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OM PRAKASH ASATI

v.

STATE OF U.P. & ORS.

(Special Leave Petition (C) Nos. 13896-13897 of 2008)

B

JANUARY 13, 2012

[ASOK KUMAR GANGULY AND JAGDISH SINGH
KHEHAR, JJ.]

C *Service law: Retirement - Pre-mature retirement from*
service - Jal Nigam adopted criterion for screening the claim
of employees for continuation of service - Order of premature
retirement against several employees including petitioner -
The criterion adopted by Jal Nigam set aside by the High
Court and the said decision attained finality - Whether setting
D *aside of the criterion adopted by Jal Nigam would ipso facto*
result in the negation of the impugned order by which the
petitioner was prematurely retired from service - Held: The
order passed by the Jal Nigam, prematurely retiring the
petitioner from its employment, cannot be set aside merely
E *because the criterion adopted by the Jal Nigam has been set*
aside - The veracity of the impugned order will have to be
examined independently of the criterion so as to determine,
whether or not the impugned order is sustainable on the basis
of the record taken into consideration by the Screening
F *Committee - The petitioner was punished 3 times in the*
preceding 4 years - Besides the gradual deterioration in his
career-graph noticeable from the last 7 years of his service,
4 annual reports assessed the work and conduct of the
petitioner as "average" - The service record of the petitioner
G *was objectively evaluated - Thus the passing of the impugned*
order cannot be described as arbitrary or unfair in any manner.

The petitioner was appointed as Assistant Engineer, in the Local Self Engineering Department of the State of Uttar Pradesh on 3.3.1974. In 1975, the Uttar Pradesh

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Water Supply and Sewerage Act was enacted. The said A
enactment resulted in the creation of the Uttar Pradesh
Jal Nigam. In 1976, the services of the petitioner came to
be allocated to the Jal Nigam, where the petitioner was
absorbed against the post of Assistant Engineer, on
regular basis. While in the employment of the Jal Nigam, B
the petitioner was promoted to the post of Executive
Engineer. On his attaining the age of 50 years in January
2001, his claim for retention in service was placed before
a Screening Committee. A departmental enquiry was
pending against the petitioner. The Screening Committee C
found the petitioner fit to continue in service.

By orders dated 1.9.2005, several employees of the
Jal Nigam, including the petitioner, were prematurely
retired from service. The petitioner filed a writ petition on
the ground that the criteria adopted by Jal Nigam for
screening the claim of the employees of the Jal Nigam D
were illegal and in complete derogation of Fundamental
Rule 56(c). The petitioner relied upon the two decisions
of the High Court whereby the criteria adopted by the
Jal Nigam in retiring its employees under Fundamental E
Rule 56(c) were held illegal. The said decisions of the High
Court had attained finality. The High Court dismissed the
writ petition and upheld the order of premature
retirement. The instant special leave petitions were filed
challenging the order of the High Court. F

Dismissing the special leave petitions, the Court

HELD: 1. In the two judgments rendered by the High
Court which were relied upon by the petitioner, it was
held, that the criterion adopted by the Screening G
Committee for prematurely retiring the employees of the
Jal Nigam was illegal and not in consonance with law. The
validity of the criterion adopted by the Jal Nigam for
prematurely retiring its employees is a pure question of
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A law. The same having attained finality against the respondents, is liable to be respectfully adhered to. Once a challenge raised at the hands of the respondents to the judgments relied upon by the petitioner remained futile before this Court, the same should have been accepted without any further protestation. The contention for the respondents that the criterion adopted by the Jal Nigam was enforceable against the petitioner is rejected. [Paras 5, 6, 8] [252-F; 254-G-H; 255-A]

2. Whether the setting aside of the criterion adopted by the Screening Committee would ipso facto result in the negation of the impugned order dated 1.9.2005 (by which the petitioner was prematurely retired from service) The impugned order dated 1.9.2005 passed by the Jal Nigam, prematurely retiring the petitioner from its employment, cannot be set aside merely because the criterion adopted by the Jal Nigam has been set aside. The veracity of the impugned order will have to be examined independently of the criterion so as to determine, whether or not the impugned order is sustainable on the basis of the record taken into consideration by the Screening Committee. The entries in the Confidential Reports of the petitioner for the years 1997-1998, 1998-1999, 1999-2000 and 2002-2003 were recorded as "satisfactory". Entries for the year 1996-1997, 2000-2001, 2001-2002 and 2003-2004 were recorded as "good". For the remaining two entries, the one for the year 1994-1995 was recorded as "very good" and for a part of the year of 1995-1996 the work of the petitioner was assessed as "excellent". It is therefore apparent from the Annual Confidential Report of the petitioner, that over the last decade, preceding the impugned order dated 1.9.2005, there has been a regular and consistent deterioration from "excellent" and "very good" to "satisfactory". In fact in as many as 4 of the preceding 7

