Gur Pratap Singh Bedi

Vs

State of Punjab and Another

Civil Appeal No. 1132 of 1975

(V.R. Krishna Iyer, A.C. Gupta, N.L. Untwalia JJ)

09.01.1976

JUDGMENT

KRISHNA IYER, J. -

1. The compulsory retirement of the appellant, by the first respondent, the State of Punjab, by Exhibit A, dated January 11, 1974, was challenged before the High Court but rebuffed with merited brevity after the court called for the respondents. The disappointed official has, by securing special leave under Article 136, come up before this Court and urged in his appeal two, weak grounds which are to jejune to justify any course other than dismissal.

The facts

2. The appellant joined government service as an Excise Officer in 1944 and spiralled up over the years from the rank of Sub-Inspector to that of Assistant Excise and Taxation Officer. Probably his record of service was not sullied but, in his later years in officer since 1970 his record was a mixed one Eventually when he was about to attain the age of 55, Government, exercising its power under Rule 5.32 of the Punjab Civil Services Rules, gave three months' notice of retirement on the termination of which, the order read :

You will be deemed to have retired from service, on the expiry of the aforesaid period.

He completed the age of 55 on March 24, 1974 and the order was to take effect in April, that is to say, after he had completed the requisite age.

The Grounds

3. Counsel for the appellant attacked the validity of the order Exhibit A under two heads. He first contended that Rules 5.32 of the relevant rules was quoted in the order but, in the counter affidavit of the State in this Court it was mentioned that the order was not passed under that rule. The second ground pressed was one of mala fides of the second respondent, the Commissioner of Excise, at whose instance, according to the appellant, entries of bad record were made in his service sheets.

4. We may examine the first ground briefly. True that the State Government has shown remissness in denying that the main order was passed under Rule 5.32. On a closer and comprehensive study of the papers it is apparent that what went was meant was that Government passed the order under Rule 5.32 (c) and not under Rule 5.32 (b). This carelessness cannot certainly found an argument of invalidate the order. It is perfectly plain that there are two courses for Government to compulsorily

retire an officer. The first one under Rule 5.32 (b) has to be invoked when the officer 'has not attained the age of 55 years'. For exercising this power there are certain conditions mentioned in the note to the said sub-rule. The other provision is Rule 5.32 (c) which applies when a government employee 'is retired by the appointing authority on or after he attains the age of 55 years'. In this case only three months' notice is called for and no other pre-conditions have to be fulfilled. However, when the notice is given under this sub-rule before the age of 55 years is attained, the order shall take effect 'from a date not earlier than the date on which the age of 55 years is attained'.

5. The confusion which has encouraged the argument of the appellant stems from the counter-affidavit of the State and we do not permit ourselves to be misled by it. It is obvious that the order in question relies upon Rule 5.32 (c) although what is quoted is Rule 5.32 simpliciter. The officer was to have attained the age of 55 years before the three months' period was to expire and so it was perfectly in order to use that power. We are not prepared to say that there is any blemish against the government servant relied upon by the State in retiring him. In those circumstances the order is good and is supportable on the strength of Rule 5.32 (c). We mas mention that although Rule 5.32 (b) in the note attached to it expressly states that the right thereunder will not be exercised except when it is in the public interest to dispense with the further services of a government employee, it is clear that all public power whether it be under Rule 5.32 (b) or (c) or under any other provision, has to be exercised not for the private purposes of a higher official or even a minister. It has to be and shall be exercised only for furtherance of public interest. The private appetite of the repository of a public power can never be satisfied without the order being castigated and voided as in excess of the legitimate purpose of the power. There is nothing to suggest that in the present case any such mischief has been perpetrated.

6. The second point is equally devoid of force. We have been taken through the record and Counsel has been unsuccessful in making out a case of mala fides on the part of the second respondent. Indeed, in the High Court, the latter had sworn an affidavit denying mala fides in the light of which the feeble materials vaguely referred to for building up a case of male fides totally fails.

7. The appeal therefore fails. It was mentioned at the Bar that although two years had passed since retirement of the appellant some arrears of salary and his pension remain to be paid. It is an unfortunate dereliction of duty on the part of the persons in charge to withhold payment of salary or fail to finalize pension papers expeditiously, particularly when an officer is retired and finds himself in sudden deprivation of his monthly resources. Any Government, compassionate and welfareoriented, will not leave its public servants on retirement in the wintry cold. We dare say that while it is not a matter which arises for decision, the State will examine without any delay the question of the payment of arrears of salary, if any, and the finalisation and disbursement of the pension to the appellant.

8. The State, to an extent, has been negligent in the preparation of its counter-affidavit and in the lack of precision in quoting the specific sub-rule in the order of retirement. This has lent some encouragement to this fruitless litigation. In the circumstances, we dismiss the appeal but without costs.

</html