

(1973) 02 MAD CK 0004
In the Madras High Court

E.F. Sreshta

APPELLANT

Vs

The Commissioner of Income Tax

RESPONDENT

Date of Decision : 06-02-1973

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1973) 2 MLJ 485

Hon'ble Judges : T. Ramaprasada Rao, J

Bench : Division Bench

Judgement

T. Ramaprasada Rao, J.—The petitioner is an Income Tax Officer serving in the City, Circle VII(5), Madras-34. It appears that the

petitioner was first appointed in Government service as early as 4th July, 1942, though he was appointed as Income Tax Officer, Class-II on 1st

July, 1947. His qualifying period, if service after the first date of appointment is taken into consideration, is beyond 25 years, and even if the date

of appointment in the Income Tax Department is taken into consideration, he has completed 24 1/2 years. At the time of the petitioner's

recruitment the age of superannuation was fixed at 55 years. At the time when the petitioner entered service there was no enabling rule compelling

a Government servant to retire before the age of 55. In 1965 Fundamental Rule 56 was amended by increasing the age of superannuation from 55

to 58 with the power to the appropriate authority to retire an officer for valid reasons after he attains 55 years. This rule relating to compulsory

retirement was further amended once in May and at another time in August, 1969. The rule now in force and noticeable runs as follows:

56(j) Notwithstanding anything contained in this rule the appropriate authority shall, if it is of the opinion that it is in the public interest to do so,

have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and

allowances in lieu of such notice;

(i) If he is in Class I or Class II service or post and had entered Government service before attaining the age of thirty-five years, after he has

attained the age of fifty years.

(ii) in any other case after he has attained the age of fifty-five years:

Provided that nothing in this clause shall apply to a Government servant referred to in Clause (e) who entered Government service on or before

23rd July, 1966 and to a Government servant referred to in Clause (f).

The petitioner's complaint is that as he has secured a right to be retained in Government service till he attains the age of 55 he cannot be

compulsorily retired under the new rule which provides for such a contingency even on the Government servant completing the age of 50 years.

His case is that he has a right to serve till he attains the age of 55 and that vested right is taken away by the application of the new rule. It is claimed

that the amended rule is not retrospective in operation and therefore the petitioner cannot be compulsorily retired under the guise of public interest.

Any attempt to do so will violate Article 311 of the Constitution of India. As no express reason is given for the compulsory retirement of the

petitioner which order was made on 10th January, 1972 and which is the subject-matter of this-writ petition, the petitioner says that by the

invocation of Fundamental Rule 56 (j) his fundamental right has been affected. The text of the order compulsorily retiring the petitioner from service

runs as follows:

Whereas the Commissioner of Income Tax, Madras-II (appropriate authority) is of the opinion that it is in the public interest to do so:

Now therefore in exercise of the powers conferred by Clause (j) (i) of Rule 56. of the Fundamental Rules, the Commissioner of Income Tax,

Madras-II (appropriate authority) hereby gives notice to Sri E. F. Sreshta (name). Income Tax Officer (Class II) now working as Income Tax

Officer VII (5), Madras that he already having attained the age of fifty years on the 15th June, 1968 shall retire from service with effect from

forenoon of the 10th April, 1972, or, from the date of expiry of three months computed from the date of the service of this notice on him,

whichever is later.

The further contention raised is that the respondent who passed the order is not the appropriate authority within the meaning of the rule and therefore the order is vitiated.

2. I may here refer to certain documents produced before me regarding the quality of service rendered by the petitioner. The confidential reports on his work during 1969-70 disclosed that the petitioner was more concerned with his comfort and convenience than with his responsibilities. The petitioner, no doubt was given an opportunity to explain such remarks made, but his representations were rejected. Even for the subsequent year it was made out that his disposal was very poor and his performance was much below average. I am only referring to this for purposes of completion.

