SUREME COURT OF INDIA

Registrar. High Court of Madras

Vs.

R. Rajiah and K. Rajeswaran

(M.M. Dutt, R.S. Pathak and L.M. Sharma JJ.)

11.05.1988

JUDGMENT

DUTT, J.

These two appeals are directed against a common judgment of the Division Bench of the Madras High Court whereby, in exercise of its jurisdiction under Article 226 of the Constitution of India, the High Court quashed the orders of compulsory retirement of the two respondents, Mr. R. Rajiah and Mr K. Rajeswaran, who were then the District Munsifs.

The respondent, R. Rajiah, originally joined service as a Sub-Magistrate on 3.3.1965. On 6.1.1973, he was appointed a District Munsif in the Tamil Nadu State Judicial Service. While he was functioning as District Munsif, on 3.3.1980 the Registrar of the High Court, the appellant herein, sent a communication to the respondent Rajiah stating therein that he was being compulsorily retired from service in public interest with effect from 3.3.1980

The other respondent, K. Rajeswaran, was also originally appointed a Sub-Magistrate in 1953. On 29.11. 1971, he was appointed a District Munsif having been selected by the Tamil Nadu Public Service Commission. On 22.2.1976, the High Court passed an order confirming him as District Munsif with effect from 1.1.1976. On 27.10.1976, the High Court passed an order compulsorily retiring him from service, which was communicated to him by the Registrar.

Both the respondents being aggrieved by the orders of compulsory retirement, moved the High Court under Article 226 of the Constitution challenging the validity of the impugned ordes of compulsory retirement passed by the High Court in its administrative jurisdiction under Rule 56(d) of the Fundamental Rules.

The principal contention of the respondents before the High Court was that the High Court had no power to oompulsorily retire members of the Tamil Nadu State Judicial Service. Such an order could be passed only by the State Governor, who was the appointing authority. All that the High Court could do was to make a recommendation to the State Governor in that behalf. It was also contended on behalf of the respondents that there was no material on record which would justify the premature retirement of the respondents. The respondents also challenged the validity of the constitution of the Review Committees of the High Court that passed the impugned orders of compulsory retirement.

Two learned Judges of the Division Bench delivered two separate judgments. One of the learned Judges of the Division Bench took the view that though it was within the jurisdiction of the High Court to take a decision whether a member of the State Judicial Service should be compulsorily retired or not in public interest, the formal order of compulsory retirement was to be passed by the Governor acting on the recommendation of the High Court. The other learned Judge, however, did not subscribe to the above view. According to him, it was the High Court which was competent to pass an order of compulsory retirement of a member of the State Judicial Service without any formal order by the Governor under rule 56(d) of the Fundamental Rules. Both the learned Judges, however, came to the conclusion that there was no material on record to justify the impugned orders of compulsory retirement of the two respondents. The learned Judges also held against the validity of the constitution of the Review Committee of the High Court that considered the question of passing the order of compulsory retirement of the respondent, Rajeswaran. According to the learned Judges, the irregular or illegal constitution of the Review Committee vitiated the impugned order of compulsory retirement. In the case of respondent, Rajiah, it was held that the manner in which the Review Committee considered the question of compulsory retirement of Rajiah was illegal. The writ petitions filed by the respondents were accordingly, allowed by the High Court and the impugned orders of compulsory retirement were quashed. Hence these two appeals. Mr. Datta, learned Additional Solicitor General appearing on behalf of the High Court, has strenuously urged that it is the High Court and the High Court alone that is competent to pass an order of compulsory retirement of a member of the subordinate judiciary under rule 56(d) of the Fundamental Rules. He has placed much reliance on the provision of Article 235 of the Constitution. It is submitted by him that unless it is held that the High Court is the only competent authority to pass an order of compulsory retirement, it would be denuding the High Court of its control over subordinate courts as conferred on it by Article 235 of the Constitution. On the merits of the case, it is submitted by the learned Additional Solicitor General that the Division Bench of the High Court was not at all justified in considering the question as to the adequacy or otherwise of the materials on record in support of the impugned orders of compulsory retirement.

