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**BaladIn Vs. Inspector General of Police, U.P., Lucknow and ors.**

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**Court :** Allahabad

**Decided On :** Jan-21-1963

**Reported in :** AIR1963All554; [1963(6)FLR186]; (1963)IILLJ101All

**Judge :** V.G. Oak, J.

**Acts :** Civil Service Regulations (Uttar Pradesh) - Schedule - Article 465; Manual of Government Orders (Uttar Pradesh)

**Appeal No. :** Civil Misc. Writ No. 1358 of 1960

**Appellant :** Baladin

**Respondent :** inspector General of Police, U.P., Lucknow and ors.

**Advocate for Def. :** Standing Counsel, Adv.

**Advocate for Pet/Ap. :** Iqbal Ahmad, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**V.G. Oak, J.**

1. This writ petition by a police official is directed against departmental proceedings that are pending against him.

2. The petitioner joined the police force as a constable in 1925. He was later promoted as a Head Constable. In September 1958 a case under Section 409, I. P. C., was registered against the petitioner and one Clerk-Constable, Surendra Singh. A final report was submitted on 5-5-1959. The petitioner applied for leave preparatory to retirement. But leave was not granted. He gave another application praying that pension may be granted. But he was not permitted to retire. On 2-3-1960 a charge-sheet was served upon him. Departmental proceedings are going on against the petitioner on the basis of that charge. The petitioner's contention is that, departmental proceedings cannot be conducted against him. Hence this writ petition.

3. The main contention of Mr. Iqbal Ahmad appearing for the petitioner is that, the petitioner has already retired from service under Service Rules; so it is not possible for the respondents to conduct any departmental proceedings against the petitioner, It is pointed out that the petitioner joined police force in 1926. He has served the department for more than 25 years. It is, therefore, contended that the petitioner was entitled to retire from service as a matter of right.

4. Reliance was placed upon paragraph 106 of the Manual of Government Orders. Paragraph 106 deals with premature retirement, and runs thus:

'Provisions about retirement other than on compassionate, invalid and superannuation pensions, are contained in Articles 465 and 465-A of the Civil Service Regulations. According to the amendments to those Articles circulated with Finance Department G. O. No. 2802/X .... dated October 3, 1947 and G. O. No. .... dated January 8, 1948 and Notification No. .... dated October 15, 1948, retirement may be either at the option of the Government servant concerned or on the orders of Government as explained below.

(1) Subordinate, Ministerial and Inferior Services:

(a) Those who have rendered qualifying service for 25 years or have attained the age of 50 years have the option to retire voluntarily in accordance with G. O. No. 2802/X-..... dated October 3, 1947.

(b) .....

5. Mr. Iqbal Ahmad pointed out that, the word 'option' has been repeatedly used in paragraph 106 of the Manual of Government Orders. There is also a reference to voluntary retirement. The language of paragraph 106 does suggest that, a Government servant is entitled to retire after rendering service for 25 years.

6. Mr. Iqbal Ahmad relied upon my decision in Ramgati Singh v. Superintendent of Police, Mirzapur, Writ No. 1341) of 1956 decided on 10-12-1957 (All). In that judgment I observed:

'Under paragraph 106 of the Manual of Government Orders, a Government servant has a right to retire from service after rendering qualifying service for 25 years.' The decision in Ramgati Singh's case, W. P. No. 1340 of 1956, D/- 10-12-1957 (All), undoubtedly supports Mr. Iqbal Ahmad's contention that the present petitioner could retire from service as a matter of right.

7. But Mr. H. P. Gupta appearing for the respondents contended that, the decision in Ramgati Singh's case, W. P. No. 1340 of 1956, D/- 10-12-1957 (All), requires reconsideration. He pointed out that, paragraph 106 of the Manual of Government Orders is based on certain Government Orders and Notifications. I, therefore, examined those Government Orders and Notifications. Paragraph 106 refers to four such Government Orders or Notifications. They are dated 3-10-1947, 8-1-1948, 15-10-1948 and 3-5-1949. The Notification\* dated 8-1-1948 and 15-10-1948 are not of importance for our present purpose. But the Government Order, dated 3-10-1947 is of great importance. It is to be noted that the Government Order dated 3-10-1947 has been referred to twice in paragraph 106 of the Manual of Government Orders.