3. In the counter-affidavit the respondent states that even from the inception the petitioner did not give himself up as an efficient officer as he did not even pass the departmental examination within the period of probation. He exercised his option to be reverted to the non-gazetted subordinate post as an Income Tax Inspector, to which post he was reverted from the post of Income Tax Officer with effect from 15th October, 1954. It was only in July, 1957 the petitioner got through his examination and he was thereupon promoted as Income Tax Officer with effect from 29th November, 1957. The case of the respondent is that the impugned Fundamental Rule 57 (j) (i), as amended in 1969 is a valid one and is intended to apply to all Government servants who are in Class. I or Glass II service or post who have attained 50 years of age, irrespective of whether they had or they had not entered service prior to the amendment, the only condition being that they should have entered service before the age of 35. In the instant case the petitioner did enter service before such age. The petitioner cannot claim any vested right in the service because of the unamended rule, and no fundamental right of the petitioner is affected. As regards the contention that the appropriate authority did not pass the impugned order, it is said that as the Commissioner of Income Tax, Madras-2, to whom at the material time the petitioner as Income Tax Officer was admittedly subordinate passed the order, the contention that the Commissioner of Income Tax, Madras-1, alone had the required jurisdiction

is not correct. It is denied that the order was passed at the dictates of the Central Board of Direct Taxes as contended. The compulsory retirement having been made in public interest and after taking into consideration the petitioner's record and all circumstances having relevance to his service, the impugned order is not challengeable under Article 226 of the Constitution.

4. In the light of the above pleadings the contentions of the petitioner are that by the application of Fundamental Rule 56 (j) (i) his vested right to be in service till he completes the age of 55 is taken away wrongfully and therefore there is a violation of his fundamental right. The order entails civil consequences and in the absence of a due enquiry as contemplated in Article 311 of the Constitution the entire proceedings resulting in the compulsory retirement of the petitioner are void. The order is non-speaking excepting to state that it is in public interest that the petitioner should step down and this by itself is sufficient to support the contention that the order violates the principles of natural justice. Lastly, it is said that the appropriate authority has not passed the challenged order and therefore it is defective.

5. Answering the contentions learned Counsel for the respondent says that in order to weed out a good deal of dead wood in Government organisations and to energise its machinery the Government is competent to compulsorily retire a person after he attains the age of 50 and before the superannuation age if it is in public interest to do so and if in the ultimate analysis the petitioner has completed the prescribed qualifying period of service. Fundamental Rule 56 (j) (i) does not involve any civil consequences, nor does it take away any rights already accrued to the petitioner in relation to his past services. As three months' notice is given to the petitioner to enable him to find other suitable employment no benefits are taken away by reason of the application of the rule. The constitutional validity of the said rule is not open to question as it is now settled by pronouncements made by the Supreme Court. As the right given to Government under Fundamental Rule 56 (j) is an absolute one, the only requirement is that the Government should have formed an opinion bona fide that it is in public interest to compulsorily retire the Government servant and if once that opinion is formed it cannot be challenged in a Court of law. As it is not the case of the petitioner that such an opinion was

not formed or the order is mala fide or arbitrary, the petitioner is not entitled to succeed. As long as there is no stigma attached to the petitioner in the text or content of the order the petitioner cannot have any grievance.

6. The foremost contention rests upon a true and proper understanding of Rule 56 (j) of the Fundamental Rules applicable to all Government servants and in particular to the Central Government servants. Chapter IX of those Rules, under the head "Compulsory Retirement" compels every Government servant to retire on the day he attains the age of fifty-eight years. There is however an exception in the case of a workman, with whom we are not concerned. Fundamental Rule 56 (j) underwent two amendments, one on 17th May, 1969 and the other on 26th August, 1969. The rule as it originally stood, ran this:

(j) Notwithstanding anything contained in this Rule, the appropriate authority shall, if it is of the opinion that it is in the public interest to do so have the absolute right to retire any Government servant after he has attained the age of fifty-five years by giving him notice of not less than three months in writing:

Provided that nothing in this clause shall apply to a Government servant referred to in Clause (c) who entered Government service on or before 23rd July, 1966 and to a Government servant referred to in Clause (f);.

