

U.P. State Mineral Development Corpn. and Another

Vs

K.C.P. Sinha

Civil Appeal No. 3491 of 1990

(S.C. Agarwal, G.T. Nanavati JJ)

24.04.1996

JUDGMENT

S. C. AGRAWAL, J. –

1. This appeal, by special leave, raises the question regarding validity of Rule 27(iv) of the U.P. State Mineral Development Corporation Limited Employees Service Rules, 1978 (hereinafter referred to as 'the Rules'), as amended vide the Amendment Rules of 1988 with effect from 15-5-1988, which provides for compulsory retirement of an employee of the U.P. State Mineral Development Corporation (hereinafter referred to as 'the Corporation').
2. The Corporation, a company registered under the Companies Act, 1956, is an undertaking of the Government of Uttar Pradesh. The respondent joined the Corporation on 18-1-1977. Initially he was appointed on the post of Marketing Officer. He was redesignated as Marketing Manager on 16-4-1977. He was confirmed on the post of Marketing Manager by order dated 2-6-1984 with effect from 14-3-1978. He started officiating as Chief Marketing Manager under order dated 12-3-1984. By order dated 20-8-1988, the respondent was compulsorily retired from service from the date of the issuance of the said order. It was directed that in lieu of three months' notice he would be entitled to the payment of a sum equivalent to the amount of salary and allowances, if any, at the rate applicable to him just before the retirement. The said order was passed in exercise of the powers conferred by Rule 27(iv) of the Rules. The respondent filed a writ petition (WP No. 66 of 1988) in the Allahabad High Court, Lucknow Bench, challenging the said order of compulsory retirement. The said writ petition has been allowed by the High Court by the impugned judgment dated 20-2-1990. The High Court has held that Rule 27(iv) of the Rules is violative of the provisions of Articles 14 and 16 of the Constitution inasmuch as it does not prescribe any minimum period of service and confers arbitrary power on the authority who can pass an order for compulsory retirement of an employee after 1, 2, 5 or 10 years of service. Feeling aggrieved by the said judgment of the High Court the appellants have filed this appeal.
3. Apart from supporting the judgment of the High Court striking down Rule 27(iv) of the Rules, the learned counsel for the respondent has addressed us on the merits of the order of compulsory retirement and has submitted that even if the Rule is held to be valid the said order cannot be sustained. We will first examine the question regarding the validity of Rule 27(iv) of the Rules.
4. Rule 27 of the Rules, which was substituted by the Amendment Rules of 1988, which came into force on 15-5-1988, provides as follows :

"27. Retirement. - (i) Except as otherwise provided in this rule an employee shall

retire from the service on the afternoon of the last day of the month he attains the age of 58 years.

An employee whose date of birth is the first day of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of 58 years :

Provided an employee of Class IV who entered into the service of the Corporation prior to this amendment shall retire at the age of 60 years.

(ii) Notwithstanding anything contained in these rules an employee may seek voluntary retirement by giving 3 months' notice to the appointing authority at any time after attaining the age of 45 years or after he has completed the service of 20 years.

(iii) Provided that the appointing authority may waive the period of notice fully or partially but the retirement shall be effective only after an order has been passed by the appointing authority to this effect. In his discretion the appointing authority may reject the offer of voluntary retirement of the employee.

(iv) The appointing authority may at any time retire in the public interest or in the interest of the Corporation an employee at the age of 50 years by giving him 3 months' notice or pay in lieu thereof or pay for the said period which falls short of the said period of 3 months.

(v) In order to satisfy whether it will be in the public interest or in the interest of the Corporation to retire an employee of the Corporation under sub-rule (iv) of Rule 27 the appointing authority may take into consideration any material relating to the employee and nothing herein contained shall be construed to exclude from the consideration i.e. :

(i) any entry relating to any period before such employee was allowed to cross any efficiency bar or before he was promoted to any post in officiating or substantive capacity or any stop-gap arrangement or any ad hoc post or

(ii) any entry against which a representation is pending either before the Board or any other authority provided that the representation is also taken into consideration along with the entry or

(iii) any report of communication received from the Government or any report received from the internal vigilance/security set up established by the Corporation under the orders of the Board/Chairman/Managing Director or any report of the vigilance establishment constituted under the U.P. Vigilance Establishment Act, 1965 (7 of 1965) or any report from the CID of the State of U.P.