Before considering the contention advanced on the basis of Article 235 of the Constitution, we may, at this stage, refer to the provision of rule 56(d) of the Fundamental Rules, the relevant portion of which is extracted below:- "R. 56(d)-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, after he has attained the age of fifty years or after he has completed twentyfive years of qualifying service. Any Government servant who has attained the age of fifty years or who has completed twentyfive years of qualifying service may likewise retire from service by giving notice of not less than three months in writing to the appropriate authority.

Explanation I: Appropriate authority means the authority which has the power to make subst antive appointments to the post or service from which the Government servant is required to retire or wants to retire.

[Explanations II to V are omitted as they are not relevant for our purpose.]

Rule 56(d) of the Fundamental Rules confers absolute right on the appropriate authority to retire a Government servant in the public interest. Under Explanation, I "appropriate authority" means the

authority which has the power to make substantive appointment to the post or service from which the Government servant is required to retire or wants to retire. In view of Explanation I, it is manifestly clear that the absolute power to retire any Government servant has been conferred on the appropriate authority, that is, the authority which has the power to make substantive appointment to the post or service from which the Government servant is required to retire. It is not disputed that the authority to make substantive appointment to the post of Munsif or District Munsif is the Governor. Therefore, without anything else, under rule 56(d) of the Fundamental Rules, the State Government or the Governor being the appointing authority, has the absolute power to retire a District Munsiff.

It is not necessary to consider the provision of Article 235 of the Constitution and its impact on rule 56(d) of the Fundamental Rules as to the absolute right of the State Government to retire a member of the subordinate judicial service. Article 235 vests in the High Court the control over District Courts and Courts subordinate thereto. The vesting of such control is consistent with the ideal of preservation of the independence of the judiciary. The power of control comprises within it various matters in respect of subordinate judiciary including those relating to appointment, promotion and imposition of punishment, both major and minor. If any authority other than the High Court is conferred with the absolute right to take action against a member of the subordinate judicial service, such conferment of power will impinge upon the power of control that is vested in the High Court under Article 235 of the Constitution.

Rule 56(d) of the Fundamental Rules under which a member of suboridnate judicial service can be compulsorily retired has to be read subject to and in harmony with the power of control vested in the High Court under Article 235 of the Constitution At this stage, it is necessary to consider the extent of the power of control of the High Court under Article 235. In the instant cases, it has been already noticed that the High Court had held the enquiry and made the impugned orders of compulsory retirement. According to one of the learned Judges of the Division Bench of the High Court, as the impugned orders were not signed by the Governor, but by the High Court, they were illegal and should be struck down. The contention of the learned Additional Solicitor General is that if the Governor is required to sign the impugned orders, it would take away the control of the High Court as conferred on it by Article 235. We are, however, unable to accept the contention. The test of control is not the passing of an order against a member of the suboridnate judicial service, but the decision to take such action. It may be that so far as the members of the subordinate judicial service are concerned, it is the Governor, who being the appointing authority, has to pass an order of compulsory retirement or any order of punishment against such a member. But passing or signing of such orders by the Governor will not necessarily take away the control of the High Court vested in it under Article 235 of the Constitution. An action against any Government servant consists of two parts. Under the first part, a decision will have to be made whether an action will be taken against the Government servant Under the second part, the decision will be carried out by a formal order. The power of control envisaged under Article 235 of the Constitution relates to the power of making a decision by the High Court against a member of the subordinate judicial service. Such a decision is arrived at by holding an enquiry by the High Court against the member concerned. After the High Court comes to the conclusion that some action either in the nature of compulsory retirement or by the imposition of a punishment, as the case may be, has to be taken against the member concerned, the High Court will make a recommendation in that regard to the Governor and the Governor will act in accordance with such recommendation of the High Court by passing an order in accordance with the decision of the High Court. The Governor cannot take any action against any member of a subordinate judicial service without, and contrary to, the recommendation of the High Court. In the

State of West Bengal v. Nripendra Nath Bagchi, [1966] 1 SCR 771 a question arose whether Article 311 takes away the control of the High Court vested in it under Article 235 of the Constitution. In that context, Hidayatullah, J. (as he then was) speaking for the Court observed as follows:
"There is, therefore, nothing in Art. 311 which comples the conclusion that the High Court is ousted of the jurisdiction to hold the enquiry if Art. 235 vested such a power in it. In our judgment, the control which is vested in the High Court is a complete control subject only to the power of the Governor in the matter of appointment (including dismissal and removal) and posting and promotion of District Judges. Within the exercise of the control vested in the High Court, the High Court can hold enquiries, impose punishments other than dismissal or removal, subject however to the conditions of service, to a right of appeal if granted by the conditions of service, and to the giving of an opportunity of showing cause as required by cl. (2) of Art. 311 unless such opportunity is dispensed with by the Governor acting under the provisos (b) and (c) to that clause. The High Court alone could have held the enquiry in this case. To hold otherwise will be to reverse the policy which has moved determinedly in this direction."