The rule as finally amended has been extracted in page 2 of this judgment. Applying this rule, the appropriate authority called upon the petitioner to

retire on 10th April, 1972 or from the date of expiry of three months from the date of the service of the challenged order whichever is later. The

sheet-anchor of the petitioner's case is that as the order is non-speaking and as it is said to be based on public interest though it is not, his Vested

right to continue in service till he attains the age of 55 years has been taken away and he is therefore challenging the order basically attacking the

regularity, legality and propriety of Fundamental Rule 56(j). The foremost point urged is that according to the conditions of service annexed to the

class to which the petitioner belongs there cannot be a premature determination or snapping of such service without a due enquiry under Article

311 of the Constitution of India and even though the order purports to be one directing the petitioner to retire compulsorily in public interest there

cannot be any escape in the adoption and application of the rule of procedure

mandatory prescribed in Article 311 of the Constitution.

7. A Government Servant on entry into Government service acquires a status subject to certain conditions of service which may be made by the

President of India in the case of Central Government servants. That the President has the right to vary the conditions of service resulting in the

variance of the status of the servant is indisputable. The right to retain such a status and in consequence the privilege to occupy the post is therefore

subject to rules made by the appropriate authority, which includes the fixing up of the age of superannuation and rules regarding compulsory

retirement in public interest prior to the attainment of the age of superannuation. If the appropriate authority, in the interest of public administration,

is of the opinion that a particular Government servant should shed his status in the interest of the public and the public exchequer, then such

subjective satisfaction of the authority, which could be found by piercing through the veil of secrecy attached to public records, cannot be the

subject-matter of an independent adjudication by another authority including a Court, and such a scrutiny has to be normally avoided once again in

the interests of the public. As it is expected that public authorities would act on sufficient material seen and weighed by them before they decide to

divest the status of a Government servant and direct him to compulsorily retire in public interest, judicial review has discretely kept itself out of i

penetration or a further probe into the record to find whether the action was justified or reasonable. It may be that in exceptional cases where mala

fides is alleged and prima facie established the Courts may be inclined to undertake such an enquiry and test the reasonableness or otherwise of the

decision subjectively taken by the appropriate authority. No such cause has been shown in the instant case. Excepting for a bare allegation that the

action is motivated, there is nothing to show that there has been a mala fide exercise of authority by the appropriate authority. As a matter of fact,

sufficient material has been placed before me to show that there was cogent material available to the appropriate authority to act in the manner it

did. The personal files in which confidential remarks have been made on the turnover of the petitioner were perused by me and obviously this was

at the background of the mind of the appropriate authority when it acted for public good and directed the petitioner to compulsorily retire under the

challenged order. I am therefore satisfied that on the merits, the petitioner cannot complain that there has been an unreasonable snapping of his

chain of Government service and that was done mala fide by the appropriate authority.

8. The other question is whether action taken in the name of public interest is susceptible to the mandatory prescriptions in Article 311 of the

Constitution and whether the particular Government servant who is the target of such a procedure should be given an opportunity before action is

taken directing him to compulsorily retire. This leads me on to the main problem in the case, namely, whether Fundamental Rule 56 (j) could ever

be availed of without processing the subject through the mill and principle contained in Article 311.

9. It is by now accepted that when in public interest a Government servant is compulsorily asked to retire prior to his attaining the age of

superannuation, the subject-matter need not be channelised through the specific procedure prescribed in Article 311 of the Constitution of India.

