
(2005) 03 GUJ CK 0064

In the Gujarat High Court

Case No : Special Civil Application No. 4139 of 2005

Gulabbhai Ranchodbhai Solanki

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 15-03-2005

Acts Referred:

Bombay Civil Services Rules, 1959 — Rule 161(1)

Citation : (2005) 03 GUJ CK 0064

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Advocate : Shaukat A. Shaikh, for the Appellant; Pradip D. Bhate, AGP, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Bhatt, J.—The challenge in this petition is against the order of the Government, dated 24/6/2004, whereby, the service period of 55

years of the petitioner, who was working, as Office Superintendent in the office of Commissioner of Fisheries of the department of the

Government, was prematurely severed by an order of premature retirement in the public interest in exercise of statutory provisions of Rule 161 (1)

(c) of Bombay Civil Services Rules, 1959 ("Rules" hereinafter), and instead of three months notice, the three months salary along with the

allowance amounting to Rs.13,890/- came to be paid by a demand draft, which is, also, evidently articulated in the impugned order of premature

retirement from the service.

2. The learned Advocate Mr.Shaikh is heard. The entire record is examined. The only question, which is advanced, on behalf of the petitioner by

learned Advocate Mr.Shaikh, has been that, the opportunity of hearing, before

passing the impugned order of premature retirement from the service upon completion of 55 years, has not been afforded to him. This submission of the observance of principles of natural justice, before passing such an order of impugned one, does not form part of the statutory mechanism of Rule 161 (1).

3. It is a celebrated principle of service jurisprudence, that the employer or the master or the management concerned, is empowered to make a review of the service record upon completion of certain age, as in this case. Upon completion of 55 years of age, it is open for the Government to make the assessment and evaluation of the entire service record of the employee or the officer concerned for the purpose of consideration, as to whether such a person is further useful and resourceful and efficient for further continuance of service beyond 55 years. In such service a report of prescribed Committee whether to extend period beyond 55 years of age on the ground of public interest and administrative exigency is also considered by the Authority. If such a person is found, not useful or his further continuance would not be helpful to the administrative mechanism of the Government, upon totality, of the service record evaluation and the report of the prescribed Committee, for making a decision. The Committee may also recommend for premature retirement and on such a report, upon consideration, along with complete record, the Government also may accept and pass premature retirement order. In such a process no hearing is incumbent unless there is provision for hearing the employee.

4. Needless to reiterate that order of premature or compulsory retirement is not in any way a punishment in terms of the service jurisprudence. It is a prerogative of the State and if the State, upon consideration of all facts and circumstances of the overall service record of the employees, upon completion of 55 years in exercise of reviewing powers reaches to a positive and objective considerations concludes that, the further continuance beyond 55 years of such a person will not be conducive to the public interest or being not further useful in service on administrative ground. It is open in purported exercise of powers under Rule 161 (1) (c) of the Rules, to pass such an order. It is not the right of the incumbent; it is not a stigma; it is not a punishment; but it is a design and object of a review of the service utility and the usefulness of such a person beyond age of 55

years upon the consideration of entire service record, for the administrative interest.

5. It has been a settled proposition of law, that the very benign design and desideratum of the exercise of the power of review, which is a weapon

in the armory of the administration, is to make an assessment of the past record of incumbent and to reach to a positive conclusion from the factual

realities and profile of the service dossiers and relevant circumstances. If the management or the authority or the Government, as the case, may be,

deems it expedient to pass the orders of the continuance of service or an order of extension beyond the age of 55 years can be granted, in terms of

the statutory powers of the authority or the Government and at the same time, if it is found that the incumbent is a dead wood, he would be

chopped off from the administrative mechanism while making such an exercise. It is not that the only adverse remarks need to be considered. But

the entire service record will have to be considered. It is not only the physical and mental fitness but also usefulness of such an incumbent for

administration in the light of the overall service record that must enter into the arena of decision-making. Therefore, the contention advanced on

behalf of the petitioner that the opportunity of hearing is not given before passing the impugned order of premature retirement by the respondent-

authority, is meritless.

6. In view of the several judicial pronouncements of this Court, as well as, the Apex Court and upon the plain reading of the impugned order

makes it abundantly unambiguous, that the impugned order has been recorded by the respondent-authority in terms of the statutory powers

conferred upon the authority under Rule 161 (1) (c) of the Rules and the mechanism, which is prescribed for the purpose of exercise of reaching

such a conclusion, whether to continue the incumbent beyond 55 years or not, and personal hearing is not required or contemplated under the said

Rule. It is the past service record which matters and not the personal hearing, which is sought to be injected or projected in course of the

submissions before this Court. This proposition has been, clearly, expounded and it is very well expounded and a settled proposition of law

requiring no further meticulous investigation or examination and, therefore, the sole contention raised before this Court on behalf of the petitioner

must receive only and only one legal fate of rejection, at the outset.

7. In the result, the petition shall stand rejected at the threshold.