Before S.S. Nijjar, & Nirmal Yadav, JJ

MOHINDER PAL BALI,—*Petitioner*

versus

P.S.E.B. PATIALA AND OTHERS,—*Respondents*

C.W.P. No. 17259 of 2004

5th August. 2005

Constitution of India, 1950—Art. 226—Petitioner challenging order of his compulsorily retirement-Dismissal of petition at the motion stage by High Court after considering all the judgments cited—Review of order—Whether it is necessary to refer to each and every judgment cited by counsel while deciding the matter—Held, no—While disposing of a petition the requirement of law is that the Court should pass a speaking order and not that an elaborate judgment be written dealing with all relevant as well as irrelevant judgments that may be cited—No justifiable ground for filing the review petition—Review application liable to be dismissed.

Held, that normally when the matter is being decided at motion stage, it is not possible always to notice all the judgments cited by the learned counsel. We had considered the judgments cited by the learned counsel, but reference was not made to the two judgments as the same were not applicable to the facts and circumstances of the case of the petitioner. It is not necessary that each and every argument raised by the counsel and each and every authority cited by the learned counsel, has to be considered, whether they are relevant or irrelevant. Given the huge pendency of old cases before the High Court, the Court has to perform a balancing act whilst recording the orders at the motion stage. The requirement of law is that when the petition is being disposed of at motion stage, the Court should pass a speaking order. The requirement is not that an elaborate judgment be written dealing with all the relevant as well as irrelevant judgments that may be cited by the learned counsel. Even if the counsel for the petitioner was of the opinion that our order dated 18th July, 2005 was erroneous, the same ought to have been challenged by adopting the normal remedy of appeal. There were no justifiable grounds for filing the review petition.

(Paras 7 & 8)

K. G. Chaudhary, Advocate, *for the applicant/petitioner.*

JUDGMENT

S.S. NIJJAR, J.

Learned counsel for the petitioner submits that the points mentioned in review application were argued and these were not noticed in our order dated 18th July, 2005. On the basis of the record of the petitioner, the Appellate Authority has categorically recorded that ACRs of the petitioner are either below average or carry gradation of integrity doubtful. We were aware of the judgments that were cited by the learned counsel for the petitioner at that stage. Since the petition was being dismissed at the motion stage, it was not necessary to note each and every judgment which had been cited by the learned counsel. We are of the opinion that instead of resorting to the normal remedy of filing SLP against the aforesaid order, learned counsel for the petitioner has unnecessarily filed the present review application. The matter cannot be permitted to be re-argued in the review application. We are of the opinion that even if the judgments stated to have been cited by the learned counsel, have not been noticed by us, the order still does not suffer from an error apparent on the face of the record. The remedy of review in these circumstances would not be available to the petitioner.

(2) The very purpose of incorporating a rule of premature retirement in service rules, certainly is to enable the Government to weed out the corrupt and inefficient Officers who have been often described by the Supreme Court as "dead-wood". For this view of ours, we find support from the observations of the Supreme Court made in the case of **Baikuntha Nath Dass and another** *versus* **Chief District Medical Officer, Baripada and another (1).** In the aforesaid case, a Bench consisting of three Hon'ble Judges of the Supreme Court (Lalit Mohan Sharma, V. Ramaswami, B.P. Jeevan Reddy, JJ.) has categorically held as under:—

> "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 also taken into consideration. That circumstance by itself cannot be a basis

(1) AIR 1992 S.C. 1020

for interference because principles of natural justice have no place in the context of an order of compulsory retirement. (Emphasis supplied). As the nature of the function to compulsorily retire is not quasi- judicial in nature and as the action has to be taken on the subjective satisfaction of the Government, there is no room for importing the facet of natural justice *audi alteram partem* in such a case, more particularly when an order of compulsory retirement is not a punishment nor does it involve any stigma. This does not mean that judicial scrutiny is excluded altogether. While the High Court or the Supreme 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 it 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." (Emphasis supplied).

