

---

**(1988) 05 AHC CK 0048**

**In the Allahabad High Court**

**Case No :** (Connected with W. P. Nos. 2946 and 3205 of 1987)

B.P.Misra

APPELLANT

Vs

State of U.P. & Others

RESPONDENT

---

**Date of Decision :** 21-05-1988

**Acts Referred:**

**Citation :** (1988) 05 AHC CK 0048

**Hon'ble Judges :** R.M.Sahai, J and D.S.Bajpai, J

**Final Decision :** Allowed

---

## **Judgement**

R.M. Sahai, J.—The short but important question of law having wide impact that arises for consideration in this petition, directed against order of government granting two years extension to opposite party no. 3 after his superannuation is, if it was permissible to do so under rules and if it could be, then, on what terms?

2. To comprehend the magnitude of challenge the facts which were undisputed or stood verified from the record produced by the learned standing counsel may be narrated in brief. Sri L.R. Singh was appointed as Cane Commissioner in July, 1986. In November, 1986 Dr. C.B. Singh opposite party no. 3 was promoted as Additional Cane Commissioner. Within" few days of his promotion the Cane Commissioner recommended to the Government that term of opposite party, who was to retire in April, 1987, maybe extended by two years. It was not accepted. And the proposal was dropped in view of the clear government policy against granting any extension s is clear from letter dated 29th January, 1987. From the record it transpired that this decision was taken by high officers in the Cane and Appointment department. Things remained quiet for sometime. In March, 1987 movement started. Although the averments in paragraph 21 of the writ petition alleging that it was initiated at the instance of opposite party no. 3 by Sri Ajit Sethi, M.L.A., and State Minister, Sri Hukum Singh, have been denied because there was nothing on record to substantiate it but the contents of paragraph 22 of the writ petition which relate to State Minister for cane remained uncontroverted even though he had been impleaded as party. The mere denial by

an official of the Secretariat was not sufficient. It may be worthwhile extracting the averments of paragraph 22 which runs as under:

?That when the petitioner and other members of the Association members met the Hon"ble the State Minister he had informed and assured that there was no question of granting any such extension to Dr. C.B. Singh. He had also informed that the matter had been considered in detail once again by the Karmik Vibhag as well as Chief Secretary on the basis of the motion made by the abovesaid M.L.A. Sri Ajit Singh Sethi and the parent department as well as the Secretary concerned had once again given their detailed opinion for not granting any extension as the same would be against the Government orders and rules and accordingly the above said issue had been closed finally.?

In any case in April, 1987 the State Minister on its own without any request or communication from the office of the Cane Commissioner appears to have directed the office to put up before him the file relating to the extension of opposite party. It was complied with as appeared from the forwarding letter sent by Special Secretary to the State Minister. The State Minister thereafter put up a very detailed note to the Chief Minister speaking very high of opposite party and recommended strongly that his services should be utilised for a further period of two years. The Chief Minister agreed with the recommendation and on 30th April, the impugned order was passed by the Government.

3. Without entering into the merits of the allegations against the then Cane Commissioner founded on relationship and caste affinity with opposite party a brief reference may be made to various orders issued by government in regard to grant of extension. The first order appears to have been issued in 1963 laying down clearly that no extension should be granted after an employee reached age of superannuation. In December, 1973 the order of 1963 was reiterated and it was brought to the notice of all the departments concerned that the request for extension of service after superannuation should be accepted rarely, and in public interest. The order emphasised that the growing tendency of applying for extension by employees should be dealt strictly keeping in view the unemployment problem. In August, 1977 another order was issued deprecating the practice by Head of Department to continue an employee even after superannuation in expectation of extension being granted. In October, 1977 another order was issued reiterating the earlier orders and providing that extension should not be granted and even if it became necessary in any case then approval of personnel department be obtained. These orders were reiterated once again in 1980 and it was emphatically stated that no extension after superannuation should be granted. This order, however, made an exception if the post was occupied by an eminent jurist or Scientist. Clause 7 of it provided that if the post was held by such persons and despite efforts no suitable person was available and it was unavoidable or very important to extend the services in public interest then such an employee may be retained for not more than two years, after obtaining prior permission of Karmik (Personnel) department as a

consultant on contract. The order further stated that while passing the order it should be recorded clearly that no suitable person was available despite effort. This order was again reiterated in July, 1985.

4. Two things stand out clearly from these orders; one, that extension beyond the age of superannuation should be rare and in exceptional circumstances namely, public interest. How the word "public interest" should be understood in the context in which it has been mentioned in these orders shall be dealt with later. But from the orders of 1980 and 1985 it is amply clear that the scope was further curtailed and the policy decision of the government was that extension should be granted only if it was necessary and unavoidable. And if it was, then the employee could be retained on contract as a consultant only. Obviously, because a person occupying the post of eminent jurist or a Scientist may be difficult to replace. But surely it was not intended to be an excuse for extending services of an employee in any department on pretext that he was highly qualified or held degree in the field of Scientific research or he had contributed in the legal field. Further the tenor of the order indicates that they have been issued keeping in view the interest of the institution and not the individual. The extension wherever permitted is for the sake of post and not to the person who occupied it. Another feature which is discernible from these orders is that that the government did not intend rather made its intention clear that those who were already working in the department should not be effected and their promotional chances should not be put in abeyance. After all, promotion to the higher post is an incentive which keeps the employee efficient, sincere and hard working, looking forward to the date when due to his merit he shall not be denied what was due to him. That appears to be the basic reason why the orders provided that the retention of such person should be as consultant.

