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RAM MURTI YADAV

v.

STATE OF UTTAR PRADESH AND ANOTHER

(Civil Appeal No. 8875 of 2019)

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DECEMBER 10, 2019

[ASHOK BHUSHAN AND NAVIN SINHA, JJ.]

C *U.P. Fundamental Rules – r.56(c) – Compulsory Retirement of a Judicial Officer – Appellant while posted as a Chief Judicial Magistrate granted acquittal to the accused u/ss.467, 468, 471, 474, 420, 406 and 120B of IPC – A complaint was lodged against the appellant with regard to the acquittal – A vigilance enquiry was initiated and the report was adverse to the appellant – A*
D *censure entry was recorded in his character roll and order of punishment was accepted by the appellant without any challenge – Screening Committee recommended compulsory retirement of the appellant – Thereafter, appellant was compulsorily retired which was endorsed by the Full Court of the High Court – Held: The service records of the appellant were examined by the Screening Committee, the Full Court as also by the Division Bench of the High*
E *Court – 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 malafides, overlooks relevant materials, could there be limited scope for interference –*
F *The Full Court scrutinised the service records of the appellant and arrived at the conclusion that it was in public interest to compulsory retire the appellant – Further, punishment of censure meted out to the appellant was never assailed by him – Therefore, the order of the compulsory retirement of the appellant required no interference.*

G *Service Law – Judicial Services – Held: A judge holds the office of a public trust – Impeccable integrity, unimpeachable independence with moral values embodied to the core are absolute imperatives which brooks no compromise – A judge is the pillar of the entire justice system and the public has a right to demand*
H *virtually irreproachable conduct from anyone performing a*

judicial function – Judges must strive for the highest standards of integrity in both their professional and personal lives. A

Dismissing the appeal, the Court

HELD: 1. The service records of the appellant have been examined by the Screening Committee, the Full Court as also by the Division Bench of the High Court. 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 malafides, 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. [Para 6] [824-H; 825-A-B] B C

2. The complaint against the appellant with regard to the acquittal granted by him was first considered by the Administrative Judge, who was satisfied that it is a matter for further enquiry. The comments of the appellant were called for. A vigilance enquiry was recommended by the Administrative Judge, who obviously was not satisfied with the explanation furnished. The officer holding the vigilance enquiry was also a judicial officer who opined that the act of acquittal by the appellant was not above board. The comments of the appellant were again called for. The Screening Committee consisting of three Hon'ble Judges, on an overall assessment of the appellant's service record, recommended his compulsory retirement. The Full Court scrutinised the service records of the appellant again while considering the recommendation of the Screening Committee and arrived at the conclusion that it was in public interest to compulsory retire the appellant. It is undisputed that the punishment of censure meted out to the appellant was never assailed by him. [Para 8] [825-E-G] D E F G

3. A person entering the judicial service no doubt has career aspirations including promotions. An order of compulsory retirement undoubtedly affects the career aspirations. Having said so, it is also cautioned that judicial service is not like any other service. A person discharging judicial duties acts on behalf H

A of the State in discharge of its sovereign functions. Dispensation
of justice is not only an onerous duty but has been considered
as akin to discharge of a pious duty, and therefore, is a very
serious matter. The standards of probity, conduct, integrity that
may be relevant for discharge of duties by a careerist in another
B job cannot be the same for a judicial officer. A judge holds the
office of a public trust. Impeccable integrity, unimpeachable
independence with moral values embodied to the core are
absolute imperatives which brooks no compromise. A judge is
the pillar of the entire justice system and the public has a right
to demand virtually irreproachable conduct from anyone
C performing a judicial function. Judges must strive for the highest
standards of integrity in both their professional and personal
lives. [Para 13] [828-A-D]

4. It has to be kept in mind that a person seeking justice,
has the first exposure to the justice delivery system at the level
D of subordinate judiciary, and thus a sense of injustice can have
serious repercussions not only on that individual but can have
its fall out in the society as well. It is therefore absolutely
necessary that the ordinary litigant must have complete faith at
this level and no impression can be afforded to be given to a
E litigant which may even create a perception to the contrary as
the consequences can be very damaging. The standard or
yardstick for judging the conduct of the judicial officer therefore
has necessarily to be strict. Having said so, it is also observed
that not every inadvertent flaw or error that will make a judicial
officer culpable. The State Judicial Academies undoubtedly has
F a stellar role to perform in this regard. A bona fide error may
need correction and counselling. But a conduct which creates a
perception beyond the ordinary cannot be countenanced. For a
trained legal mind, a judicial order speaks for itself. [Para 14]
[828-E-G]

