IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 27th OF APRIL 2023

WRIT PETITION No.6331 of 2006

BETWEEN:-

BHAGWAN LAL BAREDIA S/O SHRI D.R. BAREDIA, AGED 49 YEARS, ASST. CONSERVATOR OF FOREST, R/O F-68/8 SOUTH T.T. NAGAR, BHOPAL.

.....PETITIONER

(BY SHRI VARUN TANKHA AND SHRI AAYUSH SHUKLA - ADVOCATES)

AND

1. **THE STATE OF M.P. THOUGH THE SECRETARY GOVERNMENT OF MADHYA PRADESH FOREST DEPARTMENT MANTRALAYA VALLABH BHAWAN, BHOPAL (MP).**
2. **THE PRINCIPAL CHIEF CONSERVATOR OF FOREST, BHOPAL (MP).**

.....RESPONDENTS

(BY SHRI GIRISH KEKRE – GOVERNMENT ADVOCATE)

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Reserved on : 20.02.2023

Pronounced on : 27.04.2023

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This petition having been heard and reserved for orders, coming on for pronouncement this day, the Court pronounced the following:

ORDER

Since pleadings are complete and learned counsel for the

parties are ready to argue the matter, therefore, it is finally heard.

2. This petition under Article 226 of the Constitution of India is directed against the order dated 18.04.2006 (Annexure-P/11) passed by respondent No.1 whereby on the basis of recommendations made by Screening Committee, the petitioner was directed to be retired from service compulsorily.

3. Learned counsel for the petitioner is challenging the impugned order mainly on the ground that the Screening Committee did not take note of the criteria as has been laid down for compulsory retiring an employee in a proper manner. He submits that even otherwise, the gradings awarded to the petitioner in his ACRs for the years 2000 to 2005 cannot be considered to be the gradings under which an employee is considered to be a dead-wood or allowing him in service shall be treated to be against public interest. He further submits that the Screening Committee while passing the order did not take into consideration the petitioner's ACR for the year 2005 in which he was awarded grading 'Very Good' ('A'). He also submits that the order of Screening Committee was based upon wrong premise because while passing the order, the Committee took note of the punishment which was earlier awarded to the petitioner, whereas the said punishment got set aside later on. In support of his contention, learned counsel for the petitioner has placed reliance upon a judgment of Supreme Court reported in **(1998) 4 SCC 92 [State of Punjab Vs. Gurdas Singh].**

4. Learned Government Advocate, on the other hand, has opposed the submissions advanced by learned counsel for the petitioner and submitted that the order passed by the Scrutiny Committee does not call for any interference because the same was based upon proper reasoning. He has also submitted that on perusal of petitioner's ACRs of

the years 2002 to 2004, it is clear that his performance was unsatisfactory and therefore, considering him to be a dead-wood, his order of compulsory retirement was rightly passed. He has also submitted that the punishment which got set-aside later on was not considered by the Scrutiny Committee for the reason that the Committee considered the case of compulsory retirement of the petitioner in the month of March, 2006 whereas the punishment got set aside in the month of May, 2006 and as such, the order passed by the Scrutiny Committee cannot be said to a faulty one. He has also submitted that in the petitioner's entire service carrier, he had not been given any promotion. He has submitted that considering the petitioner's over all performance, the Scrutiny Committee arrived at a conclusion that he is a dead-wood and as such, the order of his compulsory retirement was passed. He has submitted that under such circumstances, the petition deserves dismissal. To bolster his submissions, he has relied upon a judgment of Supreme Court reported in **(2001) 3 SCC 314 [State of Gujarat Vs. Umedbhai M. Patel]**.

5. Considering the rival submissions on law and facts advanced by learned counsel for the parties and perusal of record, it is clear that the petitioner has assailed the impugned order of his compulsory retirement dated 18.04.2006 (Annexure-P/11) on two counts. Firstly, that the Committee failed to appreciate that the grading awarded to the petitioner in preceding year of 2005 i.e. 'Very Good' ('A') was not available with the Scrutiny Committee and as such, the same was not considered by the Committee whereas as per the criteria laid down by the Committee at the time of scrutiny whole service record of an employee has to be taken note of but only on the basis of incompetency, the petitioner should not be retired compulsorily especially when his previous five years performance

was found satisfactory. According to the petitioner, since the grading of year 2005 was not there before the Scrutiny Committee, therefore, their opinion whether the services of the petitioner were satisfactory in the preceding five years or not was without any application of mind or it can be said that the decision was without any foundation or formed on the basis of incomplete material. The document i.e. Annexure-P/16 obtained by the petitioner under Right to Information Act reveals that in the year 2005, he was awarded grading 'Very Good' ('A') but the said grading was not placed before the Scrutiny Committee. Secondly, the petitioner has challenged the impugned order on the ground that the Scrutiny Committee took note of the punishment inflicted upon the petitioner vide order dated 05.05.2005 withholding of one annual increment with non-cumulative effect whereas that order was later on set aside but that fact was not considered by the authority.

