Dinesh Chandra Sangma

Vs

State of Assam and Others

Civil Appeal No. 1199 of 1977

(P. K. Goswami, P. N. Shinghal, Jaswant, Singh JJ)

05.10.1977

JUDGMENT

GOSWAMI, J. -

1. The appellant, Shri Dinesh Chandra Sangma, was a District and Sessions Judge at Dibrugarh in the State of Assam. He attained the age of 50 years on February 29, 1976. After serving for about twenty years under the Government, on account of certain 'domestic troubles', he did not want to continue in service after his attainment of 50 years of age. The appellant, therefore, served a notice on the Government under Fundamental Rule 56(c) as amended by the Governor of Assam under Article 309 of the Constitution by a notification dated July 22, 1975. By this notice the appellant formally intimated to the Government that he "propose(d) to voluntarily retire from the service" and requested the Government to treat that as a formal notice under F.R. 56. The appellant also indicated in his letter that although he served the requisite three months' notice he proposed to make over charge by the afternoon of August 2, 1976. On July 1, 1976, the Governor of Assam by a notification of that date was "pleased to allow Shri D.C. Sangma to retire from this State Government Service with effect from August 2, 1976 (afternoon)". The High Court also allowed the appellant to go on one month's leave preparatory to retirement with effect from July 2, 1976, on which date he relinquished his charge of office.

2. Meanwhile there were some quick developments at the Government's end. The Government sought to retrace its steps and passed an order on July 28, 1976, countermanding its earlier order of July 1, 1976, allowing him to retire from service with effect from August 2, 1976. Accordingly on July 31, 1976, the High Court, also, squaring with the Government's order of July 28, 1976, transferred the appellant from Dibrugarh to Dhubri and asked him to join there "immediately after the expiry of his leave".

3. The appellant did not join at Dhubri as ordered by the High Court since, according to him, he voluntarily retired from service on and from August 2, 1976, under Rule 56(c) of the Fundamental Rules.

4. The appellant made several representations to the High Court and to the Government without success. While the Government by a letter dated December 4, 1976, declined to recall the order of revocation, the High Court by a letter of December 7, 1976, directed the appellant to join his post at Dhubri within ten days on pain of disciplinary action. The appellant was thus obliged to approach the High Court on the judicial side under Article 226 of the Constitution for a writ of certiorari to quash the order of Government of July 28, 1976, and the High Court's order dated July 31, 1976, passed on the administrative side.

5. The High Court dismissed the appellant's application holding that F.R. 56(c) "is subject to compliance with clause (3) of Rule 119 of DISI Rules, 1971". Since the Government revoked the earlier permission granted by it to the appellant to retire from service, the appellant, according to the High Court, could not voluntarily retire and his refusal to join the service amounted to abandonment of service within the meaning of Rule 119(3) read with Explanation 2 of the Defence and Internal Security of India Rules. It is in this view that the High Court held that the Government was competent to revoke its order and thus to continue the appellant in service.

6. It is submitted by Mr. Niren De on behalf of the State that Rule 119 of the Defence and Internal Security of India Rules, 1971 (briefly the DISI Rules) is super-imposed on F.R. 56(c). It is, therefore, impermissible in law for a Government servant to voluntarily retire under F.R. 56(c) without written permission from the Government, says Counsel. Mr. De further submits that since the effective date of retirement was August 2, 1976, it was open to the Government to revoke the permission earlier accorded to the appellant to retire voluntarily from service on his attainment of the age of 50 years by giving three months' notice to the Government. He concedes that but for Rule 119 of the DISI Rules there would be no necessity for any permission or consent of the Government in that behalf.

7. Before we proceed further we may read F.R. 56 as amended :

> F.R. 56. (a) The date of compulsory retirement of a Government servant is the date on which he attains the age of 55 years. He may be retained in service after this age with sanction of the State Government on public grounds which must be recorded in writing, and proposals for the retention of a Government servant in service after this age should not be made except in very special circumstances.
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> (b) Notwithstanding anything contained in these rules the appropriate authority may, if he is of the opinion that it is in the public interest to do so, retire 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, after he has attained fifty years of age or has completed 25 years of service, whichever is earlier.
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> (c) Any Government servant may, be giving notice of not less than three months in writing to the appropriate authority, retire from service after he has attained the age of fifty years or has competed 25 years of service, whichever is earlier.

