

Court No. - 8

Case :- WRIT - A No. - 17421 of 2020

Petitioner :- Mohammed Naseem Ali

Respondent :- State Of U.P. Thru.Prin.Secy. Panchayat Raj Deptt. And Ors.

Counsel for Petitioner :- Ravi Shanker Tewari,Sheo Pal Singh

Counsel for Respondent :- C.S.C.,Dibyam Mishra,Gajendra Kumar Mishra,Sudhir Pande,Umesh Kumar Srivastava

Hon'ble Dinesh Kumar Singh,J.

1. The petitioner, who was working as Administrative Officer in Zila Panchayat, Hardoi, having been compulsorily retired from service vide order dated 15.09.2020, has filed this writ petition, impugning the said order of compulsorily retirement passed by the Chairman, Zila Panchayat, Hardoi.

2. The petitioner was selected and appointed on the post of Second Grade Clerk vide order dated 20.12.1989 passed by the Uper Mukhya Adhikari, Zila Panchayat, Hardoi; his services were confirmed vide order dated 27.12.1990; in 1999, he was promoted as First Class Clerk and Departmental Selection Committee in its meeting dated 14.05.2012 recommended him to be promoted as Section Head Clerk (Tax) on temporary basis and, the said recommendation was accepted by the Chairman of the Zila Panchayat; the petitioner assumed the charge of the Section Head Clerk (Tax) on 17.05.2012; the petitioner was further promoted as Administrative Officer vide order dated 19.05.2015.

3. The petitioner's integrity was not certified for the Financial Year 2016-17. The Uper Mukhya Adhikari, respondent no. 4, considering service record of the petitioner and, his work and conduct, recommended for his premature retirement vide order dated 15.04.2017.

4. Learned counsel for the petitioner has submitted that the Screening Committee constituted for assessing the service record of Class-III and Class-IV employees of the Zila Panchayat in the year 2017 did not assess the

petitioner for being compulsorily retired. It has been further submitted that on 11.09.2020 a meeting of the Board of Zila Panchayat was scheduled for which agenda/karya soochi was published on 28.09.2020, which was sent to all the members of the Zila Panchayat. In the agenda, there was no proposal to take action against the petitioner. Despite the premature retirement of the petitioner, not being in the Agenda, the Zila Panchayat, in its meeting dated 11.09.2020, approved the resolution of the Board of Zila Panchayat dated 11.09.2020 for petitioner's retirement compulsorily. It has been further submitted that neither the Agenda of compulsorily retirement of the petitioner was published nor served on any members of the Zila Panchayat and, therefore, the resolution of the Board of the Zila Panchayat dated 11.09.2020, so far as the petitioner's compulsorily retirement is concerned, is wholly not sustainable in law. The Chairman of the Zila Panchayat, on the basis of the decision taken by the Board, has passed the impugned order dated 15.09.2020 whereby the petitioner has been directed to be retired compulsorily.

5. Paragraphs 31, 32 and 33 of the petition are extracted herein below in which it has been specifically stated that no screening committee was constituted to assess the petitioner's service record for taking a decision of his retirement compulsorily from services:-

"31. That the petitioner humbly submits that to declare an employee as deed wood and to take further action to have his premature retirement it was incumbent upon the opp. parties to constitute a screening committee which could look into the A.C.R. of the petitioner and recommend accordingly by forming its opinion regarding the employee under screening, which in the instant case nothing was done and the compulsory retirement was sought to be doe by way of punishment which is not sustainable under law.

*32. That the Government of U.P. vide G.O. dated 06 February, 1989 has mandated to form screening committee to assess an employee for the purposes of the premature retirement and further it was mandated that once a report is obtain and the employee is not retired compulsorily, he should not be subjected every year for being screened. The true photo copy of the G.O. dated 06 February, 1989 is being annexed herewith as **Annexure***

NO. 23 to this writ petition.

33. That the petitioner craves leave of this Hon'ble Court to State that once the opp. parties did not take action in pursuance the entry dated 15.04.2017 and no screening committee was formed to assess the petitioner for being compulsorily retired, no such action could have been taken."

6. On behalf of the petitioner, it has further submitted that in subsequent years i.e. 2017-18, 2018-19 and 2019-20 the petitioner's work and conduct was found satisfactory as nothing adverse was communicated to the petitioner and, as such, he had never been declared as 'dead wood' and, therefore, the order of compulsorily retirement of the petitioner is bad in law.

7. Considering the stand of the petitioner that no screening committee was constituted to consider the entire service record of the petitioner and, no recommendation was made by the screening committee for his compulsorily retirement, this Court passed interim order dated 19.10.2020, which reads as under:-

"Notices on behalf of opposite party no.1 has been accepted by the office of learned Chief Standing Counsel whereas notices on behalf of opposite parties no.2 to 4 have been accepted by Mr. Sudhir Pande, learned Advocate.

