Murari Mohan Deb

Vs

Secretary to the Government of India and Others

Civil Appeal No. 1605 of 1971

(V. B. Eradi, V. Khalid, D. A. Desai JJ)

10.04.1985

JUDGMENT

D. A. DESAI, J. -

1. Murari Mohan Deb, a Forester in the employment of Tripura Government was compulsorily retired from service by the order dated October 12, 1962 of the 4th respondent Chief Forest Officer. Since then he is knocking at the doors of the courts in search of illusory justice and chased mirage till he reached the age of super-annuation. Alas ! the ways of justice like the ways of Providence are inscrutable. And who is to blame, if not, the system.

2. The appellant questioned the correctness and validity of the order of compulsory retirement in Writ Petition No. 22 of 1964 which came to be disposed of after a lapse of six years on November 28, 1970. In his writ petition the appellant had impleaded (1) The Secretary to the Government of India, Ministry of Home Affairs, (2) The Chief Commissioner, Tripura, (3) The Secretary to the Government of Tripura, Forest Department and (4) The Chief Forest Officer, Government of Tripura, last one being the one who had passed the impugned order of compulsory retirement. The grievance in the writ petition was that penalty of compulsory retirement was imposed upon the appellant without affording the appellant an adequate opportunity to defend himself and to explain the charges levelled against him. In short it was alleged that the enquiry was held in violation of the principles of natural justice.

3. The respondents resisted the writ petition inter alia contending that as the punishment of compulsory retirement does not tantamount to dismissal or removal from service as contemplated by Article 311(1) and therefore, no formal enquiry was necessary to be held before imposing the penalty. It was contended that adequate opportunity was afforded to the appellant to controvert the charges and defend himself.

4. Surprisingly, when the matter was taken up for hearing, the learned Judicial Commissioner suo moto raised the objection that in the absence of Union of India being made a party, the petition was not properly constituted.

5. After an elaborate discussion, the learned Judicial Commissioner recorded a finding that Government of India was a necessary party and in its absence the petition is incompetent and must be rejected. After having reached this firm conclusion, the learned Judicial Commissioner proceeded to investigate the contention of the appellant that the enquiry against him was held in violation of the principles of natural justice, and that the Chief Forest Officer being not the appointing authority could not impose the penalty of compulsory retirement on the appellant. In respect of the second

contention, the learned Judicial Commissioner held that as it has been unquestionably established that the appellant was appointed by the Chief Commissioner, the Chief Forest Officer, a subordinate of the Chief Commissioner was not competent to impose the penalty of compulsory retirement and therefore on merits the order was bad. However, consistent with his view that the writ petition in the absence of Union of India was incompetent, he rejected the writ petition. Hence this appeal by special leave.

6. This appeal reached hearing on July 26, 1984 and after hearing Mr. D. N. Mukherjee, learned counsel for the appellant and Mr. Abdul Khader, learned counsel for Tripura Administration, we told them that the appeal is being allowed and the impugned order is being set aside. However, at this stage, Mr. Abdul Khader, learned counsel for the State of Tripura pointed out that as the appellant even on his showing has reached the age of superannuation, even if the impugned order is illegal and invalid, the relief of reinstatement cannot be granted to him. As the facts were not clear, a direction was given that the matter be listed on August 7, 1984 for clarification about the date of superannuation of the appellant. At the resumed bearing it was conceded that, had the appellant not been compulsorily retired from service, he would have retired on superannuation on December 6, 1978. In this fact situation the relief of physical reinstatement could not be granted. On that day a direction was given that the second respondent should compute and calculate the back wages payable to the appellant on the footing that the order of compulsory retirement is illegal and invalid and the appellant continued to be in service till December 6, 1978. The matter thereafter was listed on October 17, 1984 when Mr. Abdul Khader, learned counsel for the second respondent produced before us the rough computation made by the competent authority pursuant to our direction showing that approximately Rs. 93,000 would be payable to the appellant as and by way of back wages and he would be entitled to gratuity and pension thereafter. The plight of the appellant lent urgency to the matter inasmuch as the appellant was without succour for a long period, a direction was given that the second respondent i.e. Tripura Administration should pay Rs. 93,000 by a demand draft drawn in favour of the appellant within four weeks from the date of the order. A further direction was given that year to year calculation of computation of back wages must be submitted to the Court.