Thus, it appears that this Court brought about a harmony between the power of the Governor and the power of control of the High Court.

The question was again considered by this Court in State of Haryana v. Inder Prakash Anand, [1976] Suppl. SCR 603. In that case A.N. Ray, C.J. Observed as follows: "The control vested in the High Court is that if the High Court is of opinion that a particular Judicial officer is not fit to be retained in service the High Court will communicate that to the Governor because the Governor is the authority to dismiss, remove, reduce in rank or terminate the appointment. In such cases it is the contemplation in the Constitution that the Governor as the head of the State will act in harmony with the recommendation of the High Court. If the recommendation of the High Court is not held to be binding on the State consequences will be unfortunate. It is in public interest that the State will accept the recommendation of the High Court. The vesting of complete control over the Subordinate Judiciary in the High Court leads to this that the decision of the High Court in matters within its jurisdiction will bind the State. "The Government will act on the recommendation of the High Court. That is the broad basis of Article 235"."

It is apparent from the observation extracted above that this Court also understood the power of control of the High Court as the power of taking a decision against a member of the subordinate judicial service. The High Court is the only authority that can take such a decision. The High Court will hold an enquiry and decide on the result of such enquiry whether any action will be taken against a member of the subordinate judicial service. If it comes to the conclusion that such an action is required to be taken, it will make a recommendation in that regard to the State Governor who will make an order in accordance with the recommendation of the High Court.

There can be no doubt and, indeed, it is well established that compulsory retirement of members of the subordinate judicial service comes within the purview of the power of control of the High Court under Article 235 of the Constitution. See State of Uttar Pradesh v. Batuk Deo Pati Tripathi, [1978] 2 SCC 102; High Court of Punjab & Haryana v. State of Haryana, [1975] 3 SCR 365; Shamsher Singh v. State of Punjab, [1975] 1 SCR 814; State of Haryana v. Inder Prakash Anand (supra) and B. Misra v. Orissa High Court, [1976] 3 SCC 327.

The control of the High Court, as understood, will also be applicable in the case of compulsory retirement is that the High Court will, upon an enquiry, come to a conclusion whether a member of

the subordinate judicial service should be retired prematurely or not. If the High Court comes to the conclusion that such a member should be prematurely retired, it will make a recommendation in that regard to the Governor inasmuch as the Governor is the appointing authority. The Governor will make a formal order of compulsory retirement in accordance with the recommendation of the High Court.

