
(1997) 03 KAR CK 0039
In the Karnataka High Court
Case No : Writ Petition No. 4978 of 1994

K.B.K. Somayajulu

APPELLANT

Vs

The Bharath Earth Movers Limited, Bangalore and Another

RESPONDENT

Date of Decision : 11-03-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1997) 4 KarLJ 141

Hon'ble Judges : G. C. Bharuka, J

Judgement

1. The question raised herein is, as to whether the order of compulsory retirement dated 15-10-1993 (Annexure-E) passed against the petitioner is sustainable and justifiable both in law and/or on facts. To substantiate his contention the petitioner, who is appearing in person, has called in question the constitutional validity of Rule 18.1 of the Service Rules (hereinafter in short "the Rules") (Annexure-J) framed by his employer M/s. Bharath Earth Movers Limited (in short the "Company"), in pursuance whereof, the impugned order has been passed.

2. The foundational facts in short lie in a short compass. The petitioner had joined the respondent Company in June, 1978. In June, 1985 he was promoted as Assistant General Manager (E.D.P.). In the annual confidential reports for the year 1987-88, 1989-90 and 1992-93, the working and administrative performance of the petitioner was rated as "low average (50-59)". The said assessment appears to have been made by the Competent Authority on the appraisal of the performance of the petitioner on the job and his interpersonal relations with other Officers. The said reports were communicated to the petitioner in due course and they have been placed as Annexures-A, B and C to the writ petition. According to the respondents, the petitioner, despite grant of opportunities and rendering of advice, had failed to improve his performance. It seems under these circumstances the Appointing Authority resorted to Rule 18.1 of the rules and passed the impugned order, directing premature retirement of the petitioner with effect from

16-10-1993. The respondents assert that such an action has been taken in the interest of the Company.

3. The impugned order (Annexure-E) of the compulsory retirement passed against the petitioner is to the following effect.-

T.V.S. Sastry Chairman and Managing Director B.E.M.L. BharatEarth Movers Limited

No. D(K)/188/HPC/82415th October, 1993

ORDER

In exercise of the powers conferred upon me as the Appointing Authority under the Service/Superannuation Rules of the Company, I hereby order that Sri K.B.K. Somayajulu, Assistant General Manager (M.I.S.), S. No. 372-14159, B.E.M.L., K.G.F. Complex, K.G.F., having already attained 50 years of age, is hereby retired from service in the interest of the Company, with effect from forenoon of Sixteenth October Nineteen Ninety Three (16-10-1993). He may be paid three months pay and allowances as admissible, in lieu of notice.

Sd/-(T.V.S. Sastry) Chairman and Managing Director

4. Admittedly, after service of the said notice of retirement, this petitioner without raising any grudge against the same received all the sums which were due to him as retiral benefits against gratuity, provident fund, etc., in total amounting to Rs. 4,56,645/-.

5. After having materially settled his accounts as above without expressing any reservation or protest, the petitioner then seems to have decided to feed his grudge against his employer through the judicial forum, questioning their very

authority to retire its employee prematurely. This is how the present writ petition seems to have been filed. The petitioner contends that the impugned order of compulsory retirement is ultra vires the powers of the respondents, since according to him, the very Rule 18.1 under which the impugned order has been passed is constitutionally invalid and is hit by Article 14 of the Constitution of India, since it confers uncanalised, unbridled and arbitrary powers on the employer to terminate the services of any of the employees prematurely. According to him, the Company, which is an instrumentality of the State, is bound to abide by the constitutional mandate of the equality and reasonableness clause but it has under the impugned rule assumed to itself a draconian power, which can hardly withstand the well accepted concept of fair play and justice, which has to form the foundational ingredients of a society administered by the rule of law.

6. To appreciate the rival contentions, I may hereunder reproduce the impugned rule in verbatim.

"Rule 18(1). Retirement/Superannuation.-

The age of Superannuation will be 58 years. The employer, however, may require an employee to retire after he attains the age of 50 years on 3 months notice or pay in lieu thereof, without assigning any reason. The employee may also, after attaining the age of 50 years, voluntarily retire after giving 3 months notice to the employer".

7. Before advertng to the constitutionality aspect of the impugned rule, it may be relevant to notice here that in the case of Allahabad Bank Officers' Association and Another v Allahabad Bank and Others, (1996)⁴ SCC 504, the Supreme Court has very succinctly traced out and explained the very concept of compulsory retirement and its purpose as envisaged in Service Jurisprudence, which has been evolved through judicial exercises undertaken from time to time under varying circumstances. Para 5 of the judgment elaborates the aspect, which is to the following effect-

"The object of compulsory retirement is to weed out the "dead wood" in order to maintain efficiency and initiative in the service and also to dispense with the services of those whose integrity is doubtful so as to preserve purity in the administration. Generally speaking, Service Rules provide for compulsory retirement of a Government servant on his completing certain number of years of service or attaining the prescribed age. His service record is reviewed at that stage and a decision is taken whether he should be compulsorily retired or continued further in service. There is no levelling of a charge or imputation requiring an explanation from the Government servant. While misconduct and inefficiency are factors that enter into the account where the order is one of the dismissal or removal or of retirement, there is this difference that while in the case of retirement they merely furnish the background and the enquiry, if held - and there is no duty to hold an enquiry - is only for the satisfaction of the authorities who have to take action, in the case of dismissal or removal they from the very basis on which the order is made, as pointed out by this Court in Shyam Lal v State of Uttar Pradesh, AIR 1954 SC 369 and State of Bombay v Saubhagchand M. Doshi, AIR 1957 SC 892. Thus, by its very nature the power of compulsorily retire a Government servant is distinct and separate from the power to punish him by way of removal, dismissal, etc., for misconduct. A Government servant who is compulsorily retired does not lose any part of the benefit that he has earned during service. Thus, compulsory retirement differs both from dismissal and removal as it involves no penal consequences. Though compulsory retirement deprives a Government servant of the chance of serving and getting his pay till he attains the age of superannuation and thereafter to get pension, that cannot be regarded in the eye of law as punishment as pointed in the case of Shyam Lal's case, supra and Union of India v M.E. Reddy, (1980)² SCC 15. Thus, compulsory retirement differs from dismissal and removal both in its nature and incidence or effects. Therefore, compulsory retirement is not considered prima facie and per se a punishment and does not attract the provisions of Article 311.