(3) A similar view has been reiterated by a Full Bench of this Court in the case of **Daya Nand *versus* State of Haryana (2).** The Full Bench of this Court noticed the law laid down by the Supreme Court in the case of **Union of India** *versus* **J. N. Sinha and another, (3).** In paragraph 8 of the judgment rendered in the case of **Union of India** *versus* **J. N. Sinha (supra),** the Supreme Court while considering the object of the rules pertaining to compulsory retirement, observed that it was in the public interest to chop off the dead- wood and that compulsory retirement as envisaged under the Rules involves no civil consequences. We may reproduce the observations of the Supreme Court as under :—

"Compulsory retirement involves no civil consequences. The aforementioned Rule 56(j) is not intended for taking any penal action against the Government servants. That Rule merely embodies one of the facts of the 'pleasure' doctrine embodied in Art. 310 of the Constitution. Various considerations may weigh with the appropriate authority while exercising the power conferred under

(2) (1994-3) 108 P.L.R. 652
(3) AIR 1971 S.C. 40

the rule. In some cases, the Government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organisations, there is good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 56(j) holds the balance between the rights of the individual Government servant and the interests of the public. While a minimum service is guaranteed to the Government servant, the Government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest."

(4) As noticed in the order dated 18th July, 2005 passed by this Court, the petitioner had submitted an appeal against the order dated 24th June, 2004 retiring him prematurely which was passed on the basis of the recommendations of the High Empowered Integrity Committee. The Appellate Authority had even given an opportunity of personal hearing to the petitioner before a speaking order was passed. Since the petitioner claims that we had overlooked certain submissions justifying the filing of the present review application, we may notice hereunder the material which was taken into consideration by the respondents in passing the order of premature retirement, which has been upheld by the Appellate Authority. In the preliminary objections of the written statement filed by the respondents, it has been stated as follows :—

"Preliminary Objection :—

1. That the petitioner is not entitled to any relief as the petitioner was prematurely reitred on consideration of his entire service record. It is submitted that out of his 11 years ACRs preceding

to 31st March, 2004, only 4 years and 1/2 years ACRs are good. The remaining ACRs are either average or below average. It is further submitted that in four ACRs his intergrity was recorded as "doubtful". Even his latest integrity was recorded as "doubtful". Even his latest ACRs for March, 2004 is average with integrity doubtful alongwith other adverse remarks (sic.). These remarks were conveyed to the petitioner,—*vide* Chief Engineer West Bathinda Memo No. 1034, dated 21st June, 2004. The above said facts were conveyed by the office of Director Personal/Zones Confidential Patiala to Senior Executive Engineer Operation Divison, P.S.E.B., Bhagta Baika,—*vide* Annexure P-2. It is further submitted here that the petitioner had not performed his duty efficiently. He was negligent in performing of his duty. The petitioner was punished with stoppage of one increment without cumulative effect,—*vide* order No. 659, dated 8th August, 1994, his one increment was stopped without cumulative effect,—*vide* order No. 35, dated 13th February, 1997, his one increment was stopped without cumulative effect,—*vide* order No. 348, dated 28th April, 1995, his two increments were stopped without cumulative effect,—*vide* order No. 66, dated 28th January, 2000, his two increments were stopped without cumulative effect,—*vide* order No. 438, dated 21st June, 2000, his one increment was stopped without cumulative effect,—*vide* order No. 322, dated 17th May, 2000. In this way, the petitioner was punished with stoppage of 13 increments without cumulative effect in 8 cases mentioned above on account of various irregularities committed by him.

