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STATE OF U.P. AND ANR.

v.

LALSA RAM

FEBRUARY 23, 2001

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[G.B. PATTANAİK AND U.C. BANERJEE, JJ.]

Service Law :

U.P. Fundamental Rules : Rules 56(c) and 56(2).

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Compulsory retirement—Government servant promoted as Deputy Collector on the basis of seniority only—Subsequently, the said Government servant was compulsorily retired in public interest on the basis of adverse entries in his service record prior to promotion—Validity of—Held : Adverse remarks lose their sting if promotion is made on merits—But if promotion is made on seniority only adverse remarks do not lose their sting—Rules provide an absolute right to compulsorily retire a Government servant—Compulsory retirement being in public interest, no interference is called for—Fundamental Rules, R.56.

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The respondent was appointed as a direct recruit Naib Tehsildar and was promoted as Deputy Collector on the basis of seniority only. Subsequently, the respondent was compulsorily retired from service under Rule 56(c) of the U.P. Fundamental Rules on the basis of adverse entries in his service records prior to his promotion. However, the High Court quashed the order of compulsory retirement. Hence this appeal.

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On behalf of the respondent it was contended that the adverse remarks lost their sting upon promotion of the respondent and could not, therefore, form a basis for the compulsory retirement of the respondent.

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Allowing the appeal, the Court

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HELD : 1. In the event of there being a promotion by the Departmental Promotion committee upon assessment of the service career and annual confidential reports, the adverse entries lose their sting - in the event, however, the promotion is offered only on the ground of seniority without any assessment of the entire career situation, question of adverse entries losing their sting does not and cannot arise. In the contextual facts

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if it was promotion by way of selection and not by seniority, no exception could be taken therefor but the facts in the present context depict otherwise since the respondent was promoted by seniority only. [114-F-G]

Baikuntha Nath Das v. Chief District Medical Officer, Baripada, [1992] 2 SCC 299, followed.

State of Punjab v. Gurdas Singh, [1998] 4 SCC 92; *Prabodh Sagar v. Punjab State Electricity Board*, [2000] 5 SCC 630; *I.K. Mishra v. Union of India*, [1997] 6 SCC 228 and *Posts and Telegraphs Board v. C.S.N. Murthy*, [1992] 2 SCC 317, relied on.

2. Rule 56(c) of the U.P. Fundamental Rules read with sub-rule (2) provides an authority to the Government with an absolute right to retire an employee on the date on which he attains the age of 50 years. The option for the Government servant to voluntarily retire, however, has been attributed to the concerned employee at any time after attaining the age of 45 years or after he has completed the qualifying service of 20 years. The fundamental Rules thus confer a *right absolute* to retire an employee on the happening of certain event namely the latter attaining 50 years of age - the right being absolute. [115-E-F]

3. The Appointing Authority upon consideration of the entire service record as required under the Rules and having formed its opinion that the compulsory retirement of the respondent being in public interest issued the order and in the wake of the aforesaid, question of any interference of this Court does not and cannot arise. Interference in these matters by the courts in exercise of its jurisdiction under the constitutional mandate is very restricted and the courts shall have to tread on the issue with utmost care and caution by reason of very limited scope of interference. [116-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4040 of 1999.

From the Judgment and Order dated 15.3.99 of the Allahabad High Court in C.M.W.P. No. 20567 of 1998.

Y.P. Singh, C. Siddharth, Mukesh K. Sharma and Ajay K. Agrawal for the Appellants.

Shashindra Tripathi and Ms. Mridula Ray Bharadwaj for the Respondent.

A The Judgment of the Court was delivered by

BANERJEE, J. The challenge in this appeal, by the grant of special leave, is to a judgment of the Allahabad High Court allowing a writ petition upon having an order of compulsory retirement dated 18th May 1998, set aside and quashed.