It is clear from the above that under F.R. 56(b) the Government may retire a Government servant in the public interest by giving him three months' notice in writing or three months' pay and allowances in lieu thereof after he has attained the age of fifty years or has completed 25 years of service, whichever is earlier.

8. As is well known Government servants hold officer during the pleasure of the President or the Governor, as the case may be, under Article 310 of the Constitution. However, the pleasure doctrine under Article 310 is limited by Article 311(2). It is clear that the services of a permanent Government servant cannot be terminated except in accordance with the rules made under Article 309 subject to Article 311(2) of the Constitution and the Fundamental Rights. It is also well-settled that even a temporary Government servant or a probationer cannot be dismissed or removed or reduced in rank except in accordance with Article 311(2). The above doctrine of pleasure is invoked by the Government in the public interest after a Government servant attains the age of 50 years or

has completed 25 years of service. This is constitutionally permissible as compulsory termination of service under F.R. 56(b) does not amount to removal or dismissal by way of punishment. While the Government reserves its right to compulsorily retire a Government servant, even against his wish, there is a corresponding right of the Government servant under F.R. 56(c) to voluntarily retire from service by giving the Government three months' notice in writing. There is no question of acceptance of the request for voluntary retirement by the Government when the Government servant exercises his right under F.R. 56(c). Mr. Niren De is therefore right in conceding this position.

9. We have, therefore, next to turn to Rule 119, of the DISI Rules which is the sheet-anchor of the respondents. Rule 119, so far as material, reads as follows :

> (3) Any person engaged in any employment or class of employment to which this rule applies, who -
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> # (a) * * *##
>
> (b) without reasonable excuse abandons any such employment or absents himself from work, or
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> # (c) * * *##

shall be deemed to have contravened this rule.

Explanation 2. - A person abandons his employment within the meaning of clause (b), who, notwithstanding that it is an express or implied term, of his contract of employment that he may terminate his employment on giving notice to his employer of his intention to do so, so terminates his employment without the previous consent of his employer.

Clause (5) of Rule 119 may also be read :

> If any person contravenes any provisions of this rule or of any order made under this rule, he shall be punishable, without prejudice to any action which may be taken against him under any other law for the time being in force, with imprisonment for a term which may extend to one year, or with fine, or with both.

10. Mr. Niren De drew our attention to Section 37 of the Defence and Internal Security of India Act, 1971, which provides that "the provisions of this Act or any rule made thereunder or any order made under any such rule shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act". Before Section 37 can be invoked it must be shown that there is something inconsistent between F.R. 56(c) and Rule 119 of DISI Rules. The important question is whether Explanation 2 to Rule 119, which is relied upon by the respondents, is at all attracted to the instant case. In other words, briefly put, does a Government servant in voluntarily retiring under F.R. 56(c) terminate his employment on the basis of express or implied term of his contract of employment ?

11. Mr. Niren De submits that Article 310(2) supports his submission that the relationship between the Government servant and the Government is contractual. Sub-article (2) of Article 310 provides that notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor of the State, any contract under

which a person, not being a member of a defence service or of an all-India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor, as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of composition, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

The above is a special provision which deals with a special situation where a contract is entered into between the Government and a person appointed under the Constitution to hold a civil post. But simply because there may be, in a give case, a contractual employment, as envisaged under Article 310(2) of the Constitution, the relationship of all other Government servant, as a class, and the Government, cannot be said to be contractual. It is well-settled that except in the case of a person who has been appointed under a written contract, employment under the Government is a matter of status and not of contract even though it may be said to have started, initially, by a contract in the sense that the offer of appointment is accepted by the employee.

