

प्रस्तरों में चर्चा की गई है और उभय पक्षों के विद्वान अधिवक्ताओं द्वारा प्रस्तुत तर्कों को सुनने के पश्चात हम पाते हैं कि मामले के तथ्य के साक्षीगण और पीड़िता के बयान चिकित्सीय साक्ष्य से मेल नहीं खाते हैं। साथ ही इस तथ्य को भी शामिल किया गया कि साक्षीगण द्वारा अपराध को देखने के तरीके में विरोधाभास है। इस स्तर पर हम सुविचारित राय के हैं कि अभियोजन पक्ष, अपीलार्थी/अभियुक्तगण के विरुद्ध लगाए गए दुराचार के आरोपों को बखूबी साबित करने में विफल रहा है तथा अपीलार्थी/अभियुक्त संदेह का लाभ पाने का हकदार है। पीड़िता के कथनों में विरोधाभास के कारण उसे (पीड़िता) को निर्विवाद पीड़िता की संज्ञा नहीं दी जा सकती है। अतः पीड़िता के कथनों के विरोधाभास एवं अन्य किसी संपुष्टि की अनुलब्धता में अपीलार्थी को सजा दिया जाना उचित न होगा।

२२. तदनुसार, पत्रावली पर उपलब्ध उपरोक्त संपूर्ण साक्ष्यों पर विचार-विमर्श करने के मद्देनजर, यह आपराधिक अपील स्वीकार की जाती है तथा मु०अ०सं० 436/2018, धारा 376डी, 506 भा०दं०वि० व धारा 4 लैंगिक अपराधों से बालकों का संरक्षण अधिनियम 2012, थाना नवाबगंज, जनपद बरेली से उद्भूत फौजदारी वाद सं० 303/2020 (उ०प्र० राज्य बनाम राम किशोर उर्फ रामकिशन) को अपास्त किया जाता है तथा अपीलार्थी/ अभियुक्त को

धारा 376डी भा०दं०वि० के अधीन आजीवन कारावास और एक लाख रुपये के अर्थदण्ड व अर्थदण्ड अदा न करने की दशा में छः-छः माह का अतिरिक्त साधारण कारावास एवं धारा 506 (2) भा०दं०वि० के अधीन पांच वर्ष कारावास और सात हजार रुपये के अर्थदण्ड व अर्थदण्ड अदा न करने की दशा में एक माह का अतिरिक्त कारावास के दण्ड के अधीन दण्डित अपराध से **दोषमुक्त** किया जाता है।

२३. अपीलार्थी/अभियुक्त, यदि धारा 437-ए दं०प्र०सं० के अनुपालन के अधीन किसी अन्य मामले में वांछित न हो तो उसे अविलंब कारागार से अवमुक्त कर दिया जाय।

२४. कार्यालय को निर्देशित किया जाता है कि विचारण न्यायालय का अभिलेख वापस भेज दिया जाय तथा इस आदेश की एक प्रतिलिपि संबंधित विचारण न्यायालय को अनुपालन हेतु तुरंत भेजना सुनिश्चित किये जाय।

(2024) 11 ILRA 554

ORIGINAL JURISDICTION
CIVIL SIDE

DATED: LUCKNOW 05.11.2024

BEFORE

THE HON'BLE ALOK MATHUR, J.

Writ-A No. 1934 of 2018

Vijay Bahadur Verma ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Saantosh Kumar Kanaujia, Diwakar Singh Kaushik

Counsel for the Respondents:
C.S.C.

A. Service Law – Compulsory retirement –

The petitioner has been inflicted with censure entry in 2007 and five annual increments were withheld in the 2010 and again in the year 2012, censure entry was awarded in his character roll. The aforesaid entries clearly indicate that there was sufficient material before the screening committee to conclude that the petitioner was a deadwood and accordingly, provision of Regulation 56 of the Financial Hand Book 2 to 4 were clearly applicable in the case of the petitioner. (Para 15)

The screening committee constituted of the Sub Divisional Officer, who was the appointing authority of the petitioner, apart from the Tehsildar, Kanoongo and Revenue Inspector. In the present case, the appointing authority was mandated by the GO dated 26.10.1985 to be a part of the screening committee and accordingly, he had examined the entire service record of the petitioner and was a party to the screening committee. He in his capacity as the appointing authority has issued letter dated 18.10.2019 compulsory retiring the petitioner relying on the report of screening committee. There is no infirmity in the said order, as the Sub Divisional Officer himself was the Presiding Officer of the screening committee and was duly aware of the facts and circumstances of the said report and accordingly, **the argument of learned counsel for petitioner and there was absence of subjective satisfaction is clearly not made out in peculiar facts of the present case.** (Para 14)

