
(1968) 02 MAD CK 0016
In the Madras High Court
Case No : Writ Petition No. 171 of 1967

C.S. Devasahayam

APPELLANT

Vs

Government of Madras

RESPONDENT

Date of Decision : 01-02-1968

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 16(1)

Citation : AIR 1969 Mad 118 : (1969) 1 LLJ 93

Hon'ble Judges : Kailasam, J

Bench : Single Bench

Advocate : M.V. Krishnan, for the Appellant; A.G. for Govt. Pleader and T. Salvaraj, for the Respondent

Final Decision : Dismissed

Judgement

Kailasam, J.—This Writ Petition is filed by a retired Deputy Commissioner of Commercial Taxes for the issue of a Writ of Mandamus

directing the Government of Madras to continue the service of the petitioner in the Commercial Department until he reaches 58 years of age.

2. The Petitioner joined the service of the Government of Madras in the Revenue Department on 16-2-1931. In 1948, he opted to the

Commercial Taxes Department where he served for about 18 years, On attaining the age of 55, he was retired from service on 25-4-1966. The

order retiring the petitioner is challenged on the ground that it is discriminatory, in that, while the servants of the Central Government are retired

only at the age of 58, the State Government Servants are forced to retire on attaining 55 years, and that even regarding the State Government

Service, while in the case of certain departments, the age of retirement is 53, the members of the service belonging to the petitioner's department

are obliged to retire at 55 years. It is contended that this amounts to unfair discrimination and not valid in law.

3. Rule 56 of the Fundamental Rules of the Madras Government provides that the date of compulsory retirement of Government servant is the date

on which he attains the age of fifty five years. The State of Madras examined the question of increasing the age of retirement of its employees to

fifty eight as had been done by the Central Government and decided that the age of superannuation of the State Government servants should

remain at 55. But in respect of certain categories, in modification of the policy of retiring the Government Servants at fifty five, raised the age of

superannuation from fifty five to fifty eight by issuing suitable amendments to govern such services. The list of services for which the age of

retirement was raised to fifty eight is given in para (4) of the supplemental counter affidavit filed on behalf of the respondent. Nine categories of

services are listed of which regarding the posts covered by categories (1), (3), (4), (5), (6), (8) and (9) the main reason given for the extension of

the age of superannuation is that there was dearth of qualified persons. Regarding category (2), the reason given is that the members of the State

Higher Judicial Service are treated on a par with the officers of the I. A. S. cadre in the matter of pay, pension and retirement benefits, and since

the Government of India have raised the age of I. A. S. and I. P. S. Officers to fifty eight, the Madras Government have also raised the age of

superannuation in respect of District Judges. In respect of category (7), the reason is that in order to enable the Government to utilise the services

of the technically qualified and experienced persons, such extension was given.

4. The principle to be borne in mind by a Court in determining the validity of a statute on grounds of violation of Article 14 of the Constitution is

laid down in *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, . The Supreme Court held that (at pages 547 and 548)

While Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the

test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which

distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to

the object sought to be achieved by the statute in question.

Among other principles stated, the Court laid down:--

That there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds; that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest; that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.

In *The General Manager, Southern Railway Vs. Rangachari*, the Supreme Court while construing the extent of protection under Article 16 of the Constitution of India, held thus:--

Thus construed it would be clear that matters relating to employment cannot be confined only to the initial matters prior to the act of employment.

The narrow construction would confine the application of Article 16(1) to the initial employment and nothing else; but that clearly is only one of the matters relating to employment. The other matters relating to employment would inevitably be the provision as to the salary and periodical increments therein, terms as to leave, as to gratuity, as to pension and as to the age of superannuation. In this connection, it may be relevant to remember that Article 16(1) and (2) really give effect to the equality before law guaranteed by Article 14 and to the prohibition of discrimination guaranteed by Article 15(1). The three provisions form part of the same constitutional code of guarantees and supplement each other. If that be so, there would be no difficulty in holding that the matters relating to employment must include all matters in relation to employment both prior, and

subsequent, to the employment which are incidental to the employment and form part of the terms and conditions of such employment.

