

# ALLAHABAD HIGH COURT

Motilal Gupta

Vs

State of U.P

Special Appeal No. 126 of 1997

(R.A. Sharma and D.K. Seth, JJ.)

10.03.1997

## JUDGMENT

### **R.A. Sharma , J.**

1. Being aggrieved by an order retiring him from service at the age of 58 years, the Appellant who was a Junior Engineer in the Irrigation Department of the State, filed Writ Petition No. 5036 of 1997. The writ petition having been dismissed with costs of Rs. 5,000 by a learned single Judge on 11.2.1997, the Appellant has filed this appeal.

2. The learned Counsel for the Appellant has made three submissions, namely : (1) the Appellant having joined the Department as a Group 'D' employee is entitled to retire at the age of 60 which is the age of retirement of group 'D' employees even though he was holding the Group 'C' post of Junior Engineer on the date on which the impugned order of retirement was passed, (2) as this Court has granted interim orders in some of the writ petitions filed earlier by some of the Junior Engineers permitting them to continue in service upto the age of 60 years, the learned Judge ought to have granted the similar interim order in favour of the Appellant and it was not open to the learned Judge to dismiss the writ petition and (3) in view of the fact that the writ petitions filed by some Junior Engineers have been entertained earlier, there was no occasion to impose the cost of Rs. 5,000 against the Appellant.

3. The Appellant has filed a supplementary affidavit along with an application in which he has given reference of two writ petitions filed in this Court by Junior Engineers and has also quoted a stay order dated 4.1.1994 passed in one of those writ petitions whereby the Petitioner therein has been permitted to continue in service upto the age of 60 years. We have heard the learned Counsel for the parties.

4. Fundamental Rule 56, the relevant extract of which is reproduced below, has fixed the age of superannuation of the State employees.

"55. (a) Except as otherwise provided in other clauses of this rule, every Government Servant shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. He may be retained in service after the date of

retirement on superannuation, with the sanction of the Government, on public grounds, which must be recorded in writing, but he must not be retained after the age of 60 years except in every special circumstances:

Provided that a Government servant, recruited before; November 5, 1985 and holding the Group "D" post shall retire from service on the afternoon of the month in which he attains the age of 60 (Sixty) years".

5. By the above Rule, the superannuation age for the State employees has been fixed at 58 years. But the exception has been made by the proviso in favour of Government servants holding Group "D" posts who were recruited before November 5, 1985. The said provision can be applied only when two conditions are satisfied : (1) the Government servant must have been recruited before November 5, 1985 and (2) he is holding Group 'D' post at the time of his retirement. If any of the above two conditions is not satisfied, the proviso will not be applicable and the Government servant must retire at the age of 58 years. Therefore, a Government servant who was recruited before November 5, 1985 as a Group 'D' employee but has subsequently been promoted to Group 'C' post, his case will be governed by the main provision of Rule 56(a) and the provision appended thereto will not be applicable to him. He has, therefore, to retire at the age of 58 years. In this connection, reference may be made to a decision of the Division Bench of this Court in *Ram Chandra Lal v. Zila Panchayat Raj Adhikari*<sup>1</sup> relevant extract of which is reproduced below:

"5. It is thus apparent that for every Government servant of this State the retirement age is 58 years and the only exception, which has been made by the proviso to the above rule is in favour of a Government servant of Group 'D' who was recruited before November 5, 1985 in whose case the age of retirement is 60 years accordingly, all the Government servant will retirement the age of 58 years unless a Government servant belongs to Group 'D' and was recruited before November 5, 1985 for whom the proviso to Fundamental Rule 56 has fixed the age of retirement at 60 years.

6. The Appellant was although recruited as a Group 'D' employee in the Department but he was subsequently promoted as Junior Engineer and was also confirmed on that post. The post of Junior Engineer belonged to Group D' for which the age of retirement has been fixed at 58 years. The first contention, therefore has to be rejected.

7. As regards the second contention as may be mentioned that normally there should not consistency in the interim orders which may be passed by the Court. But this Rule is not without exception. The Court can refuse to pass the interim order similar to that which was passed in earlier case in many situations/circumstance, such as (i) when the interim order in the earlier case was granted in ignorance of the statutory provisions, and/or the decision of the higher Court of the Court of co-ordinate Jurisdiction : (ii) when the interim order passed in the earlier case is contrary to the statutory provisions which have neither been declared ultra vires nor is their validity under challenge in the case; (iii) when the interim order is obtained in the earlier case by concealment of relevant facts and/or law; and (iv) when the interim order passed in the earlier case is based on the fact situation of a particular case. The above illustrations are not the only exceptions to the rule of consistency in the matter of interim orders. There may be many more

situations where the Court may not pass similar interim orders depending on the peculiar facts and circumstances of the case. That apart, the grant of interim order on the earlier case does not prevent the Court from deciding writ petition filed subsequently on merit. In the instant case, Fundamental Rule 56 has fixed the retirement age of a Junior Engineer who is a Group 'C' employee at 58 years and the interim order which is said to have been passed In earlier case was thus contrary to statutory Rules the validity of which is not under challenge. It was, therefore, not obligatory for the learned single Judge to pass similar order in favour of the Appellant in any case, as the learned Judge had decided the Appellant's writ petition on merit, the interim order passed In the earlier case cannot be used as a precedence. The second contention is also rejected.

8. Regarding the third submission, the learned Counsel submitted that but for the interim order passed In the earlier case, he would not have filed the writ petition of the Appellant challenging the order of his retirement. In view of the facts and circumstances of the case and the submission made, we are of the view that the writ petition was rightly dismissed but cost of Rs. 5,000 (Rupees five thousand) should not have been imposed.

9. For the reasons given above this appeal is disposed of. The aspect of though the judgment of the learned single Judge whereby the cost of 5.000 (Rupees five thousand) has been imposed, is set aside. The rest of the judgment of the learned Judge is upheld the view of the facts and circumstances of the case. There will be no order as to costs.

Appeal partly allowed.

Cases Referred.

1994 (3) UPLBEC 1708