

The State of Uttar Pradesh

Vs

Madan Mohan Nagar

Civil Appeal No. 997 of 1965

(S. M. Sikri, J. C. Shah, V.Ramaswami-I JJ)

05.01.1967

JUDGMENT

SIKRI, J. –

The respondent, Shri Madan Mohan Nagar, filed a Writ Petition in the High Court of Judicature at Allahabad for quashing the order of compulsory retirement dated July 28, 1960, passed against him. The order of compulsory retirement was in the following terms :

"I am directed to say that the Governor has been pleased to order in the public interest under Article 465A and Note (1) thereof of the Civil Service Regulations, the compulsory retirement with effect from September 1, 1960 of Sri Madan Mohan Nagar, Director State Museum Lucknow who completed 52 years of age on July 1, 1960, and 28 years and 3 months of qualifying service on 31-5-1960 as he has outlived his utility."

The learned Single Judge who heard the petition quashed the order on the ground that "Rule 465 of the Civil Service Regulations as amended by the U.P. Government while providing a criterion for the guidance of Government when inflicting compulsory retirement on a Government servant nevertheless violates the guarantee of equality of opportunity in matters relating to employment under Article 16(1)" of the Constitution. He further held that the order inflicting compulsory retirement on the petitioner was invalid because it was passed in violation of the principles of natural justice.

The State appealed and the Division Bench on appeal upheld the order passed by the learned Single Judge on the ground that the order of compulsory retirement was passed in violation of the provisions of article 311 of the Constitution and was, therefore, ultra vires. The State having obtained special leave, the appeal is now before us.

Before we deal with arguments of the learned counsel for the appellant, we may give a few facts and set out Article 465(A) and Note (1) thereof of the Civil Service Regulation, as amended by the Government of Uttar Pradesh. The facts, in brief, are that the respondent was first appointed in 1931 on one year's probation to the post of Custodian, Sarnath Museum, Banaras, under the Archaeological Department of the Government of India. In 1939, he was posted to Mathura Museum as Curator, and he was appointed substantively to this post from January 5, 1941. Later, he was appointed on the recommendation of the Provincial Public Service Commission as Curator of the State Museum, Lucknow, on a scale of pay Rs. 250/- to Rs. 850/-. The post of Curator was upgraded to the post of Director, State Museum, Lucknow, in the U.P. Educational Service, Senior

Scale, and the respondent was appointed to it. Thereafter the respondent continued in service as Director of State Museum, Lucknow, until he was compulsorily retired by the order of the Government, dated July 28, 1960, which has already been set out above. It is common ground that no enquiry as contemplated by Article 311(2) was held.

The relevant part of Article 465A of the Civil Service Regulation is in the following terms :

"Government retains the right to retire any Government servant after he has completed 25 years qualifying service without giving any reasons, and no claim to special compensation on this account shall be entertained.

This right shall only be exercised by Government in the Administrative Department when it is in the public interest to dispense with the services of Government servant who has outlived his usefulness."

This learned Solicitor General, who appears on behalf of the appellant has urged that the fact that the impugned order of compulsory retirement states the reason for compulsory retirement, namely, that the respondent had outlived his utility, does not lead to the conclusion that the order amounts to dismissal or removal because in every case of compulsory retirement it is implied that the person who is compulsorily retired had outlived his usefulness. He refers to *Shyam Lal v. The State of Uttar Pradesh* ([1955] 1 S.C.R. 26) and says that in that case it was implied that Shyam Lal was not fit to be retained in service. We are unable to read *Shyam Lal's* case ([1955] 1 S.C.R. 26) in that manner because the Court expressly said at p. 41, as follows :

"It is true that this power of compulsory retirement may be used when the authority exercising this power cannot substantiate the misconduct which may be the real cause for taking the action but what is important to note is that the directions in the last sentence in Note 1 to article 465-A make it abundantly clear that an imputation or charge is not in terms made a condition for the exercise of the power. In other words, a compulsory retirement has no stigma or implication of misbehaviour or incapacity."

In the present case there is not only no question of implication but a clear statement appears on the face of the order that the respondent had outlived his utility; in other words, it is stated that he was incapacitated from holding the post of Director, State Museum, Lucknow. The order clearly attaches a stigma to him and any person who reads the order would immediately consider that there is something wrong with him or his capacity to work.

In our opinion this case is covered by the principle applied in *Jagdish Mitter v. Union of India* (A.I.R. 1964 S.C. 449). It is true that that was a case of a temporary servant, but that does not matter. The order in that case reads as follows :

"Shri Jagdish Mitter, a temporary 2nd Division Clerk of this office having been found undesirable to be retained in Government service is hereby served with a month's notice of discharge with effect from November 1, 1949."

Gajenderagadkar, J., as he then was, speaking for the Court, said :

"No doubt the order purports to be one of discharge and as such can be referred to the power of the authority to terminate the temporary appointment with one month's notice. But it seems to us that when the order refers to the fact that the appellant was

found undesirable to be retained to government service, it expressly casts a stigma on the appellant and in that sense must be held to be an order of dismissal and not a mere order of discharge."

Later, he observed :

"It seems that anyone who reads the order in a reasonable way, would naturally conclude that the appellant was found to be undesirable, and that must necessarily import an element of punishment which is the basis of the order and is its integral part. When an authority wants to terminate the services of a temporary servant, it can pass a simple order of discharge without casting any aspersion against the temporary servant or attaching any stigma to his character. As soon as it is shown that the order purports to cast an aspersion on the temporary servant, it would be idle to suggest that the order is a simple order of discharge. The test in such cases must be : does the order cast aspersion or attach stigma to the officer when it purports to discharge him ? If the answer to this question is in the affirmative, then notwithstanding the form of the order, the termination of service must be held, in substance, to amount to dismissal."

