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Court : Karnataka

Decided On : Nov-23-1964

Reported in : AIR1966Kant61; AIR1966Mys61

Judge : K.S. Hegde and ;Ahmed Ali Khan, JJ.

Acts : Constitution of India - Articles 14, 16(1), 226, 311(1) and 311(2); Mysore Civil Service Rules, 1958 - Rules 285 and 293; States Reorganisation Act, 1956 - Sections 115; Revised Pension Rules, 1951

Appeal No. : Writ Petn. Nos. 807, 808 and 809 of 1962

Appellant : Mohammad Abdul Aziz and ors.

Respondent : The State of Mysore

Judgement :

Hegde, J.

(1) These petitions, under Article 226 of the Constitution, raise common questions of law. The grievances of the petitioners in these petitions are identical. They challenge the validity of the Order made by the respondent in No. RD. 105 EGO 60 dated 29th May 1961, compulsorily retiring them from service.

(2) The petitioners joined the erstwhile State of Hyderabad as clerks. On the eve of the reorganisation of the States on 1-11-1956, the petitioners in W.P. Nos. 807

and 809 of 1962 were serving as Deputy Tahsildars and the petitioner in W.P. No. 808 of 1962 as a Superintendent in the Board of Revenue. At the time of the reorganisation of the States, the petitioners were allotted to the new State of Mysore. Thereafter they were promoted as Tahsildars. The petitioner in W.P. No. 807/62 was promoted as Tahsildar with effect from 21-10-1959, the petitioner in W.P. No. 809/62 from 19-9-1957. On 29-5-1961, the Government made the following Order.

'Government of Mysore

Mysore Govt. Secretariat

Vidhana Soudha

Dated 29th May 1961.

No. RD 105 EGO 60

NOTIFICATION

Governments are pleased to direct that Sri yuths B.S. Mahadeva Rao, A.L. Deshpande and Abdul Aziz, Tahsildars be retired from service with immediate effect under the Note below Rule 293 of the Hyderabad Civil Service Rules.

By. Order and in the name of the Governor of Mysore.

Sd/- Under Secretary to Govt. of Mysore Revenue Department.

In pursuance of hat Order, the petitioners were relieved of their duties. By the time the impugned Order was passed, all the petitioners had completed 50 years of age. They had also completed 25 years of service.

(3) The validity of the impugned Order is challenged on the following grounds:

(i) The petitioners' conditions of service are governed by the provisions contained in the Mysore Civil Service Rules, 1958, and therefore, they could not have been compulsorily retired under Rule 293 of the Hyderabad Civil Services Rules; if the Government wanted to compulsorily retire them, it should have taken steps under

Rule 285 of the M.C.S. Rules;

(ii) Rule 293 of the H.C.S. Rules requires that before an Officer is compulsorily retired the approval of the Finance Department has to be obtained; the impugned Order does not disclose whether the approval of the Finance Department was obtained, hence the Order is bad.

(iii) Note to Rule 293 of the H.C.S. Rules was framed in the year 1954, the petitioners joined service long before that; hence the petitioners could not have been compulsorily retired under the aforementioned Rule 293;

(iv) Rule 293 of the H.C.S. Rules is invalid as it contravene Article 311(2) of the Constitution; and

(v) That Rule is void and inoperative as it violates Articles 14 and 16(1) of the Constitution.

We shall now examine these contentions seriatim.

(4) We shall first take up the question whether the conditions of service of the petitioners are governed by the H.C.S. Rules or M.C.S. Rules 1958. It is not disputed that even after the petitioners were allotted to the new State of Mysore, their conditions of service remained unaltered in view of section 115 of the States Reorganisation Act. It was faintly suggested that in view of Rules 2(1)(a) and (c) of the M.C.S. Rules, the only provision under which they could have been compulsorily retired is that found in Rule 285 of the M.C.S. Rules. That Rule reads:

'A retiring pension is granted to a Government servant who is permitted to retire after completing qualifying service for thirty years or such less time as may, for any special class of Government servants be prescribed.

