

State of Haryana

Vs

Inder Prakash Anand H. C. S. and others

Civil Appeal No. 2454 of 1972

(CJI A.N. Ray, R.S. Sarkaria, P.N. Shinghal, Jaswant Singh JJ)

07.05.1976

JUDGMENT

RAY, C.J. -

1. This appeal is by certificate from the judgment dated November 18, 1971 of the Punjab and Haryana High Court.
2. The respondent joined the Punjab Civil Service, (Executive Branch) in November, 1954. He was selected for the Judicial Branch of the Punjab Civil Service on or about May 1, 1965. On November 15, 1968 he was promoted as officiating Additional District and Sessions Judge.
3. The respondent was due to attain the age of 55 years on February 24, 1971. His case was referred to the High Court for their recommendation whether the respondent should retire at the age of 55 years or he should be retained in service till the age of 58 years which is the prescribed age of superannuation under the Punjab Civil Service Rules.
4. The High Court was of opinion that the work of the respondent as Additional District and Sessions Judge was not satisfactory. The High Court was not inclined to recommend the respondent's continuance in Superior Judicial Service up to the age of 58 years. The High Court recommended that the respondent should be reverted to his substantive post of Senior Subordinate Judge/Chief Judicial Magistrate and that he might be allowed to continue in service till the age of 58 years.
5. The State Government agreed with the recommendation for reverting the respondent from the post of Additional District and Sessions Judge to the Senior Subordinate Judge/Chief Judicial Magistrate. With regard to the retention of the respondent in service up to the age of 58 years the State again asked the High Court to consider whether in view of the respondent's work as Additional District and Sessions Judge, Hissar having been found to be unsatisfactory, the respondent should be retained at all in service beyond the age of 55 years. The State Government suggested that it was in public interest to retire the respondent at the age of 55 years. The High Court did not agree with the suggestion. By letter dated August 16, 1971 the High Court reiterated that the respondent might continue in service upto the age of 58 years the State Government did not agree with the recommendation of the High Court and decided to retire the respondent under Rule 5.32(c) of the Punjab Civil Rules. A notice was issued to the respondent on August 20, 1971 giving him notice of three months on the expiry of which he would retire from service.
6. The respondent filed a writ petition in the High Court impeaching the notice dated August 20,

1971. The matter was heard by a Bench of three learned Judges. The order retiring the respondent from service was quashed by the majority opinion.

7. The question is whether the State Government could compulsorily retire a senior Subordinate Judge-cum-Chief Judicial Magistrate under Rule 5.32(c) of the Punjab Civil Service Rules against the recommendation of the High Court.

8. This Court in *Shyam Lal v. State of Uttar Pradesh* ((1955) 1 SCR 26 : AIR 1954 SC 369) held that compulsory retirement does not involve stigma or any implication of misbehavior or incapacity. In *Dalip Singh v. State of Punjab* ((1961) 1 SCR 88 : AIR 1960 SC 1305) this Court said that in order to find out whether an order of compulsory retirement is or is not by way of punishment, is to find out whether a charge of imputation against the officer is made the basis of the exercise of power and second whether the officer is deprived of any benefit already earned.

9. In the recent decision in *Tara Singh v. State of Rajasthan* ((1975) 4 SCC 86 : 1975 SCC (L&S) 222) this Court held that compulsory retirement is not a punishment because the officer does not lose the terminal benefits already earned by him. In *B. Venkateswararao Naidu v. Union of India* ((1973) 1 SCC 361 : 1973 SCC (L&S) 202) this Court held that compulsory retirement does not involve civil consequences.

10. It therefore, follows that compulsory retirement simpliciter does not amount to dismissal or removal or reduction in rank under Article 311 or under the Service Rules. It is in fact compulsory retirement in accordance with the terms and conditions of service.

11. The decisions of this Court in *State of West Bengal v. Nripendra Nath Bagchi* ((1966) 1 SCR 771 : AIR 1966 SC 447 : (1968) 1 LLJ 270) and *High Court of Punjab and Haryana v. State of Haryana (sub Nom Narendra Singh Rao)* ((1975) 3 SCR 365 : (1975) 1 SCC 843 : 1975 SCC (L&S) 229) are that Article 235 vests in the High Court control over District Courts and courts subordinate thereto. The Governor appoints and dismisses and removes judicial officers. Control which is vested in the High Court is complete control subject only to the power of the Governor in the matter of appointment including dismissal, removal, reduction in rank and the initial posting and of the initial promotion to District Judges. There is nothing in Article 235 to restrict the control of the High Court in respect of judges other than District Judges in any manner. Article 311 has taken away the power of dismissal or removal or reduction in rank from the High Court and the Governor has been given that special power referred to in Article 311(3).

