Gurdev Singh Sidhu

Vs

State of Punjab and Anr

Writ Petition No. 200 of 1963

(CJI P. B. Gajendragodkar, N. Rajgopala ayyangar, M. Hidayatullah, K. N. Wonchoo, K. C. Das Gupta JJ)

01.04. 1964

JUDGMENT

GAJENDRAGADKAR, C.J. –

This petition which has been filed by the petitioner S. Gurdev Singh Sidhu under Art. 32 of the Constitution, challenges the validity of article 9(1) of the Pepsu Services Regulations, Volume I, as amended by the Governor of Punjab by the notification issued by him on the 19th January, 1960 in exercise of the powers conferred on him by the proviso to Art. 309 of the Constitution and all other powers enabling him in that behalf. The petitioner's contention is that the said article contravenes the constitutional right guaranteed to the persons employed in civil capacities either under the Union or the State, by Art. 311.

The petitioner was appointed as Assistant Superintendent of Police in the erstwhile Patiala State by His Highness the Maharaja Adhiraj of Patiala on the 4th of February, 1942. The conditions of his service were governed by the Patiala State Service Regulations which had been issued by the Ruler of Patiala State who was at the relevant time the sovereign legislature of the State. Later, the petitioner was confirmed in the rank on the occurrence of a regular vacancy after he had undergone practical district training courses in the Punjab in 1947. On the formation of Patiala and East Punjab States Union on the 20th August, 1948, the petitioner was integrated in Pepsu Police Service. In due course, he was promoted to officiate as Superintendent of Police in February, 1950 by His Highness the Rajpramukh of the erstwhile State of Pepsu.

On the 25th March, 1963, respondent No. 2 S. Gurdial Singh, Inspector General of Police & Joint Secretary to the Government of Punjab, issued a notice against the petitioner purporting to act under the second proviso to article 9.1 of the Pepsu Services Regulations to show cause why he should not be compulsorily retired. The petitioner alleges that the second proviso to article 9.1 under which the said notice has been issued against him, is invalid, and so, he has moved this Court under Art. 32 for quashing the said notice on the ground that the article on which it is based is itself ultra vires and inoperative. Respondent No. 1, the State of Punjab, and respondent No. 2 have by their counter-affidavit denied the petitioner's contention that the impugned article 9.1 is constitutionally invalid and they have resisted his claim for quashing the notice issued by respondent No. 2 against the petitioner. That is how the only point which arises for our decision in the present petition is whether the impugned article is shown to be constitutionally invalid.

Before dealing with this point, it is necessary to read the said article :-

> "The following shall be added after the first proviso to clause (1) of article 9.1 of the said regulations :
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> (ii) "Provided further that Government retains an absolute right to retire any Government servant after he has completed ten years qualifying service without giving any reason and no claim to special compensation on this account will be entertained. This right will not be exercised except when it is in public interest to dispense with the further services of a Government servant such as on account of inefficiency, dishonesty, corruption or infamous conduct. Thus the rule is intended for use :
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> (a) against a Government servant whose efficiency is impaired but against whom it is not desirable to make formal charges of inefficiency or who has ceased to be fully efficient, (i.e. when a Government servant's value is clearly incommensurate with the pay which he draws), but not to such a degree as to warrant his retirement on a compassionate allowance. It is not the intention to use the proviso as a financial weapon, that is to say the proviso should be used only in the case of Government servants who are considered unfit for retention on personal as opposed to financial grounds;
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> (b) in cases where reputation for corruption, dishonesty or infamous conduct is clearly established even though no specific instance is likely to be proved under the Punjab Civil Services (Punishment and Appeal Rules) Appendix 24 of Volume I, Part II or the Public Servants (Inquiries Act XXXVII of 1850).

The word 'Government' used in this proviso should be given a reasonable opportunity to show cause the power of removing the Government servant concerned from service under the Civil Services (Punishment and Appeal) 'Rules'.

> (iii) Provided further that Government servant should be given a reasonable opportunity to show cause against the proposed action under the rule. No Gazetted Government servants shall, however, be retired without the approval of the Council of Ministers. In all cases of compulsory retirement of gazetted Government servants belonging to the State Services, the Public Service Commission shall be consulted. In the case of non-gazetted Government servants the Heads of Departments should effect such retirement with the previous approval of the State Government".

This article clearly shows that the absolute right retained by respondent No. 1 to deal with public servants can be used against them if it appears to respondent No. 1 that the said public servants suffer from inefficiency, dishonesty, corruption, or infamous conduct. It is also clear that one of the reasons for making the amendment in the Pepsu Services Regulations was to use the power thereby conferred on respondent No. 1 in cases where reputation for corruption, dishonesty or infamous conduct may be established to the satisfaction of respondent No. 1 even though no specific instance is likely to be proved under the Punjab Civil Services (Punishment and Appeal) Rules. This power was likewise intended for use in cases where the incompetence of the Government servant may not be of such an extent as to warrant his retirement on a compassionate allowance. The only safeguard provided by the amended article is that it was not contemplated to use the power conferred by it on

financial grounds. Grounds on which the said power was intended to be used were all grounds personal to the Government servant against whom the said power was exercised.

