

M. P. Pradhan

Vs

Union of India and Others

Civil Appeal No. 1899 of 1989

(V.R. Krishna Iyer, Kuldeep Singh JJ)

16.02.1990

JUDGMENT

KULDIP SINGH, J. -

1. The question for our consideration in this appeal is whether the appellant is governed by Fundamental Rule 56(c)(1) and as such entitled to superannuation at the age of 60 years.

2. Fundamental Rule 56(c)(1) is reproduced as under :"

"(c) A ministerial government servant who entered government service on or before March 31, 1938 and held on that date :

(i) a lien or a suspended lien on a permanent post, or ... shall retire from service on the afternoon of the 1st day of the month in which he attains the age of sixty years."

3. The appellant joined service as paid apprentice in the Collectorate of Etawah, Government of Uttar Pradesh on July 1, 1937. On the same day he was asked to officiate in the post of Arranger. He was sent back to the post of paid apprentice on December 24, 1937 but was again appointed as Arranger in officiating capacity on January 3, 1938. While holding the post of paid apprentice he had been appointed in various posts on officiating basis. He was finally promoted and appointed to a permanent post of Copyist in a substantive capacity on August 1, 1941. He came to the Government of India on deputation in March 1943 and thereafter retired from service on attaining the age of 58 years in February 1976.

4. The appellant claimed that having entered government service on permanent basis before March 31, 1938 he was entitled to continue in service till the age of 60 years under Fundamental Rule 56(c)(1) and his retirement on attaining the age of 58 years was illegal. The Central Administrative Tribunal, Principal Bench, New Delhi dismissed the application of the appellant holding that the appellant was only an apprentice under training prior to August 1, 1941 and as such was not holding any employment under the State on permanent basis. According to the Tribunal the appellant was appointed to the government service on permanent basis to the post of copyist on August 1, 1941 and as such he did not come within the purview of Fundamental Rule 56(c)(1).

5. We have examined the admitted entries in the service book of the appellant which are on the record. These entries show that the appellant joined service as paid apprentice on substantive permanent basis on July 1, 1937. It is correct that from July 1, 1937 up to August 1, 1941 he has been shown in the service book to be appointed in officiating capacity to various posts but the fact

remains that his basic appointment as paid apprentice was permanent for the first time as Copyist on August 1, 1941 cannot be accepted in the face clear entries in the service book showing that he joined as paid apprentice on permanent basis on July 1, 1937. Joining as paid apprentice on permanent basis cannot be anything else but entering government service on permanent basis and since the entry was before March 31, 1938 Fundamental Rule 56(c)(1) is attracted and the appellant is entitled to remain in government service till the age of 60 years.

6. In the reply affidavit on behalf of the respondents in the court below, it is stated as under :

"The petitioner joined government service under the provincial Government of Uttar Pradesh on July 1, 1937 against a post of paid apprentice. It appears there were a few permanent posts of paid apprentice under the State Government. Petitioner was appointed against one of them in Collectorate, Etawah."

7. The respondents repeated their stand in the counter filed by them in this Court in the following terms :

"It is submitted that the petitioner joined government service under the Provincial Government of Uttar Pradesh on July 1, 1937 against a post of 'paid Apprentice'. It appears that there were a few permanent posts of paid apprentice under the State Government. The petitioner was appointed against one of them in the Collectorate, Etawah."

8. We are, therefor, of the view, that the Tribunal erred in denying the benefit of Fundamental Rule 56(c)(1) to the appellant. We allow the appeal with costs and set aside the judgment of the Central Administrative Tribunal under appeal and we hold that the appellant was entitled to continue in government service till he attained the age of 60 years. The appellant has already completed 60 years and as such he be paid two years' emoluments with all consequential benefits including any enhancement in the fixation of pension and other post-retirement benefits. we quantify the costs as Rs. 3000.

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