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years, the work and conduct of the petitioner was evaluated as "satisfactory". The orders of punishment taken into consideration were dated 18.4.2002, 23.11.2004 and 4.1.2005. The petitioner was punished 3 times in the preceding 4 years. The claim of the petitioner was considered by the Screening Committee on the basis of the annual entries in his service record and the punishments suffered by him during the recent past. [paras 9, 12] [255-B-H; 256-A-C; E-H; 257-A-C; 258-C]

3. Besides the gradual deterioration in his career-graph noticeable from the last 7 years of his service (before the impugned order was passed), wherein 4 annual reports assessed the work and conduct of the petitioner as "average". It is also apparent that punishment orders were passed against the petitioner on 3 occasions within the last 4 years. These punishments were ordered because of negligence and irregularity in granting tenders; delay in work, excess payment, financial irregularity and mis-utilization of funds, lack of administrative control; and death of 6 labourers because of lack of supervision by the petitioner which resulted in huge financial loss by way of compensation which had to be paid to the families of the deceased labourers. Based on the said, it would not be incorrect to conclude, that there was a gradual deterioration in the overall performance of the petitioner. In the said view of the matter, it is not possible to find fault with the impugned order of premature retirement dated 1.9.2005. The service record of the petitioner was objectively evaluated. Thus viewed, the passing of the impugned order cannot be described as arbitrary or unfair in any manner. The deliberations adopted by the Jal Nigam while passing the impugned order dated 1.9.2005 are, therefore, not liable to be interfered with. The impugned orders dated 27.3.2006 and 19.7.2006 passed by the High Court,

A upholding the order dated 1.9.2005, were fully justified and call for no interference. [para 12, 13] [259-D-H; 260-A-B]

B CIVIL APPELLATE JURISDICTION : SLP (Civil) No. 13896-13897 of 2008.

C From the Judgment & Order dated 3.5.2006 of the High Court of Allahabad in Civil Misc. Writ Petition No. 64396 of 2005 and Order dated 29.2.2008 in Review Petition No. 144184 of 2006.

B.S. Patil, Nikhil Majithia, Vishwajit Singh for the Petitioner.

Pramod Swarup, Ameet Singh, Gunnam Venkateswara Rao, Pradeep Misra, Suraj Singh for the Respondents.

D The Judgment of the Court was delivered by

E **JAGDISH SINGH KHEHAR, J.** 1. The petitioner herein, having qualified the B.E. examination, came to be appointed as Assistant Engineer, in the Local Self Engineering Department of the State of Uttar Pradesh, on 3.3.1974. The Uttar Pradesh Water Supply and Sewerage Act was enacted in 1975. The aforesaid enactment resulted in the creation of the Uttar Pradesh Jal Nigam (hereinafter referred to as, the Jal Nigam). In 1976 the services of the petitioner came to be allocated to the Jal Nigam, where the petitioner was absorbed against the post of Assistant Engineer, on regular basis. While in the employment of the Jal Nigam, the petitioner came to be promoted to the post of Executive Engineer, on 1.6.1996.

G 2. It is the claim of the petitioner, that on the eve of his attaining the age of 50 years in January 2001, his claim for retention in service was placed before a Screening Committee. The Screening Committee found the petitioner fit to continue in service. It is therefore, that the petitioner remained in the

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employment of the Jal Nigam beyond the age of 50 years. The instant stance adopted by the petitioner is seriously contested at the hands of the respondents. It is the assertion of the respondents, that the Screening Committee did not evaluate the claim of the petitioner for extension in service beyond the age of the 50 years, on account of the fact that a departmental inquiry was pending against him. The position adopted by the respondents in our considered view is wholly unjustified. Even after the culmination of the departmental proceedings, the petitioner was permitted to continue in service. It is therefore apparent, that the petitioner satisfied the standards adopted by the Jal Nigam, for continuation in service beyond the age of 50 years, and as such, his continuation thereafter must be deemed to have been with the implied approval of his employer, the Jal Nigam.

