

IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

&

HON'BLE SHRI JUSTICE HIRDESH

WRIT APPEAL No. 1105/2023

**CHIEF EXECUTIVE OFFICER GWALIOR DEVELOPMENT
AUTHORITY**

Versus

SOHAN LAL ARYA AND OTHERS

Appearance:

Shri Raghvendra Dixit – Advocate for the appellant.

Shri D.P.Singh – Advocate for the respondent No.1.

*Shri Vivek Khedkar – Additional Advocate General for the respondents
No.2 and 3/State.*

AND

WRIT APPEAL No. 1308/2023

CHAIRMAN GWALIOR DEVELOPMENT AUTHORITY AND OTHERS

Versus

HARI KRISHNA SHARMA (DEAD) AND OTHERS

Appearance:

Shri Raghvendra Dixit – Advocate for the appellants

Shri Pratip Visoriya – Advocate for the respondents.

JUDGMENT

(Delivered on 16th Day of June 2025)

Per: Justice Anand Pathak

Heard on I.A.No.6735/2023, an application for condonation of delay in filing W.A.No.1105/2023.

2. As per office note, said appeal is barred by 69 days.
3. For the reasons mentioned in the application, same is allowed. Delay in filing W.A.No.1105/2023 is hereby condoned.
4. Heard on merits.
5. *Regard being had to similitude of the dispute, both the writ appeals are heard analogously and decided by a common order.*
6. **Writ Appeal Nos.1105/2023 and 1308/2023** have been preferred by the appellants – Gwalior Development Authority under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 being aggrieved by the orders dated 17.02.2023 (passed in Writ Petition No.18181/2019) and dt.19.07.2023 (passed in Writ Petition No.17774/2019), by which learned Writ Court allowed both the writ petitions and set aside the impugned order of compulsory retirement of the petitioners dt.20.08.2019.
7. Precisely stated, facts of the case are that **Sohanlal Arya (Petitioner in W.P.No.18181/2019)** was initially appointed as Copyist on 09.01.1984 as daily wager for 84 days. Thereafter, he was promoted as Lower Division Clerk on 23.03.1984. As per the service record of the petitioner, his date of birth is 30th September 1958 and by virtue of the same the petitioner was due to retire in the month of September 2020. During the service tenure of

the petitioner, he was promoted from the post of Assistant Grade- III to Assistant Grade – II vide order dated 4.3.2014.

8. Hari Krishna Sharma (now dead) (petitioner in W.P. No.17714/2019) was initially appointed on the post of Lower Division Clerk on 22.12.1988. As per the service record of the petitioner, his date of birth is 1st July 1958 and by virtue of the same the date of retirement of petitioner was 30.06.2020. Petitioner was given first time bound promotion on 13.05.2008, second time bound promotion on 01.05.2010. He has also been granted grade pay on 6.10.2018.

9. A policy was formulated by the State Government through its General Administration Department on 6th of July 2019 for retirement of employees after scrutiny of their performance/suitability on completion of 20 years and on attaining the age of 50 years. In view of the aforesaid policy and relying on sub-rule 2 (ka) and (kha) of Rule 56 of Fundamental Rules, the Chief Executive Officer of the Gwalior Development Authority vide order dt.20.08.2019 issued directions to retire compulsorily both the petitioners with immediate effect on payment of salary of three months alleging it to be in the public interest. Being aggrieved by the aforesaid order, petitioner Hari Krishna Sharma filed W.P.No. 17774/2019, whereas petitioner Sohanlal Aaya filed W.P.No.18181/2019 before the learned Writ Court.

10. Submission of both the petitioners before the writ court was that impugned order whereby the petitioners have been retired compulsorily is illegal and arbitrary as the entire service record of the petitioners is unblemished and excellent. Petitioners have been given promotion/time bound promotion from time to time and there is no communication of adverse ACRs to the petitioners. It was further submitted that entire ACRs of the petitioners were not available before the scrutiny committee and only on the basis of presumption, decision has been taken to retire the petitioners compulsorily, which is not only bad in law but is colourable exercise of powers which is contrary to the Rules of 1976.

11. In reply, the submission of respondent GDA (appellants herein) before the Writ Court was that before passing the impugned order of compulsory retirement, entire procedure as prescribed in F.R. 56 (2) (a) and (b) and circular dt.06.07.2019 has been followed. After assessing the service record of various employees of different cadres, who have completed the age of 50 years or 20 years of service and were failed to perform their duties, the scrutiny committee recommended names of various employees including the petitioners for compulsory retirement. It was necessary to chop off the dead wood for the better administration and in consequence thereof petitioners were compulsorily retired. There is no illegality or arbitrariness in passing the impugned order.