B. There is no doubt even if the government servant is compulsory retired, he is certainly entitled for all service dues for which he is entitled as per rules. Accordingly, liberty is given to the petitioner to move a fresh representation to respondent no. 3 i.e. Sub Divisional Officer Mitauli, District Lakhimpur Kheri giving all the details of the dues to which he is entitled. (Para 18)

C. Words and Phrases – ‘Quorum’ – ‘Quorum denotes the minimum number of members of any body of persons whose presence is necessary in order to enable that body to transact its business validly so that its acts may be lawful. (Para 9)

Writ petition dismissed. (E-4)

Precedent followed:

Punjab University, Chandigarh Vs Vijay Singh Lamba & ors., (1976) 3 SCC 334 (Para 9)

Present petition challenges order dated 18.10.2017, passed by the Sub Divisional Officer/appointing authority, Mitauli, Lakhimpur Kheri, whereby the petitioner has been compulsorily retired from the service.

(Delivered by Hon’ble Alok Mathur, J.)

1. Heard Shri Diwakar Singh Kaushik, learned counsel for petitioner, learned Standing Counsel for the State and perused the material available on record.

2. By means of the present writ petition, the petitioner has challenged the impugned order dated 18.10.2017 passed by the Sub Divisional Officer/appointing authority, Mitauli, Lakhimpur Kheri, whereby the petitioner has been compulsory retired from service.

3. It has been submitted by learned counsel for petitioner that the petitioner was appointed on the post of Lekhpal in the year 1984 in Tehsil Lakhimpur District Kheri and subsequently he was transferred to Tehsil Gola in the year 1988 and in 1994 to Dhaurahara, District Lakhimpur Kheri. It has further been stated that certain disciplinary proceedings were initiated against the petitioner in 2002 whereby on 25.07.2002 he was placed under suspension on the allegation that he had not attended

the work relating to revision of voters list and has not carried out agricultural accounts and he was not present on the Tehsil Day. The inquiry proceedings concluded on 31.03.2003 and a punishment of censure order was passed against the petitioner. Against the order of punishment of censure, the petitioner had preferred a statutory appeal before the District Magistrate, Lakhimpur Kheri, which was also rejected on 30.07.2012 and subsequently a writ petition was also filed before this Court being Writ Petition No. 906 (SS) of 2013, which was allowed on 20.02.2013 and the order of punishment dated 30.07.2012 was quashed and the matter was remanded to the Prescribed Authority for deciding afresh after giving opportunity of hearing to the petitioner. Again in the remand proceedings, fresh order of punishment was passed, against which also an appeal was also rejected, against which the petitioner approached before the U.P. Public Services Tribunal by filing a claim petition, against which fresh order of punishment dated 31.03.2003, which was pending consideration when the decision was taken to compulsory retire the petitioner.

4. It has further been stated that by means of the impugned order, it seems that service record of the petitioner was duly examined by a screening committee, who had made a recommendation to the appointing authority and the appointing authority in turn has concurred with the report of the screening committee and considering the fact that the petitioner has crossed the age of 50 years, he has been compulsory retired after giving three months wages in lieu of notice.

5. The first ground urged by the petitioner in assailing the said order is

that a screening committee was constituted contrary to the Government Order dated 26.10.1985. It has been submitted that in the Government Order dated 26.10.1985, it has been provided that in case the appointing authority of the government servant is other than the Governor then the screening committee would constitute (1) of the appointing authority (2) two senior officials nominated by the appointing authority.

6. In the present case, the screening committee consisted of the Sub Divisional Officer, Mitauli-Kheri, Tehsildar, Mitauli-Kheri, Kanoongo Mitauli-Kheri and Revenue Inspector, Aurangabad, accordingly, it is stated that there were four persons in the screening committee rather than three persons as required in the Government Order dated 26.10.1985. The only ground urged by the petitioner is that the screening committee consisted of more persons than is required under the Government Order Dated 26.10.1985.

7. Learned Standing Counsel on the other hand has opposed the said ground. He has submitted that in-fact the minimum number of persons in the screening committee should be three as per Government Order dated 26.10.1985. He has submitted that in the screening committee, which was constituted to consider the case of the petitioner undoubtedly the appointing authority was the Chairman of the said committee and he was accompanied by three other officials in the Tehsil including, Thesildar, Kanoongo and Revenue Inspector.

8. This Court has considered the Government Order dated 26.10.1985 and

finds that the requirement is of minimum three persons and the three persons should at-least including the appointing authority.