3. By orders dated 1.9.2005, several employees of the Jal Nigam, including the petitioner, were prematurely retired from service. The aforesaid order (pertaining to the petitioner) is available on the record of this case as Annexure P1. A perusal thereof reveals, that the retirement of the petitioner had been ordered, in exercise of powers emerging from the amended provisions of Fundamental Rule 56(c) of the Financial Handbook, Volume II (Parts II to IV). The instant provision is being extracted hereunder :

“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”.

4. It is the case of the petitioner, that the Screening

- A Committee which evaluated the case of the petitioner for continuation in service, had adopted a criterion for screening the claim of the employees of the Jal Nigam. Under the said criterion, marks were awarded to the employees falling in the zone of consideration. The afore stated criterion provided for deduction of one mark for every adverse entry, as well as, for every punishment awarded during the course of employment. Marks were awarded keeping in mind the employees annual assessment. It is also the contention of the learned counsel for the petitioner, that the criterion framed by the Screening Committee also postulated, that an employee who had been awarded a punishment of recovery, as also, an employee who had deposited any amount towards recovery, as a result of some fault/mistake committed by him in the discharge of his duties, would be a valid ground for the employee to be prematurely retired. It is also the contention of the learned counsel for the petitioner, that based on the criterion adopted by the Jal Nigam, an employee belonging to the general category would be entitled to continue in service only if he was awarded 9 or more marks. For an employee belonging to the reserved categories, the Jal Nigam had prescribed a minimum of 6 marks for retention in service.

5. The first and foremost contention advanced at the hands of the learned counsel for the petitioner was, that the criterion adopted by the Jal Nigam was illegal and unacceptable in law, as the same was in complete derogation of Fundamental Rule 56(c). It was therefore prayed, that the impugned order be set aside on account of the fact, that while passing the same the respondents had taken the decision on the petitioners suitability by applying a criterion which was wholly illegal and unsustainable in law. In order to substantiate his contention, learned counsel for the petitioner invited our attention to a decision rendered by a Division Bench of the High Court of judicature at Allahabad (Lucknow Bench) in Mahesh Chandra Agrawal vs. State of U.P. and Ors. (Writ Petition No.1888 (S/

B) of 2005, decided on 27.3.2006), as well as, on another judgment rendered by the same Division Bench in Naresh Kumar Aggarwal vs. State of U.P. and Ors. (Writ Petition No.1955 (S/B) of 2005, decided on 19.7.2006). Relying on the aforesaid two judgments, it was the contention of the learned counsel for the petitioner, that the criterion relied upon to pass the impugned order against the petitioner (in the instant case) had been considered by the Division Bench which decided the aforesaid two cases, and the same had been set aside as being unsustainable in law. It is also brought to our notice by the learned counsel for the petitioner, that the orders dated 27.3.2006 and 19.7.2006 passed by the High Court of judicature at Allahabad (Lucknow Bench) were assailed before this Court, but the petitions for special leave to appeal, were dismissed. It is therefore the contention of the learned counsel for the petitioner, that the determination rendered by the High Court of judicature at Allahabad (Lucknow Bench) on the issue of validity of the criterion adopted by the Jal Nigam in prematurely retiring its employees under Fundamental Rule 56(c) had attained finality. Based on the aforesaid assertions, it is the submission of the learned counsel for the petitioner, that the impugned order of premature retirement, passed in the instant case against the petitioner on 1.6.1996, was also liable to be set aside.

6. Insofar as the first contention of the learned counsel for the petitioner is concerned, it would be relevant to notice, that the petitioner assailed the impugned order dated 1.9.2005 before the High Court of judicature at Allahabad by filing Civil Miscellaneous Writ Petition No.64396 of 2005. The aforesaid writ petition came to be dismissed by a Division Bench of the High Court on 3.5.2006. Dissatisfied with the impugned order dated 3.5.2006, the petitioner preferred Civil Miscellaneous Review Application No.144184 of 2006. The said Review Application was also dismissed on 29.2.2008. The orders dated 3.5.2006 and 29.9.2008 rendered by the High Court of

A judicature at Allahabad besides the order of premature retirement dated 1.9.2005, have been assailed by the petitioner through this petition.

