

U.P. JAL NIGAM AND ANR.

v.

SYED KHADIM WARIS

NOVEMBER 13, 1995

[MADAN MOHAN PUNCHHI AND SUJATA V. MANOHAR, JJ.]

*Service Law :*

*Compulsory retirement—Order based on adverse entry against employee—Employee's representation against adverse entry placed before the screening Committee—Supportive record not produced before High Court—Order quashed by High Court—On appeal it was found that order was also based on another uncommunicated adverse entry—Setting aside of impugned order of High Court—Liberty to Department to pass fresh order on the basis of entire service record after communicating the entry to employee and considering his representation against the same.*

An order of compulsory retirement passed against the respondent was quashed by the High Court on the ground that it was based on an adverse entry for the year 1983-84 which was communicated to the respondent but against which representation was pending. In its affidavit before the High Court the appellant-Nigam specifically stated that the representation of the respondent was placed before the Screening Committee. However, supporting records of the same were not produced before the High Court. Consequently the pleadings alone engaged attention of the High Court which set aside the order of compulsory retirement. The appellant-Nigam preferred appeal before this Court which apprised itself of the total service record of the respondent and found that the order of compulsory retirement was also based on another entry for the year 1984-85 which was adverse to the respondent but was not communicated to him.

Allowing the employer's appeal, this Court

**HELD :** 1. Taking an overall view of the matter and in order to do complete justice between the parties, it is appropriate that the impugned order of the High Court, deficient as it is, be upset and the matter be put back to the stage prior to compulsory retirement. Consequently, the

A respondent would deemingly be in the service of the Nigam. However, the deemed continuance of the respondent in service would not be a bar to the taking of the step of compulsory retirement as if at the age of 50 years subject to the final back up of the record after the adverse entry for the year 1984-85 stands communicated to him, against which he would have the opportunity to make time bound representation. Any fresh order passed would govern the fate of the case relating back to the date of the original order. It is further clarified that the respondent can in no way be taken back in service because of his attaining in the meantime the age of 58 years. He need not for the present be paid anything more than his pensionary benefits till variation is warranted. [171-F-H; 172-C-D]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10452 of 1995.

From the Judgment and Order dated 21.3.95 of the Allahabad High Court in W.P. No. 604 of 1986.

D Gopal Subramanian, R.B. Misra and M.K. Ray for the Appellants.  
Anis Suharwardy for the Respondent.

The following Order of the Court was delivered :

E The respondent-Executive Engineer, on attaining the age of fifty was compulsorily retired by the Uttar Pradesh Jal Nigam in exercise of powers under Rule 56-C of the Financial Hand Book Part II, Volumes 2 to 4. The respondent successfully challenged that order before the Lucknow Bench of the Allahabad High Court by means of a writ petition. The prime consideration which weighed with the High Court deciding in his favour was that an adverse entry of the year 1983-84, though communicated to the respondent on 9-4-1985, had been put to use to arrive at the result, when representation of the respondent against the adverse entry was pending before the Nigam. As viewed by the High Court, that particular entry could not be put to use unless the representation was decided. The High Court has emphasised this aspect in its judgment at more than one place. The High Court has also blamed the Nigam for not producing before it the text of the entry pertaining to the year 1983-84 so as to apprise itself of the nature and seriousness thereof.

H The Nigam asserts to the contrary. It says that not only was the entry

adverted to in the counter affidavit filed by it before the High Court, but it was specifically averred therein that the representation of the respondent received had by itself been placed before the Screening Committee dealing with the matter whereafter action for compulsory retirement was taken. It seems that the supportive records of the same, were not produced before the High Court. It is suggested that had the High Court thought of making use of the material on official record, it could certainly have asked the counsel for the Jal Nigam to place the record before it. Seemingly, the pleadings alone engaged attention of the High Court and it went on to hold that the sole adverse entry for the year 1983-84, against which representation of the respondent was pending, could not be taken into account. It is on that basis that the order of compulsory retirement was quashed.

Now, we have been apprised of the total service record of the respondent, wherefrom we know now about the nature of the said entry and the representation and their placement before the Screening Committee. Another factor which has been discovered, and has rather frankly been put before us by learned counsel for the Nigam is that the subsequent years' entry i.e. for the year 1984-85, is also adverse to the respondent, but the same has not been communicated to him and yet it was employed in passing the orders of compulsory retirement. It might well be that the said adverse entry of the year 1984-85 by itself or in conjunction with the entry of the year 1983-84 might have influenced the authorities much more than the singular entry of the year 1983-84 to take action. Mention of this particular is not meant to reinforce the basis of the reasoning of the High Court or employed as additional reasoning in support, because that entry has not yet been ripened to be taken into account since it has not been communicated to the respondent soliciting representation from him.

Taking an overall view of the matter and in order to do complete justice between the parties, we think it appropriate that the impugned order of the High Court, deficient as it is, be upset and the matter be put back to the stage prior to compulsory retirement. Sequally, it would mean that the respondent would deemingly be in the service of the Nigam regarding whom step of compulsory retirement was being thought of, but subject to it being backed up by the entire service record on completion, after the adverse entry of the year 1984-85 stands communicated to him, against which he would have the opportunity to represent and consideration, and after a final view is taken. We make it clear that by virtue of this

A order the deemed continuance of the respondent in service would not be a bar to the taking of the step of compulsory retirement as if at the age of 50 years subject to the final back up of the record.

Thus, in order to achieve the above result, we grant leave and in the same breath allow the appeal, setting aside the impugned order of the High Court and streamlining the cause between the parties in the manner stated above. It is necessary for the Nigam to communicate to the respondent the entry of the Year 1984-85 and attract representation from him time bound. It may, then pass a fresh order of compulsory retirement on the basis of the entire record, should the facts and circumstances justify, which order would then govern the fate of the case relating back to the date of the original order. It is further clarified that the respondent, on the present day, can in no way be taken back in service because of his attaining in the meantime the age of 58 years. Whatever eventually is the outcome, that would govern the fate of the respondent. He need not thus for the present be paid anything more than his pensionary benefits till variation is warranted. Expeditious disposal by the Jal Nigam is ordered. No costs.

T.N.A.

Appeal allowed.