G *Union of India & Ors. v. K.K. Dhawan*, (1993) 2 SCC
56 : [1993] 1 SCR 296 ; *Union of India & Ors. v. Duli*
Chand, (2006) 5 SCC 680 [2003] 3 Suppl. *Pyare*
Mohan Lal v. State of Jharkhand and Ors., (2010) 10
SCC 693 : [2010] 11 SCR 216 ; *Syed T.A. Naqshbandi*
H *& Ors. v. State of Jammu & Kashmir & Ors.*, (2003) 9

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SCC 592 : [2003] 1 Suppl. SCR 114 ; *Rajendra Singh Verma (D) thr. Lrs. v. Lt. Governor (NCT of Delhi)*, (2011) 10 SCC 1 : [2011] 12 SCR 496 ; *High Court of Judicature at Bombay v. Shashikant S. Patil & Anr.*, (2000) 1 SCC 416 : [1999] 4 Suppl. SCR 205 – relied on.

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Ram Ekbal Sharma v. State of Bihar and Anr., (1990) 3 SCC 504 : [1990] 2 SCR 679 ; *P.C. Joshi v. State of U.P. and Ors.*, (2001) 6 SCC 491 : [2001] 1 Suppl. SCR 369 ; *Ramesh Chander Singh v. High Court of Allahabad and Anr.*, (2007) 4 SCC 247 : [2007] 3 SCR 198 – distinguished.

B

Baikuntha Nath Das and Anr. v. Chief District Medical Officer, Baripada and Anr., (1992) 2 SCC 299 : [1992] 1 SCR 836 ; *Nawal Singh v. State of U.P. and Another*, (2003) 8 SCC 117 : [2003] 3 Suppl. SCR 1046 ; *R.C. Chandel v. High Court of M.P. and Anr.*, (2012) 8 SCC 58 : [2012] 7 SCR 205 ; *Punjab State Power Corpn. Ltd. and Ors. v. Hari Kishan Verma*, (2015) 13 SCC 156 : [2015] 3 SCR 555 ; *Registrar General, Patna High Court v. Pandey Gajendra Prasad and Ors.*, (2012) 6 SCC 357 : [2012] 5 SCR 994 – referred to.

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Case Law Reference

[1992] 1 SCR 836	referred to	Para 3	
[2007] 3 SCR 198	distinguished	Para 3	
[1990] 2 SCR 679	distinguished	Para 12	F
[2001] 1 Suppl. SCR 369	distinguished	Para 12	
[2003] 3 Suppl. SCR 1046	referred to	Para 4	
[2012] 7 SCR 205	referred to	Para 4	
[2015] 3 SCR 555	referred to	Para 4	G
[2012] 5 SCR 994	referred to	Para 7	
[1993] 1 SCR 296	relied on	Para 9	
(2006) 5 SCC 680	relied on	Para 9	
[2010] 11 SCR 216	relied on	Para 9	H

- A [2003] 1 Suppl. SCR 114 **relied on** **Para 10**
 [2011] 12 SCR 496 **relied on** **Para 11**
 [1999] 4 Suppl. SCR 205 **relied on** **Para 11**

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8875 of 2019.

From the Judgment and Order dated 23.05.2018 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Writ Petition (SB) No. 16040 of 2016.

C R. Basant, Sr. Adv., Lokesh Kumar, Arun, Kuldip Singh, Advs. for the Appellant.

Sunny Choudhary, Adarsh Upadhyay, Advs. for the Respondents.

The Judgment of the Court was delivered by

NAVIN SINHA, J.

D 1. The appellant, a judicial officer of the rank of Additional District and Sessions Judge, assails his order of compulsory retirement dated 03.05.2016 at 56 years of age under Rule 56 (C) of the U. P. Fundamental Rules (hereinafter referred to as ‘the Rules’).