B 7. In order to repudiate the first contention advanced at the hands of the learned counsel for the petitioner, learned counsel for the respondents vehemently contended, that the petitioner is not entitled to raise the instant issue before this Court on account of the fact, that the criterion adopted by the Screening Committee which had led to the passing of the impugned order of premature retirement dated 1.9.2005, had not been assailed C by the petitioner before the High Court. It is also contended, that the evaluation of the record of the petitioner independently of the criterion adopted by the Screening Committee would also establish, that the Jal Nigam was fully justified in passing D the impugned order of premature retirement dated 1.9.2005.

8. We have given our thoughtful consideration to the first contention at the hands of the learned counsel for the petitioner. In our considered view in the judgments rendered by the Division Bench of the High Court of judicature at Allahabad E (Lucknow Bench) in Writ Petition No.1888 (S/B) of 2005 and Writ Petition No.1955 (S/B) of 2005 it was held, that the criterion adopted by the Screening Committee for prematurely retiring the employees of the Jal Nigam was illegal and not in consonance with law. A plea of the nature canvassed at the F hands of the learned counsel for the respondents (as has been noticed in the foregoing paragraph), is no longer available to the respondents to defeat the claim of the petitioner. The validity of the criterion adopted by the Jal Nigam for prematurely retiring its employees is a pure question of law. The same G having attained finality against the respondents, is liable to be respectfully adhered to. We therefore, hereby, deprecate the action of the respondents in canvassing the instant proposition. Once a challenge raised at the hands of the respondents to the H judgments relied upon by the learned counsel for the petitioner remained futile before this Court, the same should have been

accepted without any further protestation. We, therefore, hereby
reject the contention advanced at the hands of the learned
counsel for the respondents that the criterion adopted by the
Jal Nigam was enforceable against the petitioner herein. A

9. The question which still arises for consideration is, B
whether the setting aside of the criterion adopted by the
Screening Committee would ipso facto result in the negation
of the impugned order dated 1.9.2005 (by which the petitioner
was prematurely retired from service)? According to the learned
counsel for the respondents, even if the criterion adopted by C
the Screening Committee (for the sake of arguments), is
accepted as invalid in law, the impugned order of premature
retirement dated 1.9.2005 will have to be independently
examined in the light of the material taken into consideration
by the Screening Committee. According to the learned counsel D
for the respondents the impugned order dated 1.9.2005, if so
evaluated, would stand the scrutiny of law.

10. During the course of consideration of the present
controversy, we had the occasion of going through the
judgments rendered by the High Court of judicature at Allahabad E
(Lucknow Bench) in Writ Petition No.1888 (S/B) of 2005, and
in Writ Petition No.1955 (S/B) of 2005. In both the aforesaid
decisions, after the High Court accepted the contention of the
respective petitioner therein, and set aside the criterion adopted F
by the Selection Committee, the Court shorn of the parameters
laid down in the said criterion, independently evaluated the
veracity of the impugned orders of premature retirement. This
exercise was sought to be carried out on the basis of the record
taken into consideration by the Screening Committee in arriving G
at the conclusion that the petitioner deserved to be retired
prematurely. The High Court therefore examined at its own,
whether there were sufficient reasons for passing the impugned
orders of premature retirement against the concerned
petitioners. We are of the view, that the course adopted by the

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- A High Court in both the aforesaid cases, was just an appropriate. We, therefore, hereby uphold the instant contention at the hands of the learned counsel for the respondents, that the impugned order dated 1.9.2005 passed by the Jal Nigam, prematurely retiring the petitioner from its employment, cannot be set aside merely because the criterion adopted by the Jal Nigam has been set aside. The veracity of the impugned order will have to be examined independently of the criterion so as to determine, whether or not the impugned order is sustainable on the basis of the record taken into consideration by the Screening Committee.

11. It is the aforesaid determination at our hands, that prompted the learned counsel for the petitioner to raise the second contention, namely, that the material taken into consideration for prematurely retiring the petitioner did not justify the passing of the impugned order dated 1.9.2005. Insofar as the instant contention is concerned, learned counsel for the rival parties invited attention to Annexure R/4 (appended to the counter affidavit filed on behalf of the Jal Nigam), i.e. a compilation of the service profile of the petitioner. A perusal thereof reveals, that the entries recorded in the Confidential Reports of the petitioner for the preceding 10 years were outlined therein. The entries taken into consideration were for the years 1994-1995 to 2003-2004. Shorn of further details it would be relevant to mention, that out of the aforesaid entries the work and conduct of the petitioner for the years 1997-1998, 1998-1999, 1999-2000 and 2002-2003 were recorded as "satisfactory". Entries for the year 1996-1997, 2000-2001, 2001-2002 and 2003-2004 were recorded as "good". For the remaining two entries, the one for the year 1994-1995 was recorded as "very good" and for a part of the year of 1995-1996 the work of the petitioner was assessed as "excellent". It is therefore apparent from the Annual Confidential Report of the petitioner, that over the last decade, preceding the impugned order dated 1.9.2005, there has been a regular and consistent

