
(1976) 12 MP CK 0011

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 127 of 1976

Ghanshyam Das Shrivastava

APPELLANT

Vs

Chief Conservator of Forests (General) M.P. and Another

RESPONDENT

Date of Decision : 02-12-1976

Acts Referred:

States Reorganisation Act, 1956 — Section 115(7)

Citation : (1980) ILR (MP) 1121 : (1978) MPLJ 59 : (1978) MPLJ 57

Hon'ble Judges : J.S. Verma, J;G.P. Singh, J

Bench : Division Bench

Advocate : G.D. Shrivastava, for the Appellant; S.L. Saxena, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Singh, J.

By this petition under Article 226 of the Constitution, the Petitioner Ghanshyam Das Shrivastava challenges the Order of the Chief Conservator of Forests, dated 24th October 1975, compulsorily retiring the Petitioner from service with effect from 1st November 1975.

The Petitioner was appointed Forest Ranger in the year 1948 in the erstwhile Rewa State. The Petitioner continued in service after the formation of the State of Madhya Pradesh. The Petitioner also continued in service after the reorganisation of States in the new State of Madhya Pradesh. The Petitioner's contention is that on 1st November 1975 he had not completed 30 years of service and, therefore, he could not be compulsorily retired from service. It is argued by the Petitioner that under the rules applicable to him before the formation of the State of Madhya Pradesh, the Petitioner could be compulsorily retired only after completing 30 years of service and that these rules still govern the Petitioner. It is also argued that service conditions relating to compulsory retirement could not be changed to the disadvantage of the Petitioner by the

State Government without the consent of the Central Government as provided in Section 115(7) of the States Reorganisation Act, 1956. The Petitioner further argues that the provisions of the Madhya Pradesh New Pension rules which permit compulsory retirement of a Government servant after completion of 25 years of qualifying service and which have been relied upon by the Respondents in the return to justify the Order passed against the Petitioner are not applicable to the Petitioner as the consent of the Central Government was not obtained before applying them to the Petitioner.

We will assume for purposes of this case that under the service rules in force in Madhya Pradesh which were applicable to the Petitioner before the formation of the State of Madhya Pradesh, the Petitioner could not be compulsorily retired before he completed 30 years of qualifying service. After the formation of the State of Madhya Pradesh, the question of unification of Fundamental rules, Supplementary rules, Leave rules and Pension rules was taken up by the State Government. A Notification was issued on this subject by Order and in the name of the Governor on 12th November 1959. The Notification stated that the State Government had decided that subject to the reservations mentioned in paragraphs 2 and 3 of the Notification, all Government servants under its rule making control including those who were employed for the affairs of any of the constituent States immediately before 1st November 1956, shall be governed by the set of rules mentioned in the Notification. One of the rules mentioned in the Notification is the Madhya Pradesh New Pension rules, 1951, as amended from time to time. Paragraph 3 of the Notification stated that those permanent employees who were employed for the affairs of any of the constituent States immediately before 1st November 1956 could opt for the Pension rules applicable to them immediately before the States reorganization. Paragraph 4 of the Notification directed that the option should be exercised by a Government servant within 6 months of the date of the Notification and paragraph 7 provided that if the option was not exercised within the said period, the Government servant shall automatically be governed by the New Pension rules made applicable to him by the Notification. This Notification of the Government was published in the Gazette. The Petitioner did not exercise the option given to him under paragraph 3 of the Notification. The Madhya Pradesh New Pension Rules, 1951, therefore, became applicable to the Petitioner. Sub-para (ii) of Sub-rule (3) of Rule 2 of the New Pension rules as it stood in 1959 was as follows:

(ii) A Government servant may also be required to retire, by the appropriate authority, on the ground of inefficiency after completing a qualifying superior service of 25 years.

It will thus be seen that by application of the New Pension rules in 1959, the Petitioner could be retired on the ground of inefficiency after completing a qualifying superior service of 25 years. The New Pension rules in this respect were disadvantageous to the Petitioner as compared to the rules applicable to him before the reorganisation. It can, therefore, be said that the condition of