It is further submitted here that the following disciplinary cases are pending against the petitioner in which the chargesheets/show cause notices have been issued but

no final action has been taken by the competent authorities. These cases also pertain to the negligence in perfoming the duties by the petitioner :

1.	SCN No. 37	Dated 4-8-1991	(Bhikhi Division)
2.	SCN No. 55	Dated 24-1-2001	(City Division, Bathinda)
3.	SCN No. 110	Dated 13-8-2001	(Bhikhi Division)
4.	Chargesheet C-58	Dated 10-9-2003	(Bhikhi Division)
5.	SCN No. 108	Dated 28-11-2003	(City Division, Bathinda)
6.	SCN No. 38	Dated 1-3-2004	(Bhagta Bhai Ka Division)
7.	Chargesheet 94	Dated 28-6-2004	(Bhagta Bhai Ka Division)
8.	SCN No. 152	Dated 17-11-2004	(Bhagta Bhai Ka Division)
9.	SCN No. 166	Dated 28-12-2004	(Bhudlada Div)

Therefore, on consideration of entire service record of the petitioner, the petitioner was retired prematurely and the same is not liable to be viewed punitive and the present writ petition is liable to be dismissed."

(5) A perusal of the aforesaid clearly shows that the respondents had taken into consideration all the relevant material and came to the conclusion that it was in public interest to order the premature retirement of the petitioner. In the judgment rendered in the case of **Rajat Barn Roy** *versus* **State of West Bengal, (4),** The Supreme Court considered the grievance of the petitioners as per the service rules applicable to them. It was submitted that their retirement from service can take place only on their attaining the age of 60 years. The respondents by the impugned orders have prematurely retired them at the age of 58 years purportedly, on the basis of a review of the petitioners service record, performance, efficiency, integrity, utility etc. by a Review Committee of the High Court which, according to the petitioners, was not permissible in law. The Supreme Court held that the respondents did not have the authority to compulsorily retire the petitioners at the age of 58 years. It was held that the petitioners have the right to continue in service till the age of 60 years. Alternatively, it was contended on behalf of the respondents that the impugned orders can also be justified by virtue of the power vested in them under

(4) 1999(4) S.L.R. 1

Rule 57 (a) (a) of the West Bengal Service Rules, Part I. It was contended that in view of the said Rule, it is open to the respondents to retire a Government Servant in public interest. The Supreme Court examined the validity of this argument. After considering the affidavits filed, it was held that the respondents had proceeded to pass the impugned orders, in exercise of the power vested in them by virtue of the directions given by the Supreme Court in the case of **All India Judges' Association** *versus* **Union of India, (5).** Therefore, the alternative argument that the orders had been passed under Rule 75 (a)(a) of the West Bengal Service Rules Part-I was rejected. In coming to the aforesaid conclusion, the Supreme Court had examined the provisions of Rule 75(a)(a) of West Bengal Service Rules, Part-I which reads as under :—

> "Notwithstanding anything contained in this Rule the Appointing Authority shall, if it is of opinion that it is in the public interest so to do, have the absolute right to retire a Government employee by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice—
>
> (i) If he is in Group-A or Group-B (erstwhile gazetted) service of post and had entered Government service before attaining the age of 35 years, if he has attained the age of 50 years ; and
>
> (ii) In all other cases after he has attained the age of 55 years."

A perusal of this Rule shows that this Rule can be invoked for the purpose of retiring a Government servant in "public interest" on satisfying the conditions mentioned in sub-clauses (1) and (2) of that Rule. A careful perusal of the impugned orders nowhere shows that the said orders are being issued in "public interest" which is a condition precedent for invoking this Rule. Nor does it advert anywhere in the impugned orders in regard to the conditions specified in sub paras (1) and (2) of the Rule. If we have to examine the impugned orders in the light of this Rule then the same has to be held to be bad in law for

(5) 1993 (6) S.L.R. 37 (SC)

non-application of mind and want of material particulars which are mandatory for invoking the said Rule. Therefore, the argument of the respondents seeking to justify the impugned orders based on Rule 75(a)(a) of the said Rules also has to be rejected."