Mr. Bhandari for the petitioner contends that the point raised by the petitioner in this petition is, in substance, concluded by a recent decision of this Court in Moti Ram Deka, etc. v. The General Manager, North East Frontier Railway, [A.I.R. 1964 S.C. 600] etc. His argument is that the trend of the majority judgment in that case clearly indicates that the impugned Rule is inconsistent with Art. 311(2) of the Constitution, and as such, must be struck down as being invalid. It is, therefore, necessary to examine briefly the effect of the said judgment.

In the case, this Court was called upon to consider the validity of Rules 148(3) and 149(3) of the Railway Rules. These Rules authorised the termination of services of the railway employees concerned by serving them with a notice for the requisite period of paying them their salary for the said period in lieu of notice. Dealing with the question about the validity of the said Rules, the majority judgment observed that a person who substantively holds a permanent post has a right to continue in service subject to two exceptions. The first exception was in relation to the rule of superannuation, and the second was in regard to the rule as to compulsory retirement. The majority judgment accepted the position that a rule fixing the age of superannuation which is applicable to all Government servants falling in a particular category was perfectly constitutional because it applies uniformly to the public servants who fall within its scope and it is based on general considerations like life-expectation, mental capacity of the civil servants having regard to the climatic conditions under which they work and the nature of the work they do. They are not fixed on any ad hoc basis and do not involve the exercise of any discretion. The second exception was affirmed by the majority judgment with the reservation that rules of compulsory retirement would be valid if having fixed a proper age of superannuation, they permit the compulsory retirement of the public servant, provided he has put in a minimum period of service; and while affirming this rule, an express reservation was made that in case a rule of compulsory retirement permitted the authority to retire a permanent servant at a very early stage of his career, the question as to whether such a rule would be valid may have to be considered on a proper occasion. In other words, the acceptance of the doctrine that rules for compulsory retirement were valid and constituted an exception to the general rule that the termination of the services of a permanent servant means his removal within the meaning of Art. 311(2), was not absolute but qualified.

At this stage, it is necessary to explain why this reservation was made in the majority judgment. The question which fell to be decided in the case of Moti Ram Deka [A.I.R. 1964 S.C. 600] had no reference to the rule of compulsory retirement; but the argument in support of the validity of the rule proceeded on the basis that the previous decisions of this Court in which the validity of the relevant rules of compulsory retirement had been upheld logically supported the contention that the impugned Rules 148(3) and 149(3) were also valid, and this argument made it necessary for this Court to examine the said decisions and to decide whether the observations made in the course of those decisions supported the contention that Rules 148(3) and 149(3) were valid. Let us briefly refer to some of these decisions.

In Shyam Lal v. State of U.P. and the Union of India, [[1955] I.S.C.R. 26] the article which was examined was 465-A of the Civil Service Regulations. Note 1 to the said article gave the Government an absolute right to retire any officer after he has completed 25 years of service without giving any reasons, and provided that no claim to special compensation can be entertained from the public servant who has been compulsorily retired under it; this article was held to be valid.

In the State of Bombay v. Saubhag Chand M. Doshi, [[1958] S.C.R. 571] the rule which was considered was 165-A of the Bombay Civil Services Rules as amended by the Saurashtra Government. This rule gave the Government a similar right to retire a Government servant after he has completed 25 years of qualifying service or 50 years of age, and it permitted the Government to ask the Government servant to retire compulsorily without giving any reason and without giving him the right to claim special compensation. The rule further made it clear that the right conferred by it will not be exercised except when it is in the public interest to dispense with the further services of a Government servant such as on account of inefficiency or dishonesty. This rule was also upheld.

Reverting then to the argument which was urged in support of the validity of the Railway Rules challenged in the case of Moti Ram Deka [A.I.R. 1964 S.C. 600] the position taken by the learned Additional Solicitor-General was that in upholding the impugned rules, the earlier decisions had substantially proceeded on the basis that the premature termination of the services of a permanent Government servant would not in every case amount to his removal within the meaning of Art. 311(2) of the Constitution, and that is how it became necessary to refer to the said decisions which dealt with the question on compulsory retirement, though the problem of compulsory retirement did not fall for the decision of the Court in Moti Ram Deka's [A.I.R. 1964 S.C. 600] case.