(iv) Every such decision taken in sub-rule (iv) shall be deemed to have been taken in the public interest or in the interest of the Corporation as the case may be."

5. Clause (i) of Rule 27 prescribes 58 years as the age of superannuation for all employees except employees of Class IV for whom the age of superannuation is fixed at 60 years. Clauses (ii) and (iii)

enable an employee of the Corporation to seek voluntary retirement by giving three months' notice to the appointing authority at any time after attaining the age of 45 years or after he has completed the service of 20 years and the period of notice can be waived fully or partially by the appointing authority. Clause (iv) empowers the appointing authority at any time in the public interest or in the interest of the Corporation to retire an employee who has attained the age of 50 years by giving him 3 months' notice or pay in lieu thereof. The said clause does not prescribe a minimum period of service for the exercise of the power of compulsory retirement by the appointing authority. Clause (v) prescribes the material that can be taken into consideration while exercising the power under clause (iv).

6. The question is whether it is obligatory to prescribe minimum length of service in a provision relating to compulsory retirement and whether in the absence of such a requirement the provision relating to compulsory retirement has to be held to be invalid.

7. The object underlying a provision enabling the appointing authority to compulsorily retire an employee before he attains the prescribed age of superannuation is to energize the administration and make it more efficient by chopping of deadwood and to ensure that a key post is held by a person of undoubted ability and integrity. (See : Union of India v. Col. J.N. Sinha [(1970) 2 SCC 458 : (1971) 1 SCR 791], SCR at p. 796.) The decisions of this Court show that such provisions fall in three categories :

I. A provision which enables compulsory retirement of an employee after he has put in a certain period of service. (See : Shyam Lal v. Union of India [(1955) 1 SCR 26 : AIR 1954 SC 369] and Tara Singh v. State of Rajasthan [(1975) 4 SCC 86 : 1975 SCC (L&S) 222 : AIR 1975 SC 1487]. Compulsory retirement permissible on completion of 25 years of qualifying service.)

II. Provision which enables the compulsory retirement on attaining a particular age. (See : Col. J.N. Sinha [(1970) 2 SCC 458 : (1971) 1 SCR 791] Fundamental Rule 56(j) - compulsory retirement permissible on attaining the age of 50 years.)

III. Provision which enables compulsory retirement on attaining a particular age or on completion of a particular period of qualifying service. (See : State of Bombay v. Saubhagchand M. Doshi [1958 SCR 571 : AIR 1957 SC 892]; T.G. Shivacharana Singh v. State of Mysore [AIR 1964 SC 280 : (1967) 2 LLJ 246 : 15 FLR 224]; Baikuntha Nath Das v. Chief Distt. Medical Officer [(1992) 2 SCC 299 : 1993 SCC (L&S) 521 : (1992) 21 ATC 649].)

8. In Saubhagchand M. Doshi [1958 SCR 571 : AIR 1957 SC 892], compulsory retirement from dismissal or removal from service, has pointed out that while in the case of retirement misconduct and efficiency merely furnish the background and there is no duty to hold an enquiry, in the case of dismissal or removal from service they form the very basis on which the order is made and the enquiry thereon must be formal and must satisfy the rules of natural justice. This Court has further observed : (SCR p. 579)

"It should be added that questions of the above character could arise only when the rules fix both an age of superannuation and an age for compulsory retirement and the services of a civil servant are terminated between these two points of time. But where there is no rule fixing the age of compulsory retirement, or if there is one and the

servant is retired before the age prescribed therein, then that can be regarded only as dismissal or removal within Article 311(2)."

