher Judicial Service of the State of Madhya Pradesh in accordance with the advice of the High Court of Madhya Pradesh, 101 posts of the cadre of Additional District & Sessions Judges came to be abolished and the incumbents of those posts were to be absorbed as District & Sessions Judges as per Government Memorandum dated February 24, 1981. On the issue of the said Memorandum, the High Court of Madhya Pradesh decided to screen the officers in the cadre of Additional District & Sessions Judges for the purpose of making recommendation to the State Government about the promotion of selected officers to the cadre of District & Sessions Judges. For this purpose, Full Court Meetings of the Madhya Pradesh High Court were held on February 27 and 28, 1981 and March 1, 1981. The case of the appellant was also considered in that connection. It is stated that at those meetings, the High Court first resolved to scrutinise the cases of all the judicial officers who were to attain the age of 55 years in the year, 1981. In the course of such scrutiny the High Court decided on February 27, 1981 to retire the appellant compulsorily on his attaining the age of 55 years under Rule 56(3) of the Fundamental Rules. On March 1, 1981 it decided not to recommend him for promotion to the cadre of District & Sessions Judges. Accordingly, the State Government was addressed by the High Court to retire the appellant compulsorily. The appellant thereafter continued as an Additional District & Sessions Judge until he was served with the order of compulsory retirement dated August 28, 1981. Aggrieved by that order, the appellant filed a writ petition before the High Court. The petition was dismissed by a Division Bench of the High Court on July 29, 1982. This appeal is preferred by special leave against the judgment of the High Court.

G Clause (a) of the Fundamental Rule 56(3) as amended in 1976 which governs the case of the appellant reads thus:

H "F.R.56(3)(a) A Government servant may, in the public interest, be retired at any time after he attains the age of fifty-five years without assigning any reason by giving him a notice in writing."

It is contended that the order of compulsory retirement is unsustainable on various grounds and the principal ground urged is that the High Court had made the recommendation to retire the appellant compulsorily without applying its mind to the case as required by law; that it was a decision based on collateral considerations and that it was arbitrary.

It is now firmly settled that the power to retire a Government servant compulsorily in public interest in terms of a service rule is absolute provided the authority concerned forms an opinion *bona fide* that it is necessary to pass such an order in public interest. It is equally well settled that if such decision is based on collateral grounds or if the decision is arbitrary, it is liable to be interfered with by courts. (See *Union of India v. Col. J.N. Sinha & Anr.*)⁽¹⁾ We have also gone through the following decisions, namely, *Union of India v. M.E. Reddy & Anr.*,⁽²⁾ *Swami Saran Saksena v. State of U.P.*,⁽³⁾ *Baldev Raj Chaulha v. Union of India & Ors.*,⁽⁴⁾ *Brij Bihari Lal Agarwal v. High Court of Madhya Pradesh & Ors.*,⁽⁵⁾ and *D. Ramaswami v. State of Tamil Nadu*,⁽⁶⁾ which have a bearing on the question before us. We shall now proceed to deal with the facts of the case in the light of the principles enunciated in the above decisions.

In Para 10 of the counter affidavit of Shri A.K. Pandey, Additional Registrar of the High Court of Madhya Pradesh filed before this Court, it is stated as follows :

"It is not disputed that Full Court Meeting was held on 27th/28th February, as well as 1st March, 1981 to consider the cases of Additional District & Sessions Judges for promotion in the Higher Judicial Service. It is also not disputed that the petitioner stood at serial No. 10 in the seniority list of Additional District & Sessions Judges. It is also not disputed that he was confirmed as Additional District & Sessions Judge in August, 1976. The personal confidential record of the petitioner is placed before this Hon'ble Court and (it) speaks for itself (Annexure R-XI to XXXVIII).

(1) [1971] 1 S.C.R. 791.

(2) [1980] 1 S.C.R. 736.

(3) [1980] 1 S.C.R. 923.

(4) [1981] 1 S.C.R. 430.

(5) [1981] 2 S.C.R. 297.

(6) [1981] 2 S.C.R. 75.

