

THE STATE OF JAMMU AND KASHMIR AND ORS. A

v.

FARID AHMAD TAK

(Civil Appeal No. 4563 of 2019 etc.)

MAY 02, 2019

[UDAY UMESH LALIT AND INDU MALHOTRA, JJ.] B

Service Law:

Compulsory retirement – Justifiability of – Respondent official compulsorily retired by State in terms of Art. 226(2) of Service Regulations – On the basis of registration of an FIR alleging demand and acceptance of bribe – Challenged by filing writ petition – Single Judge of High Court allowed the petition, holding that the decision to compulsorily retire the Respondent was taken merely on basis of FIR without taking into account APRs of Respondent and further norms for arriving at decision with regard to integrity of Respondent were not followed – Order of Single Judge confirmed by Division Bench of High Court – On appeal, held: Respondent was never caught red-handed while accepting bribe but the Division Bench considered the matters on that premise, which was incorrect – The matter was also not considered from the perspective of Clause (iv) of Art. 226(2) of Service Regulations – Therefore, matters remitted to High Court for consideration afresh – Jammu and Kashmir Civil Services Regulations – Art. 226 (2).

Allowing the appeal and remitting the matters to High Court, the Court

HELD : 1. In the present cases the concerned respondent official was never caught red handed while accepting bribe. However, observations which are identical in all three matters indicate that the Division Bench considered the matters from that premise. The basic foundation was thus incorrect. The matter from the perspective of Clause (iv) of Article 226(2) of the Jammu and Kashmir Service Regulations was also not considered. The orders of sanction in all these three matters highlight the acts of commission and omission on part of the concerned respondents as a result of which there was wrongful loss to the State and public interest was compromised. [Para 15] [11-B-D]

- A 2. Thus, the basic premise, on the basis of which the matter was considered by the Division Bench of High Court was incorrect and secondly, the matter was also not considered from the perspective of Clause (iv) of Article 226(2). Therefore, the judgments and orders under appeal passed by the Division Bench are set aside. The matters are remitted to the Division Bench for fresh consideration. [Para 16] [11-E-F]

State of Gujarat and another v. Suryakant Chunilal Shah (1999) 1 SCC 529 : [1998] 3 Suppl. SCR 293 ;

Baikuntha Nath Das and Another v. Chief District Medical Officer, Baripada and Another (1992) 2 SCC 299 : [1992] 1 SCR 836 ; M/s. Rup Diamonds and

Others v. Union of India & Ors. (1989) 2 SCC 356 : [1989] 1 SCR 13 ; Supreme Court Employees' Welfare Association v. Union of India and another (1989) 4

SCC 187 : [1989] 3 SCR 488 ; Narayan Chowdhury and Others v. Union of India and Others (1996) 7 SCC 1 : 1995 [6] Suppl. SCR 178 - referred to.

Case Law Reference

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|---|-------------------------|-------------|---------|
| E | [1998] 3 Suppl. SCR 293 | referred to | Para 8 |
| E | [1992] 1 SCR 836 | referred to | Para 10 |
| | [1989] 1 SCR 13 | referred to | Para 15 |
| | [1989] 3 SCR 488 | referred to | Para 15 |
| | [1995] 6 Suppl. SCR 178 | referred to | Para 15 |

- F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4563 of 2019.

From the Judgment and Order dated 11.12.2017 of the High Court of Jammu and Kashmir at Jammu in LPASW No. 182 of 2017.

- G With
G Civil Appeal Nos. 4564 and 4565 of 2019.

M. Shoeb Alam, Ujjwal Singh, Gautam Parbhakar, Mojahid Karim Khan, Advs. for the Appellants.

- H Pramod Kr. Sharma, Ambhoj Kumar Sinha, Advs. for the Respondent.

The Judgment of the Court was delivered by A

UDAY UMESH LALIT, J. 1. Leave granted.

2. These appeals arise out of three separate judgments passed by the High Court of Jammu Kashmir at Jammu on 11.12.2017 in LPASW No.182 of 2017, LPASW No. 159 of 2017 and LPASW No.180 of 2017.

3. The appeal arising out of decision in LPASW No. 182 of 2017 is taken as the lead matter and the facts leading to said appeal are mentioned in detail.

