

State of Maharashtra and Others

Vs

Shri V. S. Naik

Civil Appeal No. 2950 (N) of 1979

(N. L. Untwalia, P. N. Shinghal, V. D. tulzapurkar JJ)

06.05.1980

JUDGMENT

TULZAPURKAR J.

1. This appeal, by special leave, raises the short question whether the impugned notice-cum-order of compulsory premature retirement from service passed against the respondent was in strict compliance with Rule 8, note (1) of the Revised Pension Rules, 1950 ?

2. The respondent joined as a Clerk in the office of the Registrar of Firm on the June 1, 1943. On December 1, 1959 he was promoted to the post of a Senior Clerk. On March 17, 1970 he was promoted as Head Clerk and thereafter on completion of 30 year's of qualifying service under the Revised Pension Rules, 1950, by the impugned notice-cum-order dated October 3, 1975 he was retired from service with effect from January 10, 1976. The respondent made a representation on October 22, 1975 to the Industries Commissioner and Director of Industries, Bombay against the said compulsory retirement. On January 2, 1976 he received a reply from the Joint Secretary, Law and Justice Department, State of Maharashtra, stating that the government did not consider it necessary to review his case. On January 7, 1976 the respondent filed a writ petition in the Bombay High Court being Miscellaneous Petition 16 of 1976 challenging the said compulsory retirement on several grounds. The High Court by its Judgment and Order dated August 21, 1979, allowed the petition, struck down the impugned order and directed the State Government to reinstate the respondent in service as if he had never been retired from service with all the consequential benefit of such reinstatement. The High Court took the view that the said compulsory retirement of the respondent was not in strict compliance of Rule 8, note (1) of the Revised Pension Rules, 1950 in as much as the exact reasons for such retirement had not been recorded in writing as required by note (1) to the said Rule. Since the respondent's petition succeeded on this short ground the High Court did not deal with or discuss the other grounds on which the impugned retirement was challenged. The State Government has come up in appeal against the decision of the High Court.

3. Since the point raised in the appeal pertains to the question whether Rule 8, note (1) of the Revised Pension Rules, 1950 was strictly complied with while issuing the impugned notice-cum-order of compulsory retirement in the case of the respondent, it will be proper to set out the Rule together with note (1) which runs thus :

8. A government servant may retire from service any time after completing 30 years qualifying service provided that he shall give in this behalf notice in writing to the appropriate authority, at least three months before the date on which he wishes to retire. Government may also require a government servant to retire any time after he has completed 30 years' qualifying service provided

that the appropriate authority shall give in this behalf a notice in writing to the government servant at least three months before the date on which he is required to retire.

Note (1). - The authority competent to serve notice on government servants who have completed 30 years qualifying service should be the Head of Department in respect of government servants whom the Head of Departments or lower authorities are competent to appoint. The power of requiring government servants to retire should be restricted to retirement on public grounds, such as impairment of efficiency of a government servant against whom it is not desirable to make a formal charge of inefficiency or a government servant ceasing to be fully efficient but not to such a degree as to warrant his retirement on compassionate pension. The exact reason should be recorded in writing in each case.

4. It is an admitted position that the impugned notice-cum-order dated October 3, 1975 compulsorily retiring the respondent with effect from January 10, 1976 was issued under the aforesaid Rule 8 read with note (1). It is further admitted that the impugned notice-cum-order was served on the respondent giving him full three months before the date on which he was asked to retire. It is also not disputed that the said notice-cum-order merely stated that the respondent was being retired on public ground but no specific ground or reason was indicated therein but that is not the requirement of Rule 8 read with note (1). The only requirement of note (1) is that the exact reason should be recorded in writing in each case, presumably in the concerned file dealing with the servant or somewhere before notice under Rule 8 is issued. In other words, whenever challenged, the State Government must be in a position to produce before the court the recorded reasons for ordering the compulsory retirement of a government servant under the Rule. In the instant case, the State Government was directed by the court to give inspection to the respondent of all the relevant records and pursuant to the directions, the respondent took inspection of the relevant documents and it was found by him that on one of the documents the following noting had been made under dated September 24, 1975 :

We may serve a notice of retirement on Public grounds on Shri Naik, Head Clerk under Rule 8, note (1) of the Revised Pensions Rules, 1950, for impairment of his efficiency in the work assigned to him; vide I & LD file kept below.

# Sd/- Palande##

5. The question is whether the aforesaid noting made in the file of the respondent records reason for compulsorily retiring him in compliance of Rule 8 read with note (1) ? On construction of note (1) to Rule 8 the High Court has held that the public grounds are confined only two situations (reasons) specified therein and it has further taken the view that merely stating that the respondent may be retired on public grounds, namely, for impairment of his efficiency in the work assigned to him is not sufficient compliance with note (1) to Rule 8. According to the High Court note (1) requires that not only should it be recorded that the employee's efficiency was impaired but also that it was not desirable to make a formal charge of inefficiency against him and since the noting in question did not state so it fell short of the requirement of the Rule and, therefore, the impugned notice-cum-order was liable to be struck down. Counsel for the appellants have contended that on both the aspects the High Court's view is erroneous and unsustainable and we find considerable force in the contention.