9. Hon'ble Supreme Court in the case of *Punjab University, Chandigarh Vs. Vijay Singh Lamba and others reported in (1976) 3 SCC 334* has defined "Quorum" as 'Quorum' denotes the minimum number of members of any body of persons whose presence is necessary in order to enable that body to transact its business validly so that its acts may be lawful. Therefore, by the fixation of quorum, only a minimum number of members are prescribed and it does not imply that any member more than the prescribed number may be denied opportunity to participate unless the statute itself provides for the maximum limit of the quorum. Accordingly, the mandatory condition is that the appointing authority should be a part of the screening committee in case the appointing authority of the government servant is other than the Governor and should include the two senior officials. In the present case, the condition as prescribed in the Government Order dated 26.10.1985 are clearly fulfilled, inasmuch as the case of the petitioner was duly considered by the screening committee consisting of four persons. This Court does not find any infirmity in the constitution of the screening committee.

10. Apart from the above, no allegations of the mala-fide have been levelled by the petitioner against member of the screening committee, which may render him disqualified to participate in the screening committee, accordingly, this Court does not find force in the said ground, which is accordingly, rejected.

11. The only other ground, which was urged by the petitioner is that there was no

subjective satisfaction of the authority concerned before passing of the order of the compulsory retirement.

12. It was argued by learned counsel for the petitioner that the report has been accepted by the Sub Divisional Officer and no reasons have been spelt out clearly indicating the same has been passed without any application of mind.

13. Learned Standing Counsel on the other hand has submitted that once it is clear that the appointing authority i.e., the Sub Divisional Officer was himself the Presiding Officer of the screening committee and it is the said screening committee which had looked into the previous record of the petitioner before concluding that he was fit case for being compulsory retired, no other reason was required to be given by him while accepting his own report.

14. After hearing rival contentions and perusing the record, this Court has already noticed that the screening committee constituted of the Sub Divisional Officer, who was the appointing authority of the petitioner, apart from the Tehsildar, Kanoongo and Revenue Inspector. In the present case, the appointing authority was mandated by the Government Order dated 26.10.1985 to be a part of screening committee and accordingly, he had examined the entire service record of the petitioner and was a party to the screening committee. He in his capacity as the appointing authority has issued letter dated 18.10.2019 compulsory retiring the petitioner relying on the report of screening committee. Accordingly, we do not find any infirmity in the said order, inasmuch as, the Sub Divisional Officer himself was the Presiding Officer of the screening

committee and was duly aware of the facts and circumstances of the said report and accordingly, the argument of learned counsel for petitioner that there was absence of subjective satisfaction is clearly not made out in the peculiar facts of the present case.

15. Apart from the above, this Court has examined the fact that the petitioner has been inflicted with censure entry in 2007 and five annual increments were withheld in the 2010 and again in the year 2012, censure entry was awarded in his character roll. The aforesaid entries clearly indicate that there was sufficient material before the screening committee to conclude that the petitioner was a deadwood and accordingly, provision of Regulation 56 of the Financial Hand Book 2 to 4 were clearly applicable in the case of the petitioner.

16. In light of the above, no other ground was urged in assailing the impugned order, accordingly, the petition being devoid of merits is hereby dismissed.

17. It has been submitted by learned counsel for petitioner that due to pendency of the present writ petition, even admissible dues of the petitioner of his compulsory retirement has also not been given by the State Government.

18. There is no doubt even if the government servant is compulsory retired, he is certainly entitled for all service dues for which he is entitled as per rules. Accordingly, liberty is given to the petitioner to move a fresh representation to respondent no. 3 i.e. Sub Divisional Officer Mitauli, District Lakhimpur Kheri giving all the details of the dues to which he is entitled. Let the representation be given to

the respondent no. 3 within a period of three weeks. In case such a representation is given, the respondent no. 3 shall consider and decide the same by a reasoned and speaking order within six weeks thereafter. In case he finds that the petitioner is entitled to the claims made by him in the said representation, he shall ensure that the same are disbursed to the petitioner with expedition say within a period of one month thereafter.

(2024) 11 ILRA 558
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 21.11.2024

BEFORE

THE HON'BLE MANOJ BAJAJ, J.

Criminal Appeal (Defective) No. 1431 of 2023

Chandan Mishra @ Shailesh Mishra

...Appellant

Versus

State of U.P. & Ors.

...Respondents

Counsel for the Appellant:

A.T. Pandey

Counsel for the Respondents:

G.A.

Criminal Law - Criminal Procedure Code, 1973 - Sections 161, 164, 173(2) & 375, - Indian Penal Code, 1860 - Section 354-A - The Protection of Children from Sexual Offences Act, 2012 - Sections 11 & 12 - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3(1)X - Appeals - against Conviction and Sentence - written complaint - FIR - offence of Sexual assault and attempt to rape of a minor girl Child - Investigation - Final report u/s 173(2) Cr.P.C. - Cognizance - Summoning Order - Bail Granted - Charges framed - Application to plead guilty - Request for concluding the Trial - conviction - sentencing - Application for release from custody - Dismissed