- A** It is wrong to say that any extraneous consideration operated in the Full Court Meeting against the petitioner and it is wrong to say that the resolutions in the Court Meeting were unjust, arbitrary or malafide. As already pointed out, the decision was taken in Full Court Meeting after consideration of the entire record of the petitioner.
- B** The decision to retire the petitioner under Fundamental Rule 56(3) was after due consideration of the entire record of the petitioner. (Confidential entries are Annexures R-XI to XXXVIII)."
- C** On going through the said counter affidavit we are satisfied that apart from the confidential records, nothing else appears to have been relied on by the High Court to reach the decision that the appellant should be compulsorily retired. We shall now proceed to examine the confidential rolls maintained in respect of the appellant.
- D** The Confidential Reports in respect of the appellant are placed before us. It is stated by the Registrar of the High Court in Para 13 of the counter affidavit that the appellant's performance for 28 years was taken into consideration for screening under Fundamental Rule 56(3). The High Court has relied on some adverse remarks relating to 1959-60 or thereabouts. It is true that in the early part of his career, the entries made do not appear to be quite satisfactory. They are of varied kinds. Some are good, some are not good and some are of a mixed kind. But being reports relating to a remote period, they are not quite relevant for the purpose of determining whether he should be retired compulsorily or not in the year 1981, as it would be an act bordering on perversity to dig out old files to find out some material to make an order against an officer. We, therefore, confined our scrutiny to the reports made in respect of the appellant for about ten years prior to the date on which action was taken against him to retire him compulsorily. We find that all of them except for 1972-73 and 1973-74 are good and quite satisfactory. Even in 1972-73 and 1973-74 it is stated that there was nothing to doubt his integrity and that he was punctual in attending to his work. It may be noted that the appellant was promoted as an Additional District & Sessions Judge on January 8, 1974 and was also confirmed with effect from November 25, 1974 by an order passed in 1976. Any adverse report in respect of an earlier period unless it had some connection with any event which took place subsequently cannot, therefore, reasonably form a basis for forming an opinion about the work of the appellant.
- E**
- F**
- G**
- H**

We give below a few relevant extracts from the Confidential Reports for the period subsequent to March 31, 1974 :

Year : 1975

On confidential enquiries from the members of the Bar and from other sources nothing was found against him in respect of his integrity. During surprise check he was found on the board in time. Enquiries from other sources also disclosed that he usually comes in time and does not rise early and engages himself in judicial work. This impression was gathered from judicial diary also.

After scrutiny of the cases, the following impression was gathered. Knowledge about rules and orders, law and procedure is adequate but the number of the interlocutory application is sometimes not entered in the margin of the connected order-sheet in red ink. Judgments are good with proper discussion of evidence. Interlocutory matters are not kept unduly pending for long time. Rules regarding pleadings, and evidence etc. are followed. Punishments were adequate. Examination of accused is proper. Charges framed are proper. Record is legible.

Control and supervision over the staff is satisfactory. Judicial diary calls for no particular comments. His relations with the Bar are cordial, with no complaints of any misbehaviour with any litigants. His average disposal during the period in question was of very good category. There is nothing else to comment in particular.

Year : 1976

Knowledge of law and judicial capacity: Good

Remarks about his promptness in the disposal of cases : Promptness satisfactory

Remarks about reputation of integrity and impartiality : Nothing was found against his integrity or impartiality.

General Remarks : He was mostly punctual and

did not rise early. Judgments were proper and contained the required discussion of evidence. Charges and examination of accused and issues were proper. Promptness in framing of issues was marked in recent months. Control and supervision over the staff was satisfactory. Settling dates should not normally be of more than two weeks as was noticed in certain cases. Interlocutory matters were generally not kept unduly pending.

Net Result :

Good

D

Year 1976-77

Knowledge of Law and Judicial capacity :

Satisfactory

E

Remarks about his promptness in the disposal of cases :

Generally prompt

Percentage of average monthly disposal :

148, 1/2, %

F

Behaviour towards members of the Bar and Public:

Cordial

General Remarks:

Satisfactorily managing heavy and exclusive civil file. Mostly punctual.

G

Net Result:

Good

Year 1977-78

H

Knowledge of Law and Judicial capacity:

Good

Entry against almost all the

columns in the Report-Good

General Remark :

Has good grasp of facts and law. Judgments in proper form and well written.