In the instant cases, admittedly, the impugned orders of compulsory retirement have been passed by the High Court under rule 56(d) of the Fundamental Rules. It has been noticed that under rule 56(d) of the Fundamental Rules right of compulsory retirement has been conferred on the appropriate authority which, under Explanation I, means the appointing authority, that is, the Governor. While the High Court decided to compulsorily retire the respondents. it did not communicate the recommendations to the State Governor for passing formal orders of compulsory retirement. Instead, the High Court passed the orders of compulsory retirement itself. As Article 235 vests the power of control of subordinate judiciary in the High Court, the absolute right to compulsorily retire a Government servant conferred on the Governor by rule 56(d) of the Fundamental Rules must be subject to the power of control of the High Court, so far as the members of the subordinate judicial service are concerned. In other words, if the High Court considers that a member of the subordinate judicial service should be compulsorily retired, the High Court will make a recommendation in that regard to the Governor, who will make an order of compulsory retirement in accordance with the recommendation of the High Court. The Governor will only act on the basis of the recommendation and pass a formal order. But however formal it is, the compulsory retirement of the member concerned will take effect after the order is passed by the Governor. The High Court, in the present cases, sought to derive its power to compulsorily retire the respondents from rule 56(d) of the Fundamental Rules and in exercise of its power of control it decided to compulsorily retire the respondents, but ignored the power of the Governor under rule 56(d) of the Fundamental Rules to make the order of compulsory retirement in accordance with the recommendation of the High Court. It may be that the power of the Governor under rule 56(d) of the Fundamental Rules is very formal in nature, for the Governor merely acts on the recommendation of the High Court by signing an order in that regard. But however formal it may be, yet the procedure has to be complied with. So long as there is no formal order by the Governor, the compulsory retirement, as directed by the High Court, could not take effect. We are unable to accept the contention of the learned Additional Solicitor General that to send the recommendation to the Governor for the purpose of making a formal order of compulsory retirement would be in derogation of the power of control of the High Court as vested in it under Article 235 of the Constitution. As has been discussed above, the power of control is a power to make the decision as to whether any action would be taken against a member of the subordinate judicial service and if so, what would be the nature of the action. In the case of compulsory retirement, when the High Court comes to a decision that the member should be compulsorily retired from service, its decision or recommendation has to be communicated to the Governor so that he may pass a formal order of compulsory retirement. In the instant cases, as there is no formal order by the Governor under rule 56(d) of the Fundamental Rules, the impugned orders of the High Court are ineffective. The view expressed by one of the learned Judges of the Division Bench that it was not the High Court but the Governor who had to pass formal orders of compulsory retirement, is correct. The contention made on behalf of the High Court that as rule 56(d) of the Fundamental Rules impinges upon the power of control of the High Court, as vested in it under Article 235 of the Constitution, it should be declared ultra vires in so far as it confers power on the Governor to compulsorily retire Government servants, who, in the instant cases, are members of the subordinate judicial service, is without any substance whatsoever and is rejected.

We may now come to the merits of the case. It has been upheld by both the learned Judges of the Division Bench of the High Court that the impugned orders were not supported by any material. Further, it has been held that no material has been placed before the High Court to show that the impugned orders have been passed in public interest. This finding has not been challenged by the learned Additional Solicitor General appearing on behalf of the High Court. All that has been submitted by him is that the High Court was not justified in considering the adequacy or otherwise of the materials in support of the orders of compulsory retirement. There can be no doubt that when the High Court takes the view that an order of compulsory retirement should be made against a member of the subordinate judicial service, the adequacy or sufficiency of such materials cannot be questioned, unless the materials are absolutely irrelevant for the purpose of compulsory retirement. But, in the instant case, there is no question of adequacy or sufficiency of the materials in support of the impugned orders of compulsory retirement. According to the High Court, no material has been placed in justification of the impugned orders of compulsory retirement of the respondents. It is true that the High Court in its administrative jurisdiction has power to compulsorily retire a member of the judicial service in accordance with any rule framed in that regard, but in coming to the conclusion that a member of the subordinate judicial service should be compulsorily retired, such conclusion must be based on materials. If there be no material to justify the conclusion, in that case, it will be an arbitrary exercise of power by the High Court. Indeed, Article 235 of the Constitution does not contemplate the exercise by the High Court of the power of control over subordinate courts arbitrarily, but on the basis of some materials. As there is absence of any material to justify the impugned orders of compulsory retirement, those must be held to be illegal and invalid. In Rajiah's case, a Review Committee consisting of three Judges was appointed by a resolution of the High Court. In the meeting of the Review Committee held on June 25, 1979 to consider the case of the respondent Rajiah, only two Judges of the High Court were present. The two Judges came to the conclusion that the respondent, Rajiah, should be compulsorily retired with effect from April 2, 1980. The Division Bench found that the third Judge had no notice of the meeting held on June 25, 1979, but he agreed with the view expressed by the two Judges with a slight modification that the respondent would retire with effect from March 3, 1980 under rule 56(d) of the Fundamental Rules. The Division Bench of the High Court took the view that as all the three Judges had not sat together and considered the question of compulsory retirement of respondent Rajiah, and that, further, the third Judge having also modified the decision of the two Judges, namely, that the respondent would be compulsorily retired with effect from March 3, 1980, the impugned order of compulsory retirement of the respondent, Rajiah, was vitiated. It is true that the members of the Review Committee should sit together and consider the question of compulsory retirement, but simply because one of them did not participate in the meeting, and subsequently agreed with the view expressed by the other two Judges, it would not vitiate the decision of the Committee to compulsorily retire the respondent. The third Judge might be justified in correcting the date with effect from which the respondent would compulsorily retire, but that is a very minor issue and would not, in our opinion, make the decision invalid.