service applicable to the Petitioner before the reorganisation was varied to his disadvantage. It is laid down in the proviso to Section 115(7) of the States Reorganisation Act that the conditions of service applicable immediately before the date of reorganization shall not be varied to the disadvantage of the Government servant concerned except with the previous approval of the Central Government. The previous approval of the Central Government for applying the New Pension rules in 1959 to the Petitioner has not been brought to our notice. The question, therefore, is whether the New Pension Rules, 1951, were rightly applied to the Petitioner in 1959 even though the previous approval of the Central Government was not obtained. The condition of previous approval of the Central Government under the proviso is no doubt mandatory and a rule reducing the age of superannuation or reducing the qualifying service after which a Government servant can be retired cannot be applied to the Government servant who is protected by the proviso without the prior approval of the Central Government: See *Takhatray Shivdatrai Mankad Vs. State of Gujarat*, and *The State of Rajasthan and Another Vs. Shri Rajender Singh*, . But the position would be different when the new rules are applied with the express or implied consent of the Government servant concerned. The proviso to Section 115(7) is enacted for the benefit of the Government servants concerned and it is open to them to waive that benefit. It is well settled that the benefit of a mandatory statutory provision may be waived by a person for whose benefit the provision may have been introduced if no question of public interest is involved; see *Dhirendra Nath Gorai and Subal Chandra Shaw and Others Vs. Sudhir Chandra Ghosh and Others*, and *Shri Lachoo Mal Vs. Shri Radhey Shyam*, . As earlier stated, the requirement of the proviso to Section 115(7) that service conditions cannot be disadvantageously changed without the approval of the Central Government is for the benefit of the Government servants who were serving in the constituent units of the new State before reorganization. The provision is solely for their protection and there is no question of any public interest. Therefore, the benefit under the proviso could be waived. When the Petitioner did not exercise the option for opting for the pension rules applicable to him before the formation of the new State as required by paragraph 3 of the Notification dated 12th November 1959 applying the New Pension rules, it would be inferred that the Petitioner waived the protection available to him under the proviso to Section 115(7) and the New Pension rules, 1951, as in force in 1959 must be deemed to have been applied to him with his consent.

Sub-para (ii) of Sub-rule (3) of Rule 2 of the New Pension rules which we have earlier quoted could be used by the Government for compulsorily retiring a Government servant after 25 years of qualifying superior service on the ground of inefficiency. The Petitioner has not been retired on the ground of inefficiency. The Petitioner has been retired "in the public interest". Had Sub-para (ii) of Sub-rule (3) of Rule 2 continued in the same shape as it stood in 1959, the Petitioner's retirement would have been invalid. This provision was, however, omitted and substituted by another provision in 1966 by Notification No. 1247-R-

I445-IV-R-II/66, dated 7th June 1966. The substitution was made in consultation with the Government of India u/s 115 of the States Reorganisation Act as is stated in the Notification itself. Although the words "prior approval" have not been used in the Notification, it is clear that the words "in consultation with the Government of India u/s 115 of the States Reorganisation Act" as used in the Notification in the context mean the same thing. These words in the notification were used to convey that the requirement of Section 115 has been complied with. Section 115 requires prior approval of the Central Government. Therefore, consultation u/s 115 referred to in the Notification means that prior approval of Central Government as required by Section 115 has been obtained. This is also the factual position as shown from the relevant file produced by the Government Advocate. The new provision substituted in 1966 reads as follows:

(ii) A retiring pension is also granted to a Government servant who is required to retire after completing a qualifying superior service of twenty-five years. The authority competent to retire a Government servant has an absolute right to retire him without giving any reasons after he has completed a qualifying superior service of twenty-five years, and no claim to special compensation on this account will be entertained. This right shall not be exercised except when in the opinion of the competent authority it is necessary so to do in the public interest to dispense with the further service of a Government servant.

The above provision clearly authorises the Government to compulsorily retire a Government servant after 25 years of qualifying superior service in the public interest. In 1972 there were further amendments in the New Pension rules by Notification No. 478 IV-R-II-72, dated 18th March 1972. By this Notification. Sub-para (ii) of Sub-rule (3) of Rule 2 as quoted above with certain inconsequential changes became Sub-para (i) of Sub-rule (3) of Rule 2. This amending Notification of 1972 does not purport to have been issued in consultation with or approval of the Central Government, but that makes no difference because the authority to retire a Government servant after 25 years of qualifying superior service in the public interest, which is still continued, was obtained under the earlier Notification issued in 1966 with the consent of the Central Government. It cannot, therefore, be said that the Petitioner has been retired after 25 years of qualifying service under a rule which cannot be applied to him as the prior approval of the Central Government under the proviso to Section 115(7) of the Reorganization Act has not been obtained.

The second contention raised by the Petitioner is that the Chief Conservator of Forests was not his appointing authority and, therefore, he had no authority to compulsorily retire the Petitioner. The Petitioner's argument is that he was appointed in the erstwhile Rewa State by an Order of the Council of Ministers and that Government alone can pass an Order compulsorily retiring the Petitioner. It is not disputed before us that in the State of Madhya Pradesh the Chief Conservator of Forests is the appointing authority of Forest Rangers and that he is also competent to terminate the service of a Forest Ranger. There is no such

law or rule that the service of a person appointed by a higher authority cannot be terminated by a lower authority. The prohibition is only contained in Article 311 of the Constitution that a Government servant shall not be dismissed or removed by an authority subordinate to that by which he was appointed. In all other cases of termination of service, all that has to be seen is whether the authority terminating the service is on the date of the Order of termination competent to terminate the service of an officer of the rank to which the Government servant whose services are terminated belongs. It is settled law that an Order of compulsory retirement is not an Order of dismissal or removal. The Chief Conservator of Forests on the date when the Order of compulsory retirement was passed was the appointing authority of Forest Rangers and he was also competent to terminate their services. The Order of compulsory retirement passed against the Petitioner was thus within the authority of the Chief Conservator of Forests.

The petition fails and is dismissed without any Order as to costs. The security amount shall be refunded to the Petitioner.