12. After hearing the rival submissions, writ court allowed both the writ petitions and set aside the order of compulsory retirement dt.20.04.2019 and both the petitioners were held to be entitled for the payment of salary for the aforesaid period so also for the other benefit which could have accrued during the aforesaid period. Hence, the appellant GDA is before this Court.

13. Learned counsel for the appellant GDA submitted that before passing the order of compulsory retirement as per F.R. 56 (2) (a) and (b), entire procedure has been followed in view of circular dt.06.07.2019. Order of compulsory retirement is in public interest and cannot be challenged under the writ jurisdiction as it is not a stigmatic order. Rule 58 of the MP Development Authority Service (Officers and Servant) Rules, 1987 provides appeal against impugned order but without availing the alternative remedy, writ petition has been filed, which is not maintainable. All these facts have not been considered properly by the learned Writ Court while passing the impugned orders.

14. Learned counsel for the respondents supported the impugned orders passed by the writ court and prayed for dismissal of both the appeals.

15. Heard learned counsel for the parties at length and perused the record.

16. This is a case where respondents in both the cases (employees of the appellant GDA) have been retired compulsorily.

17. Grievance of the respondents/employees was that their case has not been assessed properly by the authority and the authority did not follow the circulars issued by the State Govt. from time to time. One argument was

raised by the petitioners in the writ petition that they were having less than one year to retire and therefore, they could not have been retired compulsorily.

18. It appears that as per Fundamental Rule 56 (2)(a) & (b), if an employee completes twenty years' of service or 50 years of his age and found to be a dead wood and is not an asset to the institution, may be compulsorily retired. It is to be borne in mind that compulsory retirement is not to be treated as a punishment. It is a method by which a person if he is not contributing meaningfully and effectively to the cause of the institution where he is serving, then he can be retired not as punishment but on the ground that he is not an asset to the department. From this perspective, whole dispute is to be seen.

19. In the instant case, a committee, which was constituted by the Chairman, considered the case of petitioner Harikrishna Sharma, Assistant Grade III (W.P.No.17774/2019) and Sohanlal Arya, Assistant Grade III (W.P.No.18181/2019) and thereafter came to the conclusion in following manner :-

1	श्री हरीकृष्ण शर्मा, सहायक वर्ग-३	<p>1- विगत 5 वर्षों के गोपनीय प्रतिवेदनों का अवलोकन किया । दो वर्ष के गोपनीय प्रतिवेदन में वर्गीकरण 'क' पाया गया तथा तीन वर्ष के गोपनीय प्रतिवेदन उनके द्वारा भरकर प्रस्तुत नहीं किए हैं जिससे स्पष्ट है कि कार्य के आकलन से बचने का प्रयास किया है।</p> <p>2- उनके प्रभारी अधिकारी के मत के आधार पर कार्य दक्षता उपयुक्त नहीं पाई गई।</p> <p>3- गबन, धोखाधड़ी के संबंध में कार्यालयीन अभिलेखों के</p>
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2	श्री सोहनलाल आर्य, सहायक वर्ग-2	<p>1- विगत 5 वर्षों के गोपनीय प्रतिवेदन इनके द्वारा भरकर प्रस्तुत नहीं किए गए हैं। जिससे कार्य के आंकलन से बचने का प्रयास किया है। इससे उनके पाँच वर्ष के गोपनीय प्रतिवेदन प्राप्त न होने से कार्य की उपयुक्तता संदेहजनक है।</p> <p>2- प्रभारी अधिकारी के मत के आधार पर इनकी कार्य दक्षता, कार्य क्षमता बिल्कुल उपयुक्त नहीं है।</p> <p>3- उनके द्वारा प्रतिदिन कार्य की समीक्षा, उनके प्रभार में अभिलेखों से की गई। कार्य निपटाने की गति अत्यधिक धीमी है। इनकी कार्य क्षमता उपयुक्त नहीं है।</p>

20. Perusal of the work appraisal of both the petitioners indicate that they were deliberately trying to evade their assessment by way of annual confidential report. For the last five years, they avoided this. In fact, petitioner Harikrishna Sharma faced FIR also for the offence of cheating and embezzlement of public money, which appears to be a serious allegation. ACRs of Harikrishna Sharma for two years are marked as “Ka”. On perusal of the said ACRs, it appears that his work was average and no distinctive performance was referred by the assessing authority to bring home the analogy that he was a good employee.

