

Dr. N. V. Puttabhatta

Vs

The State of Mysore and Another

Civil Appeal No. 1835 (N) of 1968

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

20.04.1972

JUDGMENT

MITTER, J. -

1. The only point involved in this appeal by certificate is, whether the order of compulsory retirement, dated June 28, 1967, intimating the appellant that it was necessary in the public interest that he should be retired from service with effect from October 15, 1967 in terms of Rule 285 of the Mysore Civil Services Rules, read with Note 1 thereto was inconsistent with the rules of natural justice in that the appellant was not informed of the evidence on which the order was based and no opportunity was given to him of being heard and meeting or explaining away the evidence in support of the order, and as such was liable to be quashed. The High Court rejected the writ petition of the appellant in which the above and other contentions were raised by him but as the certificate is limited to the one question mentioned above the other points canvassed before the High Court do not fall for consideration.

2. The facts are as follows : The petitioner was a Class I Health Officer in the Department of Public Health in Mysore State Service in the year 1967. But for the order of retirement which was served on him he might have continued in service up to December 31, 1971 when he would have attained the age of 55 years. In June, 1967 when he had passed the age of 50 years he was served with an order the text of which is as follows :

"Whereas the Government of Mysore is opinion that it is necessary in the public interest that you, Dr. N. V. Putta Bhatta, Health Officer Class I working as District Health and Family Planning Officer, Coorg, should be retired from service with effect from October 15, 1967.

Now, therefore, as required by Note I to Rule 285 of the Mysore Civil Services Rules, you are hereby given three months' notice that you shall be retired for service with effect from October 15, 1967." He filed his writ petition in the High Court of Mysore in September 1967. The averments in the petition which are relevant for the purpose of this appeal are as follows :

(a) Paragraph 5 of the petition :

"This order which vitally affects my right to continue till I attain the age of superannuation, namely, 55 years with the prospect of becoming the Head of the Department should have been passed only after giving me an opportunity to show cause against it having regard to the rules of natural justice."

(b) Paragraph 18(a) of the petition :

"I was not given any chance or opportunity to know the causes for the impugned order on which I am to be retired prematurely. In the absence of any such cause, I assumed that some confidential report or any cause affecting my health may have been considered. On this assumption I made representation to the first respondent (the State of Mysore) through the second respondent (the Director of Health Services)..... These representations will show that I was a victim of prejudice of the Directorate of Health Services....."

(c) Paragraph 22 of the petition :

"After the impugned order was passed I got two confidential reports.....One of these reports stated that I require guidance, that I had no initiative and not fit to hold any executive post and that I was in the habit of divulging Government information without the permission of the Government. The second report of 1966 stated that I was a conceited, incompetent and irresponsible officer and that I was slow in disposing of the official matters and that I was not amenable to superior officers. These confidential reports were sent to me on September 1, 1967.....I had to make representation against these false allegations."

(d) Paragraph 23 of the petition :

"It will thus be seen that in the background of the confidential report for 1966 that I must be retired or retired from service without any opportunity to me, the impugned order has been passed. The impugned order therefore is violative of Article 311 of the Constitution since it is clearly based on the 1966 confidential report..... I therefore submit that on vague and unsupported charges my career is sought to be blocked which should have been otherwise promising."

3. In the counter affidavit of the State it was averred that action was taken by the Government on a consideration of the confidential reports submitted in respect of the petitioner and that it was not based on any prejudice or jealousy against him. No opportunity for hearing was contemplated under Rule 285 and the impugned order was not violative of Article 311 of the Constitution.

4. The relevant part of Rule 285 of the Mysore Civil Services Rules and Note 1 thereto read as follows :

"A retiring pension is granted to a Government servant who is permitted to retire after completing qualifying service for thirty years or such less time as may, for any special class of Government servants be prescribed.

Note 1. A Government servant may retire from service any time age completing thirty years' qualifying service provided that he shall give in this behalf a notice in writing to the appropriate authority, at least three months before the date on which he wishes to retire. Government may, by order, retire any Government servant after he has completed twenty-five years of qualifying service or after he has attained fifty years of age, if such retirement is in their opinion necessary in the public interest, provided that Government servant concerned is given notice of three months before the date of retirement, or in lieu of such notice, a sum equivalent to the amount of his salary for a period of three months....."