Note: A Government servant may retire from service any time after completing 30 years' qualifying service provided that he shall give in this behalf a notice in writing to the appropriate authority, at least three months before the date on which he wishes to retire. Government may, in special cases, require any Government

servant to retire any time after he has completed 25 years' qualifying Service or on attaining 50 years of age if such retirement is considered necessary in the public interest provided that the appropriate authority shall give in this behalf a notice in writing to the Government servant at least three months before the date on which he is required to retire.

A Government servant who retires or is retired, only in the manner indicated above, shall be granted a retiring pension not exceeding such proportion of average emoluments and subject to such maximum limit as are specified in Chapter XIX.'

There is no doubt that if the petitioners are governed by the above provision, then their compulsory retirement is not in accordance with law as the required three months' notice had not been given. But then, the question for decision is whether the petitioners are governed by that provision. Rule 285 is found in Part IV of the M.C.S. Rules, Rule 2(1)(a) says:

'Parts 1, II, V, Widow and VII and the provisions of Part III and IV relating to procedural matters, shall apply to all persons serving in connection with the affairs of the State of Mysore.'

It was not even suggested at the time of hearing that Rule 285 relates to any procedural matter. It deals with the pension rights of Government servants. Hence it cannot be said that in view of Rule 2(1)(a), Rule 285 of the M.C.S. Rules is attracted to the petitioners' case.

(5) It was next urged that Rule 2(1)(c) makes Rule 285 applicable to the petitioners' cases. That Rule reads:

'Part IV of these Rules, other than the provisions thereof referred to in Clause (a) of this sub-rule shall apply to the following classes of Mysore Government servants in pensionable establishment;

(i) * * * *(ii) * * * * (iii) Persons allotted to serve in connection with the affairs of the State of Mysore under Section 115 of the States Reorganisation Act 1956 who were holding substantive posts in pensionable establishments on the 31st October

1956 in a service in connection with the affairs of the former State of Mysore, Hyderabad or Bombay or the State of Madras or in a service in connection with the affairs of the Union under the administrative control of the Chief Commissioner of the State of Coorg, and who in the manner 'and within the period specified by Government exercise their option to be governed by the provisions of Part IV of these Rules'; *****' (underlying (here into ' ') is ours).

Till the date of the impugned Order, the petitioners had not opted to the new Rules. Hence the new Rules were not applicable to them which means they were governed by the H.C.S. Rules even upto the date of the impugned order.

(6) Rule 293 of the H.C.S. Rules, reads thus:

'A Government servant cannot be given retiring pension against his will unless the Government in Finance Department so approve. In Ordering retirement on completion of 25 years of qualifying service in the case of pensioners coming under the Revised Pension Rules, 1951, the Government will not be bound to give reasons for retirement.

Note: Government retain an absolute right to retire a Government servant after he has completed 25 years' or 30 years' qualifying servant as the case may be, according to the Pension Rules applicable to him without giving reason and no claims to special compensation on the account will be entertained.'

The grievance of the Petitioners is that the impugned Order does not on the face of it show that before compulsorily retiring them, the approval of the Finance Department had been sustained. This is what the petitioners say in their affidavits on that question:

'The Order does not disclose whether the approval of the Finance Department was obtained without which I could not have been given retiring pension, even under the Hyderabad Civil Service Rules.'

In the affidavit filed by the petitioners, there is no positive assertion that approval of the Finance Department as required by Rule 293 of the H.C.S. Rules had not been obtained. Nor had the petitioners put the respondent to proof of the fact

having obtained the approval of the Finance Department. Their contention as could be gathered from the pleadings is that the impugned Order is had inasmuch as it does not recite that the approval of the Finance Department had been obtained. The State Government had not filed any counter-affidavit in the case. This is, by no means, an unusual feature Despite this Court pointing out in several writ petitions the consequences of the State Government's failure to file counter-affidavit, we regret to say that the state of affairs continue to be what they were. But then, in the instant case, as seen earlier, the only contention of the petitioners is that the impugned Order is bad inasmuch as it does not recite that the approval of the Finance Department had been obtained for compulsorily retiring the petitioners. We do not agree with the petitioners that an Order compulsorily retiring a Government Servant should ex facie show that the approval of the Finance Department has been obtained before that order was made. The Government does not work in compartments. It is one legal entity. The different departments of the Government have no legal status of their own. Departmental consultations are sometimes prescribed for safeguarding the interest of the Government. A Rule prescribing that approval of any particular Departmental should be made, is necessarily administrative in character. For the outside public what is relevant is the Order of the Government. Further, the law raises a presumption that before compulsorily retiring the petitioners, the approval of the Finance Department had been obtained. In our judgment, even if the Finance Department had not been consulted, that circumstance cannot vitiate the impugned Order.