21. So far as circular dt.22.08.2000, as relied upon by the petitioners, is concerned, said circular prescribe parameters for compulsory retirement.

Same are reproduced as under :-

1. **छानबीन कर अनिवार्य सेवानिवृत्ति के लिये निर्धारित मानदण्ड-**

50 वर्ष की आयु और अथवा 20 वर्ष की सेवा पूर्ण करने वाले शासकीय सेवकों के लिये मूलभूत नियम 56 एवं मध्यप्रदेश सिविल सेवा (पेंशन) नियम, 1976 के नियम 42 के अधीन छानबीन करते समय अनिवार्य सेवानिवृत्त करने के लिये निम्नानुसार देखा जाये-

- (1) ईमानदारी तथा सत्यनिष्ठा संदेहजनक होना। (इस हेतु संबंधित शासकीय सेवक का संपूर्ण अभिलेख देखा जाकर अनुशंसा की जाए।)
- (2) शारीरिक क्षमता में कमी।
- (3) ख्याति एवं कार्यक्षमता का मूल्यांकन संबंधित शासकीय सेवक के सेवाकाल के सम्पूर्ण अभिलेखों के आधार पर किया जाये। यह आवश्यक नहीं है कि प्रत्येक प्रतिकूल अभ्युक्ति जिसे प्रतिकूल अभ्युक्ति की संज्ञा दी जा सकती है, शासकीय सेवक को संसूचित की गई हो।

(राज्य शासन, उ.प्र. एवं अन्य विरुद्ध बिहारी लाल, 1994 की सिविल अपील क्रमांक 6307 (ए आई आर 1995 सुप्रीम कोर्ट 1161)

- (4) सम्पूर्ण सेवाकाल के अभिलेखों का समग्र मूल्यांकन "अच्छा (ख)" श्रेणी से कम होना। इसके साथ यह भी देखा जावे कि शासकीय सेवक की कार्यक्षमता में होना। इसके साथ यह भी देखा जावे कि शासकीय सेवक की कार्यक्षमता में गिरावट तो नहीं आ रही है। विशेषकर पिछले 5 वर्षों के कार्य का स्तर घट तो नहीं रहा है।

22. At the same time, Clause 5 of the aforesaid circular indicates that all the parameters are not required to be fulfilled. In the opinion of the committee if any one parameter is sufficient to retire the employee compulsorily in public interest, then said decision can be taken. Relevant Clause 5 are reproduced as under :-

5. यह स्पष्ट किया जाता है कि निर्धारित मापदण्डों में से सभी मापदण्डों की पूर्ति होना आवश्यक नहीं है। समिति की राय में यदि किसी एक मापदण्ड के आधार लोक हित में शासकीय सेवक की अनिवार्य सेवानिवृत्ति की जाना औचित्यपूर्ण हो तो तदनुसार भी कार्यवाही की जा सकती है। मुख्य उद्देश्य यह परीक्षण करना है कि संबंधित शासकीय सेवक जनहित में शासकीय सेवा में निरन्तर रखने योग्य है अथवा नहीं।

23. Therefore, it is not a case that only ACRs of the petitioners were not available but looking to the fact that petitioner Harikrishna Sharma was casual in his working approach and was in habit in taking leave every now and then, which is a part of reply/submission as well as record, and also looking to the status of the petitioners as dead wood, no other option was available with the employer except to retire them compulsorily. It is to be kept in mind that they are not being removed or dismissed. Therefore, scope of scrutiny in matters of compulsory retirement in fact constricts because of nature of proceeding.

24. It is true that circular dt.20.03.2003 contemplates that generally government servants should not be retired compulsorily if they are left with less than one year service for superannuation. But at the same time, it does not

mandate compulsorily. In fact para 2 of the said circular, clarifies the position and even waters down the provision of avoidance of compulsory retirement when government employee is left with less than one year. Petitioner Sohan Lal Arya had more than a year left for his retirement. However, that provision qualifies with word “generally” (सामान्यतः), therefore, it does not create a bar absolutely about compulsory retirement of those employees, who were left with less than one year on the date of consideration for compulsory retirement. Even otherwise, it is an executive piece of instruction and it is not binding on the appellant/ GDA.