E 2. The appellant while posted as a Chief Judicial Magistrate granted acquittal to the accused on 17.09.2007 in Criminal Case No.4670 of 2005 “State vs. Mohd. Ayub” under Sections 467, 468, 471, 474, 420, 406 and 120B of the Indian Penal Code. A complaint was lodged against the appellant with regard to the acquittal. After calling for comments from the appellant, and perusing the judgement and the order of reversal in appeal, the Administrative Judge on 24.02.2009 recommended an enquiry. A vigilance enquiry, V.B. Enquiry No.26/2009, was held by the OSD, Enquiry, High Court of Allahabad. The enquiry report dated 10.05.2012 was adverse to the appellant. His comments were called for on 28.06.2012. On 20.12.2012, the appellant was informed that on basis of the enquiry, a censure entry had been recorded in his character roll. The order of punishment was accepted by the appellant without any challenge. On 01.04.2016, a committee of three Hon’ble Judges constituted for screening of judicial officers for compulsorily retirement under the Rules recommended the compulsory retirement of the appellant which was endorsed by the Full Court on H 14.04.2016 leading to the impugned order of compulsory retirement. The

challenge laid out by the appellant to his order of retirement before the High Court was unsuccessful and thus the present appeal. A

3. Learned senior counsel Shri R. Basant, appearing on behalf of the appellant, submitted that since joining the service in 1996-97 as a Civil Judge (Jr. Division) his Annual Confidential Reports (ACRs) till 2014-15 certify his integrity. The quota of cases allocated to the appellant being inadequate, his percentage of work was considered adequate. The adverse remark in 1996-97 for below performance had been expunged. An error of judgment in deciding a criminal case, while discharging judicial functions, cannot *ipso facto* lead to an inference of dishonesty. There was in fact no material to infer dishonesty or lack of integrity on part of the appellant in granting acquittal in the criminal case. Merely because a different view was possible does not justify the extreme step of compulsory retirement. The order of compulsory retirement being stigmatic in nature, the failure to hold departmental enquiry vitiates the same. The appellant was promoted to the post of Additional District and Sessions Judge on the basis of merit-cum-seniority and was confirmed in 2013. He had also crossed the efficiency bar. The punishment of censure therefore stands obliterated and was irrelevant for the purpose of compulsory retirement. The conclusion that the appellant had lost his utility and efficiency as a judicial officer to be declared deadwood was unsustainable without adequate consideration of his ACRs in the recent past years before retirement, at least from 2012 to 2015. Reliance in support of the submissions was placed on *Ram Ekbal Sharma vs. State of Bihar and Anr.*, (1990) 3 SCC 504; *Baikuntha Nath Das and Anr. vs. Chief District Medical Officer, Baripada and Anr.*, (1992) 2 SCC 299; *P.C. Joshi vs. State of U.P. and Ors.*, (2001) 6 SCC 491, and *Ramesh Chander Singh vs. High Court of Allahabad and Anr.*, (2007) 4 SCC 247. B C D E F

4. Learned counsel for the respondent contended that the adverse remarks against the appellant for the year 1996-97 was never expunged as the explanation furnished was not found satisfactory by the District Judge which was informed to the appellant on 12.10.1998. His disposal was also found to be inadequate in subsequent years. The complaint against the appellant for granting acquittal was examined at several levels before the impugned action followed. The appellant never questioned the punishment of censure in connection with the very same order of acquittal. The entire service record of the appellant was considered by the Screening Committee and again by the Full Court. G H

A The fact that the appellant may have been promoted subsequently is irrelevant for the purpose of consideration of compulsory retirement. Reliance in support of the submissions was placed on *Baikuntha Nath Das* (supra); *Union of India & Ors. vs. K.K. Dhawan*, (1993) 2 SCC 56; *Union of India & Ors. vs. Duli Chand*, (2006) 5 SCC 680; *Nawal Singh vs. State of U.P. and Another*, (2003) 8 SCC 117; *Pyare Mohan Lal vs. State of Jharkhand and Ors.*, (2010) 10 SCC 693; *R.C. Chandel vs. High Court of M.P. and Anr.*, (2012) 8 SCC 58, and *Punjab State Power Corpn. Ltd. and Ors. vs. Hari Kishan Verma*, (2015) 13 SCC 156.