12. The rubric of Rule 119 of DISI Rules is "essential services". Indeed this rule occupies a place in Part XII of the DISI Rules with the title "Essential Supplies and Work". Sub-rule (1) of Rule 119 applies to three broad categories of employment, namely, (1) employment under the Central Government, (2) employment under the State Government, and (3) employments declared by the Central and State Governments as essential. The third category may include even private employments which may be declared to be essential for the purpose of securing the objects specified in sub-rule (1) of Rule 119. It may be sufficient, here, to refer to the notification of the Central Government S.O. 206(E) dated March 25, 1974 whereby "any employment under the Hindustan Construction Company Limited in the Haldia Dock Project" was declared by the Central Government an essential employment for the purpose of Rule 119. It is because of the above mentioned third category of employment that Explanation 2 was considered necessary so as to extend the meaning of abandonment of employment by including the persons who by the terms of their contract could terminate their employment by notice. It goes without saying that in many employments, whether of private limited companies or public companies, contracts of employment are executed containing a term for termination of employment by notice. Such cases of contractual employment are different from those of Government employees whose employment is a matter of status and not of ordinary contract. The conditions of service of a Government servant are regulated by statute or statutory rules made under Article 309 of the Constitution. This Court observed in Roshan Lal Tandon v. Union of India [(1968) 1 SCR 185.] as follows :

> It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties.

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> .... it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal

> relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest.

As Salmond and Williams put it

In such contracts as those of service the tendency in modern times is to withdraw the matter more from the domain of contract into that of status. [Salmond and Willams on Contracts, 2nd edition, p. 12.]

13. F.R. 56 is one of the statutory rules which binds the Government as well as the Government servant. The condition of service which is enivsaged in Rule 56(c) giving an option in absolute terms to a Government servant to voluntarily retire with three months' previous notice, after he reaches 50 years of age or has completed 25 years of service, cannot therefore be equated with a contract of employment as envisaged in Explanation 2 to Rule 119.

14. The field occupied by F.R. 56 is left untrammelled by Explanation 2 to Rule 119. The words "his contract of employment" in Explanation 2 are clinching on the point.

15. It is cardinal rule of construction that no words should be considered redundant or surplus in interpreting the provisions of a statute or a rule. Explanation 2 does not say an express or implied term of employment, but refers to "an express or implied term of his contract of employment". If the language in Explanation 2 were different, namely, an express or implied term of employment, instead of "contract of employment", the position would have been different. Explanation 2 in Rule 119, albeit, a penal rule, takes care to use the words "contract of employment" and necessarily excludes the two categories of employment, namely, the one under the Central Government and the other under the State Government. Explanation 2 only takes in its sweep the third category of employment where the relationship between the employer and the employee is one governed by a contract of employment. Since F.R. 56 is a statutory condition of service, which operates in law, without reference to a contract of employment, there is nothing inconsistent between Rule 119 and F.R. 56.

16. The appellant has voluntarily retired by three months' notice, not in accordance with an express or implied term of his contract of employment, but in pursuance of a statutory rule. Explanation 2 to Rule 119 makes no mention of retirement under a statutory rule and hence the same is clearly out of the way. The submission that Rule 119 is superimposed on F.R. 56 has no force in this case.

17. The High Court committed an error of law holding that consent of the Government was necessary to give legal effect to the voluntary retirement of the appellant under F.R. 56(c). Since the conditions of F.R. 56(c) are fulfilled in the instant case, the appellant must be held to have lawfully retired as notified by him with effect from August 2, 1976.

18. In this view of the matter the permission accorded by the Government to retire and its subsequent order of July 28, 1976, revoking the permission, are ineffectual in law and are therefore null and void. Since the appellant voluntarily retired in accordance with F.R. 56(c), the High Court's order of July 31, 1976, on the administrative side, transferring him to Dhubri is invalid and is hereby quashed. In the result the judgment and order of the High Court of March 4, 1977, are set aside and the writ petition is allowed. The appeal is allowed with costs in this Court as well as in the

High Court.

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