B Before advertng to the contentions raised in the matter, a brief factual reference would be convenient at this juncture. The petitioner was appointed as a direct recruit Naib Tehsildar on 19th May, 1955. The records depict that in April, 1980 the petitioner was promoted to the rank of Tehsildar and subsequently in March, 1995, to the rank of Deputy Collector. The petitioner joined the post as such in April, 1995 at Pitthorgarh District. Further in 1998, the petitioner however was served with an order of compulsory retirement in terms of the report of the Screening Committee dated 2nd January, 1998. The Screening Committee reported as below :

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3. In the case of Sh. Lalsa Ram the Officer mentioned against S. No. 62 of the Enclosure A. The Screening Committee on considering thoroughly his relevant service records and the entries available in his character rolls, formed that Sh. Lalsa Ram was given adverse entry in 1967-68 (from 14.4.67 to 21.9.67), in 1967-68 (27.9.67 to 31.3.68), 1981-82, 1982-83 and in 1991-92, and a particular adverse entry on 16.12.82 and censure entry on 18.8.86. Thus the service of Sh. Lalsa Ram constantly deteriorated.

F Under the above circumstances, the Screening Committee as a result of its study, formed the following officers unfit to continue in service in public interest and the committee recommended that they should be compulsorily retired.

- (1)
 - (2)
 - G (3) Sh. Lalsa Ram From 1994.
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H Incidentally, the Screening Committee consisted of the Chief Secretary, Chairman Board of Revenue and Secretary Appointment Department - indeed a high-level Committee.

It is on the report as above, the order of compulsory retirement dated 18th May, 1998 was passed and the High Court has the following to observe in this regard :

".....On a close scrutiny we noticed that during the last five years' preceding action of compulsory retirement there has been no adverse entry in the account of the petitioner. The Screening Committee attempted to rely on the entries which related to the period of 1967-68 and some of the entries for the period of 1981-82. There is only one entry for the years 1991-92. This report otherwise records appreciation for the petitioner. But says further that some times there were complaints against the petitioners. The sole entry is not in close proximity and can not be the basis or foundation for the impugned action of compulsory retirement of the petitioner. The action, according to us, is without any basis and the same, therefore, can not be sustained."

The learned Advocate appearing in support of the Appeal on behalf of the State Government very strongly urged that the High Court has fallen into an error in not considering the totality of the service record. It has been the contention there has been a systematic failure to discharge his duties in a manner as was expected of the petitioner and diverse complaints are available on record against the petitioner.

Incidentally, Rule 56, in particular sub-rule (c) of the U.P. Fundamental Rules is the governing rule in the matter of compulsory retirement. Rule 56(c) reads as below :

"56 (a)

56 (b)

56(c) Notwithstanding anything contained in clause (a) or clause (b), the appointing authority may, at any time, by notice to any Government servant (whether permanent or temporary), without assigning any reason, require him to retire after he attains the age of fifty years or such Government servant may by notice to the appointing authority voluntarily retire at any time after attaining the age of forty five years or after he has completed qualifying service of twenty years."

A Rule 56(2) of the Fundamental Rules ought also to be considered and the same reads as below :

B “(2) In order to be satisfied whether it will be in the public interest to require a Government servant to retire under clause (c) the appointing authority may take into consideration any material relating to the Government servant and nothing herein contained shall be construed to exclude from consideration.

C (a) any entries relating to any period before such Government servant was allowed to cross any efficiency bar or before he was promoted to any post in an officiating or substantive capacity or on an *ad hoc* basis; or

(b) any entry against which a representation is pending, provided that the representation is also taken into consideration along with the entry; or

D (c) any report of the Vigilance Establishment constituted under the Uttar Pradesh Vigilance Establishment Act, 1965.”

E The rules governing the service conditions thus envisages a right to retire any Government employee on the date on which he completes 50 years subject however to sub-rule 2 (a), (b) and (c) as noticed hereinbefore.

