

C. L. Verma

Vs

State of Madhya Pradesh and Another

Civil Appeal No. 4418 of 1989

(M. N. Venkatachaliah, P. B. Sawant, Ranganathan Misra JJ)

20.10.1989

JUDGMENT

RANGANATH MISRA, J. –

1. Special leave granted.

2. The short point for consideration in this appeal is whether statutory rules framed under an Act would prevail over administrative instructions.

3. Appellant was the Chief Municipal Officer of the Municipal Council of Chhidwada in Madhya Pradesh. He was due to superannuate on March 26, 1984 on attaining the age of 58 years. An order suspending him from service was issued on March 28, 1974 (sic 1984) and thereafter he was subjected to a disciplinary proceeding on a set of charges. The appellant's contention is that under Rule 29 of the Madhya Pradesh State Municipal Service (Executive) Rules, 1973, he superannuated when he completed the age of 58 years and by the time the order of suspension was issued he had ceased to be a government servant. Rule 29 which is statutory in character reads thus :

"29. Superannuation. - (1) A member of the service shall attain the age of superannuation on the date he completes his 58 years of age and he shall retire on such date :

Provided that the State Government may allow a member of the service to continue in employment in the interest of Municipal Council or in public interest. However, no member of service shall continue in service after he attains the age of 60 years."

4. Appellant challenged the order of dismissal and the continuation of the proceedings against him on the ground that the order of dismissal was non-est and the inquiry was not tenable in view of the fact that he had ceased to be a government employee.

5. The State Government, on the other hand, relied upon notification of May 15, 1981, issued by it in the Local Bodies Department to the following effect :

# "MADHYA PRADESH GOVERNMENT LOCAL BODIES DEPARTMENT  
ORDER##

It has been decided by the State Government vide S. No. 2368/2072/18/1/18 that like the government servants to retire the officers/employees of municipalities also on the last day of the month in which they complete their 58 years of age (60 years in case of fourth class employees).

Accordingly, the required amendments shall be done in Madhya Pradesh Municipalities Employees (Recruitment and Service Conditions) Rules, 1968, and Madhya Pradesh State Municipalities Service (Executive) Rules, 1973.

Till the amendment is done, it is hereby ordered to retire the municipal officers/employees, on the last date of the month.

For and on behalf of and by order of the Governor.

# Sd/- H. N. Khare Deputy Secretary, Local Bodies Department. S. No. 2369/2071/18/1/61 Bhopal dated May 15, 1981."##

6. The question which arose for consideration in the writ petition before the High Court at the instance of the appellant was whether in the face of the mandate in Rule 29 the administrative order could operate. It is not the stand of the State Government that the order dated May 15, 1981, is one under the proviso to Rule 29. In fact, the tenor of the proviso clearly indicates that it is intended to cover specific cases and individual employees. An administrative instruction cannot compete with a statutory rule and if there be contrary provisions in the rule the administrative instructions must give way and the rule shall prevail. We are, therefore, of the view that the appellant, in terms of Rule 29, ceased to be a government employee on his attaining the age of 58 years, two days prior to the order of dismissal. In view of the fact that he had already superannuated, government had no right to deal with him in its disciplinary jurisdiction available in regard to employees. The ratio of the decision in R. T. Rangachari v. Secretary of State for India in Council (64 IA 40 : AIR 1937 PC 27 : 41 CWN 545) supports the position.

7. The appeal is allowed, the order of the High Court is reversed and the order of dismissal is quashed.

8. The appellant shall have his costs of this appeal. Hearing fee is assessed at Rs. 3000.

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