9. In *Moti Ram Deka v. G.M., N.E.F. Railways* [(1964) 5 SCR 683 : AIR 1964 SC 600 : (1964) 2 LLJ 467], while examining the validity of Rules 148(3) and 149(3) of the Indian Railway Establishment Code which provided for termination of services of a permanent servant by giving a notice by either side, this Court has taken note of the decisions of this Court relating to compulsory retirement of government employees including the decision in *Saubhagchand M. Doshi* [1958 SCR 571 : AIR 1957 SC 892] and the observations referred to above. After quoting the said observations, it has been observed : (SCR pp. 715-16)

"It would be noticed that the rule providing for compulsory retirement was upheld on the ground that such compulsory retirement does not amount to removal under Article 311(2) because it was another mode of retirement and it could be enforced only between the period of age of superannuation prescribed and after the minimum period of service indicated in the rule had been put in. If, however, no such minimum period is prescribed by the rule of compulsory retirement, that according to the judgment, would violate Article 311(2) and though the termination of a servant's services may be described as compulsory retirement, it would amount to dismissal or removal within the meaning of Article 311(2). With respect, we think that this statement correctly represents the true position in law."

10. These observations regarding prescribing a minimum period of service have to be read in the light of the observations in *Saubhagchand M. Doshi* [1958 SCR 571 : AIR 1957 SC 892] referred to above which have been approved and which refer to fixing of the age of compulsory retirement. The observations in *Moti Ram Deka* [(1964) 5 SCR 683 : AIR 1964 SC 600 : (1964) 2 LLJ 467] were made in the the context of the provisions of rule 165-A of the Bombay Civil Services Rules, as amended by the Saurashtra Government, which was under consideration in *Saubhagchand M. Doshi* [1958 SCR 571 : AIR 1957 SC 892]. It provided for compulsory retirement of a government servant after he had completed 25 years of qualifying service or 50 years of age. In *Saubhagchand M. Doshi* [1958 SCR 571 : AIR 1957 SC 892] the employee was appointed in 1948 and he was compulsorily retired on 30-10-1952, after 4 years' service, under the said rule since he had attained the age of 50 years. He had not completed the period of 35 years of qualifying service. The said order was upheld by this Court. The observations of this Court in *Moti Ram Deka* [(1964) 5 SCR 683 : AIR 1964 SC 600 : (1964) 2 LLJ 467] regarding the requirement of a minimum period of service cannot, therefore, be read to mean that a provision regarding compulsory retirement must always provide for a minimum period of service. In *Moti Ram Deka* [(1964) 5 SCR 683 : AIR 1964 SC 600 : (1964) 2 LLJ 467] what has been emphasised by this Court is that the validity of a rule providing for compulsory retirement may be open to question if having fixed a proper age of superannuation it permits a permanent servant to be retired at an early stage of his career.

11. This question came to be considered in *Gurdev Singh Sidhu v. State of Punjab* [(1964) 7 SCR 587 : AIR 1964 SC 1585 : (1965) 1 LLJ 323] in the context of Article 9.1 of the Pepsu Services Regulations which provided that the Government could retire any government servant after he had completed 10 years of qualifying service. The said rule was held to be invalid as being violative of Article 311(2) of the Constitution. It has been observed : (SCR p. 594)

"If a permanent public servant is compulsorily retired under the rules which prescribe the normal age of superannuation and provide for a reasonably long period of

qualified service after which alone compulsory retirement can be ordered, that again may not amount to dismissal or removal under Article 311(2) mainly because that is the effect of a long series of decisions of this Court. But where while reserving the power to the State to compulsorily retire a permanent public servant, a rule is framed prescribing a proper age of superannuation, and another rule is added giving the power to the State to compulsorily retire a permanent public servant at the end of 10 years of his service, that cannot, we think, be treated as falling outside Article 311(2). The termination of the service of a permanent public servant under such a rule, though called compulsory retirement, is, in substance, removal under Article 311(2)."