F The decision of this Court in the case of *Baikuntha Nath Das and Another v. Chief District Medical Officer, Baripada and Another*, [1992] 2 SCC 299 has been one of the key judgments on the subject wherein a three Judge Bench of this Court very lucidly laid down the following principles upon consideration of the available judicial precedents. The principles being :

“(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

G (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.

H (iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judi-

cial 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 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 merits (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 taken into consideration. That circumstance by itself cannot be a basis for interference."

The principles adumbrated in the decision of *Baikuntha Nath's* case (supra) has been adopted by this Court in the case of *State of Punjab v. Gurdas Singh*, [1998] 4 SCC 92 wherein this Court categorically observed that before the decision to retire a government employee pre-maturely is taken, the authorities are required to consider the whole record of service and any adverse entry prior to earning of promotion or crossing of efficiency bar or picking up higher rank is not wiped out and can be taken into consideration while considering the overall performance of the employee during the whole of his tenure of his service and the same also includes even uncommunicated adverse entry as well. Similar also is the situation in a very recent decision of this Court in the case of *Prabodh Sagar v. Punjab State Electricity Board & Others*, [2000] 5 SCC 630 wherein one of us (myself) being a party, upon consideration of the Punjab State Electricity Board Services (Premature Retirement) Regulations, 1982 ob-

A served that the Board has, upon consideration of the Regulation 3(i)(e) has an absolute power to retire an employee prematurely though upon fulfillment of the condition.

B The Uttar Pradesh Fundamental Rules governing the service conditions of the respondent herein, in particular, 56(c), 56((2)(a), (b) and (c) specifically provide that nothing in the rules should be construed to exclude from consideration of any entry relating to any period before a government servant was allowed to cross any efficiency bar or he was promoted to any post in an officiating or a substantive capacity or on an *ad hoc* basis. The important words used : *nothing herein contained shall be construed to exclude from*

C *consideration* : the exclusion thus is prohibited in terms of the rule. The concerned authority by reason whereof has thus a liberty to consider even entries relating to the period before the government servant was allowed to cross any efficiency bar or before he was promoted. It is true that one of the guiding principles as enunciated above in *Baikuntha Nath's* case (supra) with regard to performance during the later years ought to be attached more

D importance but that does not exclude the consideration of the entire record of service.

E The respondent herein very strongly adverted to the promotion offered and contended that even assuming there were adverse report and remarks by reason of the promotion being made available, the adverse remarks lost its sting and as such the same does not and cannot be said to be a factor which must have weighed with the concerned authority directing compulsory retirement. Admittedly and the law being well settled on this score that in the event of there being a promotion by the Departmental Promotion Committee upon

F assessment of the service career and annual confidential reports the adverse entires loose its sting - in the event however, the promotion is offered only on the ground of seniority without any assessment of the entire career situation, question of adverse entries loosing its sting does not and cannot arise. In the contextual facts if it was promotion by way of a selection and not by seniority, no exception could be taken therefore but the facts in the present context

G depict otherwise since the respondent herein was promoted by seniority only. The fourth principle as enunciated by this Court in *Baikuntha Nath's* case (supra) thus cannot be of any assistance to the respondent herein. A similar situation arose in the case of *I.K. Mishra v. Union of India & Ors.*, [1997] 6 SCC 228 wherein this Court upon analysis of the factual aspect has the follow-

H ing to state :

“No doubt the appellant has sent by the respondents to appear in S.A.S. examination in the year 1972-73 after having been found that the appellant complied with the conditions for appearing in the said examination and further the appellant passed the S.A.S. Part II Examination but merely the facts that the appellant was sent to appear in the examination and was declared successful in the said examination are not the end of the matter. In fact passing of the S.A.S. examination entitles an auditor to be considered for promotion to the higher post by the Departmental Promotion Committee. In the present case after the appellant was declared successful in the S.A.S. examination, the Departmental Promotion Committee after considering the service record of the appellant did not recommend his case for further promotion. Applying principle No. 4 as noted in the case of Baikuntha Nath Das the appellant having not been promoted to the higher post the adverse remarks in his character roll remained intact. Since the appellant was not promoted to the higher post by the Departmental Promotion Committee it is not correct to contend that the adverse materials in the annual confidential report of the appellant lost their sting and those materials could not form the basis of order compulsorily retiring the appellant from service.”