The primordial ingredient embedded in Article 311 is to ensure against arbitrary and capricious exercise of power by persons in authority to

terminate the services of a Government servant without affording him a reasonable opportunity to explain away the charges levelled against him

which is the basis on which such termination of service is generally made. The process envisaged in Article 311 satisfies at every possible stage

comprehended therein the essential principles of natural justice. A fair opportunity, a full enquiry and a fair hearing, are all the insignia of a fair

process. These are the elements which are well set in the procedure prescribed in Article 311. In the case of a compulsory retirement where a

period of qualifying service or the outer limit as to the age of superannuation is fixed, then the only requirement for the exercise of the authority by

the appropriate authority to direct compulsory retirement of a Government servant is public interest. Whether the appropriate authority is acting in

public interest, though not a matter of scrutiny by Courts exercising visitatorial jurisdiction under Article 226 or Article 32, yet if the conscience of

Court is satisfied that the appropriate authority on requisite material before it] acted and directed compulsory retirement and if there is satisfactory

proof of such weightment of available material by the appropriate authority before it acted and if such material would reasonably prompt a person

to issue an order of compulsory retirement, then all these elements outweigh the requirement of an enquiry contemplated in Article 311 of the Constitution. It should however be remembered that if in a case where a Government servant is asked to compulsorily retire, he is accused of something and such an accusation is the foundation for action, then it is not permissible to circumvent Article 311 and seek the substituted aid of Fundamental Rule 56 (j) to compel such a Government servant to retire. As long as the order of compulsory retirement does not cast an aspersion on the conduct of the Government servant and if it is passed solely in public interest and if the conclusion is arrived at on available material on record though not disclosed ex facie in the order, then such an order of compulsory retirement has to be upheld. The above observations are to be gathered from the various decisions of the Supreme Court which had occasion from time to time to steer clear of the so-called prejudice which a person who is asked to compulsorily step down from Government service might suffer as there would not be the usual rigmarole of an enquiry against him as visualised in Article 311 of the Constitution.

10. In *The State of Bombay Vs. Saubhagchand M. Doshi*, the Supreme Court laid down as it were the basic proposition in such circumstances.

In that case, Rule 165-A of the Bombay Civil Services Rules, which were adopted by the State of Saurashtra, came up for consideration. The material part of the rule ran thus:

Government retains absolute right to retire any Government servant after he has completed 25 years qualifying service or 50 years of age, whatever the service without giving any reason, and no claim to special compensation on this account will be entertained. This right will not be exercised except when it is in the public interest to dispense with the further services of a Government servant such as on account of inefficiency or dishonesty.

Venkatarama Iyer, J., speaking for the Bench, observed:

The said rule empowered the Government to terminate the services of an officer without assigning any reason, if he had completed the age of 50.

The rule would be ultra vires only if compulsory retirement of the person be below the age of 50 provided under the rule or if the order for

retirement amounts to one of dismissal or removal from service; it would be so

only if the order is a punishment laid on the servant for misconduct and it is penal in character....

Compulsory retirement is not a form of punishment and involves no such penal consequence.

The principle which the learned Judge evolved in that decision was that questions which normally would relate to cases of dismissal or removal,

could arise only when the rules fix both an age for superannuation and an age for compulsory retirement and the services of a civil servant are

terminated between these two points of time. But where there is no rule fixing the age of compulsory retirement, or if there is one and the servant is

retired before the age prescribed therein, then that can be regarded only as dismissal or removal within Article 311 (2).

The next decision on which strong reliance was placed by the learned Counsel for the petitioner is the one reported in *Moti Ram Deka etc. Vs.*

General Manager, N.E.F. Railways, Maligaon, Pandu, etc.,. That was a case where the Railway Administration was authorised to terminate the

services of all the permanent servants to whom the Rules apply merely on giving notice for the specified period, or on payment of salary in lieu

thereof. This was held by the Supreme Court to amount to removal of the servants in question and "the termination of the permanent servants"

tenure is no more and no less than their removal from service within Article 311 and so, Article 311 (2) must come into play in respect of such

cases." Learned Counsel however drew my attention to the observations of Subba Rao, J., as he then was, which could be extracted for ready

reference:

Once that principle is accepted the cases dealing with compulsory retirement before the age of superannuation cannot also fall outside the scope of

