

Mayongbam Radhamohan Singh

Vs

The Chief Commissioner (Administrator), Manipur and Others

Civil Appeal No. 2022 of 1969

(CJI A.N. Ray, M.H. Beg, P.N. Shinghal JJ)

01.11.1976

JUDGMENT

RAY, C.J. -

1. This appeal is by certificate from the judgment dated October 26, 1968 of the Judicial Commissioner for Manipur.
2. The appellant by a writ petition challenged the order of respondent 1 by which the appellant was compulsorily retired.
3. The Judicial Commissioner dismissed the writ petition of the appellant.
4. The appellant was born on January 1, 1911. He joined the erstwhile State of Manipur as a junior clerk in 1935. Though he was not a law graduate, he rose to become a permanent Puisne Judge in Manipur State Chief Court with effect from October 5, 1949. After the Government of India took over the administration of Manipur the appellant was appointed as a Subordinate Judge with effect from January 25, 1950 on a temporary basis. On the enactment of Manipur Courts Act, 1955 the court of subordinate Judge was established on March 1, 1956. The appellant was appointed as the judge of that subordinate Court from that date.
5. The appellant did not earn good reports from superior officers. He was reverted to the post of Subordinate Judge.
6. The appellant was served with a notice dated June 30, 1966 that he was required to retire from government service with effect from October 1, 1966 in pursuance of the directions of the President in paragraph 6 of the Government of India Decision No. 23 noted below Fundamental Rule 56.
7. The above Decision No. 23 was contained in the memorandum of the Government of India, Ministry of Home Affairs dated November 30, 1962. The decision came into force on December 1, 1962. Under paragraph 6 of the decision the appointing authority was empowered to require a government servant to retire after he had attained the age of 55 years on three months' notice without assigning any reason. This provision was really intended to retire an officer who had completed 30 years' qualifying service. The purpose of the provision was to weed out unsuitable employees after they attained the age of 55 years.
8. The Government Decision No. 23 below Fundamental Rule 56 which came into force on December 1, 1962 as aforesaid was substituted by new rule on July 21, 1965. The new rule provided

that if the appropriate authority is of opinion that it is public interest to do so, he has the absolute right to retire any government servant after he attained the age of 55 years with notice of not less than three months.

9. The appellant on receiving the notice for retirement prayed for his being retained in service after the age of 55 years in public interest. The representation of the appellant was rejected. It is in this background that the appellant filed the writ petition.

10. The principal contention of the appellant was that the impugned order of compulsory retirement was null and void ab initio because the Fundamental Rule 56 at the material time contained no reservation or any power in the appointing authority to retire him without any reason on three month's notice after the age of 55 years. Emphasis was placed by counsel on the fact that the impugned order was made expressly under the authority of Government of India Decision No. 23 below Fundamental Rule 56 and this decision was not subsisting at the time of the impugned notice. It was also contended that the government decision was not incorporated in Fundamental Rule 56 and therefore it amounted to a mere executive instruction and not a rule within the meaning of Article 309. The appellant also contended that in substance the compulsory retirement was removal under Article 311.

11. Compulsory retirement is not a punishment. There is no stigma in compulsory retirement. See *Tara Singh v. State of Rajasthan* ((1975) 3 SCR 1002 : (1975) 4 SCC 86 : 1975 SCC (L&S) 222).

12. It is also the view of this Court that if power can be traced to valid power the fact that the power is purported to have been exercised under non-existing power does not invalidate the exercise of the power. See *L. Hazari Mal Kuthiala v. Income-tax Officer, Special Circle, Ambala Cantt* (41 ITR 12 : (1961) 1 SCR 892 : AIR 1961 SC 200) and *Hukamchand Mills Ltd. v. State of Madhya Pradesh* (52 ITR 583 : (1964) 6 SCR 857 : AIR 1964 SC 1329).

13. The Government case is that the Chief Commissioner by reason of the order of the President contained in Government of India, Ministry of Home Affairs Memorandum No. 33/18/62-ESTS(A) dated November 30, 1962, followed by Fundamental (Sixth Amendment) Rules, 1965 had the power to retire the government servant without assigning any reason if he was of opinion that it was in the public interest to do so.

14. The relevant Fundamental Rule 56(j) is as follows :

Notwithstanding anything contained in this Rule, the appropriate authority shall, if it is of the opinion that it is in the public interest to do so, have the absolute right to retire any Government servant after he has attained the age of 55 years by giving him notice of not less than three months in writing.

15. The affidavit evidence is that the order of compulsory retirement was made in public interest. The absence of recital in the order of compulsory retirement that it is made in public interest is not fatal as long as power to make compulsory retirement in public interest is there and the power in fact is shown in the facts and circumstances of the case to have been exercised in public interest.

16. In *R. L. Butail v. Union of India* ((1971) 2 SCR 55 : (1970) 2 SCC 876), this Court considered Fundamental Rule 56(j) and the circumstances under which compulsory retirement can be made in public interest. It is true that in Butail's case, the notice in terms of Fundamental Rule 56(j) was served, namely that the order of compulsory retirement was made in public interest.

17. A comparison between Paragraph 6 of Decision No. 23 below Fundamental Rule 56 and Fundamental Rule 56(j) of amended F.R. 56 shows that the two deal with the identical matter of compulsory retirement. The common features are that the government servant may be asked to retire after the age of 55 years. Second, such retirement is ordered to be made by giving the government servant a notice of three months. Third, under the amended Fundamental Rule 56(j) the power is exercised only if the appropriate authority is of opinion that it is in public interest to do so.

18. The Government affidavit is that the Chief Commissioner made the order because he was of opinion that it was in public interest to do so. Whether the order is correct or not is not to be gone into by the court. See *Union of India v. J. N. Sinha* ((1971) 1 SCR 791 : (1970) 1 SCC 458).

19. In the present case, counsel for the appellant contended that it did not appear in the order that there was any application of mind that the order was being made in public interest. In *Butail's* case it was said that the plea that the appropriate authority had not applied its mind failed there in view of the clear averments made in that regard in the affidavit and no reason was adequately shown to discard those statements as untrue or otherwise unbelievable. In the present case, the affidavit evidence establishes that the Commissioner exercised his powers because he was of the opinion that it was in public interest to make the order of compulsory retirement. The order in the present case is made bona fide and nothing is in the record to show that the affidavit is unbelievable.

20. For the foregoing reasons the appeal fails and is dismissed with no order as to costs.

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