C 5. We have considered the submissions on behalf of the parties and also the precedents sought to be relied upon by them respectively. The High Court also noticed that another vigilance enquiry VB No.06 of 2009 had also been initiated but was dropped. The enquiry which followed on the complaint against acquittal manifests that the appellant was provided proper opportunity of his defence at every stage. Quite apart from the scrutiny of his service records by the Screening Committee and again by the Full Court, the Division Bench again perused his ACRs and opined as follows:

E “We have perused the expunged portion of the annual remarks of the petitioner and found that rating of the petitioner as fair officer has not been expunged. Likewise, in the year 2008-09, 2009-10, 2010-11, the petitioner was posted as Additional District & Sessions Judge, Fast Track Court No.8, Pratapgarh and his disposal of work prescribed as Additional District Judge, Fast Track Court was found inadequate. Censure entry, recorded against the petitioner and considered by the Screening Committee and Full Court, still has not been expunged. The petitioner has never challenged the said censure entry, therefore, there is no substance in the arguments of the learned counsel for the petitioner that single censure entry relating to integrity could not be considered by the Screening Committee and Full Court. The expositions of law relied upon by the learned counsel for petitioner are of no help for the petitioner. The expositions of law relied upon by the learned counsel for the respondent is squarely applicable to the facts and circumstances of this case.”

H 6. The service records of the appellant have been examined by the Screening Committee, the Full Court as also by the Division Bench of the High Court. 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 malafides, 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.

7. The performance chart, as furnished by the appellant, demonstrates that his assessment from 1996-97 till 2014-15 rates him as a “fair” or “good officer” only, except for one entry of “very good” in the year 2011-12. The submission that his integrity was certified on each occasion leaves us unimpressed. There can hardly be any direct evidence with regard to integrity as far as a judicial officer is concerned. It is more a matter of inference and perceptions based on the conduct of the officer. The inadequacy of the present system of writing ACRs of judicial officers has deficiencies in several ways, was noticed in *Registrar General, Patna High Court vs. Pandey Gajendra Prasad and Ors.*, (2012) 6 SCC 357.

8. The complaint against the appellant with regard to the acquittal granted by him was first considered by the Administrative Judge, who was satisfied that it is a matter for further enquiry. The comments of the appellant were called for. A vigilance enquiry was recommended by the Administrative Judge, who obviously was not satisfied with the explanation furnished. The officer holding the vigilance enquiry was also a judicial officer who opined that the act of acquittal by the appellant was not above board. The comments of the appellant were again called for. The Screening Committee consisting of three Hon’ble Judges, on an overall assessment of the appellant’s service record, recommended his compulsory retirement. The Full Court scrutinised the service records of the appellant again while considering the recommendation of the Screening Committee and arrived at the conclusion that it was in public interest to compulsory retire the appellant. It is undisputed that the punishment of censure meted out to the appellant was never assailed by him.

9. The submission of Shri Basant that compulsory retirement could not have been ordered for mere error of judgment in decision making merits no consideration in view of *K.K. Dhawan* (supra) and *Duli Chand* (supra). Likewise, what has been euphemistically described

- A as “washed-off theory” by reason of any subsequent promotion after adverse entry being relevant for further promotion but not for compulsory retirement has to be rejected in view of ***Pyare Mohan Lal*** (supra). A single adverse entry could suffice for an order of compulsory retirement as held in ***Pyare Mohan Lal*** (supra) as follows :
- B “29. The law requires the authority to consider the “entire service
C record” of the employee while assessing whether he can be given
D compulsory retirement irrespective of the fact that the adverse
E entries had not been communicated to him and the officer had
F been promoted earlier in spite of those adverse entries. More
G so, a single adverse entry regarding the integrity of an officer
H even in remote past is sufficient to award compulsory retirement.
The case of a judicial officer is required to be examined, treating him to be different from other wings of the society, as he is serving the State in a different capacity. The case of a judicial officer is considered by a committee of Judges of the High Court duly constituted by the Hon’ble the Chief Justice and then the report of the Committee is placed before the Full Court. A decision is taken by the Full Court after due deliberation on the matter. Therefore, there is hardly any chance to make the allegations of non-application of mind or mala fides.”
10. This Court in ***Syed T.A. Naqshbandi & Ors. vs State of Jammu & Kashmir & Ors.***, (2003) 9 SCC 592, considering the scope of judicial review of an assessment of the conduct of a judicial officer approved by a Full Court, observed as follows:
- “7. ... As has often been reiterated by this Court, judicial review is permissible only to the extent of finding whether the process in reaching the decision has been observed correctly and not the decision itself, as such. Critical or independent analysis or appraisal of the materials by the courts exercising powers of judicial review unlike the case of an appellate court, would neither be permissible nor conducive to the interests of either the officers concerned or the system and institutions of administration of justice with which we are concerned in this case, by going into the correctness as such of ACRs or the assessment made by the Committee and approval accorded by the Full Court of the High Court.”