Article 311 of the Constitution. Age of superannuation is common to all permanent civil servants; it depends upon an event that inevitably happens

by passage of time, unless the employee dies earlier or resigns from the post. It does not depend on the discretion of the employer or the

employee; it is for the benefit of the employee who earns a well-earned rest with or without pensionary benefits for the rest of his life; it has by

custom and by convention, become an inextricable incident of Government service; and it is an incident of a permanent post. Notwithstanding the

rule fixing an age of superannuation, a person appointed to such a post acquires title to it. The same cannot be said of a compulsory retirement

before the age of superannuation. It is not an incident of the tenure; it does not work automatically; it is a mode of terminating his employment at

the discretion of the appointing authority. In effect, whatever may be the phraseology used in terminating the services of a Government employee, it

is punishment imposed on him, for it not only destroys his title but also inevitably carried with it a stigma. Such a termination is only dismissal or

removal within the meaning of Article 311 of the Constitution.

It should however be remembered that Subba Rao, J. as he then was, was pronouncing this dicta in the facts and circumstances of that case

wherein the rule authorised the termination of the services without assigning any reason and without an enquiry by giving the permanent

Government servant a notice or payment of salary in lieu thereof. It was in that context he was dealing with the subject of compulsory retirement

and not in the light of the present rule with which we are concerned.

11. As a matter of fact, this decision has been sufficiently explained away in the later decision of the Supreme Court. In Gurdev Singh Sidhu Vs.

State of Punjab and Another, the Supreme Court had to consider the vires of a rule, the relevant portion of which is set out below:

Provided further that Government retains an absolute right to retire any Government servant after he has completed ten years qualifying service

without giving any reason and no claim to special compensation on this account will be entertained. This right will not be exercised except when it is

in public interest to dispense with the further services of a Government servant such as on account of inefficiency, dishonesty, corruption or

infamous conduct.

Whilst upholding the right of a State to compulsorily retire a permanent public servant after fixing the proper age of superannuation, the Supreme

Court felt that another rule giving the power to the State to compulsorily retire a permanent public servant at the end of 10 years of his service

cannot be treated as falling outside Article 311 (2). In that context the learned Judges said:

It is hardly necessary to emphasise that for the efficient administration of the State, it is absolutely essential that permanent public servants should

enjoy a sense of security of tenure. The safeguard which Article 311 (2) affords to permanent public servants is no more than this that in case it is

intended to dismiss, remove or reduce them in rank a reasonable opportunity should be given to them of showing cause against the action

proposed to be taken in regard to them. It seems that only two exceptions can be treated as valid in dealing with the scope and effect of the

protection afforded by Article 311 (2). If a permanent public servant is asked to retire on the ground that he has reached the age of superannuation

which has been reasonably fixed, Article 311 (2) does not apply, because such retirement is neither dismissal nor removal of the public servant. If a

permanent public servant is compulsorily retired under the rules which prescribe the normal age of superannuation and provide for a reasonably

long period of qualified service after which alone compulsory retirement can be ordered, that again may not amount to dismissal or removal under

Article 311 (2) mainly because that is the effect of a long series of decisions of this Court.

It therefore follows that if the period of superannuation fixed is reasonable or the alternative qualifying period of service is equally reasonable then

Courts have uniformly taken the view that the appropriate authority has the power to compulsorily retire a public servant if in its opinion public

interest demands that it should so act and decide.

12. I may immediately refer to a decision in *R.L. Butah Vs. Union of India (UOI) and Others*, . That was also a case which arose under

Fundamental Rule 56 (j) as amended by the Sixth Amendment. The petitioner there was compulsorily retired under Fundamental Rule 56 (J) at the

age of 55. When such an order was challenged the Supreme Court said:

That Fundamental Rule 56 (j) in express terms confers on the appropriate authority an absolute right to retire a Government servant on his attaining

the age of 55 years if such authority is of the opinion that it is in public interest so to do. If that authority bona fide forms that opinion, the

correctness of that opinion cannot be challenged before Courts.