12. This Court in *Shamsher Singh v. State of Punjab* ((1975) 1 SCR 814 : (1974) 2 SCC 831 : 1974 SCC (L&S) 550) held that when a case is not of removal or dismissal or reduction in rank any order in respect of exercise of control over the judicial officers is by the High Court and no other authority. There cannot be dual control. If State Government is to have the power of deciding whether a judicial officer should be retained in service after attaining the age of 55 years up to the age of 58 years that will seriously affect the independence of the Judiciary and take away the control vested in the High Court. Compulsory retirement is neither suspension nor dismissal nor removal nor reduction in rank. It is unsound to contend that the Governor and not the High Court has the power to retire a judicial officer compulsorily under Section 14 of the Punjab General Clauses Act. The suggestion that the High Court recommends and the State Government is to implement the recommendation in the matter of compulsory retirement is to destroy the control of the High Court.

13. The Punjab Civil Service Rules in Rule 3.26(a) deals with compulsory retirement at the age of

58. Rule 5.32(c) deals with retirement at the age of 55.

14. Two relevant rules in the Punjab Civil Service Rules in the present case are these. Rule 3.26(a) states that the date of compulsory retirement of a government servant other than a Class IV government servant is the date on which he attains the age of 58. Rule 5.32(c) states that a retiring pension is granted to a government servant who is retired by the appointing authority on or after he attains the age of 55 years by giving him not less than three months' notice.

15. This Court in Bagchi's case said that control vested in the High Court is over the conduct and discipline of the members of the Judicial Service. Orders passed in disciplinary jurisdiction by the High Court are subject to an appeal as provided in the conditions of service. The High Court further deals with members of the Judicial Service in accordance with the rules and conditions of service. This Court in Bagchi's case said that the word "deal" points to disciplinary and not merely administrative jurisdiction. The order terminating the appointment of a member of the service otherwise than upon his reaching the age fixed for superannuation will be passed by the State Government on the recommendation of the High Court. This is because the High Court is not the authority for appointing, removing, reducing the rank or terminating the service.

16. It is true that the fixation of the age of superannuation is the right of the State Government. The curtailment of that period under rule governing the conditions of service is a matter pertaining to disciplinary control as well as administrative control. Disciplinary control means not merely jurisdiction to award punishment for misconduct. It also embraces the power to determine whether the record of a member of the service is satisfactory or not so as to entitle him to continue in service for the full term till he attains the age of superannuation. Administrative, judicial and disciplinary control over members of the Judicial Service is vested solely in the High Court. Premature retirement is made in the exercise of administrative and disciplinary jurisdiction. It is administrative because it is decided in public interest to retire him prematurely. It is disciplinary because the decision was taken that he does not deserve to continue in service up to the normal age of superannuation and that it is in the public interest to do so.

17. This Court held in *State of Assam v. Ranga Mahammad* ((1967) 1 SCR 454 : AIR 1967 SC 903 : (1968) 1 LLJ 282) that the Governor under Article 233 is concerned with the appointment, promotion and posting to the cadre of District Judges but not with the transfer of District Judges already appointed or promoted and posted to the cadre. This Court has held in the Punjab and Haryana case (*supra*) that the confirmation of District Judges is to be done by the High Court because it falls within the control vested in the High Court. The High Court is acquainted with the capacity of work of the members of the service. In the Punjab and Haryana case this Court pointed out that if after the appointment of District Judge till he is confirmed the State is allowed to control the District Judge there will be dual control. This is not the meaning of "control" in our Constitution.

18. The control vested in the High Court is that if the High Court is of opinion that a particular judicial officer is not fit to be retained in service the High Court will communicate that to the Governor because the Governor is the authority to dismiss, remove, reduce in rank or terminate the appointment. In such cases it is the contemplation in the Constitution that the Governor as the head of the State will act in harmony with the recommendation of the High Court. If the recommendation of the High Court is not held to be binding on the State consequences will be unfortunate. It is in public interest that the State will accept the recommendation of the High Court. The vesting of complete control over the subordinate Judiciary in the High Court leads to this that the decision of

the High Court in matters within its jurisdiction will bind the State. "The Government will act on the recommendation of the High Court. That is the broad basis of Article 235." See Shamsher Singh's case at page 841 [SCC p. 855 : SCC (L&S) p. 574].

19. In the present case, the order of the State retiring the respondent from service after the expiry of three months from the date of the order August 20, 1971 has been rightly quashed by the High Court. The High Court did not make any recommendation to that effect.

20. The appeal is, therefore, dismissed with costs.

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