Construing the provisions of Articles 14, 15 and 16 of the Constitution of India, it is clear that a Government servant is entitled to equality of

treatment in respect of matters relating to employment Under Article 16(1) and that would include as pointed out by the Supreme Court in the

Rangachari's case, the provision as to salary, periodical increments, terms as to leave, as to gratuity, as to pension and as to the age of

superannuation. The person adversely affected is entitled to challenge any order on the ground of discrimination. But its validity can be sustained if

two tests are satisfied. The first test is that the classification on which it is founded must be based on an intelligible differentia which distinguishes

persons or things grouped together from others left out of the group and the second test is that the differentia in question must have a reasonable

relation to the object sought to be achieved by the rule or statutory provision in question. The age of retirement of State Government servants is

fixed as fifty five. But as regards certain services in the State service, the age of superannuation was increased to fifty eight. The object of such

increase is to secure efficient public service. The question is whether the classification which distinguished persons grouped together from others

was based on an intelligible differentia. The differentiation relied on by the Government in the case of services, except categories 2 and 7

mentioned in the supplemental counter affidavit, is dearth of qualified persons in the services. It cannot be said that there is any dearth of officers in

the service to which the petitioner belongs. This is an intelligible differentiation and has to be accepted as valid classification. Regarding category

No. 7, the reason given is that the extension was given to enable the Government to utilise the services of the technically qualified and experienced

persons. The service to which the petitioner belonged cannot be said to be a technical service. In the case of category No. 2, the extension was

granted as the members of the State Higher Judicial Services are treated on a par with the officers of the I. A. S, cadre in the matter of pay,

pension and retirement benefits, and as the Government of India have raised the age of I. A. S. and I.P.S. to fifty eight, the Madras Government

have also raised the age of superannuation in respect of District Judges. This is an adequate and valid ground for classification. The second test is

that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question. The

object sought to be achieved is efficient public service, and this could be achieved only by retaining persons in service when there is a dearth of

persons applying for those posts. On these grounds, I am unable to accept the contention of the learned Counsel for the petitioner that the order of

retirement of the petitioner is unsustainable.

5. The learned Counsel relied on the decision in J. Pandurangarao Vs. Andhra Pradesh Public Service Commission, wherein it was held by the

Supreme Court that:-- "

as this rule has introduced a classification between one class of advocates and the rest, and the said classification must be said to be irrational in as

much as there is no nexus between the basis of the said classification and the object intended to be achieved by the relevant scheme of rules. Rule

12 (h) and the corresponding portion of paragraph 4A (1) of the notification based on it are unconstitutional and ultra vires." The decision is not

applicable to the facts of the case as it has been held in this case that the classification is justified. Learned Counsel relied on the decisions of the

Supreme Court in T.G. Shivacharana Singh and Others Vs. The State of Mysore, and Bishun Narain Mishra Vs. State of Uttar Pradesh and

Others, . In the former decision, it was held that No. 1, to Rule 285 applied to all Government Servants and as such was not open to challenge

under Article 14 or Article 16(1) of the Constitution. In the latter case it was held that the impugned notification was not discriminatory, for. It had

treated all public servants alike and fixed 31-12-1961 as the date of retirement for those who had completed fifty five years, but not fifty eight

years upto 31-12-1961. In the two cases referred to above, there was no discrimination, as the order was made applicable to all Government

Servants. But when it is not made applicable to certain classes of public services, it will have to be considered whether the classification is

reasonable and answers the tests laid down by the Supreme Court as stated above. It has been found in this case that the tests were satisfied. The

two decisions of the Supreme Court cited by the petitioner will not be of any help to him.

6. In the result, all the contentions of the petitioner will have to be rejected. This

petition is accordingly dismissed. No order as to costs,