In regard to the case of the other respondent, namely, K. Rajeswaran, the High Court took the view that the constitution of the Review Committee by the Chief Justice and not by the Full Court was illegal. We are unable to accept the view cf the High Court. We fail to understand why the Chief Justice cannot appoint a Review Committee or an Administrative Committee. But in one respect the High Court is, in our opinion, correct, namely, that the decision of the Review Committee should have been placed before a meeting of the Judges. In the case of the respondent, K. Rajeswaran, the decision and recommendation of the Review Committee was not placed before the Full Court meeting. Nor is there any material to show that the same was circulated to the Judges. In that sense,

the recommendation of the Review Committee was not strictly legal.

Another fact which has been pointed out by the High Court is that although the Review Committee was constituted with two Judges, another Judge also participated in the meeting of the Review Committee and, indeed, he recorded a very elaborate minute. The Division Bench has looked into the record and found that the learned Chief Justice had appointed only two Judges to constitute the Review Committee and observed that the participation of the third Judge was improper. It is, however, not known whether he participated in the meeting of the Review Committee under the direction of the Chief Justice. We had not the opportunity of looking into the record and, as such, we do not make any final pronouncement about the same.

Another infirmity that has been pointed out by the Division Bench is of some substance. The respondent, K. Rajeswaran, was selected a District Munsif by the Public Service Commission on 29.11.1971. His probation was declared by the order of the High Court dated 15.7.1974 and on 1.1.1976 he was confirmed as a District Munsif. The Division Bench has rightly observed that it must be taken that when he was confirmed on 1.1.1976, there was nothing seriously wrong against him. In coming to a decision that the respondent should be compulsorily retired, the third Judge of the Review Committee relied upon events that had happened right from 30.3.1954. It is curious that the past events that happened in 1954 were not considered to be of any significance in appointing the respondent to the post of District Munsif, but for the purpose of compulsory retirement those events were considered to be of importance. In Baldev Raj Chadha v. Union of India, [1981] 1 SCR 430 this Court observed as follows:

"One wonders how an officer whose continuous service for 14 years crossing the efficiency bar and reaching the maximum salary in the scale and with no adverse entries at least for five years immediately before the compulsory retirement, could be cashiered on the score that long years ago, his performance had been poor, although his superiors had allowed him to cross the efficiency bar without qualms. A short cut may often be a wrong cut. The order of compulsory retirement fails because vital material, relevant to the decision, has been ignored and obsolete material, less relevant to the decision has influenced the decision. Any order which materially suffers from the blemish of overlooking or ignoring, wilfully or otherwise, vital facts bearing on the decision is bad in law. Likewise, any action which irrationally digs up obsolete circumstances and obsessively reaches a decision based thereon, cannot be sustained."

The above decision has been relied upon by the Division Bench and that rightly. The decision to compulsory retire the respondent, in our opinion, is vitiated as the High Court had relied upon some adverse incidents against the respondent that took place in 1954, although the respondent was appointed to the post of District Munsif in 1976. In this regard, we may also refer to an observation by this Court in Brij Bihari Lal Agarwal v. High Court of M.P., [1981] 2 SCR 297:

"It is possible that a Government servant may possess a somewhat erratic record in the early years of service, but with the passage of time he may have so greatly improved that it would be of advantage to continue him in service up to the statutory age of superannuation."

For the reasons aforesaid, we are of the view that the Division Bench of the High Court was perfectly justified in quashing the impugned orders of compulsory retirement.

In the result, the appeals are dismissed. There will, however, be no order as to costs.

SHARMA, J. I have gone through the Judgment just now delivered by Mr. Justice M.M. Dutt, and I agree that since there is no material on the records of the cases in support of the impugned orders of compulsory retirement of the two respondents-Mr. R. Rajiah and Mr. K. Rajeswaran, they were rightly quashed by the High Court. The appeals are accordingly dismissed. I am not expressing any opinion on the other questions raised in these cases.

R.S.S. Appeals dismissed.

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