Net Results

Good

Year 1979-80

(a) Shri Shrivastava begins his judicial work punctually at 11:00 A.M. and works throughout the Court hours. So far, it appears that he has arranged his Cause List judiciously/fixing civil work for the day. This Judge understands that there can be no subsequent pleadings except by way of amendment of pleadings. In other words, he understands the purport of Order 8 rule 9 and Order 6 rule 7 of the Civil Procedure Code. He also understands what is pleading i.e. Order 6 rule 1 of the Civil Procedure Code as compared with oral statement. He so far appears to be equally conversant with Order 17 rule 1 of the Civil Procedure Code i.e. adjournment is only granted for sufficient cause. He does not find any difficulty in applying law relating to pleadings and interlocutory matters. So far, his procedure conforms to rules of pleadings, filing of documents, framing of issues and recording of evidence.

(b) So far, on the criminal side, he frames charges with care, records evidence with such care and prepares examination of accused with equal care.

(c) So far, he makes a neat and legible record. He generally supervises the work of ministerial staff.

(d) His judgments, both on civil and criminal, so far, appear to be well written. He is prompt in his disposals including doing work therein. His work, as a whole, so far, has been found to be of high quality. He also takes up civil work. His relations with the Bar, so far, appear to be cordial.

(e) The above remarks are subject to the D.O. No. 462/C. Rs/1979 Jabalpur dated 6.3.80 of the High Court.

(Note : The Memo. sent to the appellant in March, 1980 only informed him of two remarks—(1) that he did not dispose of Sessions trials quickly and (2) that he did not follow the amended provisions under Order 39 rule 3 of the Civil Procedure Code. The Memo. also disclosed that the appellant did not write judgments in civil appeals according to the pattern prescribed; that Sessions trials were not conducted quickly and that (he) granted unduly long adjournments of about a month or so for examination of accused and defence witnesses. The appellant sent a prompt reply to it on March 28, 1980 refuting the correctness of the above remarks. We have gone through the said reply. On going through the facts mentioned therein, we feel that the remarks against him appear to be totally uncharitable. It shows that the appellant has disposed of more number of cases than what ordinarily could be disposed of during the relevant period. We are not informed of what action was taken on his prayer for expunging the said remarks).

Year : 1980-81

His out turn during the year was about 200 percent. The quality of work may be classed as good. 'B' category. No specific complaints were received against him about his behaviour or integrity."

The above reports no doubt speak for themselves as stated in the counter affidavit of the Additional Registrar. But they all speak in favour of the appellant and not against him. A perusal of these reports shows that there was nothing against the appellant which necessitated the action which was taken against him. In the state of the above record it was impossible to take the view that the appellant was liable to be compulsorily retired, unless there was any other circumstance which was adverse to him. We have found it necessary to incorporate in this judgment the relevant confidential remarks in great detail only to show that the action of the High Court was not called for. We may state here that the learned counsel for the High Court very fairly stated that there was no other circumstance against the appellant during the period subsequent to 1971 which would support the order of compulsory retirement. From what has been stated we find that the decision taken by the High Court in respect of the appellant is arbitrary as it was mainly based on the entries that were made about 20 years before the date on which the decision was

taken. Dependence on such stale entries cannot be placed for retiring a person compulsorily, particularly when the officer concerned has been promoted subsequent to such entries, as held by this Court in *D. Ramaswami's* case (supra). In that case one of us (Chinnappa Reddy, J.) observed thus at pages 79-80:

"In the face of the promotion of the appellant just a few months earlier and nothing even mildly suggestive of ineptitude or inefficiency thereafter, it is impossible to sustain the order of the Government retiring the appellant from service. The learned Counsel for the State of Tamil Nadu argued that the Government was entitled to take into consideration the entire history of the appellant including that part of it which was prior to his promotion. We do not say that the previous history of a Government servant should be completely ignored, once he is promoted. Sometimes past events may help to assess present conduct. But when there is nothing in the present conduct casting any doubt on the wisdom of the promotion, we see no justification for needless digging into the past."

In the result the judgment of the High Court is reversed and the resolution of the High Court recommending to the Government that the appellant should be compulsorily retired and the impugned order passed thereon under Fundamental Rule 56(3) are quashed. The resolution of the High Court that the appellant was not fit for promotion to the cadre of District & Sessions Judges is also quashed. The High Court should now consider in the light of this decision whether the appellant was entitled to be promoted as a District & Sessions Judge as on the date on which his immediate junior was promoted and make appropriate recommendation to the State Government. The appellant is entitled to all consequential financial and other benefits as if the order of compulsory retirement had not been passed.

The appeal is accordingly allowed with costs.

N.V.K.

Appeal allowed.