6. Undisputably, the order of punishment awarded to the petitioner was set aside in the month of May, 2006 whereas his order of compulsory retirement was passed in the month of March, 2006 and, as such, though learned counsel for the petitioner has taken a ground that this Court can take note of the subsequent development whereby the petitioner's order of punishment was set-aside and direct the authority to change their decision retiring the petitioner compulsorily treating him to be a dead-wood, but this Court exercising the writ jurisdiction under Article 226 of the Constitution of India shall consider the validity of the impugned order in the touchstone of the material available before the authority on the date of taking decision and, therefore, I am not convinced with the ground raised by learned counsel for the petitioner nor this Court will take into account the decision exonerating the petitioner setting-aside

his punishment in the month of May, 2006.

(6.1) So far as the grading awarded to the petitioner in the year 2005 is concerned, the same was not before the Scrutiny Committee while taking decision and scrutinizing his service record. However, from the report of the Scrutiny Committee, it is clear that the Committee had considered the whole service record of the petitioner. Only because one grading of the year 2005 was not there though it was 'very good', but in absence of any allegation of *mala fide* or indicating that subjective satisfaction of the Committee was based upon arbitrary or capricious ground overlooking the relevant material does not vitiate the decision of the Scrutiny Committee. It is also not a case in which the petitioner's gradings of preceding five years except 2005 were so attractive which keep him in a profitable position. While considering the petitioner's case, the Scrutiny Committee not only considered the adverse remark awarded to him in the years 2002 and 2003, i.e. 'ग' and 'घ' but also took note of punishment inflicted upon him and as such, the subjective satisfaction of the Scrutiny Committee can be said to be based upon the whole service record of the employee. Had it been a case where the decision was to be taken only on the criteria of considering grading awarded to the employee in the preceding five years, then the situation would have been different. The Supreme Court in several cases after expressing its view has clarified that the order of compulsory retirement causes no prejudice to the Government servant who is made to lead a restful life enjoying full pensionary and other benefits. It is not an exercise to penalise the employee but it amounts just to fruitful incident of service made in the larger interest of country.

7. The Supreme Court in the case of **Umedbhai M. Patel**

(supra) relying upon the cases reported in **(1992) 2 SCC 299 [Baikuntha Nath Das Vs. Chief District Medical Officer]** and also in **(1970) 2 SCC 458** [**Union of India Vs. Col. J.N. Sinha]** has observed that order has to be passed by the Government on forming the opinion that in the public interest to retire a Government Servant compulsorily, the order is passed on the subjective satisfaction of the Government. It is also observed that the order of compulsory retirement cannot be discarded and set-aside on the ground that even the uncommunicated adverse remark has been taken note of. Recently, the Supreme Court in **Civil Appeal No.5428 of 2012 [Central Industrial Security Force Vs. HC (GD) Om Prakash]** after taking note of several judgments of Supreme Court on this issue and also considering the scope of interference by the High Court in the matter of compulsory retirement has observed as under:-

> "4. This Court approved the earlier judgment of this Court reported as Union of India v. M.E. Reddy and another wherein it was held as under:
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> > "12. An order of compulsory retirement on one hand causes no prejudice to the government servant who is made to lead a restful life enjoying full pensionary and other benefits and on the other gives a new animation and equanimity to the Services. The employees should try to understand the true spirit behind the rule which is not to penalise them but amounts just to a fruitful incident of the Service made in the larger interest of the country. Even if the employee feels that he has suffered, he should derive sufficient solace and consolation from the fact that this is his small contribution to his country, for every good cause claims its martyr."
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> 5. We find that the High Court has completely misdirected itself while setting aside the order of premature retirement of the writ petitioner. The writ petitioner has been awarded number of punishments prior to his promotion including receiving illegal gratification from a transporter while on duty in the year 1993. There are also allegations of absence from duty and overstaying of leave. After promotion, a punishment of four days fine was imposed on the charge of sleeping on duty and two days fine was imposed for overstayed from joining time. Apart from the said punishments, the

writ petitioner has a mixed bag of ACRs such as average, below average, satisfactory good and very good. In the last 5 years, he has been graded average for the period 01.01.2010 to 31.12.2010.