(6) On considering the aforesaid rule, it was held that the rule can be invoked for the purpose of retiring a Govenment servant in "public interest" on satisfying the conditions mentioned in sub-paras (1) and (2) of that rule. It was observed by the Supreme Court that if the impugned orders are examined in the light of the aforesaid Rule, then the same has to be held to be bad in law for non-application of mind and want of material particulars which are mandatory for invoking the said Rules. In the present case, such a charge cannot be made against the respondents. The facts of the present case make it abundantly clear that the entire record of the petitioner has been thoroughly examined by the respondents before coming to the conclusion that he deserves to be prematurely retire. The judgment of the Supreme Court in Civil Appeal No. 3048 of 2000 (Annexure P-4 to the writ petition) has been given on the facts and circumstances of that case. It has been held that the order retiring the appellant therein, compulsorily was stigmatic in nature. Since the order was *ex facie* stigmatic, it was punitive. The observations made in this case would not be applicable in the facts and circumstances of the present case. As noticed earlier, in the present case, the order of premature retirement was challenged by the petitioner by filing the appeal before the Appellate Authority. The Appellate Authority gave an opportunity of hearing to the petitioner. After examining the entire matter, the Appellate Authority has come to the conclusion that it was not in public interest to retain the petitioner in service and he was rightly compulsorily retired. Therefore, it cannot even be said that the action of the respondents is violative of rules of natural justice.

(7) Normally, when the matter is being decided at motion stage, it is not possible always to notice all the judgments cited by the learned counsel. We had considered the judgments cited by the learned counsel, but reference was not made to the aforesaid two judgments as the same were not applicable to the facts and circumstances of the case of the petitioner. It is not necessary that each and every argument raised by the counsel and each and every authority cited by the

learned counsel. has to be considered. whether they are relevant or irrelevant. Given the huge pendency of old cases before the High Court, the Court has to perform a balancing act whilst recording the orders at the motion stage. The requirement of law as laid down by the Supreme Court in numerous cases is that when the petition is being disposed of at motion stage, the court should pass a speaking order. The requirement is not that an elaborate judgment be written dealing with all the relevant as well as irrelevant judgments that may be cited by the learned counsel. We have been constrained to pass a detailed order, in view of the tendency of the Advocates in the High Court to file review petitions, before challenging the order before the Supreme Court in SLP. The High Court has very limited jurisdiction to review its own orders. The parameters within which such jurisdiction is to be exercised, has been laid down by the Supreme Court in the case **Aribam Tuleshwar Sharma** *versus* **Aribam Pishak Sharma and others (6),** wherein it has been observed as under —

> "3. The Judicial Commissioner gave two reasons for reviewing his predecessor's order. The first was that his predecessor had overlooked two important documents Exhibits A/1 and A/3 which showed that the respondents were in possession of the sites even in the year 1948-49 and that the grants must have been made even by then. The second was that there was a patent illegality in permitting the appellant to question, in a single writ petition, 'settlement' made in favour of the different respondents. We are afraid that neither of the reasons mentioned by the learned Judicial Commissioner constitutes a ground for review. It is true as observed by this Court in *Shivdeo Singh versus State of Punjab* (AIR 1963 SC 1909) there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definite limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the

(6) AIR 1979 S.C. 1047

knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found ; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court." (Emphasis Supplied).

(8) Therefore, even if the counsel for the petitioner was of the opinion that our order, dated 18th July, 2005 was erroneous, the same ought to have been challenged by adopting the normal remedy of appeal. There were no justifiable grounds for filing the Review Petition.

(9) In view of the aforesaid observations of the Supreme Court, the Review Application is dismissed.

R.N.R.

Before J.S. Narang & Baldev Singh, JJ

DR. DEV PARKASH CHUGH,—*Petitioner*

versus

STATE OF PUNJAB & OTHERS,—*Respondents*

C.W.P. NO. 11172 OF 2005

29th September, 2005

Constitution of India, 1950—Article 226—Policy Letter, dated 20th April, 2005 issued by Government of Punjab, Department of Personnel on transfers—Cl.2(b)—Posting of a Veterinary Officer from time to time at various places—After about 10 months' stay on last station transfer of petitioner ordered—Petitioner due to retire after about a period of 1—1/2 years—Challenge thereto—Clause 2(b) of the policy, dated 20th April, 2005 provides that a Government employee whether Gazetted or non-gazetted who is due to retire within the next two years, may be allowed to continue in the same district or at the