5. The validity of the above rule was attacked in this Court in Shivacharana v. State of

Mysore (AIR 1965 SC 280 : (1967) 15 FLR 224 : (1967) 2 LLJ 246). Upholding the validity thereof it was said by this Court (at p. 281, Paragraph 4) :

"It would thus be clear that though the normal age of retirement under Rule 95(a) is 55 years, under Rule 285 it is competent to the Government to retire compulsorily a Government servant prematurely if it is thought that such premature retirement is necessary in the public interest. This power can, however, be exercised only in cases where the Government servant has completed 25 years' qualifying service or has attained 50 years of age. In other words, ordinary retirement by superannuation occurs after attaining 55 years or completing 30 years' service, while premature retirement can be forced on the Government servant if he has either completed 25 years of service, or has attained 50 years of age. In the case of premature compulsory retirement, the Government servant is entitled to pension as indicated in Note 1 to Rule 285."

6. In that case the appellant before this Court had urged that his record was free from blemish and Government was not justified in coming to the conclusion that it was in the public interest to retire him. Turning down the said contention it was stated :

"There allegations made by the petitioner in that behalf are very vague and unsatisfactory, and so, it would be idle to contend that if the impugned note is valid, the order terminating the services of the petitioner can still be challenged on the ground that it is not justified on the merits or is illegal arbitrary. Whether or not the petitioner's retirement was in the public interest, is a matter for the State Government to consider, and as to the plea that the order is arbitrary and illegal, it is impossible to hold on the material placed by the petitioner before us that the said order suffers from the vice of mala fides."

7. It may be noted that the appellant before us had challenged the order of termination of service on very similar grounds and the only additional point urged by him before us is that as the order of June, 1967 has civil consequences it was obligatory on Government to give him notice to show cause against the order proposed before it was made. In support of this reliance was placed on *Orissa v. Binapani Dei* ((1967) 2 SCR 625 : AIR 1967 SC 1269 : (1967) 2 SCJ 339 : (1967) 2 LLJ 266). There too the Government of Orissa had served the order of compulsory retirement on the first respondent but the main ground of attack was that whereas according to Government records she was born on April 10, 1910 and as such would have been due for superannuation on April 10, 1965, Government had made an enquiry as to her date of birth behind her back and asked her to show cause why a certain date should not be taken as the correct date of birth. The report of the enquiry officer was not disclosed to her and the first respondent was not given an opportunity to meet the evidence used against her. This was followed by Government re-fixing her date of birth and ordering compulsory retirement. It was observed by this Court (see p. 629) :

"The State has undoubtedly authority to compulsorily retire a public servant who is superannuated. But when that person disputes the claim he must be informed of the case of the State and the evidence in support thereof and he must have a fair opportunity of meeting that case before a decision adverse to him is taken."

With regard to the enquiry it was said that it was contrary to the basic concept of justice and cannot have any value.

8. It was added that although the order was administrative in character it involved civil

consequences and must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence.

9. It will be noticed at once that the facts of this case are not in pari material with those of Binapani Dei's. Here there was no dispute nor any claim by the appellant that he was asked to retire before he had attained the age of 50 years. All his challenge is directed to the formation of opinion by the Government that it was in the public interest to retire him. It is difficult to see how the appellant could have explained that it was contrary to public interest to retire him if his attack on the ground that the order was made arbitrarily or mala fide could not be sustained. The counter affidavit of the State definitely alleged that in forming the opinion Government had taken note of the adverse remarks in the appellants's confidential report.

10. The appellant contends that if Government's action was motivated by the adverse remarks in the reports he should have first been given notice thereof and in any event his representation against them should have been disposed of before any retirement order could have been passed on him.

11. Our attention was drawn to G.S.R. 597 of the General Administration Secretariat notification of the State of Mysore, dated July 6, 1965. By the said notification the Governor of the State made a set of rules known as the Mysore Civil Services (Confidential Reports) Rules, 1965. According to Rule 3 thereof :

"In respect of every Gazetted and Non-Gazetted officer an Annual Confidential Report shall be recorded assessing as correctly as possible such officer's Physical, mental and moral suitability for his office and for promotion, his ability to apply intelligently the law and procedure prescribed to cases coming before him, his treatment of his subordinates and behaviour to his superiors and colleagues in other departments and his relations with the public."