6. In our view, the judgment of the High Court suffers from two infirmities which we will presently

indicate. Rule 8 confers power upon the State Government to retire a government servant at any time after he has completed 30 years of qualifying service for pension by serving upon him written notice at least 3 months before the date on which he is required to retire while note (1) indicates in what circumstances the said power could be exercised by the State Government and it says that the said power should be restricted to retirement of the employee

on public grounds, such as, impairment of efficiency of a government servant against whom it is not desirable to make a formal charge of inefficiency or a government servant ceasing to be fully efficient but not to such a degree as to warrant his retirement on compassionate pension.

User of the expression "such as" which follows the expression "public grounds" clearly shows that the two categories of public ground are illustrative and not exhaustive. It is difficult to appreciate how in face of such language the High Court could take the view (which has been expressed at not less than three places in the judgment) that the public grounds on which a government servant may be retired under the Rule were restricted only to two categories of cases specified therein and that there was no other category in which recourse to the power of compulsory retirement could be taken under this Rule. Similarly it is difficult to appreciate how the High Court has taken the view that where a government servant is sought to be retired for impairment of his efficiency under this Rule, an additional reason was required to be stated before passing the order of compulsory retirement, namely, that it was not desirable to make a formal charge of inefficiency against him. Note (1) clearly stated that the exact reason should be recorded in writing in each case and in the instance case the exact reason has been recorded in the noting made in the file concerning the respondent, namely, "for impairment of his efficiency in the work assigned to him". In other words, the impairment of efficiency of the respondent in the work assigned to him was the reason why he was sought to be compulsorily retired on public ground. Whether it was desirable or not to make a formal charge of inefficiency against him cannot be said to be any additional reason required to be stated. It would merely be an opinion formed by the authorities concerned that it was not desirable to level a formal charge of inefficiency against him; the formation of such opinion was not the reason for directing compulsory retirement. Presumably, after qualifying service of 30 years had been put in by the respondent the authorities concerned formed the opinion that it would not be desirable to level a charge of inefficiency against him, so that the respondent could earn his full pension which entitlement would have been thrown in jeopardy if an inquiry on a charge of inefficiency were to be launched against him. In our view, therefore, the impugned notice-cum-order dated October 3, 1975 compulsorily retiring the respondent with effect from January 10, 1976 was in strict and full compliance of Rule 8, note (1) of the Revised Pension Rules, 1950 and the compulsory retirement of the respondent cannot be struck down on this ground.

7. We have already stated that in the view the High Court took on the main point discussed above, it did not deal with or discuss the other grounds on which the respondent sought to challenge his compulsory retirement under the impugned notice-cum-order dated October 3, 1975. Since we reached a contrary conclusion on that point, we asked counsel whether the matter should be remanded or we should hear the other grounds of challenge and dispose of the matter finally and counsel for both the parties agreed to the latter course being followed.

8. Out of the several other grounds on which the impugned notice-cum-order dated October 3, 1975 was challenged by the respondent before the High Court, counsel for the respondent pressed only one ground before us, namely, that the impugned notice-cum-order had been issued mala fide and in that behalf took us through the entire material available on record, particularly the letter dated February 29, 1973 addressed by the respondent to the Secretary, Industries and Labour Department

Sachivalaya, Bombay complaining about the harassment meted out by Shri Shinde, the Register of Firm to the employees of the office including the respondent and counsel urged that Shri Shinde was always acting against the interest of the respondent, had spoiled his confidential record on the basis of which the ultimate action of compulsorily retiring him was taken and as such the same, having been taken mala fide was liable to be struck down. It is impossible to accept this contention for reasons we briefly indicate. May be, the respondent had some grievances against Shri Shinde - we have not investigated whether they were frivolous or justified but we proceed on the assumption that he had justifiable grievances against Shri Sinda - but what about the respondent's confidentials prior to Shri Shinde's joining as Registrar of Firms in September 1970 ? We have gone through his confidential reports from 1965-66 to 1969-70 and these are far from complimentary to him. The material on record also shows that right from 1948 down to 1974-75 there were adverse remarks made against him which were duly communicated to him from time to time and in 1961 as a result of departmental enquiry held against him and the finding recorded therein his increment was withheld for one year. The record shows no improvement but persistent deterioration in his efficiency. It was by reason of such record for several years that the impugned decision was taken. Further, the impugned action came to be suggested by Shri Palande, Industries Commissioner and Director of Industries on an overall consideration of the respondent's record and not by Shri Shinde and ultimately the State Government took the decision to retire the respondent under Rule 8. It is difficult to shift the mala fides, if any, of Shri Shinde and ascribe them to the Industries Commissioner against whom the respondent has no grievance whatever. This challenge, therefore, fails.

9. Since no other ground was urged, the appeal must be allowed. Accordingly, we allow the appeal, set aside the judgment and order of the High Court and dismiss the respondent's writ petition. As regards costs, they will abide by order made by the this Court on October 18, 1979 at the time of granting special leave.

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