

Accountant General, A. P. and Another

Vs

Mohd. Abdul Rahman Khan

Civil Appeal No. 698 of 1981

(S. Saghir Ahmed, K. Ramaswamy JJ)

06.02.1997

ORDER

1. This appeal by special leave arises from the judgment of the Division Bench of the Andhra Pradesh High Court in Writ Appeal No. 397 of 1978, made on 15-11-1978. The respondent was appointed as a Lower Division Clerk in the erstwhile Nizam State (Part State) on 10-3-1938. His date of birth is 6-3-1919. After the formation of Part B State, he was confirmed in the office of the Accountant General as Upper Division Clerk. He was absorbed permanently on 1-4-1950, since, he had been working in the office of Accountant General of Hyderabad from 7-3-1939. The question arises whether he requires to be superannuated on his completion of 58 years. The respondent contended that being an erstwhile employee of Part B State absorbed in the Government of India service, he is governed by Fundamental Rule 56(c) and clause (a) of Fundamental Rule 56 does not apply to him and, therefore, he is entitled to remain in service until he reaches the age of superannuation of 60 years. That contention found favour with the learned Single Judge and was upheld by the Division Bench. Thus, this appeal by special leave.

2. Fundamental Rule 56, as amended in July 1965 reads as under :

"F. R. 56 was amended in July 1965. After amendment the relevant part of it reads as follows :

(a) except as otherwise provided in this Rule every government servant shall retire on the day he attains the age of 58 years.

##(b) * * *##

(c) A ministerial government servant who entered government service on or before 31-3-1938 and held on that date (i) a lien or suspended lien on a permanent post or, (ii) a permanent post in a provisional substantive capacity under clause (a) of Rule 14 and continued to hold the same without interruption until he was confirmed in that post, shall be retained in service till the day he attains the age of 60 years.

Note : For the purpose of this clause, the expression, 'Government service' includes service rendered in a former provincial Government.

##(cc) * * *##

3. The appellants have taken the stand that by virtue of Rule 1(ii) which came into force on 1-4-

1950 of the C. C. S. (Part B State Transferred Employees) Rules, 1953 by operation of Rule 9(4) of the Rules, on determination of the age, a ministerial servant was to superannuate under Fundamental Rule 56(b) (ii) as it stood prior to amendment in July 1965 would apply and as a consequence, the respondent was required to be superannuated on his completion of 58 years of age. Accordingly, he was informed of the same by a letter dated 27-11-1976 that he was to retire on 31-3-1977 on his attaining 58 years. The stand taken by the appellants is not correct in the light of clause (c) of Fundamental Rule 56. It is a special provision in relation to an erstwhile government servant in Part B State, who was made permanent, after the Part B State merged with the Union of India. Nizam State was Part B State and merged in Union of India and became an integral part of the Andhra Pradesh State under the States Reorganisation Act, 1956. The note to Fundamental Rule 56 clearly mentions that for the purpose of this clause, the expression, 'government service' includes service rendered in a former provincial Government. In view of the admitted position that the respondent was appointed on permanent basis as an LDC on 10-3-1938 and ever since he continued in service till he was absorbed as UDC on permanent basis on 1-4-1950 with the Central Government, he held his post on permanent basis with a lien in provincial service, prior to the Amendment Rules, 1965 had come into force, namely, prior to 31-3-1938. As a consequence he is governed by clause (c) of Fundamental Rule 56. Accordingly, he is required to be superannuated only on his completion of 60 years of age. The High Court, therefore, was right in directing that the respondent should be retained in service till he attains the age of 60 years. Even by now he had completed superannuation. It needs no interference.

4. The appeal is accordingly dismissed. No costs.