

The State of Mysore

Vs

S. V. G. Iyengar

Civil Appeal No. 1312 of 1966

(J. C. Shah, V. Ramaswami-I, A.N. Grover JJ)

01.09.1969

JUDGMENT

RAMASWAMI, J. -

1. This appeal is brought by special leave from the judgment of the Mysore High Court, dated October 1, 1962 in Writ Petition no. 1280 of 1961, directing the appellant to determine the salary payable to the respondent on the basis that he had been permitted to cross the efficiency bar in the time scale of pay of Rs. 900 - 50 - 1200 - E.B. - 75 - 1500 in Osmania Sikka rupees. The High Court also directed by the same judgment that the increments above the efficiency bar withheld by the appellant should now be paid to him and the salary so determined should be taken into account for determining the amount of pension payable to the respondent in accordance with the relevant rules.

2. The respondent was working as an Executive Engineer in the Public Works Department of the Hyderabad State and was in charge of certain project works during the period June 1949 to September 1950. On the basis of some information the explanation of the respondent was called for in respect of certain alleged irregularities in the execution of certain project works. The respondent sent in his explanations, dated June 14, 1951 on December 10, 1951 to the Superintending Engineer, Munirabad. In October 1953 the Enquiry Officer came to the conclusion that some loss had been caused in respect of four projects more due to lack of foresight and organising capacity on the part of the respondent than to any intentional misappropriation and a show cause notice was issued on March 11, 1955 asking the respondent to show cause why he should not be stopped from crossing the efficiency bar with effect from February 9, 1952 and why a sum of Rs. 23,371/- should not be recovered from his salary on account of the loss caused to the Government by the respondent's negligence. After the respondent had shown cause the matter was sent by the Government to the Public Service Commission. The Public Service Commission recommended that in addition to stopping the respondent at the efficiency bar for the period 1952 to 1957 as recommended by the Government, the pecuniary loss caused to the Government should be recovered from the respondent. On November 1, 1956 the States' Reorganisation came into force and the services of the respondent stood transferred to the State of Mysore. By its order, dated October 14, 1968 the Mysore Government directed that the respondent should be retired compulsorily from service and should also be asked to make good a sum of Rs. 4,576/- being the amount of loss caused to Government in the above connection. The respondent challenged this order by a writ petition on the ground that the Enquiry Officer at Hyderabad had exonerated him of all the charges excepting one and also because the report of the Enquiry Officer was not furnished to the respondent. The High Court of Mysore allowed the writ petition and quashed the order of the Government. Thereafter the Mysore Government took further steps in the matter and the respondent presented several other writ petitions in the Mysore High Court impugning the subsequent action of the Mysore Government. It

is unnecessary for the purpose of the present appeal to set out the orders of the Mysore Government and the writ petitions filed by the respondent and the orders made by the High Court except to state that by an order made on December 10, 1960 the respondent who was to have retired with effect from October 27, 1960, the date on which he completed the age of 55 years, was continued in service but under suspension pending completion of the disciplinary proceedings against him and that the Government by a subsequent order, dated, May 19, 1961 revoked the previous order of December 10, 1960 and permitted the respondent to retire dropping altogether the disciplinary proceedings against him. After his retirement the respondent filed Writ Petition No. 1280 of 1961 praying for declaration that he should be regarded as having crossed the efficiency bar in his pay scale on February 9, 1952 and that he should be given all the increments after the efficiency bar in the pay scale of an Executive Engineer and that he should be paid the difference and his pension should be fixed on the basis of enhanced salary claimed by him. The claim of the respondent was resisted by the Mysore State on the ground that under Rule 38 of the Hyderabad Civil Service Rules a specific order ought to be made permitting the respondent to cross the efficiency bar. The High Court rejected the contention of the appellant and held that consequent upon the dropping of the proceedings against the respondent the increment withheld by way of penalty should be restored and the increased salary should be taken into account in fixing the amount of pension payable to the respondent.

3. Rule 38 of the Hyderabad Civil Services Rules, 1952 reads as follows :

"Where an efficiency bar is prescribed in a time scale the increment next above the bar shall not be given to a Government servant without the specific sanction of the authority empowered to withhold increments."

Rule 52 of the Mysore Civil Service Rules, 1958 is in the same language as Rule 38 of the Hyderabad Civil Service Rules.

4. On behalf of the respondent it was contended that the withholding of the increment of the respondent at the efficiency bar was intended to operate as a penalty for alleged misconduct. It was said that upon the facts of the case the only conclusion possible was that the Government wanted to stop the respondent at the efficiency bar in the time scale with a view to reimburse itself at the expense of the respondent the loss said to have been caused by him to the Government. It was, therefore, argued that after the dropping of disciplinary proceedings against the respondent without recording any finding of guilt no penalty could be imposed. It was contended that once the Government had taken the decision to stop the respondent at the efficiency bar by way of penalty it must be held that the Government had waived their right to stop the respondent at the efficiency bar for administrative reasons under Rule 38. In our opinion there is no warrant for the contentions advanced on behalf of the respondent. It is manifest that in view of the language of Rule 38 of the Hyderabad Rules and Rule 52 of the Mysore Rules before the respondent could claim payment of increments next above the bar, it is necessary that the Government should make a special order sanctioning such payment. It is true that disciplinary proceedings against the respondent were dropped but the result claimed by the respondent cannot automatically follow as a result of the dropping of the disciplinary proceedings. In this connection the Attorney-General pointed out that the notice, dated March 16, 1955 against the respondent asked him to show cause why (1) he should not be stopped from crossing the efficiency bar and (2) why a sum of Rs. 23,371-14-2 should not be recovered from him on account of loss caused to the Government by his negligence. The stoppage at efficiency bar had no connection with the recovery of loss sustained by the Government and it cannot, therefore, be said that the Government wanted to impose the efficiency bar because it

wanted to reimburse itself for the loss caused by the respondent. So far as the language of Rule 38 is concerned it is manifest that an express order of the appropriate authority is necessary before the respondent is allowed to cross the efficiency bar. It is not, therefore, possible to accept the contention of the respondent that the Government must be deemed to have given specific sanction under Rule 38 of the Hyderabad Rules permitting the respondent to cross the efficiency bar merely because disciplinary proceedings against him had been dropped for certain reasons.

5. In the High Court the case was argued by both the parties on the assumption that Rule 38 applied to the case of the respondent. During the hearing of the appeal in this Court it was stated by Mr. Iyengar that when the respondent became due for crossing the efficiency bar Rule 38 as it stands at present was not in operation. But it was said that a rule similar to Rule 38 was in operation at the relevant time.

6. For these reasons we hold that this appeal should be allowed and the judgment of the Mysore High Court, dated October 1, 1962 should be set aside and the writ petition filed by the respondent should be ordered to be dismissed.

There will be no order with regard to costs in this appeal.

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