(2000) 01 DEL CK 0092

In the Delhi High Court

Case No : CW. No. 4227 of 1998

G.S. Bhogal — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 31-01-2000

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2000) 2 AD 582 : (2000) 84 DLT 313 : (2000) 53 DRJ 328

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. A.P. Dhamija, for the Appellant; Mr. K.L. Budhiraja, for the Respondent

Judgement

K. Ramamoorthy, J.—The petitioner is an engineer working in the third respondent/Corporation. Before the Report of the Fifth Pay Commission, as per the rules, he was to retire on attaining the age of 58 years. The Fifth Pay Commission had recommended the enhancement of the retirement age to sixty years for Government servants. On 13th of May, 1998, the Government of India issued a notification fixing the age of retirement at 60 years for Government employees. On the 19th of May, 1998, the Ministry of Industry issued an Office Memorandum directing the public sector undertakings to fix the age of retirement at 60 years with reference to the employees below the Board level. On the 9th of June, 1998, the said Office Memorandum was forwarded by the second respondent Ministry of Industry, to the third respondent/Corporation. The third respondent according to the petitioner, has not taken any steps.

2. On the 22nd of July, 1998, a letter was issued to the petitioner that he would be retired on the 31st of August, 1998. When this was so, two employees of the Corporation, similarly situated like the petitioner, moved the Calcutta High Court for direction to the Corporation to issue rules fixing the age at 60 years. The Calcutta High Court, disposing of the Writ Petition No.11531 (W) of 1998, held:

"On a careful consideration of the submissions made on behalf of the respective parties, I cannot but come to the conclusion that since the Central Government has taken a specific decision to enhance the age of retirement of below board level employees in Central Government Public Enterprises from 58 years to 60 years, it was incumbent on the part of the respondent Corporation to act according to such decision and to amend its rules in accordance with the directions contained in the Office Memorandum in question. The decision has been taken by the Department of Public Enterprises, Ministry of Industry, Government of India, which controls the functioning of the respondent No.1 Corporation, and in my view, no discretion has been left to the respondent No. 1 Corporation, as has been urged by Mr. Sen, regarding the implementation of the aforesaid decision of the Central Government.

As to the question of being governed by specific rules, it is obvious that by specific rules, what was meant was the rules which were specially applicable to a particular group of employees and not to the rules which had general application to all employees. As was submitted by Mr. Banerjee Chowdhuri, certain classes of employees may be governed by certain rules and in their cases the decision to enhance the age from 58 years to 60 years would not possibly apply, but this is not so in the instant case, since the rules referred to by Mr. Sen in the affidavit-in opposition appears to be of general application to all the employees of the Corporation.

It is no doubt true that the rules of the Corporation have not yet been amended and in terms of paragraph 2 of the Office Memorandum the decision of the Central Government would not come into effect till the rules are amended. But, in my view, the Corporation was not entitled to keep the decision of the Central Government in abeyance by not amending its rules, although, the Office Memorandum had been received, by the respondent No.1 Corporation on 10th June, 1998, so as to deprive the petitioner of the benefits thereof. I am, Therefore, inclined to agree with Mr. Guha that having regard to the decision taken by the Central Government at a time when the petitioner was still in service, the petitioner should not be deprived of the benefit of the said decision of the Corporation merely because it had chosen not to amend its rules as per the directions contained in the Office Memorandum in question.

In that view of the matter, this writ petition is disposed of with a direction upon the respondent No.1 Corporation to take immediate steps to comply with the directions contained in the Office Memorandum regarding amendment of its rules for the purpose of enhancement of the age of retirement of its employees in keeping with the decision of the Central Government within a month from date and to extend to the petitioner the benefit of such amended rules. The petitioner will be deemed to have continued in service between the period from 30th June, 1998 and the date on which the rules are amended by the Corporation so that there is no break of service as far as the petitioner is concerned."

3. The third respondent had filed its counter and had taken the stand that until the rules are framed by the Corporation, the petitioner cannot insist on to

continue in service until he attains the age of 60 years.

4. The judgment of the Calcutta High Court would apply to the case of the petitioner. Therefore, the writ is allowed. The petitioner shall be entitled to continue in service until he attains the age of 60 years.

5. There shall be no order as to costs.

