

Tej Pal Singh

Vs

State of U. P. and Another

Civil Appeal No. 1243 of 1972

(Venkataramiah, J.)

05.08.1986.

JUDGMENT

VENKATARAMIAH, J. – The appellant was working as an Additional District and Sessions Judge in the State of Uttar Pradesh in the year 1968. His date of birth was April 1, 1913. He would have retired from service on the expiry of March 31, 1971 on completing 58 years of age. But on September 3, 1968 the appellant was served with an order dated August 24, 1968 issued by the Secretary to the Government of Uttar Pradesh (Home Department) stating that the Governor of Uttar Pradesh in exercise of the powers under para (i) of the first proviso to clause (a) of Fundamental Rules 56 contained in the Financial Hand Book, Volume II, Parts II to IV, as amended from time to time, had been pleased to order that the appellant should retire from service on the expiry of three months from the date of service of the notice. Aggrieved by the said notice of premature retirement, the appellant filed Writ Petition No. 3958 of 1968 before the High Court of Allahabad under Article 226 of the Constitution urging inter alia (i) that the retirement of the appellant as per order dated August 24, 1968 had been ordered without the recommendation of the High Court as required by Article 235 of the Constitution, (ii) that Fundamental Rule 56 under which the impugned order had been issued was violative of Articles 14 and 16 of the Constitution, and (iii) that the appellant's premature retirement was in violation of Article 311(2) of the Constitution. The question relating to the validity of Fundamental Rule 56 was involved in two other cases which were pending before the High Court. The writ petition filed by the appellant and the other two writ petitions were heard together by a Division Bench of the High Court. The Divisional Bench referred all the three matters to a Full Bench to consider two specific questions of law, namely (i) whether under Fundamental Rule 56 the age of superannuation was 55 or 58 years and (ii) whether the proviso to clause (a) of Fundamental Rule 56 violated Articles 14 and 16 of the Constitution. Thereafter the Full Bench heard all the three cases and answered the two questions as follows : (i) Under clause (a) of Fundamental Rule 56 the age of superannuation was 58 years and (ii) Paragraph (i) of the proviso to clause (a) of the Fundamental Rule 56 violated Articles 14 and 16 of the Constitution. The judgment of the Full Bench was pronounced on September 26, 1969. Immediately thereafter the Governor of Uttar Pradesh issued an Ordinance date November 5, 1969 making amendments of Fundamental Rules 56 and validating actions already taken thereunder. The Ordinance was replaced by U.P. Act No. 5 of 1970 (U.P. Fundamental Rule 56 (Amendment and Validation) Act, 1970) on April 1, 1970. The appellant sought the amendment of the writ petition questioning the validity of the Ordinance and the Act. Thereafter the writ petition was heard by a Division Bench of the High Court and it came to be dismissed on February 23, 1970. This appeal by certificate is filed against the judgment of the High Court. 2. In this case we are not concerned much with the validity of Fundamental Rule 56 since it can be disposed of on the ground based on Article 235 of the Constitution. 3. The undisputed facts as can be gathered from the records in this case

