

Meghraj Urkudaji Tempe

Vs

State of Maharashtra

Civil Appeal No. 5197 of 1993

(S. P. Bharucha, M. Jagannadha Rao JJ)

13.05.1998

JUDGMENT

M. JAGANNADHA RAO, J. –

1. The appellant contends that the notice dated 23-1-1989 for compulsory retirement issued under Rule 10(4)(a)(i) of the Maharashtra Civil Services (Pension) Rules, 1982 is bad inasmuch as the procedure indicated in the circular issued by the State Government on 1-9-1983 has not been followed before the appellant crossed 50 years and his case must be deemed to have been reviewed in his favour before he crossed 50 years. In such a situation, a second review after he crossed 50 years is, according to the appellant, not permissible. It is also contended that it is not open to the respondent while issuing notice on 23-1-1989 to apply the norms prescribed in a latter circular dated 12-5-1986. It is contended that while the 23-1-1983 circular prescribes a standard of "not less than average", the circular dated 12-5-1986 prescribes a more stringent standard of "not less than good". If review had been undertaken before the appellant crossed 50 years, then it would have been sufficient if the appellant satisfied the standard of "less than average" - which, in fact, he did - as per the norms prescribed by the circular dated 1-9-1983. The contention of the appellant is that the circular dated 1-9-1983 is binding on the Government and is intended to see that the general power under Rule 10(4)(a)(i) is not used arbitrarily.

2. After hearing learned Senior Counsel on both sides, we are prima facie inclined to accept the above contention of the appellant. But we have come to notice a two-Judge Bench decision in *Suryakant Govind Oke v. State of Maharashtra* (1995 Supp (2) SCC 420 : 1995 SCC (L&S) 872 : (1995) 30 ATC 137) wherein it has held that even if an officer's case has not been reviewed before he crossed 50 years, his case can be reviewed under the circular dated 12-5-1986 read with Rule 10(4)(a)(i) of the Rules, and that this could be done even after he has crossed 50 years. We have, therefore, thought it fit that the case is to be decided by a three-Judge Bench.

3. In this context, we are of the view that the decisions in *Union of India v. Nasirmiya Ahmadmiya Chauhan*, (1994 Supp (2) SCC 537 : 1994 SCC (L&S) 1144 : (1994) 28 ATC 66), *K. Chelliah v. Industrial Finance Corp'n. of India* (1992 Supp (3) SCC 82 : 1993 SCC (L&S) 70 : (1992) 21 ATC 849) and in *Brij Mohan Singh Chopra v. State of Punjab* ((1987) 2 SCC 188 : (1987) 3 ATC 496) decided by Benches of two Judges and also a decision of a three-Judge Bench in *State of U. P. v. Chandra Mohan Nigam* ((1977) 4 SCC 345 : 1977 SCC (L&S) 535 : (1978) 1 SCR 521) - all concerning the effect of circulars/guidelines dealing with compulsory retirement - are also relevant.

4. We direct accordingly that the papers be placed before the Hon'ble the Chief Justice of India, for being listed before a Bench of three learned Judges.