4. The Respondent was appointed as Junior Engineer, Power Development Department, Jammu and Kashmir in the year 1985 and with the passage of time stood promoted as Assistant Executive Engineer. FIR No. 30 of 2006 -VOJ (Vigilance Organisation, Jammu) was registered against the Respondent at Police Station Vigilance Organisation, Jammu in respect of offences punishable under Section 5(1) (d) read with Section 5(2) of Jammu and Kashmir Prevention of Corruption Act, 2006 and under Section 120-B of the Ranbir Penal Code. In due course of time, sanction for prosecution was granted by the competent authority after having found substance in the allegations. The prosecution in respect of said offence is still pending.

5. On 20.5.2015 a Committee comprising of Chief Secretary – Government of J&K, Principal Secretary to the Chief Minister, Principal Secretary to the Government – Home Department, Commissioner/Secretary to the Government – General Administration Department and Secretary to the Government – Department of Law Justice & Parliamentary Affairs was constituted under the orders issued by the Commissioner/Secretary to Government, General Administration Department, Government of Jammu and Kashmir. In terms of Article 226(2) and 226(3) of Jammu and Kashmir Civil Services Regulations (for short ‘the Regulations’) cases of officials for premature retirement were placed before the Committee. The Committee held meetings on 21.5.2015, 11.6.2015 and 26.6.2015 and considered cases of officers/officials including the respondent. Insofar as the case of the respondent was concerned, the Report of the Committee stated as under:-

“The accused officer by abusing his official position made payments against unexecuted works resulting in huge loss to the State exchequer. The accused officer in league with JE, recorded

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- A fraudulent measurements and prepared exorbitant bills for drawal, thereby, misusing his official position. Accordingly, FIR No.30/ 2006-VOJ, was registered by the Vigilance Organisation. The investigation of the case was concluded as proved. The Competent Authority has also accorded sanction vide Govt. Order No.34-GAD (Vig) of 2012 dated 20.09.2012. Further, the case already stands challaned in the court of law.
- B It was reported by the Department that the Annual Confidential Reports (ACRs) of the officer are not available.
- C The Committee took note of the fact that the officer while holding a post in Power Development Department, indulged in corrupt practices and caused loss to the State exchequer by fraudulent means, thereby, substantiating the fact that he has outlived his utility to the public.
- D Since, the officer is generally known to have bad reputation and embezzled Government money by misusing and abusing his official position, and under a conspired plan, dishonestly prepared fraudulent bills on the basis of false/excessive measurements thus caused loss to the State exchequer, therefore, it is recommended that Mr. Fareed Ahmad Tak be retired from the Government Service in the public interest, under Article 226(2) of J&K CSRs. It is further recommended that Mr. Fareed Ahmad Tak be given three months pay and allowances in advance, as admissible, in lieu of the notice.”
- F 6. On 30.6.2015 in exercise of power conferred under aforesaid Article 226(2), an order was passed compulsorily retiring the Respondent from service. The text of the order was as under:-
- “Whereas the Government is of opinion that it is in the public interest to do so.
- G Now, therefore, in exercise of the powers conferred by Article 226(2) of the Jammu and Kashmir Civil Service Regulations, the Government hereby gives notice to Shri Fareed Ahmad Tak, I/c Assistant Executive Engineer, Estates Division, Jammu, that he having rendered 22 years of service, shall retire from service w.e.f. forenoon of 01/07/2015.
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He is allowed three months of pay and allowances in lieu of A
three months notice.

By order of the Government of Jammu and Kashmir.”

7. The Respondent challenged the aforesaid order dated 30.6.2015 by filing a Writ Petition namely SWP No.2405 of 2015 in the High Court of Jammu and Kashmir at Jammu. In its affidavit-in-reply, the State justified the action submitting *inter alia* that the order of compulsory retirement was passed in public interest after due consideration by a Committee which comprised of very senior officials. The Writ Petition was allowed by a Single Judge of the High Court by his judgment and order dated 22.12.2016. It was held by the Single Judge that the decision to compulsorily retire the Respondent was taken merely on the basis of registration of a First Information Report against the Respondent without taking into account the APRs of the Respondent. Further, the norms evolved by the State to arrive at a decision with regard to integrity of the Respondent were also not followed and as such, the order compulsorily retiring the Respondent was not sustainable.

8. The State being aggrieved, preferred Letters Patent Appeal being LPASW No. 182 of 2017 which was dismissed by a Division Bench of the High Court by its order dated 11.12.2017. On the same date, two other Letters Patent Appeals viz. LPASW Nos. 159 of 2017 and 180 of 2017 were also considered and dealt with by the Division Bench. While considering the instant Letters Patent Appeal, the Division Bench stated in paragraph 16 of the lead matter as under:-

“16. Learned counsel for the appellant urged that the fact that the respondent had been booked by the vigilance organisation pursuant to the lodging of a complaint and was caught red handed while demanding and accepting bribe was a case, which would come within the ambit of paragraph 27 of **Suryakant Chunilal Shah’s¹** case and, therefore, in those circumstances, the order of premature retirement could not be said to be bad in law.”

