

SUKHDEO

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v.

THE COMMISSIONER AMRAVATI DIVISION,
AMRAVATI AND ANR.

MAY 2, 1996

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[K. RAMASWAMY AND G.B. PATTANAİK, JJ.]

Service Law :

Maharashtra Civil Services (Pension) Rules, 1982:

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Rule 65(1)(b)—Compulsory retirement—Class III employee—Order of Government exercising power to compulsorily retire the employee who had not completed 55 years of age based on adverse remarks—Held, the remarks are mutually inconsistent and lack bona fide—Controlling Officer has not used due diligence in making remarks—Controlling Officer before writing adverse remarks would give prior sufficient opportunity in writing by informing the employee of the deficiency he noticed for improvement—Power exercised by Controlling Officer is per se illegal—Employee is entitled to reinstatement with all consequential benefits.

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State Bank of India Etc. v. Kashinath Kher & Ors. Etc., JT (1996) 2 SC 569, relied on.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8805 of 1996.

From the Judgment and Order dated 20.4.93 of the Madhya Pradesh Administrative Tribunal, Nagpur in T.A. No. 198/92 in W.P. No. 787 of 1990.

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V.A. Bobde, S.D. Mudaliar and U.U. Lalit for the Appellants.

S.M. Jadhav for the Respondents.

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The following Order of the Court was delivered :

Leave granted.

We have heard the counsel on both sides. This appeal by special

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A leave arises from an order of compulsory retirement of the appellant dated March 23, 1990 made in exercise of Rule 65(1)(b) of the Maharashtra Civil Services (Pension) Rules, 1982. The appellant had completed 30 years of service in Class III service but he had not completed 55 years of age. The Government relying upon the adverse remarks in the reports for the years 1987-88 and 1988-89 exercised the above power to compulsorily retire the appellant from service. When he impugned the order in a writ petition which was subsequently transferred to the Maharashtra Administrative Tribunal at Nagpur Bench in TA No. 198/92 by order dated April 20, 1993, the Tribunal dismissed the application. Thus this appeal by special leave.

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C The Government preserved power under Rule 10(4)(b) to retire Government Servant which reads thus :

"any Government Servant who holds a post in Class III service of the State, either pensionable or non-pensionable, after he has attained the age of fifty five years."

D The object of the compulsory retirement is to see that the inefficient and corrupt persons are removed but no sufficient evidence was available to dismiss or remove him from service after enquiry, they are weeded out from service with a view to secure efficiency in public service and to maintain honesty and integrity among the service personnel. The question is: whether the respondents have exercised the said power to serve the above public purpose? Rule 65(1)(b) reads as under :

"65. Retirement on completion of 30 years qualifying service.

F (1) At any time after a Government servant has completed thirty years' qualifying service, he may retire from service, or he may be required by the appointing authority to retire in the public interest.

Provided that

G (a) a Government servant shall give a notice in writing to the appointing authority at least three months before the date on which he wishes to retire; or

H (b) the appointing authority shall give a notice in writing to a Government servant at least three months before the date on which he is required to retire in the public interest, or three months pay

and allowances in lieu of such notice.

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It is seen that when the compulsory retirement was sought to be made under Rule 65(1)(b) as indicated earlier, the Government exercise the power only for public purpose, namely to augment efficiency in public service. We have called for the record and the same has been placed before us. The entries for the years 1987-88 and same remarks verbatim repeated for 1988-89 by the same officer would indicate that the appellant is an "industrious" man, "his capacity to get work done by subordinates is good"; his "relationship with the colleagues and the public is good"; general intelligence is "satisfactory" However, in the column on technical ability (where relevant), he is reported as "not satisfactory", "special attitude is good", "administrative ability including judgment, initiative and drive-not satisfactory", "integrity and character are good", fit to continue in service, "fit for promotion, if due" and general assessment; "irregular, rarely found at Head quarter, poor performance in a recovery work, bad in public image". On the basis of this last remark of general assessment, notice was given to him and he was compulsorily retired from service on that basis. The question is: whether the said exercise of power, as has been stated earlier, is in the public interest and whether the appellant is not found to augment the efficiency in the service.

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In view of the above remarks made by the officer, the conclusion reached is obviously incorrect and it is not in public interest. A man does not become poor in public image when his relationship with the public and subordinates is good and he is a man of integrity and honesty and he has got the intelligence satisfactory for discharging his duties and is fit for promotion. How can in such circumstances his performance be held unsatisfactory when he is capable to coordinate with subordinates and get the work done. How his technical ability is not satisfactory. The remarks are mutually inconsistent and reasons are self-evident of lack of *bonafides* in making these remarks. Under these circumstances, it could be characterised that the remarks were not *bona fide* made in public interest but was self-serving statement to weed him out from service.

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It is settled law that when the Government resorts to compulsorily retire a Government servant, the entire record of service, particularly, in the last period of service is required to be closely scrutinised and the power would be reasonably exercised. In *State Bank of India Etc. v. Kashinath*

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- A *Kher & Ors. Etc.*, JT (1996) 2 SC 569 at 578 para 15), this Court has held that the controlling officer while writing confidential and character roll report, should be a superior officer higher above the cadres of the officer whose confidential reports are written. Such officer should show objectivity, impartiality and fair assessment without any prejudice whatsoever with highest sense of responsibility to inculcate in the officer's devotion to
- B duty, honesty and integrity so as to improve excellence of the individual officer, lest the officers get demoralised which would be deleterious to the efficacy and efficiency of public service. In that case it was pointed out that confidential reports written and submitted by the officer of the same cadre and adopted without any independent scrutiny and assessment by the
- C committee was held to be illegal. In this case, the power exercised is illegal and it is not expected of from that high responsible officer who made the remarks. When an officer makes the remarks he must eschew of making vague remarks causing jeopardy to the service of the subordinate officer. He must bestow careful attention to collect all correct and truthful information and give necessary particulars when he seeks to make adverse
- D remarks against the subordinate officer whose career prospect and service were in jeopardy. In this case, the controlling officer has not used due diligence in making remarks. It would be salutary that the controlling officer before writing adverse remarks would give prior sufficient opportunity in writing by informing him of the deficiency he noticed for improve-
- E ment. In spite of the opportunity given if the officer/employee does not improve then it would be an obvious fact and would form material basis in support of the adverse remarks. It should also be mentioned that he had given prior opportunity in waiting for improvement and yet was not availed of so that it would form part of the record. The power exercised by the
- F controlling officer is per se illegal. The tribunal has not considered this aspect of the matter in dismissing the petition. The appellant is entitled to reinstatement with all consequential benefits. The appeal is accordingly allowed with exemplary costs quantified at Rs. 10,000 recoverable by the State from the officer who made the remarks.

R.P.

Appeal allowed.