(7) Somewhat hesitatingly, it was contended that the petitioners could not have been compulsorily retired under Rule 293 of the H.C.S. Rules, 1954, as they joined service long before those Rules were framed. There is no merit in this contention. The Rules famed under Article 311(sic) of the Constitution govern the conditions of service of all Government servants to whom they purport to apply--those Government Servants who were already in service at the time those Rules were framed as well as those recruited later. The State Government servants hold office during the pleasure of the Governor subject to the protection afforded to them by Article 311. Their conditions of service can be unilaterally altered by an Act of the State Legislature or till such an Act is enacted by the Rules framed by the Governor. There is no legal basis for the contention that the conditions of

service of a Government servant cannot be altered to his disadvantage after he joins service.

(8) The contention that Rule 293 of the H.C.S. Rules is constitutionally invalid, as it contravenes Article 311(2) of the Constitution, is a stale one. That question is no more res integra. In view of the several decisions of the Supreme Court beginning with Shyamlal v. State of Uttar Pradesh, : (1954)IILLJ139SC and ending with the latest decision in T.G. Shivacharan Singh v. State of Mysore, W.Ps. Nos. 184 to 195 of 1963: : (1967)IILLJ246SC , Sri Venkataranga Iyengar contended that Rule 293 of the H.C.S. Rules unlike Rule 285 of the M.C.S. Rules, 1958, does not even require that the compulsory retirement should be in public interest, nor does it require that any prior notice in writing should be given to the Government servant before actually compulsorily retiring him and therefore it violates Article 311. There can be hardly any doubt that the power transferred on the Government servant is intended to be exercised in public interest and we have no doubt that in generality of cases it is so exercised. But existence or non-existence of public interest is not a justiciable issue. Whether the public interest demands the compulsory retirement of a particular Government servant depends upon the subjective satisfaction of the authority empowered to exercise the power in question. Hence, the mere recital, in Order compulsorily retiring a Government servant that he has been retired in public interest is at best he has been retired in public interest is at best a formality. Legal foundation for the power in question is the rule of England law pithily expressed in the latin phrase 'dulanto bene placito' (during pleasure) partially embodied in Article 310 of the Constitution. Whether it is in public interest to retire a particular Government servant of the State excluding those constitutionally protected, is entirely left to the discretion of the Governor. Subject to the rights guaranteed under Article 311, the pleasure doctrine is all pervasive.

(9) As observed by the Supreme Court in State of Bombay v. Sambhag chand M. Doshi, : [1958]1SCR571 that it does not make any difference in the position that a particular Rule does not contain the provision that the power of compulsory retirement is not to be exercised except in cases of misconduct or inefficiency; when the Government decides to retire a Government servant before the age of superannuation, it does so far some good reason and that in general it would be

on the ground of misconduct or inefficiency. If any particular Rule provides that no action should be taken except in public interest, it merely makes explicit what is otherwise implicit, the fact to be noted is that while misconduct and inefficiency are factors that enter into the account where the Order is one of dismissal or removal or of retirement, there is this difference that while in the case of retirement they merely furnish the background and the enquiry, is only for the satisfaction of the authorities who have to take action, in the case of dismissal or removal, they form the very basis on which the Order is made and the enquiry thereon must be formal and must satisfy the rules of natural justice and the requirements of Article 311.

