

State of Punjab and Others

Vs

Gamdoor Singh

Civil Appeal No. 1525 of 1993

(K. Venkataswami, V.N. Khare JJ)

05.08.1997

ORDER

1. This appeal by special leave is preferred against the judgment of the Punjab and Haryana High Court under the following circumstances.
2. The respondent was appointed as Nazir Niabat Amolh on 1-5-1947 by the Registrar of the High Court of Nabha. Subsequently, the Nabha High Court was merged with the Pepsu State on 1-9-1948. Later on, it was merged along with Pepsu with Punjab State. Disciplinary action for unauthorised absence from duty was initiated against the respondent. At that time he voluntarily addressed a letter on 6-7-1977 to the Sub-Judge, Patiala, under whom he was serving, seeking permission to retire voluntarily. It may be noted by offering voluntary retirement he avoided disciplinary action. The learned Sub-Judge granted the permission and the respondent was retired from service w.e.f. 31-8-1977. Surprisingly the respondent challenged the permission so granted by the learned Sub-Judge, Patiala, and the consequential retirement order on the ground that the authority to grant such permission was not the learned Sub-Judge but the Hon'ble Chief Justice/Registrar, Punjab and Haryana High Court. This contention was raised on the basis of Section 115(7) of the States Reorganisation Act, 1956. To sustain his contention, he filed a civil suit challenging the order of voluntary retirement. The trial court (Senior Sub-Judge, Patiala) did not accept the contention and accordingly dismissed the suit. On appeal, the appellate court (Additional District Judge, Patiala) accepted the contention of the respondent and allowed the appeal. The High Court also confirmed it on the ground that appointing authority so far as the respondent was concerned was the Chief Justice/Registrar of the High Court. It is under these circumstances the present appeal by way of special leave has been preferred.
3. Learned counsel appearing for the appellant brought to our notice proviso to Section 115(7) of the States Reorganisation Act and also Rule 2(1) of the Punjab Civil Services (Premature Retirement) Rules, 1975.
4. According to the learned counsel, the proviso to sub-section (7) of Section 115 enables the State Government to frame rules with prior approval of the Central Government to change the conditions of service. Accordingly, with the prior approval of the Central Government the said rules have been framed. Section 115 of the States Reorganisation Act, 1956 deals with the provisions relating to services other than all-India services. Sub-section (7) with proviso thereof reads as follows :

"115. (7) Nothing in this section shall be deemed to affect after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with

the affairs of the Union or any State :

Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in sub-section (1) or sub-section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government."

5. As noticed above, with the prior approval of the Central Government and in exercise of the powers conferred by the proviso to Article 309 of the Constitution, and by invoking the power under the proviso to sub-section (7) of Section 115 of the States Reorganisation Act, the Punjab Civil Services (Premature Retirement) Rules, 1975 were framed. Rule 2 of the Punjab Civil Services (Premature Retirement) Rules, 1975 defines the expressions contained in those Rules. Rule 2(1) defines "appropriate authority" as follows :

"2. (1) 'appropriate authority' means the authority which has the power to make substantive appointments to the post or service from which the government employee is required or wants to retire or any other authority to which it is subordinate."

6. It is not in dispute that at the relevant time viz. 31-8-1977, the appointing authority for the post of Nazir Niabat was the Senior Subordinate Judge. As a matter of fact the High Court has noticed this position by observing as follows :

"The factum of Senior Sub-Judge being the appointing authority for a Nazir, now under the Punjab and Haryana High Court would not make any difference to the case of the plaintiff because he was appointed by the Chief Justice of Nabha High Court."

7. The High Court committed a mistake by noticing the provision in the States Reorganisation Act, namely, sub-section (7) to Section 115 without noticing the rules framed under the proviso to that section changing the service conditions concerning premature retirement. It is fairly stated by the learned counsel appearing for the appellant that the 1975 Rules were not brought to the notice of the High Court.

8. A combined reading of proviso to sub-section (7) of Section 115 of the Act and Rule 2(1) of the Retirement Rules, 1975 (supra), we are of the view that the acceptance of the letter of voluntary retirement given by the respondent and the consequential order retiring him from service prematurely by the Senior Subordinate Judge was within his power and the finding of the High Court that the acceptance and consequential order should have been by the High Court was not correct.

9. In the result, the appeal succeeds and it is accordingly allowed. The suit filed by the respondent stands dismissed. There shall be no order as to costs.