By means of instant writ petition, the petitioner has sought for the following main prayers:

"(i). To issue a writ, order or direction in the nature of certiorari quashing the order dated 15.09.2020 passed by opposite party no.2 (contained in Annexure No.1 to the writ petition.).

(ii). To issue a writ, order or direction in the nature of mandamus commanding the opposite parties not to give effect the impugned order dated 15.09.2020 and permit the petitioner to working on his post as he was working before."

Learned Counsel for the petitioner has submitted that the petitioner has been retired compulsorily by the impugned order dated 15.09.2020 passed by opposite party no.2 which is illegal and arbitrary. He has further submitted that the impugned order has been passed without following the procedure prescribed. The impugned order has been passed without any recommendation of Screening

Committee. He has further submitted that no Screening Committee has ever been formed after 2017 when the petitioner was awarded bad entry but he was excluded from being screened and thereafter, no complaint whatsoever in this nature was found against the petitioner.

Learned Additional Chief Standing Counsel appearing on behalf of opposite party no.1 is present whereas Mr. Sudhir Pande appearing on behalf of opposite parties no.2 to 4 is not present and, therefore, this Court is left with no option except to issue notice to the opposite parties no. 2 to 4.

Issue notice to opposite parties no.2 to 4, returnable at an early date.

Steps be taken within a week.

List this case on 19.11.2020.

Till the next date of listing, the operation and implementation of order dated 15.09.2020 passed by the Chairman, Zila Panchayat, Hardoi (opposite party no.2) shall be kept in abeyance."

8. Learned counsel for the petitioner has relied on judgment in **(2009) 15 SCC 221 (Madhya Pradesh State Cooperative Federation and another Vs. Rajnesh Kumar Jamindar and others)** to submit that provisions for compulsory retirement is for the purpose of weeding out 'dead wood'. The Supreme Court placed reliance on judgment in **(2001) 3 SCC 314 (State of Gujarat Vs. Umedbhai M. Patel)**. In the said judgment compulsory retirement was crystallized into definite principles and broadly summarized them as under:-

"11. The law relating to compulsory retirement has now crystallised into definite principles, which could be broadly summarised thus:

(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure."

9. Learned counsel for the petitioner has further submitted that since the compulsory retirement has been imposed as punitive measure, the same is liable to be set-aside.

10. On the other hand, Mr. U.K. Srivastava, learned counsel for respondent no. 4, has submitted that the writ petition has been filed on falsehood and by stating wholly incorrect and false averments of facts, the petitioner obtained the interim order. It has been further stated that the petitioner has approached this Court with unclean hands and, by misleading this Court by making false, incorrect and wrong statements of facts, he could obtain the interim order. It has been further stated that a person, who approaches this Court with unclean hands and, has relied on falsehood, cannot be given any indulgence by this Court in exercise of equity jurisdiction under Article 226 of the Constitution of India. It has been further stated that the writ petition is liable to be dismissed on this ground alone.

11. Mr. U.K. Srivastava, learned counsel for respondent no. 4, has also sought dismissal of the writ petition on the ground of availability of alternative remedy to the petitioner under the provisions of Government Order No.5/1/1976-Karmik-1 dated 12th May, 1976, which provides that all employees, whose appointing authority is not the Governor, may approach the higher authority than one who has passed the order of compulsory retirement. He, therefore, submits that the writ petition is not maintainable on the ground of availability of alternative remedy and, therefore, the same is liable to be dismissed.

12. On behalf of respondent no. 4, it has been further stated that the petitioner has concealed the material facts

inasmuch as he deliberately has not filed the proceedings dated 11.09.2020 referred to in the impugned order, which specifically mentions the screening committee recommendation dated 14.07.2020, considering case of the petitioner for compulsory retirement. A person, who approaches the writ-Court by concealing the material fact is not entitled to get any relief in exercise of writ-jurisdiction and, therefore, he prays for dismissal of the writ petition on this ground also. It has been further submitted that the impugned order dated 15.09.2020 has been passed on the basis of the recommendation of the screening committee dated 14.07.2020 and minutes of the Administrative Committee Meeting held on 01.09.2020 on which the resolution dated 11.09.2020 was passed by the Board of Zila Panchayat.