It seems to us that the same test must apply in the case of compulsory retirement, namely : does the order of compulsory retirement cast an aspersion or attach a stigma to the officer when it purports to retire him compulsorily ? In the present case there is no doubt that the order does cast a stigma on the respondent.

Mr. Gupte relies on *T. G. Shivacharana Singh v. State of Mysore* (A.I.R. 1965 S.C. 280). But this case does not assist him because it does not appear that the order in that case contained any stigma, and under Rule 285 of the Mysore Civil Service Rules, 1958, retirement could be effected if it was considered necessary in the public interest. There was no question of requiring that there should be a finding that the government officer had outlived his utility.

In *Ram Parshad v. State of Punjab* (A.I.R. 1966 S.C. 1607 : [1966] 3 S.C.R. 486) no such question appears to have been argued. In para 32 of the judgment *Satyanarayana Raju, J.*, while considering the validity of Rule 27 of the Staff Rules, reproduced an extract from the judgment of this Court in *Moti Ram Deka v. N.E. Frontier Railway* ([1964] 5 S.C.R. 683). We will presently consider the effect of the decision in *Deka's* case.

In *Deka's* case ([1964] 5 S.C.R. 683) *Moti Ram Deka*, who was a peon employed by the North East Frontier Railway, challenged the order of termination of his services under Rule 148 of the Indian Railway Establishment Code on the ground that the said Rule was invalid. There were some other appellants before the Court who challenged the validity of Rule 149 of the Railway Establishment Code. The question posed for decision by *Gajendragadkar, J.*, at page 699 was : if the service of a permanent civil servant is terminated otherwise than by operation of the rule of superannuation, or the rule of compulsory retirement, does such termination amount to removal under Article 311(2) or not ? The Court was thus not concerned with the question of compulsory retirement under a rule similar to Rule 465A, note (1), of the Uttar Pradesh Civil Service Regulation, but it reviewed some cases dealing with compulsory retirement. *Subba Rao J.*, as he then was, who delivered a concurring judgment also reviewed the cases, but he preferred to follow the principle laid down in *Parshotam Lal Dhingra v. Union of India* ([1958] S.C.R. 828), in respect of permanent government servants in preference to that accepted in *Shyam Lal's* case ([1955] 1 S.C.R. 26) and the subsequent decisions

following it. But it is not necessary for us to resolve the conflict, if any, which exists between Dhingra's case ([1958] S.C.R. 828) and Shyam Lal's case ([1955] 1 S.C.R. 26) because here we have an order which on the face of it casts a stigma on the respondent. It is true, as pointed out by Subba Rao J., that in Doshi's case State of Bombay v. Saubhagchand M. Doshi ([1958] S.C.R. 571) Rule 165-A of the Bombay Civil Services Rules laid down that the right of compulsory retirement 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, but in Doshi's case it does not appear that the order contained any aspersion that Doshi was inefficient or suffered from some other defect. What was challenged in that case was the validity of Rule 165-A of the Bombay Civil Services Rules, and it was held that it did not violate article 311(2) of the Constitution.

Similarly, in Balakotaih v. The Union of India ([1958] S.C.R. 1052) in Rule 3 of the Railway Services (Safeguarding of National Security) Rules 1949, dealing with compulsory retirement, the proviso provided that "a member of the Railway Service shall not be retired or have his service so terminated unless the competent authority is satisfied that his retention in public service is prejudicial to national security, and unless, where the competent authority is the Head of a Department, the prior approval of the Governor-General has been obtained." In this case also it does not appear that the order terminating the services contained any stigma on the public servant concerned.

In Dalip Singh v. State of Punjab ([1961] 1 S.C.R. 88) the order read as follows :

"His Highness the Rajpramukh is pleased to retire from service Sardar Dalip Singh, Inspector General of Police, Pepsu (on leave) for administrative reasons with effect from the 18th August 1950."

It was held that the order did not amount to dismissal or removal from service within the meaning of article 311(2) of the Constitution. The Court derived two tests from Shyam Lal's case ([1955] 1 S.C.R. 26) and formulated them as follows : the first is whether the action is by way of punishment and to find that out the Court said that it was necessary that a charge or imputation against the officer is made the condition of the exercise of the power; the second is whether by compulsory retirement the officer is losing the benefit he has already earned as he does by dismissal or removal. If the first test is applied in this case it is quite clear that the charge or imputation "that the respondent had outlived his utility" was made the condition of the exercise of the power.

The learned Solicitor General also brought to our notice the decision of the Full Bench of the Allahabad High Court in Abdul Ahad v. The Inspector General of Police, U.P. (A.I.R. 1965 All. 142) The decision certainly helps him, and as a matter of fact, the Full Bench overruled the judgment of the Division Bench under appeal. But, with respect, we are unable to agree with the conclusion that even if the order of compulsory retirement recites the fact that the public servant had outlived his utility, it would not amount to a punitive order. The Full Bench was of the view that "compulsory retirement will always be on the ground that he can no longer render useful service. The position certainly does not become worse because what is implied is expressed." We are unable to agree that the position does not become worse because a stigma is attached expressly.

We may say that the question whether Article 465-A, note (1), violates article 311 of the Constitution was not argued before us and we say nothing about it.

In the result the appeal fails and is dismissed with costs.

Appeal dismissed.

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