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Court : Rajasthan

Decided On : Nov-08-1965

Reported in : (1967)ILLJ267Raj

Judge : Dave, C.J. and; Kan Singh, J.

Appellant : Gurmukh Singh

Respondent : State

Judgement :

1. The petitioner, who was an Executive Engineer in the Public Works Department (Buildings and Roads) of the State of Rajasthan and was retired under Rule 244(2) of the Rajasthan Service Rules on his attaining the age of 55 years, is seeking to challenge the order of his compulsory retirement under that rule.

2. It is conceded by learned Counsel for the petitioner that he does not challenge his client's retirement on the basis of any contravention of Article 311 of the Constitution.

3. The only ground of attack which the learned Counsel for the petitioner has strenuously urged before us is that Rule 244(4) of the Rajasthan Service Rules is hit by Article 14 of the Constitution in that it places unguided discretion in the hands of the Government. The learned Counsel being aware of the view taken by the Supreme Court in a series of cases, such as, *Shyam Lal v. State of Uttar Pradesh* and *Anr. 1954-II L.L.J. 139*; *State of Bombay v. Saubhag Chand M. Doshi*

: [1958]1SCR571 ; and Motiram Deka v. North-east Frontier Railway 1964-II L.L.J. 467, submitted that all those cases were distinguishable on the ground that the rule about compulsory retirement that fell for consideration in such cases laid down that compulsory retirement could be ordered on the ground of public interest. This, according to the learned Counsel, distinguishes those cases from the present case. Rule 244 runs as under;

244. Optional retirement after completion of thirty years of service.-(1) A Government servant may, after giving at least three months' previous notice in writing to the Government, retire from the service on the date on which he completes thirty years of qualifying service or attains the age of 55 years or on any date thereafter to be specified in the notice:

Provided that a Government servant of class IV can seek retirement only if he has completed thirty years of qualifying service.

(2) Compulsory retirement after completion of twenty-five years' service.-The Government may, after giving him at least three months' previous notice in writing require a Government servant to retire from the service on the date on which he completes twenty-five years of qualifying service or attains the age of 55 years or on any date thereafter to be specified in the notice:

Provided that a Government servant of class IV can only be required to retire on the date on which he completes twenty-five years of qualifying service or any date thereafter.

It occurs in Section 5 of the Rajasthan Service Rules which is headed as ' Retiring pension.' Rule 244 is in two parts. The first part states when a Government servant may retire at his option so that he may be entitled to retirement benefits. Sub-section (2) lays down as to when the Government may order the compulsory retirement of a Government servant. This rule applies to all Government servants equally and each one of them is subjected to the liability of being retired under that rule. Learned Counsel strongly relied on the observations of Das Gupta, J., In Moti Ram Deka case 1964-II L.L.J. 467 (vide supra). In dealing with the rules 148(3) and 149(3) of the Railway Establishments Code the learned Judge observed as

follows:

Rules 148(3) and 149(3) do not lay down any principle or policy for guiding the exercise of discretion by the authority who will terminate the service in the matter of selection or classification. Arbitrary and uncontrolled power is left in the authority to select at its will any person against whom action will be taken. The rules thus enable the authority concerned to discriminate between two railway servants to both of whom the rules equally applied by taking action in one case and not taking it in the other. In the absence of any guiding principle in the exercise of the discretion by the authority the rules have therefore to be struck down as contravening the requirements of Article 14 of the Constitution.

4. The rules 148(3) and 149(3) were struck down because the railway authorities could terminate the employment of any railway servant on giving him a notice for the specified period Irrespective of the age of the railway servant concerned or Irrespective of the question whether he had put in sufficient service to be able to earn retirement benefits. This is not the case here. The learned Counsel particularly emphasized the observation that

arbitrary and uncontrolled power is left in the authority to select at its will any person against whom action will be taken.

The observations, as we have already observed, were in respect of a rule the frame of which was materially different from Rule 244 of the Rajasthan Service Rules. Moreover, this observation was made by the learned Judge who was in minority, the majority of the learned Judges not expressing any opinion on the question. It has been held by their lordships of the Supreme Court in *Matajog Dobey v. H.C. Bhari* : [1955]28ITR941(SC) that where discretion is vested in the Government as distinguished from any subordinate authority it is not to be readily Inferred that the discretion shall be exercised arbitrarily or discriminately. In a very recent case of the Supreme Court cited by Sri Agrawal himself, namely, *Shivcharna v. State of Mysore* : (1967)11LLJ246SC their lordships observed that so far as the question of compulsory retirement was concerned it must be taken to be concluded by several decisions of the Supreme Court and the position regarding the validity of the rules permitting compulsory retirement must be taken to be well-

settled and need not be reopened. The observations of their lordships may usefully be quoted below:

In our opinion, this contention can no longer be entertained; because it is concluded by a long series of decisions of this Court. Recently a Special Bench of this Court had occasion to consider the validity of Rules 148(3) and 149(3) contained in the Indian Railway Establishment Code in *Moti Ram Deka v. General Manager, Northeast Frontier Railway* 1964-II L.L.J. 467. In dealing with the problem raised in that case, this Court has 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 then examined the relevant decisions on this point beginning with the case of *Shyam Lal v. State of Uttar Pradesh* 1954-II L.L.J. 139 (vide supra) and it has observed that the law in relation 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.

To our mind, the present rule cannot be viewed differently merely because it is not laid down therein that this power is to be exercised in public interest. In our mind, therefore, there is no doubt about the validity of Rule 244(2) of the Rajasthan Service Rules. Apart from what we have said above, the order of retirement of the petitioner states in express terms that the State Government was satisfied that it was in the public interest to dispense with farther service of the petitioner. Even if the rule were to lay down that the services could be dispensed with in public interest, then the Government alone would have been the Judge about the existence of public interest in dispensing with the services of a Government servant.

5. Thus, we find no substance in this application which we hereby summarily reject.