8. Government Notification no. 2803/X-608-44 was published in the U. P. Gazette dated 11-10-1947. Government Order No. 2802/X-608-44 dated 3-10-1947 was from the Finance Department, U. P. to all Heads of Departments and Principal Heads of Offices. In the first paragraph of the G. O. it was observed:

'As there is a general demand for provision for voluntary retirement before that age, Government have also agreed that voluntary retirement may be allowed on proportionate pension after 25 years of qualifying service or 50 years of age.' Paragraph 2 of the G. O. ran thus:

'I am further to say that in order to give effect to the decisions in paragraph 1 above, Articles 465 and 474 of the Civil Service Regulations are being suitably amended. A copy of notification No. M-2803/X-6G8-44, dated October 3, 1947, containing the necessary amendments, is enclosed herewith for guidance.'

It will be seen that Notification No. M-2803/X, dated 3-10- 1947 was issued in continuation of G. O. No. 2802/X, dated 3-10-1947.

The Notification dated 3-10-1947 runs thus :

'In exercise of the powers conferred by Clause (b) of Subsection (2) of Section 241 of the Government of India Act, 1935 ..... the Governor of the United Provinces is pleased to make the following amendments to the Civil Service Regulations in their application to the personnel under the rule-making control of the Provincial Government, namely : Amendments:

1. Substitute the following for Article 465: (1) A retiring pension is granted to a Government servant who is permitted to retire after completing qualifying service for 25 years or on attaining the age of 50 years. ....'

9. It will be seen that, the part of paragraph 106 of the Manual of Government Orders, on which the petitioner relies, is based on Article 465 of the Civil Service Regulations. That part of paragraph 106 of the Manual of Government Orders cannot have any authority apart from Article 465 of Civil Service Regulations. Article 464 of the Civil Service Regulations is under the heading, 'optional retirement at fifty-five'. Article 464 of the Civil Service Regulations is in these terms:

'An officer in Superior service who has attained the age of 55 years may, at his option, retire on a superannuation pension.'

It is to be noticed that, Article 464 is confined to Superior services. It was not contended for the petitioner that, he is entitled to the benefit of Article 464 of the Civil Service Regulations.

10. Then follows Section V of the Civil Service Regulations. The heading of Section V is, 'Retiring pension'. Article 465 appears under this heading. 'Retiring pension'. Mr. Iqbal Ahmad is, therefore, right in contending that, the subject-matter of Article 465 of Civil Service Regulations is pension, and not the right to retire. It is, however, significant that, the expression used in Article 465 is, 'an officer who is permitted to retire'. This expression suggests that, an officer needs permission to retire from some superior authority. By virtue of Article 465, an officer cannot claim retirement as a matter of right. If Article 465 were to stand by itself, there is no absolute right to retire after completing qualifying service for 25 years. An option so exercised further needs permission from some superior authority.

11. The marginal note to paragraph 106 of the Manual of Government Orders mentions G. O. dated 3-5-1949. The Government Order dated 3-5-1949 was a General Letter addressed by the Chief Secretary to government to all Heads of Departments and other Principal Heads of Offices. In that latter dated 3-5-1949 the Chief Secretary wrote thus :-

'.....According to the amendments to Articles 465 and 465-A of the Civil Service Regulations..... retirement may be either at the option of the Government servant concerned or on the orders of Government as explained below:

(1) Subordinate, Ministerial and Inferior services:

(a) Those who have rendered qualifying service for 25 years or attained the age of 50 years have the option to retire voluntarily in accordance with G. O. No. 2802/X .....dated October 3, 1947.

(b) .....

Here also we note that the General Letter dated 3-5-1949 refers back to G. O. dated 3-10-1947. So, whether we consider paragraph 106 of the Manual of Government Orders or G. O. dated 3-5-1949, we are ultimately driven back to G. O.

No. 2802/X-. ..... dated 3-10-1947. I have shown above that, G. O, dated 3-10-1947 is nothing but amendment of Article 465 of the Civil Service Regulations. So, ultimately the petitioner must base his rights upon Article 465 of the Civil Service Regulations. That Article is mainly concerned with pension. There is a reference to retirement after qualifying services for 25 years. But there is also a reference to permission to retire. The petitioner is not, therefore, right in' his contention that, he has the absolute right to retire from service after rendering 25 years' service. Such an option had to be approved by some higher authority. It appears that in the present case the authorities were not willing to permit the petitioner to retire from service till the departmental proceedings against him are over.

12. It is true that the petitioner has completed 25 years of service, and has expressed his desire to retire from service. But it does not follow that he has ceased to be a member of the police force. The petitioner's request to retire has not been accepted by higher authorities. The result is that the petitioner continues to be a member of the police force. The departmental proceedings pending against him are competent.

13. The petition is dismissed with costs. The stay order dated 18-7-1960 is vacated.

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