

Batahari Jena

Vs

The State of Orissa

Civil Appeal No. 1064 (NCS) of 1967

(G. K. Mitter, K. K. Hegde, A. N. Grover JJ)

05.04.1971

JUDGMENT

MITTER, J. -

This is an appeal from a judgment of the High Court of Orissa rejecting a Writ Petition filed by the appellant for quashing the order of the Government passed on him on July 14, 1964, informing him that he was to retire from Government service on January 1, 1965, when he would reach the age of 55 years.

2. The facts are shortly as follows. The appellant who was born on January 1, 1910, entered the service of the former India State of Mayurbhanj in Orissa as an engineer on November 1, 1937. He was in the employment of that State up to December 31, 1948. On the merger of that State with the province of Orissa on January 1, 1949 he became an officer of the said Province. The age of superannuation of Government employees in Orissa was then 55 years. On May 21, 1963 the Government of Orissa passed a resolution the relevant portion whereof ran in follows :

"1. The question of raising the age of compulsory retirement of the state Government employees has been under the consideration of Government for some time past

2. After careful consideration Government have now decided that the age of compulsory retirement for the State Government employees should be raised from 55 years to 58 years with effect from December 1, 1962

3. Notwithstanding anything contained in the preceding paragraph, the appointing authority may require a Government servant to retire after he attains the age of 55 years on three months previous notice in writing without assigning any reason. The Government servants also may after attaining the age of 55 years, voluntarily retire by giving three months' notice to the appointing authority. The power to retire a Government servant under this provision will normally be exercised to weed out unsuitable employees after they have attained the age of 55 years.

4. This provision will be in addition to the provisions already contained in Rule 2 in Section 1 of the Liberalised Pension Rules issued with the Finance Department Resolution according to which -

(a) the Government may require an officer to retire any time after he has completed 30 years qualifying service by giving him a notice in writing at least three months before the date on which he is required to retire, and

(b) a Government servant may retire from service any time after completing 30 years qualifying service by giving a notice in writing to the appropriate authority at least three months before the date on which he wishes to retire."

On February 6, 1964, a notification was issued by the Government of Orissa a connection with the above laying down the criteria and procedure to be adopted to ensure uniformity of operation of the rule mentioned in Paragraph 3 of the above resolution and also equitable treatment in all cases. Speaking broadly, the idea behind the notification was that : (1) the service record of an officer was to be scrutinised six months before he was due to attain the age of fifty-five year : (2) in any case where Government had reasonable cause to believe that he lacked in integrity it would be appropriate to determine upon his retirement; (3) where an officer's integrity was not in doubt but his physical or mental condition was such as to make him inefficient for further service the same result would follow, and (4) an officer whose performance was considered as below "average" should not be allowed to work after the age of 55 years.

3. On July 14, 1964 the appellant was asked to retire from Government service on January 1, 1965. His representation for reconsideration was not accepted. He filed a Writ Petition in the High Court on December 21, 1964. This was rejected by the High Court on September 19, 1966. The appellants has come up by certificate to this Court.

4. Counsel for the appellant raised only two points in support of the appeal. His first submission was that as the appellant had not completed 30 years' service on January 1, 1965 he could not be asked to retire on that date; and, secondly, having regard to the criteria laid down by the notification, dated February 5, 1964, the order of retirement, dated July 14, 1964, cast a stigma on him and as such was violative of the protection given by Article 311 of the Constitution.

5. The submission of learned counsel on the first head was based on his construction of the resolution of May 21, 1963. It was urged that as the power of the appointing authority under Paragraph 3 of that resolution to retire the appellant after he attained the age of 55 years was described as "in addition to the provision contained in Rule 2 in Section I of the officer to retire at any time after he had completed 30 years' qualifying service, the new provision was to be treated as super-added to the Pension Rules and no Government servant could be asked to retire at the age of 55 years unless he had completed 30 years' qualifying service. As there was no dispute that he appellant had not completed 30 years of such service on January 1, 1965 it was urged on behalf of the appellant that Government could not resort to Paragraph 3 of the said resolution.