No doubt, in *T.G. Shivacharana Singh and Others Vs. The State of Mysore*, , the qualifying service period was 25 years and the age of

superannuation was 50 years. In our case the qualifying service is 15 years. The fixation of the period of qualifying service is a matter within the

discretion and power of the rule-making authority and it cannot be said that a qualifying service of 15 years is an unreasonable period for the

determination of the quality of services of a public servant if bona fide it is felt at the end of such period that his continuance would be a drain on

public funds and that in public interest he should step down, In fact, the ratio in R.L. Butah Vs. Union of India (UOI) and Others, ., followed the

decision in Union of India (UOI) Vs. Col. J.N. Sinha and Another, . The Supreme Court in the latter case said:

If that authority bona fide forms that opinion, the correctness of that opinion cannot be challenged before Courts. It is open to an aggrieved party

to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision.

In the instant case it has not been shown that any such opinion has been formed and considerations other than relevant prompted the authority to

pass the order or the decision was the result of caprice. Finally, the principle in this decision may be summarised thus : No rule should confer an

absolute authority to retire a Government servant compulsorily unless in the generality of the provisions there is a provision fixing an outer limit as to

the age of superannuation which appears to be reasonable and that the Government servant was compulsorily retired under the rules which

prescribed not only such normal age of superannuation but also made a provision for a reasonably long period of qualifying service after which

alone compulsory retirement could be ordered.

13. All the above cases were reviewed in the later case of the Supreme Court in Union of India (UOI) Vs. Col. J.N. Sinha and Another, . The

Supreme Court was noticing Fundamental Rule 56 (j) as amended and as is applied in this case. Hegde, J., speaking for the Bench forcibly laid

down the proposition thus:

Where an appropriate authority bona fide forms the opinion that a Government servant be retired in public interest, he can pass an order of

compulsory retirement. That opinion cannot be challenged before Courts. Nor does Rule 56 (j) require that an opportunity to show Cause against

compulsory retirement must be given. Order of compulsory retirement can be challenged only on the ground that either the requisite opinion was

not formed or that the order was passed arbitrarily or on collateral grounds.

Fundamental Rule 56 (j) holds the balance between the rights of the individual Government servant and the interests of the public. While a minimum

service is guaranteed to the Government servant, the Government is given power to energise its machinery and make it more efficient by

compulsorily retiring those who in its opinion should not be there in public interest. Compulsory retirement involves no civil consequences. Rule 56

(j) is not intended for taking any penal action against the Government servants. That rule merely embodies one of the facts of "pleasure doctrine"

embodied in Article 310 of the Constitution.

In Dr. N.V. Puttabhatta Vs. The State of Mysore and Another, the same principle has been reiterated by the Supreme Court.

14. Thus it is seen that when the confidential reports of a public servant poses certain situations wherein a reasonable person could not and

subjectively opine for himself that in order to energise public machinery it would not be conducive to keep on such Government servant any more

in service, then he cannot opine and decide the effect that such public servant should compulsorily retire. The qualifying service prescribed

under Fundamental Rule 56 (j), has already been seen by the Supreme Court and upheld by it in Union of India (UOI) Vs. Col. J.N. Sinha and

Another, . The outer periphery of the age of superannuation is equally reasonable. It cannot be said that the challenged order was passed on

extraneous considerations or out of malice or caprice. The order therefore has to be upheld.

15. Though it is contended that Fundamental Rule 56 (j) is not retrospective, that question was not argued before me. The other contention which

has to be considered is whether the Commissioner of Income Tax, Madras-2, had the jurisdiction to pass the order. u/s 5 (2) of the Indian Income

Tax Act, 1922 Commissioners of Income Tax are appointed by the Central Government and their functions are allocated by the Central Board of

Revenue and if by directions two or more Commissioners of Income Tax are assigned the same area or the same persons or classes of persons

and are asked to perform their functions in respect of such areas, they shall have concurrent jurisdiction subject to any orders which the Central

Board of Revenue may make for the distribution and allocation of work to be performed. u/s 117 (2):

The Commissioner may, subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, appoint as many Income Tax Officers of Class II Service and as many Inspectors of Income Tax as may be sanctioned by the Central Government.