13. The petitioner's work and conduct has been much wanting. He was given warnings. He has been habitual of flouting the orders of superior authorities. He has been given warning several times, but he did not care about those warnings and showed his negligence in discharge of duty. Various orders dated 17.05.2017, 20.12.2017, 08.05.2018 and 08.08.2018 have been annexed with the counter affidavit, warning him of committing indiscipline and flouting the orders passed by the superiors. It has been further submitted that the petitioner was duly informed about adverse entry given in 2016-2017 vide letter dated 14.06.2017. In case of any grievance regarding adverse entry in his character roll, an employee has right to appeal under rule-41 of the Uttar Pradesh Zila Panchayat Sewa Niyamawali, 1970. It has been further submitted that the petitioner has claimed that he had no knowledge about entry for the 2016-2017 and, therefore, no adverse entry was given up to 2018 is false and incorrect. It has been further submitted that adverse entry was given by the competent Authority to the petitioner for the year 2017-2018 as well and, the said entry was communicated vide letter dated 13.07.2018, however, the petitioner refused

the accepted the said letter. It has been further submitted that the recommendation was made by the screening committee held in the year 2017, however, since age of the petitioner was less than 50 years, his case was not forwarded for compulsory retirement. The minutes of the screening committee dated 09.08.2017 and 14.07.2020, minutes of the Administrative Committee Meeting dated 01.09.2020 and copy of the resolution of the Zila Panchayat dated 11.09.2020 have been placed on record along with the counter affidavit. The petitioner had filed an appeal against the adverse entry given to him in the year 2016-2017 before the Commissioner, Lucknow Divison, Lucknow, however, the said appeal was dismissed on 13.12.2018 and adverse entry was confirmed. It has been further submitted that there have been serious complaints by several employees against the petitioner about his indecent behaviour with the colleagues, including the female employees.

14. Reply of paragraphs-31, 32 and 33 of the writ petition has been given in paragraph-34 of the counter affidavit, which reads as under:-

"34. That the contents of paragraphs 31 to 33 of the writ petition are not only false but are also misrepresentation of fact with a view to misguide the Hon'ble Court to have obtained a favourable order. Truth of the matter is that the screening committee was duly constituted which held its meeting on 14.7.2020 and reported the matter to authorities. Administrative Committee also recommended compulsory retirement in its meeting dated 1.9.2020. The petitioner was not compulsorily retired in 2017 as his age was less than 50 years. The action taken is perfectly right."

15. Mr. U.K. Srivastava, learned counsel for respondent no. 4, has further submitted that earlier an adverse entry was also awarded in 2017-18 and in 2018-19 yearly entry was not given, but yearly increment was not given to the petitioner in 2019-20 for the petitioner's work and conduct was found unsatisfactory and, was recommended for compulsory retirement. It has been further submitted that the petitioner has been compulsorily retired by adopting

due procedure of law and, there is no illegality or infraction of any procedural or substantive law in passing the impugned order. It has been further submitted that the petitioner has been in habit of flouting the orders passed by his superiors. The petitioner was directed to deposit all the records in the office but, he did not do the same and, as a result thereof, public work has been suffering.

16. In rejoinder, while giving reply to the paragraph-34 of the counter affidavit, the petitioner has stated that the meeting of the screening committee dated 14.07.2020 and minutes of the Administrative Committee Meeting dated 01.09.2020 are forged documents and, have been antedated only to fill up the lacunae.

17. Except for making bald allegations, the petitioner has not substantiated the said allegation of forging or antedating the official records. From perusal of the recommendation of the screening committee dated 14.07.2020, it is evident that after considering the work and conduct of the petitioner, the screening committee had recorded that the petitioner is indolent, quarrelsome, disturber of peace, religious bigot, harasser of females and scheduled caste people, malignant and wholly useless employee and, the same has been confirmed by the Commissioner, Lucknow Division, Lucknow.

18. The petitioner's misconduct has been taken note of in detail in the minutes and, need not to be further dwelled upon by this Court. From the pleadings, it is evident that the petitioner had approached this Court for exercising its extraordinary jurisdiction by adopting falsehood, misrepresentation and concealing the material facts and, thus, abusing the process of the Court. He obtained the interim order on the basis of false and misleading averments and concealing material facts. One, who approaches this Court, is expected to come with clean hands inasmuch this Court exercises writ jurisdiction to maintain rule of law. The petitioner has not approached this Court with clean hands and, thus, the writ petition is liable

to be dismissed on this ground alone. Further, from looking at the service record of the petitioner, the petitioner has become 'dead wood' in the organization and, is wholly unuseful. The employer is entitled to remove the dead woods from service, if on consideration of the service record, it is found that the work of such an employee has not been upto the mark or he has become 'dead wood' for the organization. This Court does not find from the pleadings that the order has been passed as punishment and, therefore, the sole ground, urged by the petitioner, has no substance.

19. In view of aforesaid, for making false and incorrect averments and misrepresenting this Court, concealing material facts from the Court, the writ petition is **dismissed and a cost of Rs. 25,000/- (Rupees twenty five thousand) is imposed** upon the petitioner to be deposited in the 'Army Battle Casualties Welfare Fund' within a period of four weeks, failing which the District Magistrate concerned shall recover the same, as arrears of land revenue and, deposit in the account of Army Battle Casualties Welfare Fund.

20. Let a copy of this order be forwarded to the District Magistrate concerned for compliance.

Order Date :- 18.2.2022

MVS/-