6. In our view the above contention cannot be accepted. Before May 21, 1963 an employee of the Government of Orissa would have been due for superannuation when he attained the age of 55 years whether he had or had not put in 30 years' qualifying service. Government had before the said date an option to ask him to retire if he had completed 30 years qualifying service even though he has not reached the age of fifty-five year : correspondingly the officer had the right to retire if he wanted to do so before he reached the age mentioned if he had 30 years' qualifying service to his credit. Fifty-five years was the outside limit of age to which an officer was permitted to work before superannuation. The resolution of May 21, 1963, raised the age of superannuation from 55 to 58 but nevertheless under paragraph 3 thereof the Government reserved to itself a right to ask any employee to retire when he attained the age of 55 years without assigning any reason. This was not unilateral. A Government servant was not bound to continue in service beyond the age of fifty-five years unless he wanted it. There was no alteration in the rule unless which a Government servant could voluntarily retire or be asked to retire in a case where he had completed thirty years' service.

In other words, the right of Government to require an officer to retire at any time after he had completed 30 years service was and still remained intact. This right which was not linked with the age of Superannuation before May 1963 remained unaffected even after that date. Although the age of superannuation was raised from 55 to 58 years Government armed itself with the power to require any employee to retire when he attained the age of 55 years without assigning any reason.

7. Reliance was placed on certain observation in the decision of this Court in *Gurdev Singh Sidhu v. State of Punjab and Another*. ((1964) 7 SCR 587 at 593 : AIR 1964 SC 1585 : (1964) 1 SCWR 783) There this Court struck down Article 9.1 of the Pepsu service Regulations under which the Government sought to retain an absolute right to retire any Government servant after he had completed ten years' qualifying service without giving any reason. In that case the petitioner who had been appointed as an Assistant Superintendent of Police in the erstwhile Patiala State on February 4, 1942 and confirmed in that rank on the occurrence of a regular vacancy after undergoing practical district training course, and after promotion to the rank of Superintendent of Police in an officiating capacity in February 1950 in the said State of Pepsu, was asked to show cause by notice, dated March 25, 1963, as to why he should not be compulsorily retired. The petitioner complained that the notice issued to him was invalid on the ground that the article on which it was based was itself ultra vires and inoperative and the only question before this Court was whether the impugned Article was shown to be constitutionally invalid. Referring to *Satish Chandra Anand v. The Union of India* (1953 SCR 655 : AIR 1953 SC 250 : 1953 SCJ 328) and to certain dicta of the majority Judges in *Moti Ram Deka, etc. v. The General Manager, North east Frontier Railway, etc.*, this Court observed by way of explanation that :

"..... 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 Article 311(2), the 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."

The Court further observed (see p. 594) that :

"The safeguard which Article 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 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 Article 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, Article 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 rule 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 Article 311 (2) mainly because that is the effect of a long series of decision 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 public servant at the end of 10 years of his service that cannot, we think, be treated as falling outside Article 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 Article 311 (2)."

8. In our view the above observations relied on by counsel do not help the appellant. The above observation show hat a rule which permits a Government to ask an officer to retire after an unreasonably short period of service much before the normal age of superannuation would be hit by Article 311. They cannot apply when the period of qualifying service mentioned in the rule is not unreasonably short and the normal age of super annuation fixed is not unaccountably early.

9. Before May 1963 a Government servant in Orissa had to retire on attaining the age of 55 years whether he had completed 30 years' qualifying service or not. The fact that the age of superannuation was raised from 55 to 58 years while Government reserved to itself a right to ask any employee to retire at the age 55 years does not violate Article 311(2).

10. On the second point it is enough to point out that the order of July 14, 1964, did not cast any aspersions or stigma on the appellant which would attract Article 311. Under paragraph 3 of the resolution mentioned Government had a right to require any Government servant to retire at the age of 55 years' without assigning any reason. The fact that by the notification of February 5, 1964, certain guidelines were indicated to the Heads of departments in considering whether a Government servant should continue in service beyond the age of 55 years, one of the factors of consideration being lack of integrity, did not imply that any officer whose continuance in service was not advised lacked in integrity. On the facts of this case, we cannot say that any evil aspersion was cast on the appellant.

11. In the result, we must hold that there has been no violation of Article 311 of the Constitution and the appeal must be dismissed with costs.

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