The aforesaid paragraph also appears *ad verbatim* in the judgment in respect of LPASW No. 159 of 2017 as paragraph no.15 and as paragraph no. 16 in its decision in LPASW No. 180 of 2017.

¹ State of Gujarat and another vs. Suryakant Chunilal Shah - (1999) 1 SCC 529

- A 9. The State being aggrieved is presently in appeal challenging the correctness of the decisions of the Division Bench of the High Court.
- B 10. It was submitted by Mr. M. Shoeb Alam, learned advocate for the appellant that the law laid down by this Court in various decisions, leading case being *Baikuntha Nath Das and Another vs. Chief District Medical Officer, Baripada and Another*², is very clear and summed up in paragraph no. 34 of the decision in *Baikuntha Nath Das*² as under:-
- “34. The following principles emerge from the above discussion:
- C (i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.
- D (ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.
- E (iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this 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.
- F (iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter — of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) 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 for interference.”

It was further submitted that the High Court principally relied upon paragraph no. 27 of the decision of this Court in *Chunilal Shah's case*¹. Said paragraph no.27 was as under:-

“27. The whole exercise described above would, therefore, indicate that although there was no material on the basis of which a reasonable opinion could be formed that the respondent had outlived his utility as a government servant or that he had lost his efficiency and had become a dead wood, he was compulsorily retired merely because of his involvement in two criminal cases pertaining to the grant of permits in favour of fake and bogus institutions. The involvement of a person in a criminal case does not mean that he is guilty. He is still to be tried in a court of law and the truth has to be found out ultimately by the court where the prosecution is ultimately conducted. But before that stage is reached, it would be highly improper to deprive a person of his livelihood merely on the basis of his involvement. We may, however, hasten to add that mere involvement in a criminal case would constitute relevant material for compulsory retirement or not would depend upon the circumstances of each case and the nature of offence allegedly committed by the employee.”

11. Mr. Alam submitted that the Committee in question comprised of very high officials/officers under the Chairmanship of Chief Secretary. The Respondent's involvement in the crime, as well as the fact that the competent authority had granted sanction, were the factors which weighed with the Committee, and the decision was taken in public interest. The order of compulsory retirement was an innocuous order and completely satisfied the principles as culled out in *Baikunth Nath Das*². He further submitted that the Division Bench completely failed to consider the fact situation in the matter. It was never the case of the prosecution that the Vigilance Organisation had caught Respondent red handed while demanding and accepting bribe. As a matter of fact, in none of the present three cases was

- A there any such allegation of the accused being caught red handed while demanding and accepting bribe.

12. Mr. Pramod Kumar Sharma, learned advocate who appeared for Respondents in all three matters relied upon various orders passed by this Court dismissing Special Leave Petitions arising from judgment and orders passed by the Division Bench in identical situations. He particularly relied upon the orders passed by this Court in Special Leave Petition (c) CC Nos.6027-6028 of 2017 arising from the judgment and order dated 07.10.2016 passed by the Division Bench of the High Court of Jammu and Kashmir at Jammu in LPASW Nos.103 of 2016 and 122 of 2016 and various other orders passed by this Court subsequently.

13. The provisions under which the Committee was constituted viz. 226(2) of the Regulations prescribes norms which are required to be followed by the Screening Committee. Said Article 226(2) is as under:-

- D “(i) The Annual Performance Report of the Non-Gazetted employees are neither normally written very carefully nor are they fully available in a large number of cases. The Screening Committee should, therefore, consider the entire service record including all material and relevant information available on record about the employee before coming to any conclusion.
- (ii) The Government employees whose integrity is doubtful should be retired. For the purpose of establishing that the integrity of the Government servant is doubtful the following information/records could be considered.
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- Number and nature of complaints received, if any, against the Government servant pertaining to doubtful integrity or corruption.
 - Number and nature of various audit paras pending, if any, against the Government Servant in which concerned govt. servant is found to be involved.
 - Number and nature of vigilance cases pending inquiry, if any, against the Government servant.
 - Adverse entries in the APRs concerning doubtful integrity, if any.
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- Number and nature of departmental inquiries/preliminary inquiries, if any, which are going on against the concerned Government servant. A

- Number and nature of administrative censure/warnings/ punishment pertaining to corruption/doubtful integrity against the Government servant, if any. B

- General reputation of the employees.

