

PETITIONER:
STATE OF M.P.

Vs.

RESPONDENT:
GANEKAR MOTGHARE

DATE OF JUDGMENT 21/11/1989

BENCH:
SINGH, K.N. (J)
BENCH:
SINGH, K.N. (J)
KANIA, M.H.
KULDIP SINGH (J)

CITATION:
1989 SCR Supl. (2) 248 1989 SCC Supl. (2) 703
JT 1989 Supl. 345 1989 SCALE (2) 1187

ACT:

Fundamental Rules: F.R. 56(j)--Civil servant--Compulsory retirement of--Head of Department awarding adverse remarks in character roll--Screening Committee consisting of Head of Department and others recommending compulsory retirement--Order of retirement--Whether hit by doctrine of bias.

HEADNOTE:

The respondent was sought to be retired compulsorily from service by an order dated August 21, 1984 on attaining the age of 55 years under Rule 56 of the Fundamental Rules, pursuant to the Screening Committee's recommendation. He challenged the said order in a writ petition under Article 226 of the Constitution.

The High Court quashed the said order on the finding that the participation of the Head of the Department in the deliberation of the Screening Committee had vitiated its recommendation, and order of the State Government on the doctrine of bias, since he had on an earlier occasion awarded adverse remarks against the respondent.

Allowing the appeal by special leave, the Court,

HELD: 1. 'The presence of Head of Department in the Screening Committee did not vitiate its recommendation. Consequently the State Government's order could not be quashed. [251E]

2.1 The object and purpose of Fundamental Rules 56 conferring power on the Government to prematurely terminate the service of a Government servant is to ensure efficiency in the administration by weeding out dead-wood who may have outlived their utility. In the instant case, while exercising this power the State Government had constituted a high powered Screening Committee consisting of senior officials of the State Government and the Head of the Department. [250D-F]

2.2 The Head of Department had performed his duty in recording _ opinion in the respondent's character roll as no other person was entitled under the rules to adjudge respondent's work and conduct. As

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a member of the Screening Committee he was performing duty

assigned to him under the rules and Government order for screening records of the officers. He was the best person to assess the efficiency and utility of employees working in his department. He had no personal interest in the matter and there was no conflict between his personal interest and his duties as member of the Screening Committee. Therefore, there could not be any question of bias or malice in law. [250H, 251C, 250F]

J.N. Sinha v. Union of India, [1971] 1 SCR 791, referred to.

A.K. Kraipak & Ors. etc. v. Union of India, [1970] 1 SCR 457, distinguished.

3. Since the respondent had been reinstated in service after the High Court order and he has now retired from service on attaining the age of superannuation, the State Government should not take any steps for reducing his pension by treating him to have retired with effect from August 21, 1984, [251F-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4756 of 1989.

From the Judgment and Order dated 6.9.1985 of the Madhya Pradesh High Court in Civil Misc. Petition No. 465 of 1984.

S.K. Agnihotri for the Appellant.

S.K. Gambhir for the Respondent.

The Judgment of the Court was delivered by

K.N. SINGH, J. Special leave granted.

This appeal is directed against the order of the High Court of Madhya Pradesh, Jabalpur, Gwalior Bench dated 6.9.1985 quashing the State Government's order dated 21.8.1984 pre-maturely retiring the respondent from service.

The respondent was holding the post of Deputy Director of Geology and Mining in the State of Madhya Pradesh. The State Government constituted a committee for screening the service roll of its employees for considering the question of compulsory retirement on attaining the age of 35 years. The Screening Committee which

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included Shri S.S. Dave, Director of Geology and Mining Department of the Government of Madhya Pradesh, on examining the service records of the respondent made recommendation to the Government for his pre-mature retirement. Pursuant to the Screening Committee's recommendation the State Government by its order dated 21.8.1984 retired the respondent compulsorily from service under Rule 56 of the Fundamental Rules. The respondent challenged the validity of the State Government's order by means of a writ petition under Article 226 of the Constitution before the High Court (Gwalior Bench). The High Court quashed the State Government's order on the finding that the participation of Shri S.S. Dave in the deliberation of the Screening Committee vitiated its recommendation and also consequently order of the State Government on the doctrine of bias. The High Court further held that since Shri S.S. Dave had on an earlier occasion awarded adverse remarks against the respondent he was biased in law and therefore he was disqualified to be a member of the Screening Committee and his participation in the Screening Committee rendered his recommendation invalid. The High Court placed reliance on the decision of this Court in A.K. Kraipak & Ors. etc. v. Union of India, [1970] 1 SCR 457.

After hearing learned counsel for the parties at length we are of the opinion that this appeal must succeed. The object and purpose of Fundamental Rule 56 conferring power

on the Government to prematurely terminate the service of a Government servant is to ensure efficiency in the administration by weeding out dead-wood officials who may have outlived their utility as observed by this Court in J.N. Sinha v. Union of India, [1971] 1 SCR 791. While exercising this power the State Government constituted a high-powered Committee consisting of senior officials of the State Government and S.S. Dave being the Head of Department of Geology and Mining was a member of the Screening Committee. As Head of Department he was the best person to assess the efficiency and utility of employees working in the Department of Geology and Mining. His presence in the Committee was necessary to have a fair and correct assessment of the work and conduct of the employees of that Department for the purposes of making recommendations to the Government. While it is true that as Head of Department he had awarded adverse remarks to the respondent on an earlier occasion but that does not mean that he had any malice against the respondent, in fact no malice had been pleaded by the respondent against S.S. Dave. As Head of Department Dave had performed his duty in recording his opinion in the respondent's character roll as no other person was entitled under the rules to adjudge his work and

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conduct. No doubt bias and malice both vitiate decision of an authority. But by no stretch of imagination Dave could be held to have been biased against the respondent merely because on an earlier occasion he had in the performance of his duties awarded an adverse remark to the respondent.

The High Court committed serious error in holding that malice in law was writ large on the face of the proceedings of the Screening Committee, although no malice in fact had been pleaded against him. In coming to that conclusion the High Court placed reliance of Kraipak's case. As a member of the Screening Committee Shri Dave was performing duty assigned to him under the rules and Government order for screening records of the officers. He had no personal interest in the matter and there was no conflict between his personal interest and his duties as member of the Screening Committee, therefore there could not be any question of bias or malice in law. In Kraipak's case an officer who was himself a candidate for selection was a member of the selection committee and selection was held to be vitiated on the ground that there was a conflict between that officer's personal interest and his duties as he was judge of his own cause. The principles laid down in Kraipak's case do not apply to the facts of the instant case.

We are therefore of the opinion that Dave's presence in the Screening Committee did not vitiate the recommendation made by the Committee in any manner, consequently the State Government's order could not be quashed. The High Court had no valid reason to hold that the Screening Committee was not properly constituted and that its recommendations were unconstitutional. We accordingly allow the appeal, set aside the order of the High Court, and dismiss the respondent's writ petition but we make no order as to costs.

Although we have upheld the State Government's order but we would like to observe that since the respondent had been reinstated in service after the High Court order and he has now retired from service on attaining the age of superannuation, the State Government should not take any steps for reducing his pension by treating him to have retired with effect from 21.8.1984.

P.S.S.
allowed.

Appeal

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JUDIS