

Union of India and Another

Vs

K. R. Tahiliani

And

Union of India and Others

Vs

M. M. Singh

Civil Appeals Nos. 850 of 1978, Nos. 2008 of 1978

(V. S. Krishna Iyer, A. D. Koshal JJ)

26.02.1980

JUDGMENT

KRISHNA IYER, J. –

1. Two government servants have been retired from service in exercise of the powers vested in the Central Government by Rule 56(j)(i) of the Fundamental Rules. They have successfully challenged compulsory retirement by petitions under Article 226 of the Constitution and the Union of India has come up in appeal to this Court by special leave. The sole question to be decided is whether a government servant officiating in a Class I or Class II service or post can be retired compulsorily by exercising the power under Rule 56(j)(i) after he has attained the age of 50 years.

2. The biographical details of these two officials in government service need not detain us because the facts are admitted and the only point at issue is whether Rule 56(j)(i) will apply to a government servant who is only officiating in a Class I or Class II post or service. We agree with the High Court that on a correct interpretation of that rule, an officiating had will not be caught in the claws of the compulsory retirement provision. The reasons may briefly be stated by us now although these have been elaborately set out by the High Court (in the Delhi case (ILR (1978) 1 Del 107)).

3. We may extract the relevant part of the rule at this stage :

56. (j) Notwithstanding anything contained in this rule the appropriate authority shall if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any 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;

(i) if he is in Class I or Class II service or post and had entered government service before attaining the age of thirty-five years after he has attained the age of fifty years;

4. A government servant ordinarily holds service at the pleasure of the State but in our Republic where the rule of law prevails even pleasure is canalised by rules. Viewed from this perspective

security of tenure is a value in itself. In government jurisprudence it is, however, open to the State to make rules under the proviso to Article 309; and Rule 56(j)(i) is one such rule. Assuming as we do, the validity of the said rule, the question of construction causes little difficulty once the scheme of the proviso is understood correctly.

5. An officiating hand has no right to the post and is perhaps a fleeting bird who may have to go back to the substantive post from which he has been promoted on an officiating basis. What is more to the point, a person who has been appointed de novo may be in his service on an officiating basis or on a temporary basis and it is obvious that he has no right to the post and cannot be strictly said to be in that service or post as a member of that service. In short an officiating government servant does not really belong to Class I or Class II service until he acquires a right thereon. Even viewed clearly and meticulously, the structure of the clause, namely, "if he is in Class I or Class II service or post", emphasises the nature of the service or post vis-a-vis the government servant concerned. We need not go into the semantic shapes, lexical niceties or linguistic nuances but only go through the meaning and purpose of the provision. When a government servant belonging to a Class I or Class II service or post on a regular basis has to be retired compulsorily, Rule 56(j)(i) comes to the rescue of the government. But if he is only a temporary hand he has no right to the post and can always be reverted to the post, if any, on which he has a lien. Similar is the position of an officiating hand. Thus, we have reached an inevitable conclusion that Rule 56(j)(i) is meant to cover only those who are in a post on a regular basis i.e., in a substantive capacity, and not on an officiating basis only.

6. In passing, we may make it clear that although the rule vests an absolute right in the appropriate authority to retire a government servant in public interest, yet absolutism and arbitrariness are contrary to the scheme of the rules we are concerned with. We, therefore, emphasise the fact that even while exercising power under Rule 56(j)(i) the State will take care not to act arbitrarily misguided by the absolute expression in the rule.

7. We dismiss the two appeals and vacate the stay in Civil Appeal No. 850 of 1978. In each case, costs quantified in a sum of Rs. 2,500 (two thousand and five hundred) will be paid. The counsel for the respondents in both the cases have generously agreed that Rs. 1,000 (one thousand), out of the said sum be paid over to the Free Legal Aid Society in each case.

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