* * *

7. A three Judge Bench of this Court reported as Union of India and Others v. Dulal Dutt examined the order of compulsory retirement of a Controller of Stores in Indian Railway. It was held that an order of compulsory retirement is not an order of punishment. It is a prerogative of the Government but it should be based on material and has to be passed on the subjective satisfaction of the Government and that it is not required to be a speaking order. This Court held as under:

> "18. It will be noticed that the Tribunal completely erred in assuming, in the circumstances of the case, that there ought to have been a speaking order for compulsory retirement. This Court, has been repeatedly emphasising right from the case of R.L. Butail v. Union of India [(1970) 2 SCC 876] and Union of India v. J.N. Sinha [(1970) 2 SCC 458] that an order of a compulsory retirement is not an order of punishment. It is actually a prerogative of the Government but it should be based on material and has to be passed on the subjective satisfaction of the Government. Very often, on enquiry by the Court the Government may disclose the material but it is very much different from the saying that the order should be a speaking order. No order of compulsory retirement is required to be a speaking order. From the very order of the Tribunal it is clear that the Government had, before it, the report of the Review Committee yet it thought it fit of compulsorily retiring the respondent. The order cannot be called either mala fide or arbitrary in law."

* * *

9. In Union of India v. V.P. Seth and Another9 relying upon Baikuntha Nath Das and other judgments, it was held as under:

> "3. These principles were reiterated with approval in the subsequent decision. It would, therefore, seem that an order of compulsory retirement can be made subject to judicial review only on grounds of mala fides, arbitrariness or perversity and that the rule of audi alteram partem has no application since the order of compulsory retirement in such a situation is not penal in nature. The position of law having thus been settled by two decisions of this Court, we are afraid that the order of the Tribunal cannot be sustained as the same runs counter to the principles laid down in the said

two decisions."

* * *

13. There are numerous other judgments upholding the orders of premature retirement of judicial officers inter alia on the ground that the judicial service is not akin to other services. A person discharging judicial duties acts on behalf of the State in discharge of its sovereign functions. Dispensation of justice is not only an onerous duty but has been considered as discharge of a pious duty, therefore, it is a very serious matter. This Court in Ram Murti Yadav v. State of Uttar Pradesh and Another held as under:

> "6. ….The scope for judicial review of an order of compulsory retirement based on the subjective satisfaction of the employer is extremely narrow and restricted. Only if it is found to be based on arbitrary or capricious grounds, vitiated by mala fides, overlooks relevant materials, could there be limited scope for interference. The court, in judicial review, cannot sit in judgment over the same as an appellate authority. Principles of natural justice have no application in a case of compulsory retirement."

14. Thus, we find that the High Court has not only misread the judgment of this Court in Baikuntha Nath Das but wrongly applied the principles laid down therein. The adverse remarks can be taken into consideration as mentioned in the number of judgments mentioned above. There is also a factual error in the order of the High Court that there are no adverse remarks and that the ACRs for the year 1990 till the year 2009 were either good or very good. In fact, the summary of ACRs as reproduced by the High Court itself shows average, satisfactory and in fact below average reports as well."

Looking to the view taken by the Supreme Court in the matter of compulsory retirement confining the scope of interference by the High Court, it is very difficult to hold that merely because the grading awarded to the petitioner in the year 2005 was not available before the Scrutiny Committee, the foundation of forming an opinion about him that too in absence of any allegation of *mala fide*, arbitrariness or perversity cannot be interfered with.

8. From the minutes of meeting of the Scrutiny Committee

which consists of five members, it is clear that the Committee considered the whole service record of the petitioner. In paragraph-8 of the minutes (Annexure-R/1), the Committee had observed that the gradings awarded to the petitioner in the preceding five years are the sign of downfall as his services were found unsatisfactory and thereafter, the Committee had also considered the gradings awarded to the petitioner in the month of March, 2002 and March, 2003 and then only the impugned order has been passed. In paragraph-9 of the minutes, the Scrutiny Committee had also taken note of the gradings awarded to the petitioner in the years 1983, 1987, 1990, 1991 and 2003, in which, he was awarded grading 'घ'. It is out of the place to mention that the order of compulsory retirement shall not be imposed as a punitive measure and in the present case also it does not appear so. In absence of any allegation of arbitrariness or *mala fide*, the subjective satisfaction of the employer can be considered to be based upon proper foundation and cannot be interfered with in a routine manner. As has been discussed hereinabove and looking to the minutes of the Scrutiny Committee, I am of the opinion that there was sufficient material available before the respondents to take a decision for retiring the petitioner compulsorily in the public interest.

9. In the light of foregoing discussion, I find no merit in this petition and it is accordingly **dismissed**.

(SANJAY DWIVEDI)
JUDGE

Devashish

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