Rule 56 © of the U.P. Fundamental Rules read with sub-rule (2) as noted herein before provides an authority to the Board with an absolute right to retire an employee on the date on which he attains the age of 50 years. The option for the government servant to voluntarily retire however has been attributed to the concerned employee at any time after attaining the age of 45 years or after he has completed qualifying service of 20 years. The fundamental rules thus confer a *right absolute* to retire an employee on the happening of certain event namely the latter attains 50 years of age - the right being absolute and in the even the same is not contra to the conditions as embodied in Rule 56 of the Fundamental Rules, question of violation of any legal right of the respondent herein does not and cannot arise. The factum of the doctrine of natural justice being not available to an employee so retired compulsorily stands well settled and we need not dilate thereon.

Rule 56 © seems to be in *pari materia* with Rule 3 of the Punjab Civil Services (Premature Retirement) Rules, 1975 and this Court while considering the same in the case of *Gurdas Singh* (supra) in para 6 observed :

“It will be thus seen that these Rules give absolute right to retire any

A government employee on the date on which he completes 25 years of qualifying service or attains fifty years of age or as on any date thereafter to be specified in the notice by giving that employee prior notice of three months in writing. This right has to be exercised if in the opinion of the appropriate authority it is in public interest to retire any employee under the Rules.”

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Incidentally, the five guiding principles as laid down in *Baikuntha Nath's* case (supra) by this Court stands accepted in another three-Judges Bench's judgment of this Court in *Posts and Telegraphs Board v. C.S.N. Murthy*, [1992] 2 SCC 317 wherein this Court observed that whether the conduct of the employee is such as to justify a conclusion of compulsory retirement but the same is primarily for the departmental authorities to decide. The nature of the delinquency and whether it is of such a degree as to require the compulsory retirement, the courts have no authority or jurisdiction to interfere with the exercise of power if arrived at *bona fide* on the basis of the material available on record : Usurpation of authority is not only unwarranted but contrary to all norms of service jurisprudence.

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This Court on the basis as above in *Gurdas Singh's* case (supra) observed that is on this perspective the matter shall have to be considered as to whether it is in public interest to retain him in the service and the whole record of the service of the employee shall have to be considered including any uncommunicated adverse entry as well provided however, the service Conditions/Regulations do not run counter thereto. We also do record our concurrence therewith and record that the same holds good excepting however the issue *mala fides*. The issue of *mala fides* has not been or even raised in the pleadings of the matter in issue and as such we are not called upon to delve into the same. The Appointing Authority upon consideration of the entire service record as required under the rules having formed its opinion that the compulsory retirement of the respondent being in public interest issued the order and on the wake of the aforesaid, question of any interference of this Court does not and cannot arise. Interference in these matters by the courts in exercise of its jurisdiction under the constitutional mandate is very restricted and the courts shall have to tread on the issue with utmost care and caution by reason of very limited scope of interference. The High Court has in fact ignored this aspect of the matter and proceeded solely on the basis of the factum of there being no adverse entry in recent past. Needless to state that adverse entries did not stand extinguished by mere lapse of time but they continued to be on record

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and it is for the employer to act and rely thereon in the event of there being, a rule permitting an order of compulsory retirement. The High Court thus fell into an error and as such the order under appeal cannot thus to be sustained. The appeal therefore succeeds and is allowed. Order of the High Court stands set aside and quashed. There shall however be no order as to costs.

V.S.S.

Appeal allowed.

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