The preparation and transmission of confidential reports are to be made in terms of Rule 5 which inter alia directs that a report was to be prepared with the greatest caution and no record or remarks shall be made lightly on the spur of the moment or based on prejudice. Under Rule 8(1) all adverse remarks whether through an ordinary or special report shall be communicated to the officer concerned, unless the adverse remarks are of such a nature that the communication thereof is unlikely to result in the remedy of the defect or is considered inadvisable for any other reason. While communicating an adverse remark, the name of the officer recording the adverse remark shall not be communicated to the officer reported upon. Under Rule 9 no appeal lay against adverse remarks made in the annual confidential reports.

12. Our attention was however drawn to a notification, dated February 5, 1970, whereby Rule 9 was altered so as to give an officer against whom adverse remarks were made a right to submit a representation on which a decision had to be taken expeditiously and communicated to him. At the relevant time however the said amended rule was not in operation and consequently it was not open to the appellant to challenge the correctness of the adverse remarks in his confidential reports by way of appeal. As the confidential reports rules stood at the relevant time, the appellant could not have appealed against the adverse remarks and if the opinion of Government to retire him compulsorily was based primarily on the said report he could only challenge the order if he was in a position to show that the remarks were arbitrary or mala fide.

13. It is not necessary for us to examine the rules of natural justice in general but we may quote observations from a judgment of this Court in *A. K. Kraipak v. Union of India*, ((1970) 1 SCR 457 at 469 : (1969) 2 SCC 262) to show that the particular circumstances of a case considered in the background of the law applicable must be determinative on the point. There the Court said :

"What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal of body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

14. In *Union of India v. J. N. Sinha*, ((1971) 1 SCR 791 : (1970) 2 SCC 459 : 1970 SCC (Cri) 487) the Court was concerned directly with the principle of natural justice in similar circumstances. There the order of retirement was based on Fundamental Rule 56(i) reading :

"Notwithstanding anything contained in this rule the appropriate authority shall, if it is of the opinion that it is in the public interest so to do have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice."

There this Court observed (see p. 795) :

"The right conferred on the appropriate authority is an absolute one. That power can be exercised subject to the conditions mentioned in the rule, one of which is that the concerned authority must be of the opinion that it is in public interest to do so. If that authority bona fide forms that opinion, the correctness of that opinion cannot be challenged before courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision based on collateral grounds or that it is an arbitrary decision. The 1st respondent challenged the opinion formed by the Government on the ground of mala fide. But that ground has failed.... The impugned order was not attacked on the ground that the required opinion was not formed or that the opinion formed was an arbitrary one. One of the conditions of the 1st respondent's service is that the Government can choose to retire him any time after he completes fifty years if it thinks that it is in public interest to do so. Because of his compulsory retirement he does not lose any of the rights acquired by him before retirement. Compulsory retirement involves no civil consequences. The aforementioned Rule 56(i) is not intended for taking any penal action against the Government servants. That rule merely embodies one of the facets of the pleasure doctrine embodied in Article 310 of the Constitution. Various considerations may weigh with the appropriate authority while exercising the power conferred under the rule. In some cases, the Government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer.... While a minimum service is guaranteed to the Government servant, the Government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest."

The Court further noted that a compulsory retirement was bound to have some adverse effect on the Government servant but such rule of retirement could only be acted upon after the officer had

attained the prescribed age and further a compulsorily retired Government servant did not lose any of the benefits earned by him till the date of his retirement.

15. All the above observations apply to the facts of the appellants's case. But the appellant seeks to distinguish that case because of the use of the expression "absolute rights" in Fundamental Rule 56(i), Rule 285 not being so emphatically worded. But that in our opinion makes no difference. Both rules give the Government the same or similar right : so long as the right is not qualified it must be held to be absolute and no distinction can be made between Rule 285 and Fundamental Rule 56(i) on that ground.

16. The last contention of the appellant that in the normal course and would have reached the top position in the department the deprivation whereof was a civil consequence of the order, does not bear scrutiny. If the confidential reports could be acted upon his promotion could be withheld even if he was not made to retire compulsorily. If on the basis of the confidential reports he is asked to retire in compliance with that rule he cannot complain because of loss of position which he might have attained if there were no adverse remarks against him.

17. In the result the appeal fails but we make no order as to costs. We however think it appropriate to take note of the skillful way in which the appellant put forward his case and dealt with the points of law with which as a layman he was not expected to be familiar.

</html