deterioration from "excellent" and "very good" to "satisfactory". A
In fact in as many as 4 of the preceding 7 years, the work and
conduct of the petitioner was evaluated as "satisfactory". The
compilation Annexure R/4 also outlines the various orders of
punishment inflicted on the petitioner. The orders of punishment
taken into consideration were dated 18.4.2002, 23.11.2004 B
and 4.1.2005. The petitioner was punished 3 times in the
preceding 4 years. Details in respect of the orders of
punishment were mentioned in the counter affidavit filed on
behalf of the respondents. Its summary was also made
available for our consideration. The said summary, pertaining C
to the orders of punishment, is being extracted hereunder:

"That the case of the petitioner was also screened and the
petitioner has earned only 5.59 marks out of 30 marks
which shows that his performance during last 10 years was D
not satisfactory. Besides this, vide Office Order dated
18.4.2002 in respect of irregularities inviting in tenders it
has been found that the petitioner has not compared the
rate offered by the contractor with Schedule G and H which
is a gross negligence, hence he should be given a warning E
to be more cautious in future (Annexure R/1).

That again vide office order dated 23.11.2004 it has been
found that respondent while posted as Executive Engineer
at Lalitpur did not reside at Lalitpur and used to come from F
Jhansi which is against the Rules. Further it has been
found that there has been delay in work, excess payment,
financial irregularity and mis-utilization of funds because
the petitioner could not had administrative control while
discharging his responsibilities which is proved, hence a G
warning to this effect has been issued to the petitioner and
it is directed that the order be kept in his personal file and
character roll (Annexure R/2).

That again vide Officer Order dated 04.01.2005 after
completion of an enquiry against the respondent and H

A relevant documents it has been found that all the charges
against him is proved regarding the incident at Kanpur
while he was working as Project Manager in Ganga
Pollution Control Unit in which 6 labourers have died and
the Corporation had to pay compensation in respect of
B their death. Hence he has been awarded censor entry and
his two increments were withheld. It was further directed
that the said order be kept in his character roll and personal
file (Annexure R/3)".

C From the above it is apparent, that the claim of the
petitioner was considered by the Screening Committee on the
basis of the annual entries in his service record and the
punishments suffered by him during the recent past.

D 12. We have given our thoughtful consideration to the
material taken into consideration by the Screening Committee
before passing the impugned order dated 1.9.2005. Besides
the gradual deterioration in his career-graph noticeable from
the last 7 years of his service (before the impugned order was
passed), wherein 4 annual reports assessed the work and
E conduct of the petitioner as "average". It is also apparent that
punishment orders were passed against the petitioner on 3
occasions within the last 4 years. These punishments were
ordered because of negligence and irregularity in granting
tenders; delay in work, excess payment, financial irregularity
F and mis-utilization of funds, lack of administrative control; and
death of 6 labourers because of lack of supervision by the
petitioner which resulted in huge financial loss by way of
compensation which had to be paid to the families of the
deceased labourers. Based on the aforesaid, it would not be
G incorrect to conclude, that there was a gradual deterioration in
the overall performance of the petitioner. In the aforesaid view
of the matter, it is not possible for us to find fault with the
impugned order of premature retirement dated 1.9.2005. We
are therefore satisfied, that the service record of the petitioner

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was objectively evaluated. Thus viewed, the passing of the impugned order cannot be described as arbitrary or unfair in any manner. The deliberations adopted by the Jal Nigam while passing the impugned order dated 1.9.2005 are, therefore, not liable to be interfered with. A

13. For the reasons recorded hereinabove we are of the view, that the impugned orders dated 27.3.2006 and 19.7.2006 passed by the High Court, upholding the order dated 1.9.2005, were fully justified and call for no interference. B

14. Dismissed. C

D.G.

SLPs dismissed.