

Sikander Pal Jain

Vs

State of Haryana and Others

Civil Appeal No. 3417 of 1982

(CJI Y. V. Chandrachud, D. P. Madon, Ranganath Misra JJ)

19.07.1984

JUDGMENT

CHANDRACHUD, C.J. –

1. The appellant, who was working as a Works Manager, Karnal Depot, Haryana Roadways, was retired compulsorily by an order dated May 14, 1976. He filed a review petition to the Government of Haryana to challenge the order of compulsory retirement. That review petition was disposed of by the State Government on July 9, 1979. The appellant filed a writ petition in the High Court of Punjab and Haryana on October 23, 1979, to challenge the order of compulsory retirement and the refusal of the State Government to review that order. The writ petition was dismissed by the High Court on the ground, mainly, that though the order of compulsory retirement was passed in May 1976, the appellant merely resorted to a tenuous claim for reviewing that order instead of challenging that order on merits in a court of law. Being aggrieved by the order of the High Court, the appellant has filed this appeal by special leave.

2. We are unable to accept the view of the High Court that, in seeking a review of the order by which he was retired compulsorily, the appellant adopted a tenuous remedy. It is clear from the very order dated July 9, 1979, passed by the Secretary, Haryana Government, Transport Department, that a Review Board is constituted by the State of Haryana for reviewing orders of compulsory retirement. That order says that the case of the appellant was put up before the "Review Board" but the Board did not feel the necessity of changing the decision which was already taken by the Government. In these circumstances, it cannot be said that the appellant had resorted to a tenuous remedy for the vindication of his rights.

3. As stated above, the review order is dated July 9, 1979 while, the writ petition was filed by the appellant in October 1979. Obviously, the writ petition could not have been dismissed on the ground that it suffered from laches.

4. The High Court has made a passing observation that there was no infirmity in the order of compulsory retirement but, no reason at all has been given in support of that observation. It seems to us that being influenced by the consideration that the writ petition suffered from laches, the High Court did not consider the merits of the matter. Since we are differing from the High Court on the question of laches, and find that the writ petition did not suffer from any defect of a preliminary nature, it becomes necessary to remand the matter to the High Court for a reconsideration of the writ petition on merits.

5. Miss Lily Thomas, who appears on behalf of the appellant, has raised two principal contentions

before us. The first contention is that the order of compulsory retirement is bad because it was passed without consulting the State Public Service Commission. The second contention is that the appellant could not have been retired compulsorily before he had completed 25 years of service. The High Court will examine the correctness of these and any other contentions which the appellant may legitimately raise before it.

6. It would appear that the appellant would have retired in the normal course in 1982. On that basis, he would be entitled to retirement benefits under the relevant rules. Even on the basis of compulsory retirement he would, we suppose, be entitled to retirement benefits. If the benefits due to the appellant have not been given to him, the High Court will pass an appropriate order directing the Government to give the same to him.

7. The appeal is accordingly allowed with costs, which we quantify at one thousand rupees.

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