25. Hon'ble Supreme Court in the case of *Madhya Pradesh State Cooperative Dairy Federation Limited and Another v. Rajnesh Kumar Jamindar and others (2009) 15 SCC 221* has laid down the parameters and same were reflected in para 47 of the said order. Para 47 of the aforesaid judgment is reproduced as under for ready reference :-

47. The question came up for consideration before a Division Bench of this Court in *State of Gujarat v. Umedbhai M. Patel [(2001) 3 SCC 314]* wherein Balakrishnan, J., as the learned Chief Justice then was, summarized the law, thus:

"11. The law relating to compulsory retirement has now crystallised into definite principles, which could be broadly summarised thus:

(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure."

26. Even in the case of *Rajendra Kumar Verma (dead) through LRS. and others Vs. Lieutenant Governor (NCT of Delhi) and others (2011) 10 SCC 1*, Hon'ble Supreme Court has given guidance in paras 183 to 185, which are reproduced as under for ready reference :-

183. It is well settled by a catena of decisions of this Court that while considering the case of an officer as to whether he should be continued in service or compulsorily retired, his entire service record upto that date on which consideration is made has to be taken into account. What weight should be attached to earlier entries as compared to recent entries is a matter of evaluation, but there is no manner of doubt that consideration has to be of the entire service record. The fact that an officer, after an earlier adverse entry, was promoted does not wipe out earlier adverse entry at all. It would be wrong to contend that merely for the reason that after an earlier adverse entry an officer was promoted that by itself would preclude the authority from considering the earlier adverse entry. When the law says that the entire service record has to be taken into consideration, the earlier adverse entry, which forms a part of the service record, would also be relevant irrespective of the fact whether officer concerned was

promoted to higher position or whether he was granted certain benefits like increments etc.

184. Therefore, this Court in *State of Orissa v. Ram Chandra Das*, (1996) 5 SCC 331, observed as under in paragraph 7 of the reported decision :-

"7. ... it is settled law that the Government is required to consider the entire record of service. We find that selfsame material after promotion may not be taken into consideration only to deny him further promotion, if any. But that material undoubtedly would be available to the Government to consider the overall expediency or necessity to continue the government servant in service after he attained the required length of service or qualified period of service for pension."

185. Thus the respondent High Court was justified in taking into consideration adverse ACRs reflecting on integrity of Mr. M.S. Rohilla for the years 1993, 1994 and 2000 while considering the question whether it was expedient to continue him in service on his attaining the age of 50 years. Similarly, insofar as appellant Mr. P.D. Gupta is concerned, for two years, that is 1994 and again in 1995 his ACRs were C "Integrity Doubtful" and again in the year 2000, the position was the same. Further, for two years, i.e., 1994 and 1995 his ACRs "C Integrity Doubtful" were upheld by the Division Bench of the High Court against which his Special Leave Petition was dismissed.

27. In view of above discussion and on perusal of the entire service record, it appears that both the petitioners/employees were dead wood which was ascertained by the scrutiny committee after taking into account the performance of both the employees holistically and the committee was not dependent upon the ACRs of the petitioners but after assessment of over all performance on various parameters, the committee came to the conclusion of giving them compulsory retirement. Said consideration can not be entertained in the writ proceeding under Article 226 of Constitution, which is

discretionary in nature and if the assessment is scrutinized like an appellate authority, then this Court in writ jurisdiction may enter into arena of subjectivity and travel beyond objective considerations.

28. After going through the record produced by the appellant GDA and the proceedings undertaken by the GDA, it appears that order of compulsory retirement was just and proper. In fact, no plea of malafide is being alleged in specific terms. Only alleged procedural irregularities were pointed out.

29. In administrative arena, it is always decision making process which is to be seen and not the decision itself as mandated in the case of *Union of India and another v. K.G. Soni*, (2006) 6 SCC 794, wherein Apex Court observed as under :-

“14. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury case* [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223] the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision.”

30. Here, once the authority scrutinized record of several employees and found some of them as persons to be retired compulsorily, then it appears that no case for interference is made out. Learned writ court glossed over all these aspects and entered into the arena of subjectivity.

31. Resultantly, both the appeals stand **allowed** and the impugned orders dated 17.02.2023 (passed in Writ Petition No.18181/2029) and dt.19.07.2023 (passed in Writ Petition No.17774/2019) are set side. The order passed by the authority, whereby petitioners got compulsorily retired stands affirmed. The respondents/employees Hari Krishna Sharma (now dead) and Sohanlal Arya (petitioners in writ petitions) are treated to be compulsorily retired. Appellant GDA to proceed accordingly.

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE

SP