

State of Sikkim and others

Vs

Sonam Lama and others

Civil Appeals Nos. 700 to 702 of 1986

(B. C. Ray, K. Jagannatha Shetty JJ)

06.09.1990

JUDGMENT

1. These appeals on special leave are against the judgment and order passed by the High Court of Sikkim on 4th December, 1985 allowing the writ petitions and quashing the impugned order of compulsory retirement. The short facts of the case are as follows:

The respondents are the employees in the Sikkim Nationalised Transport. On 26th March, 1985 a report was submitted by the Committee of Secretaries, Sikkim Nationalised Transport New Establishment Department recommending compulsory retirement of the respondents. The reasons that weighed with this Committee have been stated in detail in paragraph 3 of the Special Leave Petition at page 24. It is to the following effect :

"The Minister constituted a Committee with the Secretary, Nationalised Transport Department and the Secretary, Establishment Department and reviewed the cases of following four employees who are in key positions in the Nationalised Transport Department, they are S/ Sh

- 1) Smt. Tshering Dolma, Deputy General Manager
- 2) Sonam Lama, Joint General Manager
- 3) Tempo Rapgyal, Superintendent of the Transport, and
- 4) H. N. Pradhan

The Committee reviewed the working of the nationalised transport and suggested that better qualified persons have to be entrusted with the duties and responsibilities of the above four officers and recommended compulsory retirement of the above four officers by their report dated 26-3-1985. The Minister for Transport agreed with the recommendations of the Committee and ordered compulsory retirement of the above four officers and submitted the proposals to the Chief Minister. The Chief Minister after going through the report of the Committee agreed with the proposals of the Department. Thereafter, the Government passed orders dated 11-4-1985 which is as follows:-

" Whereas the Government is of the opinion that it is in the public interest to do so."

Now, therefore, in exercise of the powers conferred by R. 99(1) contained in Chapter 12 of Sikkim Government Service Rules, 1974 the Governor hereby gives notice to Shri Sonam Lama, Joint General Manager (Operation) that he having already attained the age of 50 years on 5-1-1978 shall retire from service with effect from the afternoon of 30-4-1985. He shall be entitled to salary for three months in lieu of three months notice by order signed by L. B. Rai, Joint Secretary, Government of Sikkim, Establishment Department."

2. The respondents being aggrieved filed three writ petitions bearing Nos. 26, 27 and 28 of 1985 challenging the validity of the impugned order. The High Court on hearing the parties arrived at the finding that there has been a violation of the principles of natural justice and also held that the impugned order was made not in public interest as well as by non-observance of the provisions of Article 21 of the Constitution. So, the High Court quashed the order of compulsory retirement and allowed the writ petitions.

3. Against this judgment and order the instant appeals on special leave are preferred before this court.

4. Learned counsel for the State of Sikkim has challenged the judgment of the High Court on the ground that the order of compulsory retirement does not require the observance of rules of natural justice to the parties. He has also submitted that there is no scope for importing the provisions of Art. 21 of the Constitution for making an order of compulsory retirement. On the merits of the matter, he has justified the compulsory retirement of the officials on the ground that they have become a dead wood in the administration. We agree with the first two contentions and make it clear that we do not agree with the findings of the High Court that before passing an order of compulsory retirement, the principles of natural justice have to be followed and we also cannot accept the finding of the High Court that in a case of compulsory retirement the provisions of Art. 21 of the Constitution have to be observed.

5. However, the reason given for compulsory retirement appears to be wholly erroneous and cannot be sustained under law. The Report of the Secretary, Sikkim Nationalised Transport, New Establishment Department, has given reasons why the officials should be compulsorily removed. The Report states:

"that better talent which is available in the department can be used and entrusted with the functions of these officers who can be compulsorily retired..... the functions of these..... officers can be better done by more qualified persons."

Apparently the above reasoning cannot be the basis for compulsorily retiring any official. The Report does not state that in the public interest the officers cannot be continued. The assessment of performance of the officers is only to the effect that there are better talented persons available in the department and the work performed by the officials could be better done by more qualified persons. This is wholly extraneous consideration for- compulsorily retiring any official. 'The better talent' is a relative term. That does not mean that the incumbent in the office has become a dead wood. We agree with the High Court on this aspect and dismiss the appeals with no order as to costs.

Appeals dismissed.

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