which are relevant for purposes of this appeal are these. The State Government moved the High Court in the year 1967 for the premature retirement of the appellant. On July 8, 1968 the Administrative Judge agreed with the proposal of the State Government to retire the appellant prematurely after giving him three months' notice. The Governor passed the order of retirement on August 24, 1968. Three days thereafter, on August 27, 1968 the Administrative Committee of the High Court gave its approval to the recommendation of the Administrative Judge earlier communicated to the State Government. Thereafter on August 30, 1968 the Additional Registrar transmitted the order of retirement to the appellant. It was actually served on September 3, 1968. The question for consideration in this case is whether the order of compulsory retirement passed against the appellant satisfies the requirements of the Constitution. 4. Article 235 of the Constitution provides that the control over district courts and courts subordinate thereto including the position and promotion of and the grant of leave to persons belonging to the judicial service of the State and holding any post inferior to the post of District Judge shall be vested in the High Court. It has been held in *State of U.P. v. Batuk Deo Pati Tripathi* ((1978) 3 SCR 131 : (1978) 2 SCC 102 : 1978 SCC (L & S) 147) that premature retirement of Judges of District Courts and of subordinate courts is matter which falls squarely within the power of control vested in the High Courts by Article 235 of the Constitution. Without the recommendation of the High Court it is not open to the Governor to issue an order retiring prematurely Judges of District Courts and of subordinate courts. 5. Insofar as the High Court of Allahabad is concerned rules are framed under Article 225 of the Constitution and all other powers enabling it in that behalf by the High Court regarding the manner in which the administrative work of the High Court should be carried out. They are known as Rules of Court, 1952. The relevant rules are found in Chapter III of the Rules of Court, 1952. The material part of Chapter III is set out below : Chapter III Executive and Administrative Business of the Court 1. Subject to these Rules, a Committee of Judges composed of the Chief Justice, the Judge in the Administrative Department and five other Judges to be appointed by the Chief Justice, referred to in these Rules as the Administrative Committee, shall act for the court. The Chief Justice shall have the charge of, and may act for the court in the Administrative Department and the executive and administrative business pertaining to the court, except that the Judge in the Administrative Department shall have charge of, and may act for the court in the Administrative Department and the executive and administrative business pertaining to the courts subordinate to the court. As far as possible, the Judge in the Administrative Department shall discharge his duties and functions in consultation with the Inspection Judges concerned, who shall be appointed by the Chief Justice from time to time. The membership of the Committee shall be for two years except in the case of the Chief Justice and the Judge in the Administrative Department. 2. From time to time and as occasion arises the Chief Justice shall nominate one of the Judges to act as the Judge in the Administrative Department, whose term of office shall be three years unless renominated. 3. All executive and administrative business and all business in the administrative Department requiring orders....shall be submitted by the Registrar to the Chief Justice or the Judge in the Administrative Department, as the case may be, together with his comments thereon, if any, and may, subject to these Rules, be disposed of by that Judge. 4. The Judge in the Administrative Department shall, before passing final orders, cause to be circulated for the information of the Judges of the Administrative Committee then present in Allahabad, his recommendation as to the appointment, promotion or suspension of judicial officers. Should any Judge dissent from such recommendations, he shall signify his dissent and his reasons therefor in writing. 5. (1) In regard to the following matter the Judge in the Administrative Department shall consult the Administrative Committee either by circulating the papers connected with the matter together with his own opinion or recommendation thereon to the members of the Committee then present in Allahabad or by laying it before a meeting of the Administrative Committee, namely : (a) the issued of General Letters to subordinate courts; (b) the

issue of directions regarding the preparation of returns and statements; (c) all matters of importance upon which the government desires the opinion of the Court; (d) appointment of the U.P. Higher Judicial Service; and (e) any other matter which the Chief Justice or the Judge in the Administrative Department may consider fit to be laid before it for consideration. (2) Copies of all General Letters issued to subordinate courts shall be circulated to all Judges for information as soon as may be after issue... (7) As soon as the Administrative Committee has disposed of any business, a statement showing what matters were laid before the Committee and the manner in which they were disposed of shall be circulated for information to all Judges except such Judges as may be on leave. 6. In the above decision - State of U.P. v. Batuk Deo Pati Tripathi ((1978) 3 SCR 131 : (1978) 2 SCC 102 : 1978 SCC (L & S) 147) this Court has held had the power of the High Court under Article 235 of the Constitution to make recommendation to the government to retire a subordinate judicial officer prematurely could be exercised by the Administrative Committee of the High Court. In the instant case it is seen that the Administrative Committee of the High Court came into the picture only after the State Government had passed the order of retirement. It was no doubt true that the Administrative Judge had agreed with the proposal of the State Government to retire the appellant prematurely on July 8, 1968 and that on the basis of the opinion expressed by the Administrative Judge the Governor had passed the order on August 24, 1968. It was only on August 27, 1968 the order of the Governor was placed before the Administrative Committee of the High court when it gave its approval to the opinion of the Administrative Judge earlier communicated to the State Government. After the Administrative Committee had expressed its opinion the matter was not again referred to the Governor at all. After the Administrative Committee had approved the opinion of the Administrative Judge the order of retirement was served on the appellant on September 3, 1968. It is thus seen that the Governor had not acted in the instant case on the basis of the recommendation of either the Full Court or of the Administrative Committee of the High Court but only on the opinion of the Administrative Judge. 7. The two learned Judges who finally heard the writ petition of the appellant dealt with the question of compliance with Article 235 of the Constitution in the two separate judgments delivered by them. Both the learned Judges, we regret to say, missed the essence of the question agitated before them. They have referred to Article 233 of the Constitution in the course of their judgments while the proper article which arose for consideration before them was Article 235 of the Constitution. Both the learned Judges have taken the view that the Governor is only expected to consult the High Court on the question when he proposes to make an order of premature retirement in respect of a District Judge or a subordinate judicial officer. They have overlooked that the Governor can pass such an order only on a recommendation made by the High Court or the Administrative Committee. The second error committed by both of them is that they have held that such consultation with the High Court is permissible even after the Governor has passed the order of compulsory retirement. Thirdly, they have equated the recommendation that should be made by the High Court before a judicial officer can be prematurely retired to the consultation contemplated under Article 320(3)(c) of the Constitution, which provides that the Union Public Service Commission or the State Public service Commission, as the case may be, shall be consulted on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters, and have held relying upon a decision of this Court in State of U.P. v. Manbodhan Lal Srivastava (1958 SCR 533 : AIR 1957 SC 912 : (1958) 2 Lab LJ 273) that such consultation was not mandatory and that failure to do so did not afford a cause of action to the appellant in a court of law. 8. In state of Haryana v. Inder Prakash Anand (1976 Supp SCR 603 : (1976) 2 SCC 977 : 1976 SCC (L & S) 372 : AIR 1976 SC 1841) this Court has held that Article 235 of the Constitution vests in the High Court control over district courts and courts subordinate thereto. This "control" includes both disciplinary and administrative jurisdiction.