The approach adopted by the majority decision in Moti Ram Deka's [A.I.R. 1964 S.C. 600] case indicates that the Court was not prepared to examine the question as to whether the relevant Rules in respect of compulsory retirement which had been upheld were valid or not. The trend of the majority judgment shows that logically, it would be consistent to hold that the premature termination of the services of a permanent Government servant would not amount to his removal under Art. 311(2) only where such termination is the result of the fixation of a general rule of superannuation. In all other cases where a permanent Government servant is asked to retire compulsorily whether on account of his incompetence, inefficiency, or dishonesty, it may, logically, be open to be suggested that such compulsory retirement is removal within Art. 311(2). But since 1953, when the case of Satish Chandra Anand v. The Union of India [[1953] S.C.R. 655] was decided by this Court there appeared to be a consistent course of decisions which had upheld the validity of the rules in regard to compulsory retirement. No doubt, the case of Satish Chandra Anand was one where a person had been employed by the Government of India on a five-year contract in the Resettlement and Employment Directorate of the Ministry of Labour; but some observations were made in that judgment and similar observations were made in subsequent decisions dealing with the question of compulsory retirement. The majority judgment in Moti Ram Deka's [A.I.R. 1964 S.C. 600] case took the view that it would be inappropriate and inexpedient to reopen an issue which was covered by several prior reported decisions of the Court. Besides, the point covered by the said decisions did not directly arise in the case of Moti Ram Deka. Even so, the majority judgment took the precaution of adding a note of caution that if a rule of compulsory retirement purported to give authority to the Government to terminate the services of a permanent public servant at a very early stage of his career, the question about the validity of such a rule may have to be examined. That is how in accepting the view that a rule of compulsory retirement can be treated as valid and as constituting an exception to the general rule that the termination of the services of a permanent public servant would amount to his removal under Art. 311(2), this Court added a rider and made it perfectly clear that if the minimum period of service which was prescribed by the relevant rules upheld by the earlier decisions was 25 years, it could not be unreasonably reduced in that behalf. In other words, the majority judgment indicates that what influenced the decision was the fact that a fairly large number of years had been prescribed by the rule of compulsory retirement as constituting the minimum period of service after which alone the

said rule could be invoked. Therefore, it seems to us that Mr. Bhandari is right when he contends that the present article which reduces the minimum period of service to 10 years, is open to challenge in the light of the majority decision pronounced in the case of Moti Ram Deka [A.I.R. 1964 S.C. 600].

In this connection, it is hardly necessary to emphasise that for the efficient administration of the State, it is absolutely essential that permanent public servants should enjoy a sense of security of tenure. The safeguard which Art. 311(2) affords to permanent public servants is no more than this that in case it is intended to dismiss, remove or reduce them in rank, a reasonable opportunity should be given to them of showing cause against the action proposed to be taken in regard to them. A claim for security of tenure does not mean security of tenure for dishonest, corrupt, or inefficient public servants. The claim merely insists that before they are removed, the permanent public servants should be given an opportunity to meet the charge on which they are sought to be removed. Therefore, it seems that only two exceptions can be treated as valid in dealing with the scope and effect of the protection afforded by Art. 311(2). If a permanent public servant is asked to retire on the ground that he has reached the age of superannuation which has been reasonably fixed, Art. 311(2) does not apply, because such retirement is neither dismissal nor removal of the public servant. If a permanent public servant is compulsorily retired under the rules which prescribe the normal age of superannuation and provide for a reasonably long period of qualified service after which alone compulsory retirement can be ordered, that again may not amount to dismissal or removal under Art. 311(2) mainly because that is the effect of a long series of decisions of this Court. But where while reserving the power to the State to compulsorily retire a permanent public servant, a rule is framed prescribing a proper age of superannuation, and another rule is added giving the power to the State to compulsorily retire a permanent public servant at the end of 10 years of his service, that cannot, we think, be treated as falling outside Art. 311(2). The termination of the service of a permanent public servant under such a rule, though called compulsory retirement, is, in substance, removal under Art. 311(2). It is because it was apprehended that rules of compulsory retirement may purport to reduce the prescribed minimum period of service beyond which compulsory retirement can be forced against a public servant that the majority judgment in the case of Moti Ram Deka [A.I.R. 1964 S.C. 600] clearly indicated that if such a situation arose, the validity of the rule may have to be examined, and in doing so, the impugned rule may not be permitted to seek the protection of the earlier decisions of this Court in which the minimum qualifying period of service was prescribed as high as 25 years, or the age of the public servant at 50 years. We are, therefore, satisfied that Mr. Bhandari is right in contending that the effect of the majority decision in the case of Moti Ram Deka [A.I.R. 1964 S.C. 600] clearly is that the impugned article 9.1 contravenes Article 311(2) of the Constitution and must be struck down as invalid.

The result is, the petition succeeds and article 9.1 as amended by the Governor of Punjab by a notification issued on the 19th January, 1960, is struck down as invalid. In consequence, the notice issued by respondent No. 2 against the petitioner on the 25th March, 1963 must be cancelled.

Before we part with this petition we ought to add that the respondents did not urge before us that the writ petition was not competent under Art. 32 and that the proper remedy available to the petitioner was a petition under Art. 226 of the Constitution to the Punjab High Court; that is presumably, because the respondents were anxious to have a decision from this Court on the question about the validity of the impugned article in the Regulations in question. We would, therefore, make it clear that our decision in the present writ petition should not be taken to mean that we have held that a petition like the present is competent under Art. 32 of the Constitution.

In the circumstances of this case, the petitioner is entitled to his costs from respondents 1 and 2.

Petition allowed.

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