

Horace Ross Vs. the State Govt. of Madhya Pradesh and ors.

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Court : Madhya Pradesh

Decided On : Jan-22-1960

Reported in : AIR1960MP252; [1960(1)FLR364]; (1961)ILLJ272MP

Judge : P.V. Dixit, C.J. and ;K.L. Pandey, J.

Acts : [Constitution of India](#) - Articles 226 and 311; All India Services (Discipline and Appeal) Rules, 1955 - Rule 17(2); All India Services (Death cum Retirement Benefits) Rules, 1958; All India Services (Leave) Rules, 1955 - Rules 3 and 9; Liberalised Pension Rules, 1950

Appeal No. : Misc. Petn. No. 114 of 1959

Appellant : Horace Ross

Respondent : The State Govt. of Madhya Pradesh and ors.

Advocate for Def. : M. Adhikari, Adv. General for Opposite Party No. 1

Advocate for Pet/Ap. : R.S. Dabir and ;V.S. Dabir, Advs.

Disposition : Petition dismissed

Judgement :

K.L. Pandey, J.

1. This is a petition under Article 226 of the Constitution for suitable writs or directions (i) to quash a notice dated 20 March 1959 (Annexure-B) intimating to the petitioner that he would be retired from service on the expiry of three months from the date of its receipt, (ii) to require the respondents to postpone the date of retirement so as enable the petitioner to enjoy the earned leave due to him and also (iii) to direct the State of Madhya Pradesh (respondent 1) to place fully and correctly before the Central Government all facts relating to the leave due to the petitioner.

2. The petitioner was promoted from the State Police Service to the Indian Police Service, on which, post he was subsequently confirmed. At the material time, he had completed more than 30 years of qualifying service. On 20-3-1959, the Government of Madhya Pradesh (respondent 1) served on the petitioner a notice (Annexure B) under Rule 17 (2) of the All India Services (Deathcum-Retirement Benefits) Rules, 1958, intimating to him that he would be retired from Service on the expiry of 8 months from the date of its service. The petitioner made a representation (Annexure C) and requested that he should be granted all the leave due to him preparatory to his retirement. The petitioner was telegraphically intimated that leave preparatory to retirement was sanctioned subject to admissibility and that it might be availed of immediately. However, the formal order (Annexure B) dated 2-5-1959 limited the leave to only 64 days commencing from 19 April 1959 and ending on a date coinciding with the date already fixed for the compulsory retirement of the petitioner.

3. The petitioner's case, briefly stated, is this. On 20-3-1959, he had to his credit at least 620 days of earned leave. This, accumulated leave constituted his property since it enabled him to enjoy as of right 120 days of the leave on full pay and the remaining leave on half pay prior to his retirement with consequent increase in the amount of pension) admissible to him. Secondly, the petitioner was not governed by the All India Services (Death-cum-Retirement Benefits) Rules, 1958, which were recently framed. In any event, since these Rules entitled the State Government to act unjustly, they were void and inoperative. Thirdly, the compulsory retirement of the petitioner originated in some complaint made against him which he had no opportunity of meeting before it was acted upon to his

prejudice. That being so, the order of compulsory retirement was not a lawful order. Finally, the assent of the Central Government to the compulsory retirement of the petitioner was obtained by suppressing the fact that he had more than 620 days of accumulated earned leave to his credit.

4. The main contention of the petitioner is that he had a right to the leave which he had earned and that, since it secured to him certain advantages in the matter of work, emoluments and (pension, it constitutes his property. In our opinion, this contention is not well-founded. Sub-rule (1) of Rule 3 of the All India Services (Leave) Rules, 1955, framed under the All India Services Act, 1951 (LXI of 1951) provides as follows:

'Leave cannot be claimed as of right and when the exigencies of public service so demand, leave of any description may be refused or revoked by the Government. '

Rule 9 of the same Rules reads :

'No leave shall be granted beyond the date on which a member of the Service must compulsorily retire: Provided that a member of the Service who has been denied in whole or in part on account of exigencies of the public service the earned leave which was due to him pending retirement, may be granted by the Government the whole or any portion of the earned leave so denied, even though it extends to a date beyond the data on which he must compulsorily retire.'

It is obvious from these rules that leave cannot be claimed as of right and that, when it is refused even pending retirement, the Government has a discretion to subsequently disallow it either wholly or in part. We think that these leave rules merely give to the Government a discretionary power to confer certain benefits or privileges. They do not create in favour of the Government Servant any legal right. That being so, no legal action can be maintained to enforce the alleged right to leave claimed to have been earned.

5. It is next urged that the petitioner is not governed by the All India Services (Death-cum-Retirement Benefits) Rules, 1958, which came into force on 18-8-1958. In our view, the petitioner, who is not excepted, is governed by those Rules.

Even otherwise, he was previously governed by the rules applicable to the officers of the Central Services Class I, namely. Fundamental Rules. Civil Services Regulations and Civil Pensions (Commutation) Rules as amended by the liberalised Pension Rules, which came into force on 17-4-1950. Since there is no substantial difference between Rule 3 (21) of the liberalised Pension Rules and Rule 17(2) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958, the petitioner can have no grievance if after he had put in more than 30 years of qualifying service, he was compulsorily retired by giving to him, in accordance with Rule: 17 (3) *ibid*, at least 3 month's previous notice in writing. The contention that the Rule itself is bad as calculated to deprive a Government servant of his 'property' without any just cause and without any compensation is devoid of substance because, as we have already shown, the supposed right to the earned leave is not a legal right.

6. It is accepted before us that there were certain complaints against the petitioner and the State Government was satisfied on enquiry that it was desirable in the interest of public service to compulsorily retire him. That was also the position in the case of *Shyamlal v. State of Uttar Pradesh*, AIR 1954 SC 369. This is what their Lord-ships observed:

'The foregoing discussion necessarily leads to the conclusion that a compulsory retirement does not amount to dismissal or removal and, therefore, does not attract the provisions of Article 311 of the Constitution or of Rule 55 and that, therefore, the, order of the President cannot be challenged on the ground that the appellant had not been afforded full opportunity of showing cause against the action sought to be taken in regard to him.'

This view was reaffirmed in *State of Bombay v. Saubhagchand*, (S) AIR 1957 SC 892. In view of the two decisions of the Supreme Court, we must hold that, when acting under Rule 17 (2) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958, which does not even require, unlike Rule 465A of the Civil Services Regulations, that the compulsory retirement should be in public interest it is not necessary for the Government to afford to the servant sought to be retired an opportunity to show cause against the proposed action. It would, however, be

different if a servant were compulsorily retired as a measure of punishment under the provisions of the All India Services (Discipline and Appeal) Rules, 1955. He would then be governed by Rule 7 of the All India Services (Death-cum-Retirement Benefits) Rules, 1958.

7. The last ground urged in support of the petitioner is that, in seeking the assent of the Central Government to the petitioner's compulsory retirement, the State Government appeared to have suppressed from the Central Government the information that the petitioner had to his credit 620 days of earned leave. The State Government repudiated the suggestion of any such suppression. We do not consider it necessary to enter into this disputed question of fact. In our opinion, there is no basis for the argument that the date of compulsory retirement was likely to be advanced because the petitioner had a right to enjoy his earned leave.

8. The petition is misconceived and must therefore be dismissed. The petitioner shall bear his own costs and pay out of the security in deposit the costs of the respondent 1. Hearing fee Rs. 50/. The outstanding amount of security shall be refunded to the petitioner.