7. Kamal Baran Dev son of the appellant filed an affidavit dated November 7, 1984 in which he pointed out that had the appellant continued in service, if the illegal order of compulsory retirement had not been made, he would have earned two promotions, namely, as Forest Ranger and Senior Forest Ranger, all posts in Class III and IV grade. According to the appellant's computation, his pension be fixed at Rs. 550 p.m. According to him, he would be entitled to recover Rs. 3,25,000 from the respondents for the period up to and inclusive of July 1984.

8. Shri R. M. Dutta, Deputy Conservator of Forests, Government of Tripura filed a counter-affidavit in which it is pointed out that looking to the age and qualifications of the appellant, he could not have earned a single promotion. It was pointed out that the post of Forest Ranger and that of Senior Forest Ranger are governed by the recruitment rules which came into force in 1965 which did not envisage automatic promotion purely according to seniority. It was also pointed out that seniority is only one of the criteria that the Departmental Promotion Committee has to take into consideration while recommending the promotion of a Forester to the post of Forest Ranger. It was further pointed out that the revised pay scale for the post of a Forester was Rs. 260-495 effective from March 1, 1974 and that the appellant would have retired in that scale. To this affidavit was annexed calculations monthwise and it was pointed out that at best the appellant would be entitled to Rs. 93,444.08 p. inclusive of pension from December 6, 1978 to September 30, 1984, encashment of leave and gratuity.

9. Mr. D. N. Mukherjee, learned counsel for the appellant urged that we should not accept the computation as made by the competent authority as set out in the annexure to the affidavit of Shri R. M. Dutta. To a query of the Court as to how the appellant has worked out his arrears of back wages at Rs. 3,25,000 there was hardly any convincing answer though some rough and ready calculation was attempted to be offered to us which we find very difficult to implicitly rely upon.

10. Mr. Abdul Khader fairly stated that it is difficult to support the judgment of the learned Judicial Commissioner that in the absence of union of India being impleaded as a party, the petition as constituted was incompetent. We have not been able to appreciate why the learned Judicial Commissioner should have taken upon himself to raise this untenable contention even though the respondents did not raises such a contention. Respondent 1 is shown to be the Secretary to the Government of India, Ministry of Home Affairs. If there was technical error in the draftsmanship of the petition by a lawyer, a Forester a Class IV low grade servant should not have been made to suffer. An oral request to correct the description of the first respondent would have satisfied the procedural requirement. By raising and accepting such a contention, after a lapse of six years, the law is brought into ridicule. The court could have conveniently read the cause title as Government of India which means Union of India through the Secretary, Ministry of Home Affairs instead of the description set out in the writ petition and this very petition and this very petition would be competent by any standard. The contention is all the more objectionable for the additional reason that the appointing authority of the appellant, the Chief Commissioner of he Government of Tripura as well the Chief Forest Officer who passed the impugned order were impleaded and they represented the administration of Tripura Government as well as the concerned officers. Therefore, not only the petition as drawn up was competent but no bone of contention could be taken about its incompetence. Mr. Abdul Khader, learned counsel for the Government of Tripura rightly did not press this point.

11. The learned Judicial Commissioner rightly held that the impugned order of compulsory retirement was imposed by an authority not competent to impose the same and therefore it is ab initio illegal and invalid. Further, it appears crystal clear from the record that in this cases when the appellant was only 42 years of age, compulsory retirement was imposed as a penalty for misconduct. We are not unaware of the legal position that where relevant service rules provide for an age of superannuation and permits compulsory retirement in public interest on reaching a certain age lower than the age of superannuation, an order of compulsory retirement according to relevant services rules cannot be styled as imposing a penalty and obviously Article 311(2) will not be attracted. As held by this Court in Shyam Lal v. State of Uttar Pradesh ((1955) 1 SCR 26 : AIR 1954 SC 369 : 1954 SCJ 493) "an order of compulsory retirement differs both from an order of dismissal and an order of removal from service, in that it is not a form of punishment prescribed by the rules, and involves no penal consequences, inasmuch as the person who retires is entitled to pension proportionate to the period of service standing to his credit." (see State of Bombay v. Saubhagchand M. Doshi (1958 SCR 571 : AIR 1957 SC 892 : 1958 SCJ 161).) It thus appears that where the relevant service rules fixed both an age of superannuation and an age of compulsory retirement and the services of a Government servant governed by the rules are terminated between theses two points of time, the order of compulsory retirement could not be said to cast a stigma and would not attract Article 311. "But where there is no rule fixing the age of compulsory retirement or if there is one and the servant is retired before the age prescribed therein, then that can be regarded only as dismissal or removal within Article 311(2)." (See Saubhagchand M. Doshi case (1958 SCR 571 : AIR 1957 SC 892 : 1958 SCJ 161) at 579.) In this case it is admitted that the relevant service rules prescribed an age of superannuation. It was not pointed out that the relevant rules fixed some other age beyond which and before reaching the age of superannuation, a Government servant can