5. Does the impugned order withstand the tests and norms as unfolded in various orders issued by government itself ? With constraint, not even remotely because the post was of Additional Commissioner, a post reserved for promotion from the cadre of persons working in the department itself. There is no direct recruitment to the post. The field of eligibility is Joint Cane Commissioner and in absence of any Joint Cane Commissioner, the Deputy Cane Commissioner, who are class II officers recruited from an examination conducted by public service commission. The post, therefore, does not require a person either to be a scientist or jurist. It is a normal promotional avenue for class II officers to move on the ladder in the hierarchy of the department. In the note of the State Minister which of course was the basis or foundation for the order not a word was mentioned if the post was one which required a person of high calibre of a Scientist. As stated, it could be occupied by any person who had been recruited as a Class II Officer and was otherwise suitable. May be that opposite party is a scientist and he may be renowned in his field but that does not render the post itself as a post of a Scientist or eminent jurist. The State Minister in his note had gone in detail to support his recommendation as opposite party was associated with certain projects which were being worked out satisfactorily and successfully

by opposite party. Assuming it to be so it could not bring the case of opposite party within the exception pointed out in the Government order mentioned earlier. Achievements of opposite party as a Scientist has been narrated at length both in the counteraffidavit filed by the State government and the opposite party to bring it in exception provided by Clause 7 of 1985 Order. Least that can be said of it is that it was an abortive attempt to justify the unjustifiable. No heed was paid to government orders. They were ignored on pretext of competency. And that is bound to happen if such matters are not routed through proper channel and the person at helm of affairs is denied the benefit of nothings by officials. The discretion to follow the recommendation of Secretary or Additional Secretary in the department may vest with the Minister but the advantage of consultation based on rules and regulations which is necessary in such sensitive matters need not be emphasised. As stated earlier, the request for extension in January was rejected by high officials of Cane and Appointment Departments. But it got activated suddenly in April, 1987. In government functioning, specially at the high level fairness and its appearance as such is imperative otherwise it casts a veil of suspicion which erodes the basic norm of impartiality, Rules are made and policies are laid down to be followed. Adherence to it by the highest is not only desirable but necessary as well, as it not only tones up administration but percolates discipline in the bottom. Deviation from norms generates sycophancy and encourages wire pulling which is destructive of rule of fairness and impartiality. When framers of rule do not feel obliged to follow it then its implementators and followers relish its breach. If such construction is put on the Government order as has been suggested in the counteraffidavit or as argued by the learned Standing counsel then the objective of Clause 7 shall stand frustrated.

6. Public interest is an expression of wide connotation. But its meaning is to be understood in the context in which it has been used. So far as its use in the govt. orders referred to earlier is concerned it hardly leaves any room for doubt that it has to be understood in a narrow sense entitling government to exercise its power merely for betterment of the institution and not to benefit a particular person. Public interest is not a cloak for ignoring rules. No authority howsoever high if it acts in violation of or against the rules and orders then the action becomes contrary to public interest as observance of law is public interest and not otherwise. In *Baldeo Raj Chaddha v. Union of India* (AIR 1981 SC 70) the Hon<sup>ble</sup> Supreme Court while construing the word "public interest" in relation to retirement observed:

?It is an affirmative action not a negative disposition, a positive conclusion, not a neutral attitude??? so if unlimited discretion is regarded acceptable for making an order of premature retirement, it will be the surest menace of public interest and must fail for unreasonableness, arbitrariness and dismissal. To Constitutionalise the rules we must be so rigid from the potential for the mischief we have just projected. The exercise of power must be bonafide and promote public interest???.When an order is challenged and validity depends on its being supported by public interest the State must disclose the material so that the

Court may be satisfied that the order is not bad for want of any material whatever which a reasonable man reasonably instructed in the law, is sufficient to sustain the ground of public interest .....the limitation of judicial power in this area are well known and we are confined to an examination on the material merely to see whether a rational mind may conceivably be satisfied that the compulsory retirement of the officer concerned is necessary in public interest.?

Tested on this touchstone the order of extension does not satisfy the requirement of public interest. Power exercised in conformity with express words used in the rule or an order is said to be in good faith and in accordance with law. An order which is contrary to rules cannot be sustained even if it was not passed due to bias or motive. Even assuming that the opposite party could have been granted extension then he could have been retained on contract as consultant only.

7. For the reasons stated above these petitions succeed and are allowed. The order extending the services of opposite party no. 3 for a period of two years is quashed. It is, however, made clear that any action done by opposite party after the impugned order was passed shall not be deemed as invalid or a nullity. But he shall not be entitled to continue any further.