
(1974) 03 MAD CK 0009

In the Madras High Court

Case No : Writ Petition No. 3230 of 1971

Dr. C.S. Srinivasan

APPELLANT

Vs

The State of Tamil Nadu and others

RESPONDENT

Date of Decision : 27-03-1974

Acts Referred:

Citation : (1974) 03 MAD CK 0009

Hon'ble Judges : Ismail, J

Bench : Single Bench

Advocate : P.M. Jummakhan and Mr. S.A. Abdul Kareem, for the Appellant; S. Ramalingam, Asst. Government Pleader, for the Respondent

Judgement

Ismail, J.—The petitioner herein was a Supervisory Unit Officer, National Malaria Eradication Programme, Erode at Coimbatore. He

completed 55 years on 30th June, 1969. The Government had passed certain orders in G.O. Ms. No. 118, Health, dated 25th January, 1966. In

that Government Order, it was stated that the Government directed that the age of superannuation of all categories of Medical Officers of the

Madras Public Health Services be raised from 55 years to 58 years. Paragraph 2 of this order stated:-

In every case, before a Medical Officer of the Madras Public Health Service attains the age of 55 years, the Government will determine his

suitability to be continued in service beyond 55 years. If the Government decide that he is not suitable to continued in service beyond 55, they may,

after giving him at least 3 months previous notice in writing, retire him on the date on which he attains the age of 55 years. In cases where a

Medical Officer is continued in Service beyond 55 years also, the Government may, after giving him atleast three months previous notice in writing,

retire him on a date to be specified in the notice.

Paragraph 3 of this Government Order stated that a Medical Officer of the Madras Public Health Service may after giving at least 3 months

previous notice in writing to the Government retire from service on the date on which he attains the age of 59 years or on any date thereafter to be

specified in the notice. This Government Order also stated that necessary amendments to the Madras Public Health Service Rules will be issued

separately. Admittedly, no such amendments were issued, and equally admittedly the petitioner, notwithstanding his completion of 55 years on 30th

June, 1969, was continued in service pursuant to this Government Order. However, the Government passed G.O. Ms. No. 1969. Health, dated

4th December, 1969. In this Government Order, the Government rescinded their earlier decision to raise the age of superannuation from 55 to 58.

Consequently, in supersession of the existing order the Government decided that the age of superannuation of the Officers of the Madras Public

Health Service shall be 55 years as laid down in Fundamental R.56 (a). They also directed that in case where the service of an officer beyond 55

years were considered essential in public interest, re-employment might be granted to the Officer on a yearly basis upto 58 years. The orders were

to come into force on the date of the Government Order itself and they were made to apply to officers, including officers on deputation, who had

already been continued in service beyond 55 years under the earlier Government order and such officers would be given 3 months' notice on

retirement. These officers would retire on the date of expiry of the said notice period of 3 months or on the date on which they attained the age of

58, whichever date was earlier. Pursuant to this order of the Government, a notice was issued to the Petitioner herein and the three months notice

period expired on 11th March, 1970. On 12th March, 1970 the petitioner was re-employed for one year in the first instance. Subsequently also

the re-employment was continued and the petitioner ultimately ceased to be in Government service from 30th June, 1972. The petitioner has filed

the present writ petition praying for the issue of a writ of certiorari to quash the order of the Government in G.O. Ms. No. 2309 Health dated 4th

December, 1969 and the consequential order in G.O. Ms. No. 437 Health, dt. 4th March 1970. I have already pointed out that pursuant to the

order of the Government in G.O. Ms. No. 118, Health dated 25th January, 1966 the rules were not amended. Therefore, the question for

consideration is what exactly is the status of G.O. Ms. No. 118, Health dated 25th January 1966. The learned counsel for the petitioner contends

that this Government Order must be deemed to be an order passed by the Government under the provisions of Fundamental Rule 56 (a). That

Rule states:

The date of compulsory retirement of Government servant, whether he holds a substantive or officiating post, is the date on which he attains the

age of fifty five years. He shall not be retained in service after that age except with the sanction of the Government on public grounds which must

be recorded in writing, but he shall not be retained after the age of sixty years except in very special circumstances.