Tests relevant for finding out whether a given termination is removal or dismissal, within the meaning of Article 311(2) are: (1) Whether the action taken is by way of punishment and to find that out, it is necessary that a charge or imputation against the Officer is made the condition f the exercise of power or (2) whether by compulsory retirement the Officer is losing the benefit he has already earned as he does by dismissal or removal. To these two tests, one more was added by the decisions of the Supreme Court in : [1958]1SCR571 and Moti Ram Deka that is, the compulsorily retirement will be considered as removal under Article 311(2) if the rules do not fix both an age of superannuation and an age for compulsory retirement and the services of a Civil Servant is not retirement between these two points of time. In the cases before us, none of these tests have been infringed. No action was taken against the petitioners by way of punishment; no imputation of misconduct or inefficiency was made against them. As a result of their compulsory retirement they arbitration not losing any benefit which they have already earned. Further, Rule 293 of the H.C.S. Rules, fixes both the age of superannuation and the age of compulsory retirement under the Rule cannot be said to be an unduly young age. The question of giving three months notice, as is provided in the M.C.S. Rules, 1958 is merely a matter of convenience. It cannot be considered as a constitutional requirement.

(10) For the reasons mentioned above, we reject the contention that Rule 293 of the H.C.S. Rules is hit by Article 311(2) of the Constitution.

(11) The contention that the aforesaid Rule 293 is void and inoperative as it violates Articles 14 and 16(1) of the Constitution, again is no more res integra, in view of the decision or the Supreme Court in W.Ps Nos. 184 to 195 of 1963: : (1967)IILLJ246SC . In those cases, this very contention was advanced by Sri Venkataranga Iyengar. Repelling that contention, this is what the Supreme Court observed.

'Mr. Venkataranga Iyengar contends that this Rule is invalid because it contravene Article 14 as well as Article 16(1) of the Constitution. In our opinion, this contention can no longer be entertained, because it is concluded by a long series of decisions of this Court had occasion to consider the validity of Rules 148(3) and 149(3) contained in the Indian Railway Establishment Code in : (1964)IILLJ467SC . In dealing with the problem raised in that case, this Court had made it perfectly clear that so far as the question of compulsory retirement is concerned, it must be taken to be concluded by several decisions of this Court. This Court them examined the relevant decisions on this point beginning with the case of : (1954)IILLJ139SC and it has observed that the law in relating to the validity of the Rules permitting compulsory premature retirement of Government servants must be held to be well settled by those decisions and need not be reopened. The only exception the majority judgment made in that behalf was that it may be necessary to consider whether such rule of compulsory retirement would be valid if having fixed a proper age of superannuation it permits a permanent servant to be retired at a very early stage of his career. This consideration does not arise in the present case, because, as we have already seen, Note I to R, 285 requires that the Govt. servant against whom an order of compulsory retirement is proposed to be passed must have completed 25 years of active service or attained 50 years of age. We are, therefore, satisfied that the point which Mr. Venkataranga Iyengar wants to raise before us in the present petition is clearly concluded by the decisions of this Court and cannot be allowed to be reopened. Mr. Venkataranga Iyengar, however, attempted to argue that there are certain observations made by this Court in the case of General Manager, Southern Railway v. Rangachari, : (1970)IILLJ289SC which supports his contention. In that case, this Court was called upon to consider the validity of certain railway circulars and that needed an examination about the scope and effect of the provisions of the different clauses of Art. 16 read with Art.

14 of the Constitution, the question of compulsory retirement did not fall to be considered in that case. Dealing with the scope and effect of Art. 16(1) it was observed that the narrow construction of the expression 'matters relating to employment' occurring in Art. 16(1) could not be accepted, because it would lead to anomalous results. In that connection, it was pointed out that it would not be open to the State to prescribe different scales of salary for the same or similar posts, different terms of leaves or superannuation for the same or similar posts. It is on these observations that reliance is placed by Mr. Vekataranga Iyengar. It is obvious that these observations have no relevance that these observations have no relevance to the point with which we are concerned in the present petition. We are not dealing with different rules of compulsory retirement at all, the impugned note applies to all Government servant and as such is not open to a challenge under Art. 14 or Art. 16(1). Therefore we do not think Mr. Venkataranga Iyengar is justified in contending that these observations support his argument.

(12) In the result, these petitions fail and the same are dismissed. No costs.

(13) Petitions dismissed.

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