Appointing Authority" has been defined in The Central Civil Services (Classification, Control and Appeal) Rules, 1957. In Rule 2 (a) therein

Appointing Authority" has been defined and in the Schedule appearing in Part II of the said Rules the Commissioner of Income Tax is the

appointing Authority for Class II Officers in Income Tax Service. "Appropriate Authority" for compulsory retirement in Fundament Rule 56 (j) is

the "Appointing Authority". The Commissioner of Income Tax, Madras-2, comes within the meaning of Section 5 (2) of the Indian Income Tax

Act, 1922, which is carried forward even under the new Act and even under Rule 2 (a) of the Central Civil Services (Classification, Control and

Appeal) Rules, 1957, referred to above. It cannot be denied that the Income Tax Officer is subordinate to the Commissioner of income tax-For

purposes of administrative convenience, certain notifications have been issued allocating jurisdiction as between the three Commissioners who

were functioning then in Madras. Under one such notification the Commissioner of Income Tax, Madras-2 is empowered to be in charge of the

work of Income Tax Officers within his jurisdiction. In particular, under notification NO.S. C. 1714 dated 31st May, 1956, all Income Tax

Officers in City Circle VII were placed under the jurisdiction of the Commissioner of Income tax, Madras-2. At the time when the impugned

order compulsorily retiring the petitioner was passed, he was the Income Tax Officer, City Circle VII. It therefore follows that the Commissioner

of Income Tax, Madras-2, who is the respondent in this writ petition, had the requisite jurisdiction to compulsorily retire the petitioner who was

within his jurisdiction under his control. It may be that the Commissioner of Income Tax, Madras-i, might have had concurrent jurisdiction along

with the Commissioner who passed the impugned order. Concurrence of jurisdiction envisages existence of jurisdiction in both the parties in whom

such concurrent jurisdiction is vested. In Anukul Chandra Mondal Vs. Commissioner of Income Tax and Others, , an order passed by the

Commissioner of Income Tax, Calcutta, was challenged on the ground that the petitioner therein was appointed originally by the Commissioner of Income Tax, West Bengal, and that therefore the order was violative of Article 311 (1) of the Constitution. The Court held in that case that the Commissioner of Income Tax, Calcutta, is not an officer subordinate in rank to the Commissioner of Income tax, West Bengal, within the meaning of Article 311 (1). The petitioner therein was originally appointed by the Commissioner of Income Tax, West Bengal, but was subsequently transferred to the Calcutta charge where the head office and the head of department was the Commissioner of Income Tax, Calcutta. It was held that the order passed by the latter did not contravene Article 311 (1) as he was the proper authority to pass the order of dismissal. That proceedings involving compulsory retirement not being one equatable to proceedings whereunder a Government servant is intended to be punished it is not necessary that the appropriate authority should apply the procedure enjoined by Article 311 of the Constitution. Our Court in P. Shankar Rao Vs. The Government of India and Another, , held that it is not necessary to give the Government servant who is asked to compulsorily retire a reasonable opportunity of making a representation as to why he order should not have been passed. In fact, the point was conceded by the petitioner in that case. Even so, after the notification referred to above, made on 31st May, 1966 the petitioner herein was undoubtedly under the charge and control of the Commissioner of Income Tax Madras-2 who had co-ordinate jurisdiction with the Commissioner of Income Tax, Madras-1 who no doubt issued the order of appointment. But at the time when the challenged order was passed, the Commissioner of Income Tax, Madras-2, was the appropriate authority within the meaning of law and therefore the challenged order cannot be impugned under any provision of law.

16. The petitioner therefore is not entitled to a writ of certiorari to quash the order of the respondent dated 10th January, 1972, as the order does not suffer from any apparent error or any other error of law; nor can it be said that the 2nd respondent had no jurisdiction to pass the same. The writ petition is therefore dismissed. There will be no order as to costs.