Thus it will be seen that the sanction of the Government contemplated by the second sentence in the above extracted rule is the order of the

Government with reference to a particular individual Government servant. However, with reference to a general order like the present one, the

Supreme Court in its judgment in I.N. Saksena Vs. State of Madhya Pradesh, has held that there is nothing in the rule prohibiting the Government

passing a general order in anticipation of the relevant rule being amended raising the age of retirement in public interest and that such an order will

be considered to be an order made under Fundamental Rule 56. Therefore, the contention of the learned Counsel for the petitioner in this behalf is

supported by the above judgment of the Supreme Court. However, it must be borne in mind that this general order of the Government is subject to

the condition that the Government may, after giving the Government servant concerned, at least three months previous notice in writing, retire him

on a date to be specified in the notice. But the learned Counsel for the petitioner contends that even though the three months notice has been given

to the petitioner and that three months period expired on 11th March 1970, still that notice was not issued pursuant to G.O. Ms. No. 118, Health,

dated 25th January 1956, but only pursuant to G.O. Ms. No. 2309 Health dated 4th December 1969. According to the learned Counsel, the

former Government Order has the status of an order made by the Government under Fundamental Rule 56 (a), while the latter Government Order

is only an administrative order and that therefore with reference to a right conferred on the petitioner under the former order, a notice issued under the latter order cannot have effect. In my opinion, this argument is misconceived. The only question for consideration is whether the Government had the power to give three months notice to the petitioner and retire him on the expiry of the three months period. Whether that power, is traceable to G.O. Ms. No. 118, Health, dated 25th January 1966 or to G.O. Ms. No. 2309 Health, dated 4th December 1969 is totally irrelevant. Once it is held that the Government had the power, the source of the power does not affect the exercise of the power. It may be pointed out here that there is no difference between the former Government Order and the latter Government Order as far as the conditions on which the said notice of three months can be issued. Both the Government Orders are identical with reference to this part of the case, and therefore so long as the Government had the power to give three months notice and retire a person like the petitioner on the expiry of the said period of three months, it is not open to the petitioner to contend that the said exercise of power is illegal, because it was exercised under G.O. Ms. No. 2309 Health dated 4th December 1969 and not under G.O. Ms. No. 118 Health dated 25 January 1966.

2. The learned Counsel for the petitioner further contended that if the power had been exercised under G.O. Ms. No. 118 Health dated 25th January 1966, there was no question of the petitioner being reemployed after the expiry of the said period of three months, and it was only the the latter Government Order which contemplated such re-employment. In my opinion this argument is also misconceived. For re-employment of a retired Government servant no such specific provision is necessary, and so long as there is no prohibition under the statutory rules, certainly the Government had the power to re-employ such persons. Even with reference to G.O. Ms. No. 118 Health dated 25th January 1966, it was certainly open to the Government to retire a person on giving three months notice and thereafter to re-employ him, if such re-employment was necessary in the public interests. Therefore, there is no substance in this argument of the learned Counsel for the petitioner.

3. The learned Counsel repeatedly contended before me that G.O. Ms. No. 118 Health dated 25th January 1966 made under Fundamental Rule

56 (a) conferred a right on the petitioner to continue in service even after he completed the age of 55 years and that right could not be taken away

and his continued service could not be converted into an year into year service by virtue of G.O. Ms. No. 2309 Health dated 4th December 1969.

This argument ignores the conditions imposed in G.O. Ms. No. 118 Health dated 25th January 1966 which provided that notwithstanding the

change in the age of the superannuation, the Government reserved the power to retire a particular Government servant who was continued in

service after his completion of 55 years, by giving him three months notice. If this condition is borne in mind, there is no question of the right

conferred on a person like the petitioner by G.O. Ms. No. 118 Health dated 25th January 1966 being taken away by G.O. Ms. No. 2309 Health

dated 4th December 1969. As a matter of fact, the validity of such a condition imposed in G.O. Ms. No. 118 Health dated 25th January 1966

was upheld and approved by the Supreme Court in the decision referred to above. Under these circumstances, no case has been made out for

interference Consequently the writ petition fails and it is dismissed, But there will be no order as to costs.