

(1968) 02 MAD CK 0025
In the Madras High Court

C.S. Devasahayam

APPELLANT

Vs

The Government of Madras

RESPONDENT

Date of Decision : 01-02-1968

Acts Referred:

Citation : (1968) 2 MLJ 140

Hon'ble Judges : P.S. Kailasam, J

Bench : Division Bench

Judgement

P.S. Kailasam, J.—The 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 Taxes Department until he reaches 56 years of age.

2. The Petitioner joined the service of the Government of Madras in the Revenue Department on 16th February, 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 25th April, 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 58, 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.

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 (if) 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 provisions 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 *The General Manager, Southern Railway Vs. Rangachari*, 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 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 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 those 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 4-A (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 Note 1, to Rule 5285 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 31st December, 1961 as the date of retirement for those who had completed fifty-five years, but not fifty-eight years up to 31st December, 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.