Swami Saran Saksena

Vs

State of Uttar Pradesh

Civil Appeal No. 1296 of 1978

(R. S. Pathak, V. R. Krishna Iyer JJ)

11.10.1979

JUDGMENT

PATHAK, J. –

1. This appeal by special leave has been preferred by the appellant against the order of the Allahabad High Court dismissing his writ petition challenging an order or compulsory retirement.

2. The appellant was appointed by the Government of Uttar Pradesh in November, 1954 as a temporary judicial officer. The state Government terminated his services in December, 1962 but, on representation made by him, the termination order was withdrawn on January 16, 1963. The appellant re-joined service and resumed his duties. However, by an order dated May 18, 1966, his services were terminated again. On a writ petition filed by him in the Allahabad High Court, the termination order was quashed by the High Court on August 8, 1969. The appellant was reinstated with the benefit of continuity of service. His troubles did not end there. Although he had served for about fifteen years, several representations made by him to the State Government for his confirmation met with no response, and he continued to remain a temporary government servant. Meanwhile, in June, 1973 he was allowed to cross the second efficiency bar. But on August 2, 1974 the State Government made an order compulsorily retiring the appellant from service. The order purports to have been made in exercise of the powers mentioned in Note 1 to Article 465-A of the Civil Service Regulations, which provide for compulsory retirement of a temporary Government servant on attaining the age of 50 years. The appellant had reached the age of 54 years. It was recited in the order that the Governor on being satisfied that it was not in the public interest to retire from service with immediate effect, with three months' pay in lieu of notice. The order was assailed by the appellant by a writ petition, and a learned single Judge of the High Court allowed the writ petition on September 17, 1975 and quashing the order the declared that there appellant continued to remain in service. The learned single Judge held that the appellant was not covered by the terms of Article 465-A and as regards Article 465, which was invoked in the alternative in support of the impugned order, he took the view that as the appellant was a temporary Government servant only and not entitled to pension, Article 465 also did not apply. The State of Uttar Pradesh appealed, and a Division bench of the High Court has, by its recorder dated May 7, 1976 allowed the appeal and dismissed the writ petition. The division bench confirmed that the appellant was a temporary judicial officer, Note 1 to Article 465-A could not be pressed into service by the State Government for retiring him, but it maintained the order with reference to Note 1 to Article 465 holding that the provision entitled the State Government to retire any government servant attaining the age of 50 years on three months' notice or pay in lieu thereof. It observed that the power of the State Government to compulsorily on his eligibility for pension. It was of the view that the appellant, although a temporary Government servant, could be compulsorily retired under Note 1 to Article

465. The further contention of the appellant was also rejected that the impugned order was arbitrary inasmuch as he had been allowed to cross the second efficiency bar in June, 1973, which could only have been if his work showed distinct ability and his integrity was beyond doubt and, he urged, nothing had taken place since to justify the order of compulsory retirement passed shortly thereafter.

3. Several contentions have been raised in this appeal by the appellant, who appears in person. In our judgment, one of them suffices to dispose of the appeal. The contention which has found favour with us is that on a perusal of the material on the record and having regard to the entries in the personal file and character roll of the appellant, it is not possible reasonably to come to the conclusion that the compulsory retirement of the appellant was called for. This conclusion follows inevitably from the particular circumstance, among others, that the appellant was found worthy of being permitted to cross the second efficiency bar only a few months before. Ordinarily, the Court does not interfere with the judgment of the relevant authority on the point whether it is in the public interest to compulsorily retire a government servant. And we have been even more reluctant to reach the conclusion were have, when the impugned order of compulsory retirement was made on the recommendation of the High Court itself. But on the material before us we are unable to reconcile the apparent contradiction that although for the purpose of crossing the second efficiency bar the appellant was considered to have worked with distinct ability and with integrity beyond question, yet within a few months thereafter he was found so unfit as to deserve compulsory retirement. The entries in between in the records pertaining to the appellant need to be examined and appraised in that context. There is no evidence to show that suddenly there was such deterioration in the quality of the appellant's work or integrity that he deserved to be compulsorily retired. For all these reasons, we are of opinion that the order of compulsory retirement should be quashed. The appellant will be deemed to have continued in service on the date of the impugned order.

4. The appellant pressed us vehemently to make an order directing his confirmation and pointed out that after he was compulsorily retired as many as 12 temporary judicial office's were considered for confirmation. We consider that it would not be right to make the direction prayed for by the appellant. Whether he should be confirmed or not is a matter for the relevant authority. That is a matter to which the authority has yet to apply its mind, and in the circumstances it is not proper that we should pre-empt its judgment.

5. The appeal is allowed and the order dated May 7, 1976 of the division Bench of the High Court is set aside. The order of the learned single Judge quashing the impugned order of the State Government is restored. The respondent will pay the costs of this appeal to the appellant.

</html