12. The High Court, in striking down clause (iv) of Rule 27 of the Rules, has placed reliance on the decisions of this Court in *Moti Ram Deka* [(1964) 5 SCR 683 : AIR 1964 SC 600 : (1964) 2 LLJ 467] and *Gurdev Singh Sidhu v. State of Punjab* [(1964) 7 SCR 587 : AIR 1964 SC 1585 : (1965) 1 LLJ 323] to hold that it was incumbent to prescribe a minimum period of service. In taking the said view the High Court failed to note that under clause (iv) of Rule 27 of the Rules the power of compulsory retirement can be exercised only after an employee attains the age of 50 years. The normal age of superannuation prescribed under Rule 27 is 58 years. The fixation of the age of 50 years for the purpose of compulsory retirement does not result in compulsory retirement of an employee at an early stage of his career. As noticed earlier, there is a similar provision in Fundamental Rule 56(j) which provides for compulsory retirement on attaining the age of 50 years or 55 years as mentioned in *Col. J.N. Sinha* [(1970) 2 SCC 458 : (1971) 1 SCR 791] and the orders passed for compulsory retirement under the said provision have been upheld by this Court. Similarly there are provisions where the power of compulsory retirement can be exercised either on attaining a particular age (generally 50 years) or on completion of the prescribed period of qualifying service and orders for compulsory retirement passed on attaining the prescribed age have been held to be valid as in *Saubhagchand M. Doshi* [1958 SCR 571 : AIR 1957 SC 892] and *T.G. Shivacharana Singh* [AIR 1965 SC 280 : (1967) 2 LLJ 246 : 15 FLR 224]. In *Saubhagchand M. Doshi* [1958 SCR 571 : AIR 1957 SC 892] the employee had been compulsorily retired on completion of about 4 years' service only. We are, therefore, unable to agree with the view of the High Court that clause (iv) of Rule 27 suffers from the vice of arbitrariness and is violative of the provisions of Articles 14 and 16 of the Constitution inasmuch as it does not prescribe a minimum length of service for the exercise of the power of compulsory retirement.

13. Shri Tripathi, the learned counsel appearing for the respondent, has urged that even if clause (iv) of Rule 27 is held to be valid the said clause could not be applied in the case of the respondent because the respondent joined the service of the Corporation in 1977 and this clause was introduced after his joining the service with effect from 15-5-1988. It has been urged that the said provision cannot be given retrospective effect so as to apply to the respondent who had joined the service of the Corporation prior to the introduction of the said clause. The submission is that the amendment that was introduced in the Rules in 1988 can only operate prospectively and does not have retrospective operation. We find no merit in this contention. The amendment that has been introduced in the Rules by the Amendment Rules of 1988 with effect from 15-5-1988 operates prospectively and the said operation cannot be held to be retrospective in nature merely because it applies to employees who joined the Corporation prior to the said amendment but were in service of the Corporation on the date of coming into operation of the amendment. The rule operates prospectively in respect of all the employees of the Corporation who were employed with the Corporation on 15-5-1988. Moreover, the letter of appointment dated 18-1-1977 which was given to the respondent contains the following terms :

"You will be governed by the rules and regulations of the Corporation framed from time to time."

The respondent, therefore, cannot make a grievance that the amendment that was made in the Rules in 1988 whereby Rule 27 was substituted is not applicable to him and was wrongly applied.