11. The question was again considered in *Rajendra Singh Verma (D) thr. Lrs. vs. Lt. Governor (NCT of Delhi)*, (2011) 10 SCC 1, reiterating the principle laid down in *High Court of Judicature at Bombay vs. Shashikant S. Patil & Anr.*, (2000) 1 SCC 416, this Court observed as follows:

“191. ... in case where the Full Court of the High Court recommends compulsory retirement of an officer, the High Court on the judicial side has to exercise great caution and circumspection in setting aside that order because it is a complement of all the Judges of the High Court who go into the question and it is possible that in all cases evidence would not be forthcoming about integrity doubtful of a judicial officer....”

It was further observed that:

“192. ... If that authority bona fide forms an opinion that the integrity of a particular officer is doubtful, the correctness of that opinion cannot be challenged before courts. When such a constitutional function is exercised on the administrative side of the High Court, any judicial review thereon should be made only with great care and circumspection and it must be confined strictly to the parameters set by this Court in several reported decisions. When the appropriate authority forms bona fide opinion that compulsory retirement of a judicial officer is in public interest, the writ court under Article 226 or this Court under Article 32 would not interfere with the order.”

12. *P.C. Joshi* (supra) was a case relating to an order of punishment in a departmental proceeding held to be vitiated for want of any legally acceptable or relevant evidence in support of the charges of misconduct. *Ramesh Chander Singh* (supra) related to an order of bail dealing with exercise of discretionary powers specially when a co-accused had been granted bail by the High Court. An order of compulsory retirement not been a punishment, much less stigmatic in the facts and circumstances of the present case. *Ram Ekbal Sharma* (supra) was dealing with the issue that the form of the order was not conclusive and the veil could be lifted to determine if it was ordered as punishment more so in view of the stand taken in the counter affidavit with regard to grave financial irregularities, again has no relevance to the present controversy.

A 13. A person entering the judicial service no doubt has career aspirations including promotions. An order of compulsory retirement undoubtedly affects the career aspirations. Having said so, we must also sound a caution that judicial service is not like any other service. A person discharging judicial duties acts on behalf of the State in discharge of its sovereign functions. Dispensation of justice is not only
B an onerous duty but has been considered as akin to discharge of a pious duty, and therefore, is a very serious matter. The standards of probity, conduct, integrity that may be relevant for discharge of duties by a careerist in another job cannot be the same for a judicial officer. A judge holds the office of a public trust. Impeccable integrity, unimpeachable
C independence with moral values embodied to the core are absolute imperatives which brooks no compromise. A judge is the pillar of the entire justice system and the public has a right to demand virtually irreproachable conduct from anyone performing a judicial function. Judges must strive for the highest standards of integrity in both their professional and personal lives.

D 14. It has to be kept in mind that a person seeking justice, has the first exposure to the justice delivery system at the level of subordinate judiciary, and thus a sense of injustice can have serious repercussions not only on that individual but can have its fall out in the society as well. It is therefore absolutely necessary that the ordinary
E litigant must have complete faith at this level and no impression can be afforded to be given to a litigant which may even create a perception to the contrary as the consequences can be very damaging. The standard or yardstick for judging the conduct of the judicial officer therefore has necessarily to be strict. Having said so, we must also
F observe that it is not every inadvertent flaw or error that will make a judicial officer culpable. The State Judicial Academies undoubtedly has a stellar role to perform in this regard. A bona fide error may need correction and counselling. But a conduct which creates a perception beyond the ordinary cannot be countenanced. For a trained legal mind, a judicial order speaks for itself.

G 15. In conclusion, we are of the considered opinion that the order of compulsory retirement of the appellant calls for no interference. The Appeal is dismissed.