Disciplinary control means not merely jurisdiction to award punishment for misconduct, but also the power to determine whether the record of a member of the service is satisfactory or not so as to entitle him to continue in service for the full term till he attains the age of superannuation. Administrative, judicial and disciplinary control over members of the judicial service is vested solely in the High Court. Premature retirement is made in the exercise of administrative and disciplinary jurisdiction. It is administrative because it is decided in public interest to retire him prematurely and it is disciplinary, because, the decision is taken in public interest that he does not deserve to continue up to the normal age of superannuation. The fixation of the age of superannuation is the right of the State Government. The curtailment of that period under rules governing the conditions of service is a matter pertaining to disciplinary as well as administrative control. The control which is vested in the High Court is complete control subject only to the power of the Governor in the matter of appointment, dismissal, removal or reduction in rank and the initial posting of and initial promotion to the rank of District Judge. The vesting of complete control over the subordinate judiciary in the High Court, leads to this that if the High Court is of opinion that a particular officer is not fit to be retained in service, the High Court will communicate that opinion to the Governor, because, the Governor is the authority to dismiss, remove or reduce in rank or terminate the appointment. In such cases, the Governor, as the head of the State, will act in harmony with the recommendation of the High Court as otherwise the consequences will be unfortunate. But, compulsory retirement simpliciter does not amount to dismissal or removal or reduction in rank under Article 311 or under service rules. When a case is not of removal or dismissal or reduction in rank, any order in respect of exercise of control over the judicial officers is by the High Court and by no other authority; otherwise, it will affect the independence of the judiciary. It is in order to effectuate that high purpose that Article 235 of the Constitution, as construed by this Court in various decisions, requires that all matters relating to the subordinate judiciary including premature retirement and disciplinary proceedings but excluding the imposition of punishment falling within the scope of Article 311 of the Constitution and the first appointment on promotion should be dealt with and decided upon by the High Courts in exercise of the control vested in them. 9. In *High Court of A.P. v. V.V.S. Krishnamurthy* ((1979) 1 SCR 26 : (1979) 2 SCC 34 : 1979 SCC (L & S) 99 : AIR 1979 SC 193) this Court has again observed that Article 235 of the Constitution is the pivot around which the entire scheme of Chapter VI of Part VI of the Constitution revolves. Under it the control of district courts and courts subordinate thereto including the posting and promotions of and the grant of leave to persons belonging to the judicial service of a State is vested in the High Court. After considering a number of decisions, the Court in that case has set out the true legal position crystallized by the said decisions as regards the scope of the control of the High Court over the subordinate judiciary vested in it under Article 235 of the Constitution. The Court proceeded to observe that the said power under Article 235 of the Constitution was exclusive in nature, comprehensive in extent and effective in operation. Amongst the several matters which fell within its scope, this Court was of the view that premature retirement of Judges of the district courts and of the subordinate courts was one. 10. It is thus clear that the High Court was in error in not construing the applicability, and the scope, of Article 235 of the Constitution while deciding the case before it. It assumed that the Governor after consulting the High Court could pass an order of premature retirement in respect of a District Judge or a subordinate judicial officer and that even if he did not consult in that regard the order of premature retirement passed by the Governor would not be vitiated and that in any event it was an irregularity which could be cured by Rule 21 of the Rules of Court, 1952. 11. The relevant passages in the judgments of the two learned Judges who decided the case in the High court are given below : (Per D. S. Mathur, F.) In the case of premature retirement, consultation, if made subsequently, but before the officer actually retires, that is, hands over charge, cannot in each and every case be said to be illusory and not genuine. It is only when it appears that