be compulsorily retired in public interest. Nor is it claimed that the order of compulsorily retirement in this case was made under the relevant service rules in public interest. It would have been atrocious to contend to that effect in respect of a Forester, a low grade Class IV servant who would be required to be compulsorily retired in public interest. But if there was such a rule, we would have positively examined the same. At any rate, it is crystal clear that the appellant was aged only 42 when the order of compulsory retirement was made. It was not sought to be supported on the ground that the appellant having put in service for a certain number of years, he could have been compulsorily retired. On the contrary, it is admitted that the order of compulsory retirement was by way of penalty imposed upon him for misconduct after an enquiry. Obviously therefore, Article 311(2) will be attracted and an enquiry in accordance with rules of natural justice would be a prerequisite before imposing any penalty. It would be presently pointed out that the enquiry was sham and held in violation of principles of natural justice.

12. The enquiry officer issued a notice that the enquiry against the appellant would be held at Rangamura but at short notice subsequently, the venue was suddenly shifted to Radhanagar where the appellant could not keep his witnesses present. He did not have an opportunity of examine the records used against him. Therefore, for more than one reason, the enquiry appears to have been held in violation of principles of natural justice and is vitiated. If the enquiry was illegal, any punishment imposed as a result of the enquiry must fail. Therefore, the order of compulsory retirement is bad for more than one reason and liable to be set aside and it hereby set aside.

13. Once the order of compulsory retirement is set aside, the appellant continues to be in service. He has reached the age of superannuation as on December 6, 1978 as pointed out in the affidavit and not controverted. Therefore, it is not permissible to direct his reinstatement in service. He would be entitled to back wages from the date of compulsory retirement on October 16, 1962 till the date of his superannuation on December 6, 1978.

14. Before we determine the amount payable as back wags, we must make it distinctly clear that while computing the amount we have kept in view the meagre monthly salary which the appellant would have received for the years 1962 to 1974 when the pay scales of his post was revised. In any year if he had received full salary, he was not liable to pay income-tax at the rates then in force. Even the revised salary with the exemption limit of income-tax going up would have not been assessable to income-tax. And this lowest grade Class IV servant, we were informed had no other source of income. Now that the amount is payable in one lump sum, presumably the Government may resort to Section 192 of the Income Tax Act. But let it be made distinctly clear that the appellant is entitled to the benefit of Section 89 and Rule 21-A of the Income Tax Rules and he is entitled to relief under Section 89. Therefore, while computing the total amount, we have kept the spread over in view and in no year any income-tax is deductible from the meagre salary of this low paid Class IV employee. If therefore, any deduction is made towards income-tax while the payment, it is incumbent upon the Tripura administration to take all necessary steps to obtain the relief for the appellant under Section 89 of the Income-Tax Act read with Rule 21-A of the Income Tax Rules.

15. As pointed out earlier, rival contentions and calculations have been examined by us and keeping them in view and having regards to the circumstances of the case, we direct that over and above the amount of Rs. 93,000 already paid to the appellant, he should be paid Rs. 7000 more towards back wages and pension up to and inclusive of December 31, 1984. The respondent shall pay pension at the rate of Rs. 400 from January 1, 1984. The appellant shall also be paid dearness allowance if admissible to pensioners getting pension at Rs. 400 p.m. The appellant shall also be paid gratuity at the admissible rate treating him in service up to and inclusive of December 6, 1978. The payment

herein directed shall be made within a period of eight weeks from today. The respondent shall also pay costs to the appellant quantified at Rs. 2000. Appeal is allowed to the extent herein indicated.

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