Supreme Court of India
State Of M.P. And Ors. vs Indra Sen Jain on 20 November, 1997
Equivalent citations: AIR 1998 SC 2901, JT 1997 (9) SC 230, (1998) IMLJ 45 SC, 1998 (1) MPLJ 382, 1997 (7) SCALE 101, (1998) 1 SCC 451, 1998 (1) UJ 144 SC, (1997) 3 UPLBEC 2122
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Bench: S V Manohar, V Khare
JUDGMENT Sujata V. Manohar, J.

1. This is an appeal from the judgment of the High Court of Madhya Pradesh in Second Appeal No. 28 of 1987.

2. On 11-12-1947 the respondent was appointed as a clerk in the Court of the District Judge, Shivpuri. On 30-1-1948 the respondent was confirmed in the post of clerk with effect from 11-12-1947. After completion of 25 years of service on 10-8-1973 the respondent was served with a notice compulsorily retiring him from service after three months from the receipt of the notice. On 15-11-1973 the respondent was compulsorily retired from service in public interest under the provisions of the new Pension Rules of 1951.

3. The respondent challenged his compulsory retirement by filing a writ petition being Miscellaneous Petition No. 304 of 1975 before the High Court of Madhya Pradesh. The High Court by its order dated 25-11-1975 dismissed the petition. On 12-11-1976 the respondent filed Civil Suit No. 264-A of 1976 challenging his compulsory retirement on the same grounds which had been urged by him in Miscellaneous Petition No. 304 of 1975, The suit was dismissed by the trial court. The respondent's first appeal was also dismissed. In the respondent's Second Appeal No. 122 of 1980, however, the High Court by its order dated 26-7-1985 negatived the contention of the appellants that the suit was barred by res judicata and remanded the suit for retrial on the main issue whether the compulsory retirement of the respondent was, in fact, an order seeking to punish him for his past misconduct. If so, in the absence of compliance of provisions of Article 311(2), the order was bad in law.

4. After remand, the trial court decreed the suit of the plaintiff. The first appellate court confirmed the order of the trial court. The High Court by the impugned judgment only partly allowed the second appeal by setting aside the directions for payment of interest, but otherwise confirmed the judgment and decree of the courts below. The present appeal is filed from the impugned judgment of the High Court in second appeal.

5. It has been submitted on behalf of the appellants that in view of the fact that the writ petition of the respondent raising the same contentions was dismissed by the High Court, the subsequent proceedings are barred by the principles of res judicata. The High Court, in the impugned judgment, has rightly held that this plea of the appellants was negatived by the High Court by its judgment and order dated 26-7-1985 when it remanded the suit for retrial on merit. No appeal was filed from this judgment and order of the High Court in 1985. Nor was this judgment challenged by the appellants in any manner. Hence at this stage, the appellants cannot raise the same plea.

6. The more important question that we have to consider is whether the order of compulsory retirement is valid in law. It is well settled that the order of compulsory retirement must be made in bona fide exercise of power in public interest. It is open to the authority passing such an order to satisfy the court, if such order is challenged, that in fact the order was passed bona fide in public interest although the order, on the face of it, may not state this. In the present case, the appellants have throughout stated that the order of compulsory retirement had been passed against the respondent in public interest because his relations with the public were not good and there were allegations of corruption against him.

7. The service record of the respondent is far from satisfactory. The first appellate court has referred at length to the service record of the respondent. From the judgment of the first appellate court, it is apparent that efficiency bar in respect of the respondent had not been lifted for the past 13 years. In the confidential records of the respondent for the years 1966, 1967, 1972 and 1973 there were adverse entries. Adverse remarks of 1972 were communicated to the respondent. This adverse entry was to the effect that he was not well-behaved and his relations with the public were not up to the mark. The respondent had been suspended on 21-2-1959 and an inquiry was also held against him but he was found not guilty. Again on 22-1-1962 the respondent was suspended but on 27-12-1962 he was again reinstated. In 1964 again the respondent was suspended for four months but thereafter he was reinstated. On 29-12-1967 the respondent was given a charge-sheet and a departmental inquiry was pending against him at the time of his compulsory retirement. There was also an earlier order of 23-12-1967 withholding one increment of the respondent which, however, was set aside in appeal. There was a subsequent order of 14-12-1972 issuing warning to the respondent which also was set aside after considering the application of the respondent. Instead of looking at the service record of the respondent to decide whether the respondent had been validly retired compulsorily in public interest, the High Court has come to the conclusion that the order was passed mala fide and was in effect an order of punishment because the respondent could not be punished in the earlier inquiries. We fail to understand this logic of the High Court. If in earlier inquiries the respondent was either exonerated or on appeal the adverse orders against him were set aside, this would go to show that there were no mala fides against the respondent and that his case was fairly considered by the authorities concerned.

8. The appellants have stated in their affidavit that his confidential record goes to show that his relations with the public were not good and there were also allegations of corruption against him and, therefore, in public interest it was considered fit to compulsorily retire him. On the date of his compulsory retirement, a departmental inquiry was also pending against him. From this record, it is not possible to come to the conclusion that the order of compulsory retirement was, in fact, imposed by way of punishment. The High Court has strongly relied upon its judgment in the case of Registrar, High Court of M.P. v. Kumari Rajabai Gorkar. In appeal from that judgment being Civil Appeal No. 3687 of 1987 this Court has stated that even though on the face of the order it is not stated that the action is initiated in public interest, it is open to the authority to place material before the court in support of its contention that the action was taken in public interest. But the order cannot be quashed on the ground that the order does not mention on the face of it that it is in public interest. In the case which was before this Court there was no material placed at any time by the authority before the courts to show that the action was taken in public interest. This Court said that

any attempt to point out such material for the first time before this Court should not be permitted. That was the reason why the earlier order was confirmed. This order does not help the respondent in any manner.

9. In the present case right from inception the appellants have placed the entire service record of the respondent before the court and have also stated reasons why they considered it in public interest to retire the respondent compulsorily. Looking to the service record of the respondent, the view taken by the appellants cannot be faulted. The appeal is, therefore, allowed. The impugned order of the High Court is set aside and the suit of the respondent is dismissed.