after the passing of the order of compulsory retirement, the High Court did not consider the matter on merits but accepted the *fait accompli*, it can be said that there had been no consultation as contemplated by Article 233(1); but where the High Court did consider the matter on merits and agreed with the order passed by the Governor directing the compulsory retirement of a judicial officer, there would be no defect, considering that the order of retirement shall take effect from the date of communication or from the date the government servant is to retire from service. In the instant case, three months' notice was given, that is, the officer was to retire from service on the expiry of three months from the date of communication of the order of retirement. Within this period the matter could be considered on merits by the High Court on its own or on a representation made by the officer. We are, therefore, of opinion that the consultation of the High Court cannot be declared invalid simply because there was no proper and full consultation before the passing of the order of premature retirement, provided that the facts and circumstances of the case made it evident that the High Court had not been unduly influenced by the decision of the Governor and the High Court had on its own and independently considered the matter on merits. Reference may now be made to Rule 21 of Chapter III of the Rules of Court, which clearly provides that no irregularity in, or omission to follow, the procedure laid down in this chapter shall affect the validity of any order passed or anything done under these rules. This rule cannot cover a case where any order was passed in complete disregard of the rules contained in Chapter III; but an irregularity committed in good faith shall not invalidate the order. The principles governing the provisions like Section 5 of the Limitation Act can easily be made applicable to a case of the present nature. Where two opinions are possible, the irregularity, if any, cannot be deemed to have been committed in bad faith and such irregularities shall be covered by the above Rule 21. (Per Satish Chandra, F.) Under Chapter III Rule 5 the Administrative Judge had to consult the Administrative Committee. Even if the consultation takes place subsequently, if the committee approves of the action of the Administrative Judge, then the original action would be valid and effective with effect from its own date. In this view, the communication of the court's opinion on July 8, 1968 would be valid. Even if it be assumed that the communication of July 8, 1968 did not satisfy the requirements of law, still the petitioners have not made out a case for interference. It has been seen that the Administrative Committee took the decision on August 28, 1968. By then the Governor had considered the opinion of the court as sent to it on July 8, 1968. The Governor sent the order of compulsory retirement to the High Court. The High Court transmitted it for service on the petitioners on or about September 2, 1968, much after the Administrative Committee had approved the proposal. The order was served on the petitioners on September 3, 1968. Thus before the order of compulsory retirement came into force on September 3, 1968, all the requisite requirements of Article 233 of the Constitution had been completed. In this situation, Rule 21 would come into play and would cure whatever irregularity took place in following the procedure laid down in Chapter III of the Rules of the Court. The impugned order cannot be held to have violated Article 233 of the Constitution. 12. We do not approve of the above opinions of the learned Judges of the High Court. 13. Now, it is settled by the decision of this Court in *State of U.P. v. Batuk Deo Pati Tripathi* ((1978) 3 SCR 131 : (1978) 2 SCC 102 : 1978 SCC (L & S) 147) that on a true construction of the rules of business of the Allahabad High Court it was open to the Administrative Committee to recommend to the Governor to pass an order of compulsory retirement in respect of a District Judge or a subordinate judicial officer. We need not, therefore, go into the question whether the Full Bench should have considered the case of the appellant before such recommendation was made. In the instant case as we have already stated above, the Administrative Committee came to know of the order of premature retirement already passed by the Governor only after it had been passed on the basis of the opinion expressed previously by the Administrative Judge. The Rules of Business in Chapter III of the Rules of Court, 1952, referred to above, show the powers which are exercisable by the Full Bench, the Chief Judge,