(iii) Government employee who is found to be ineffective should be retired. The basic consideration in identifying such employees should be fitness/competence of the employee to continue in the post, which he is holding. If he is not found fit to continue in his present post, and than his fitness/competence to continue in the lower post from where he had been previously promoted should be considered. C

(iv) The specific norms for efficiency/effectiveness cannot be really laid down since they pertain to the nature of the work in each particular department would vary from department to department. However, these norms should be similar to norms laid down in the APRs of the employees concerned relating to his performance and efficiency/effectiveness. Specific norms on two to three parameters should be laid down for specific jobs. An illustrative list of norms is given below: D

- For Teachers the pass percentage achieved by their students.
- For Revenue staff, norms relating to revenue work, such as mutations attested, jamabandies completed, revenue pass books issued etc. F
- For engineering staff, norms relating to timely project implementations without time and cost over-runs etc.

The concerned Administrative Department should, for each specific category of employees under its control, identify two to three key result areas/norms against which the efficiency/effectiveness of the Government employees should be considered. These norms should be communicated to the screening committee by the Administrative Department in advance. G

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- A (v) While the entire record of the employee should be considered at the time of review, no employee should ordinarily be retired on grounds of ineffectiveness, if his services during the preceding 5 years, or where he has been promoted on higher post during 5 years his service in the higher post have been found satisfactory.
- B (vi) No employee should ordinarily be retired on grounds of ineffectiveness, if in any event he would be retiring on superannuation within a period of one year from the date of considering of his case.
- C (vii) This provision of Rule for premature retirement should not be used for reduction of surplus staff or an economy measure. Similarly, it should not be used to retire a Government servant on grounds of specific act of misconduct as a shortcut to initiating formal disciplinary proceedings against him. The appropriate authority shall not, however, be precluded to take action against a Government servant to retire him prematurely at the relevant time, even at that time, specific act of misconduct has come to notice.
- D (viii) Once a decision has been taken under the relevant service rule to retain a Government servant in service beyond the prescribed age or beyond the prescribed length of service, he shall ordinarily continue in service till he attains the age of superannuation.”
- F 14. According to Mr. Alam, the relevant criteria for engineering staff which was stipulated in clause (iv) related to timely project implementations without time and cost over-runs. It was submitted that not only the prosecution that was initiated against the Respondent, but the order of sanction issued by the competent authority showed that public interest was completely compromised, leading to total loss of more than Rs.16,00,000/- as a result of acts of commission and omission on part of the Respondent.
- H 15. It is true that the exercise of power under aforesaid Article 226(2) of the Regulations by the very same Committee did not meet with the approval, and the Division Bench in certain cases did reject the plea of the State Government, and affirmed the orders passed by the Single Judge setting aside the orders of compulsory

retirement. It is also true that in those matters Special Leave Petitions were dismissed summarily. However, it is well settled that mere summary disposal of a Special Leave Petition does not conclude the issue on merits³.

We, however, need not go into the matter as some striking features which emerge from three matters are as under:-

- a) In all these three cases the concerned Respondent official was never caught red handed while accepting bribe. However, observations which are identical in all three matters indicate that the Division Bench considered the matters from that premise. The basic foundation was thus incorrect. B
- b) The matter from the perspective of Clause (iv) of Article 226(2) of the Regulations was also not considered. The orders of sanction in all these three matters highlight the acts of commission and omission on part of the concerned Respondents as a result of which there was wrongful loss to the State and public interest was compromised. C D

16. The aforesaid two features are common in all these three matters. The basic premise, as indicated hereinabove, on the basis of which the matter was considered by the Division Bench was incorrect and secondly, the matter was also not considered from the perspective of Clause (iv) of Article 226(2) as stated above. We, therefore, set aside the judgments and orders under appeal passed by the Division Bench of the High Court in LPASW Nos.182 of 2017, 159 of 2017 and 180 of 2017. The matters are remitted to the Division Bench for fresh consideration. These Letters Patent Appeals stand restored to the file of the High Court which may now be dealt with afresh. E F

17. The appeals are allowed to the aforesaid extent. No costs.

Kalpana K. Tripathy

Appeal allowed and matters remitted to High Court.

³ **M/s. Rup Diamonds and others vs. Union of India & Ors** – (1989) 2 SCC 356 para 8; **Supreme Court Employees' Welfare Association vs. Union of India and another** – (1989) 4 SCC 187 para 22; **Yogendra Narayan Chowdhury and others vs. Union of India and others** – (1996) 7 SCC 1 para 5