

A

STATE OF U.P. AND ANR.

v.

BIHARI LAL

SEPTEMBER 5, 1994

B

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

*Service Law—Civil Services :*

*Fundamental Rules : Rule 56(j).*

C

*Order of compulsory retirement—Validity of—Government should consider entire service record before passing the order—Scope of court's power to interfere with order of compulsory retirement.*

D

The respondent was compulsorily retired from service on the ground that in spite of awarding adverse remarks for several years, he had not improved and that, therefore, he was found to be an officer of bad category. The respondent challenged the order before the High Court which quashed it. Consequently the respondent was reinstated in service and subsequent to his reinstatement State preferred an appeal in this Court.

E

Disposing of the appeal, this Court

F

**HELD :** 1. The entire service record should be considered before taking a decision to compulsorily retire a government servant exercising the power under Rule 56 (j) of the Fundamental Rules. It is not necessary that adverse remarks should be communicated or every remark, which may sometimes be categorised as adverse, be communicated. It is on an overall assessment of the record, and the authority would reach a decision whether the government servant should be compulsorily retired in public interest. [110-B-C]

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2. The court has to see whether before the exercise of the power, the authority has taken into consideration the overall record even including some of the adverse remarks, though for technical reasons might be expunged on appeal or revision. What is needed to be looked into is the *bona fide* decision taken in the public interest to augment efficiency in the public service. In the absence of any *mala fide* exercise of power or

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arbitrary exercise of power, a possible different conclusion would not be a ground for interference by the Court/Tribunal in exercise of its judicial review. However, in view of the fact that hardly nine months remain for the respondent to reach superannuation, no useful purpose would be served in allowing the appeal. [110-E-F]

3. In cases of serious nature, the government should expeditiously pursue the remedy and seek appropriate directions from the Court. In the instant case appeal was filed leisurely after reinstatement of the respondent. [110-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6307 of 1994.

From the Judgment and Order dated 4.5.92 of the Allahabad High Court in W.P. No. 93 (S/S) of 1992.

B.S. Chauhan and R.B. Mishra for the Appellants.

Raju Ramchandran and Ms. Sudhana Ramachandran for the Respondent.

The following Order of the Court was delivered :

Leave granted.

Heard learned counsel on both sides.

The respondent was working as Assistant Commissioner (Assessments) in the Sales Tax Department of the Government of U.P. By proceedings dated October 28, 1991, he was compulsorily retired from service on the ground that in spite of awarding adverse remarks for several years, the respondent had not improved and that, therefore, he was found to be an officer of bad category. On having been challenged by the respondent in writ petition No. 93 of 1992, the High Court in its judgment and order dated May 5, 1992 allowed the writ petition evaluating the evidence and finding that the order of compulsory retirement was by way of punishment without any opportunity which amounts to his removal from service violating Article 311 of the Constitution. The representation filed by the respondent against adverse remarks of 1989-90, was pending con-

A sideration and without its disposal, it cannot be taken into consideration. When disciplinary proceedings were pending, initiating proceedings for compulsory retirement also amounted to arbitrary and illegal exercise or power.

B We have issued notice to the respondent who appeared through counsel and filed counter affidavit. It is now settled law that the entire service record should be considered before taking a decision to compulsorily retire a government servant exercising the power under Rule 56(j) of the Fundamental Rules. It is not necessary that adverse remarks should be communicated or every remark, which may sometimes be categorised as adverse, be communicated. It is on an overall assessment of the record, the authority would reach a decision whether the government servant should be compulsorily retired in public interest. In an appropriate case, there may not be tangible material but the reputation of officer built around him could be such that his further continuance would imperil the efficiency of the public service and would breed indiscipline among other public servants. Therefore, the government could legitimately exercise their power to compulsorily retire a government servant. The court has to see whether before the exercise of the power, the authority has taken into consideration the overall record even including some of the adverse remarks, though for technical reasons might be expunged on appeal or revision. What is needed to be looked into is the *bona fide* decision taken in the public interest to augment efficiency in the public service. In the absence of any *mala fide* exercise of power or arbitrary exercise of power, a possible different conclusion would not be a ground for interference by the Court/Tribunal in exercise of its judicial review. In this case, the judgment was delivered on May 4, 1992 and on the same day hardly even the ink of Judge's signature dried up, he was reinstated. He is due to retire on his attaining age of superannuation on May 31, 1995. Hardly nine months remain for him to reach superannuation. In this view of the matter, we find that no useful purpose would be served in allowing the appeal.

F However, it is needless to emphasise that in cases of serious nature, the government should expeditiously pursue the remedy and seek appropriate directions from the court. Leisurely, the appeal was filed on September 18, 1992 after reinstatement.

H In these circumstances, the appropriate course would be that during

the remainder period of service if the respondent indulges in any corrupt practice, it would be open to be appropriate authority to report immediately to the Chief Secretary and the Chief Secretary would pass appropriate orders removing him from service without any notice or enquiry. The appeal is accordingly disposed of but without costs. A

T.N.A.

Appeal disposed of. B