Judge in the Administrative Department (Administrative Judge) and the Administrative Committee of the High Court. Rule 3 of Chapter III of the Rules lays down that all executive and administrative business and all business in the Administrative Department requiring orders shall be submitted by the Registrar to the Chief Justice or the Judge in the Administrative Department, as the case may be, together with his comments thereon, if any and may be, subject to these Rules, disposed of by that Judge. Rule 4 provides that the Judge in the Administrative Department shall before passing final order, cause to be circulated for the information of the Judges of the Administrative Committee then present in Allahabad, his recommendations as to the appointment, promotion or suspension of judicial officers, and that should any Judge dissent from such recommendations, he shall signify his dissent and his reasons therefor in writing. Rule 5 provides that in regard to the matters set out thereunder the Judge in the Administrative Department shall consult the Administrative Committee either by circulating the papers connected with the matter together with his own opinion or recommendation thereon to the members of the Committee then present in Allahabad or by laying it before a meeting of the Administrative Committee and one of the items mentioned in clause (c) of Rule 5(1) of the Rules is 'all matters of importance upon which the government desires the opinion of the Court'. In the instant case the Government has sought the opinion of the High Court regarding the question whether the appellant could be prematurely retired and that question was certainly a very important matter from the point of view of the subordinate judicial service. The Administrative Judge before giving his opinion in support of the view expressed by the government should have either circulated the letter received from the government amongst the members of the Administrative Committee or placed it before them at a meeting. He did not adopt either of the two courses. But he on his own forwarded his opinion to the government stating that the appellant could be prematurely retired. That he could not do. Ordinarily, it is for the High Court, on the basis of assessment of performance and all other aspects germane to the matter to come to the conclusion whether any particular judicial officer under its control is to be prematurely retired and once the High Court comes to the conclusion that there should be such retirement, the court recommends to the Governor to do so. The conclusion is to be of the High Court since the control vests therein. Under the Rules obtaining in the Allahabad High Court, the Administrative Committee could act for and on behalf of the court but the Administrative Judge could not have. Therefore, his agreeing with the government proposal was of no consequence and did not amount to satisfaction of the requirement of Article 235 of the Constitution. It was only after the Governor passed the order on the basis of such recommendation, the matter was placed before the Administrative Committee before the order of retirement was actually served on the appellant. The Administrative Committee may not have dissented from the order of the Governor or the opinion expressed by the Administrative Judge earlier. But it is not known what the Administrative Committee would have done if the matter had come up before it before the Governor had passed the order of premature retirement. In any event the deviation in this case is not a mere irregularity which can be cured by the ex post facto approval given by the Administrative Committee to the action of the Governor after the order of premature retirement had been passed. The error committed in this case amounts to an incurable defect amounting to an illegality. We may add that while it may be open to the government to bring to the notice of the High Court all materials having a bearing on the conduct of a District Judge or a subordinate judicial officer, which may be in its possession, the government cannot take the initiative to retire prematurely a District Judge or a subordinate judicial officer. Such initiative should rest with the High Court. 14. Under the circumstances, it has to be held that the impugned order of premature retirement passed by the Governor without have before him the recommendation of the Administrative Committee or of the Full Court is void and ineffective. We, therefore, set aside the judgment of the High Court and quash the order of premature retirement passed in respect of the appellant. He shall be treated as having been in service until the expiry of

March 31, 1971 when he would have retired from service on attaining 58 years of age. 15. We are informed that the appellant has died on November 27, 1983 and his legal representatives have been brought on record. The arrears of salary, pension etc. payable to the appellant on the above basis till November 27, 1983 shall therefore, be paid to the legal representatives of the appellant within four months from today. This appeal is accordingly allowed. The legal representatives of the appellant are also entitled to the costs in both the courts.

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