14. Shri Tripathi has next submitted that even if clause (iv) of Rule 27 is held to be valid the application of the said rule in the case of the respondent suffers from the vice of arbitrariness inasmuch as the services of the respondent have been arbitrarily terminated. In support of his aforesaid submission, Shri Tripathi has invoked the principles laid down by this Court in Delhi Transport Corpn. v. DTC Mazdoor Congress [1991 Supp (1) SCC 600 : 1991 SCC (L&S) 1213 : 1990 Supp (1) SCR 142]; Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly [(1986) 3 SCC 156 : 1986 SCC (L&S) 429 : (1986) 1 ATC 103]; and W.B. SEB v. Desh Bandhu Ghosh [(1985) 3 SCC 116 : 1985 SCC (L&S) 607]. In our opinion, this submission is without substance. As pointed out by this Court in Shyam Lal [(1955) 1 SCR 26 : AIR 1954 SC 369] compulsory retirement differs from dismissal or removal from service in the sense that while the case of dismissal or removal involves loss of benefit already earned, an officer who is compulsorily retired does not lose any part of the benefit that he has earned and on compulsory retirement he would be entitled to the benefit that he has actually earned and that there is no diminution of the accrued benefit (p. 42). It is not the case of the respondent that he has been denied the benefit which accrued to him on the basis of his service in the Corporation. The fact that the respondent joined service at a late stage when he was about 41 years' old and on account of his being compulsorily retired his services stood terminated after putting about 9 years of service only does not mean that the order of compulsory retirement ceases to be an order for compulsory retirement and should be treated as an order for removal from service. Merely because the respondent would not be able to earn pension since he had not put in the prescribed period of qualifying service would not invalidate the order of compulsory retirement if it is otherwise found to have been passed in accordance with the requirements of Rule 27(iv).

15. The impugned order of compulsory retirement was passed on the basis of the recommendations of a Screening Committee consisting of the Managing Director and two Directors of the Corporation. In the Confidential Report of the respondent for the year 1983-84 following remarks have been made by the Reviewing Officer :

"I regret that I cannot agree with the Reporting Officer. Shri K.C.P. Sinha evaded responsibility and his general reputation for integrity was bad. He got his own brother-in-law appointed as Sales Agent for Silica Sand and other products without disclosing this fact to the Management and continued to deal with him throughout without disclosing this relationship. His general reputation somehow has not been very good. I was not satisfied even with his administrative ability. I would assess his performance and leadership qualities inadequate. He might be able to work successfully under close supervision but is unsuitable for an independent assignment. His written work is well below average.

I would rate his performance as poor."

16. Shri Tripathi has submitted that the said remarks were made by Shri A.P. Singh on 19-5-1985 after he had ceased to be the Managing Director of the Corporation and that he had taken the file with him when he left the Corporation and he returned the file only in 1987. It has also been urged

by Shri Tripathi that the respondent had submitted a representation against the remarks and the same has not been considered. The fact of the respondent having submitted a representation against the said remarks was denied by the appellants before the High Court. The High Court felt that this being a disputed question of fact, could not be decided in writ jurisdiction. We are in agreement with the said view of the High Court. Insofar as the remarks are concerned, we are of the view that the same cannot be ignored only because the relevant file was taken away by Shri A.P. Singh, the Reviewing Officer, with him and the file was sent back after two years in 1987. No case of mala fides has been made out by the respondent against the Reviewing Officer. The said remarks contain a reflection on the integrity of the respondent in the matter of discharging his duties. Having regard to the said remarks it is not possible to hold that the compulsory retirement of the respondent by the appointing authority under order dated 20-8-1988 was not in public interest. We are, therefore, of the view that the order of compulsory retirement of the respondent does not suffer from any infirmity and the High Court was not justified in setting aside the said order.

17. By order dated 27-8-1990, this Court had stayed the reinstatement of the respondent on condition that the appellants will continue to pay 60% of the salary to the respondent and the respondent had agreed that the receipt of the said payment would be subject to further orders of this Court. It appears that the respondent was paid 60% of the salary in accordance with the said order but subsequently the Corporation, instead of paying 60% of the salary without obtaining his services considered it essential in the interest of the Corporation to obtain his services and by order dated 12-1-1995 he has been appointed as Chief Marketing Manager and he is functioning on that post now. Since we are upholding the order of compulsory retirement it will be open to the Corporation to consider whether the respondent should continue on the post of Chief Marketing Manager. As regards the period for which the respondent had been paid 60% of the salary in pursuance of the order dated 27-8-1990 the said amount shall be refundable by the respondent to the Corporation. The said amount shall be refunded by the respondent within a period of three months.

18. In the result the appeal is allowed, the impugned judgment of the High Court is set aside and the writ petition filed by the respondent is dismissed. No orders as to costs.