This Court in a series of decisions starting with Shyam Lal's case, *supra*, has held that compulsory retirement is neither a punishment nor a stigma; and, that can now well be regarded as settled legal position. But, if any stigma is attached to the order of compulsory retirement then it may be treated as an order of punishment in reality. So also, if a formal enquiry is made on an allegation of misconduct and a finding holding him guilty is recorded and thereafter the order of compulsory retirement is passed then such an order even when it does not contain any allegation or a stigmatic statement may be regarded as an order of punishment".

8. Keeping in view the facts of the present case and the law laid down by the Supreme Court as noticed above, it cannot be seriously disputed that the impugned order passed against the petitioner (Annexure-J) is an order pure and simple of compulsory retirement. The respondents as employers have on an appraisal of the performance of the petitioner qua the requirement/expectations from the petitioner in due discharge of his duties and performances, had thought it proper to retire the petitioner prematurely in the best interest of the business of the Company. Such an assessment by the employer based on relevant service records cannot be interfered with by this Court under writ jurisdiction by sitting in an appeal over the same. Any such exercise by this Court will be beyond the purview of established norms, as the judicially evolved, of judicial review.

9. In the said view of the matter, the only contention which needs the deliberation and pronouncement is regarding the Constitutional validity of the impugned Rule 18.1 of the rules.

10. In support of his contention the petitioner has placed heavy reliance on the judgment of the Supreme Court in the case of Senior Superintendent of Post Office and Others v Izhar Hussain, AIR 1989 SC 2262. In this case, the respondent employee had joined the Telegraph Department as a clerk on June 4, 1935. The Director, Postal Services by an order dated April 21, 1970 retired him from service under Rule 2(2) of the Pension Rules. The respondent challenged the same before Allahabad High Court and the same was dismissed holding that there was no infirmity in Rule 2(2) of the Pension Rules. The special appeal filed by the respondent before Division Bench was accepted and Rule 2(2) of the Pension Rules was declared invalid and the retirement of the respondent was set aside. The Union of India has made an appeal by special leave against the aforesaid judgment of the Division Bench before Supreme Court. The Apex Court in the said case noticed that though superannuation age of a Central Government servant was 58 years, but the Government had an absolute right under Rule 56(j) of the Fundamental Rules to prematurely retire the Government servant in "public interest" after he has attained the age of 55 years. It was further noticed that the Government had also acquired a similar power under Rule 2(2) of the Pension Rules to retire a servant "at any time" after he has completed his 30 years of qualifying service. According to the Apex Court, though under Rule 56(j) of the Fundamental Rules, the premature retirement could have been directed

only in public interest, but under the Rule 2(2) of the Pension Rules, an absolute power was given to the Government to retire any servant without providing any such guideline. It was for the said background that the Court held that Rule 2(2) of the Pension Rules was amenable to arbitrary exercise in contradistinction to what was provided under Rule 56(j) of Fundamental Rules. It was held that under the impugned provision the Government could have arbitrarily discriminated between similarly situated Government servants. It was for these reasons that Rule 2(2) of the Pension Rules was declared as ultra vires.

11. Coming to the Service Rules applicable to the petitioner and for that sake all the employees of the respondent Company, Rule 18.1 is the only rule which empowers the Company to prematurely/compulsorily retire its servants on their attaining the age of 50 years. That the rule is not capable of meeting out any discrimination between one employee and another employee of the Company, which are otherwise identically situated.

12. So far as the non-providing of the guidelines in the impugned rule is concerned, it cannot be disputed that the very concept of compulsory retirement is based on the idea of subserving the employer's requirement of having a right to ensure the best service of his employee. Time and again, it has been said that the object of compulsory retirement is to weed out the dead wood in order to maintain efficiency and initiative in the service. Therefore, in every service rule authorising compulsory retirement, the said object has to be understood as impleadly embedded, which has to form the guidelines for exercising such power.

13. The said aspect of the law has also been settled in the case of N.C. Dalwadi v State of Gujarat, AIR 1987 SC 1993. In this case a three Judges Bench of the Supreme Court was required to consider the scope and ambit of Rule 16(1)(a) and 16(1)(c)(ii)(1) of the Bombay Civil Service Rules, 1959. In para 10 it has been held that-

"Under the scheme of the Rules, the benefit which the Superintending Engineers enjoy under the second part of Rule 16(1)(c)(ii)(1) is necessarily subject to the absolute power of the Government to direct compulsory retirement of such Officers on the date they attain the age of 55 years under the first proviso to Rule 16(1)(a) or under Fundamental Rule 56(j)(1) on which it is based. Although the words "in the public interest" are not there but such power to direct premature compulsory retirement at the age of 55 years can be exercised subject to the conditions indicated in Union of India v J.N. Sinha's and Another, AIR 1971 SC 40, one of which is that the concerned authority must be of the opinion that it is in the public interest to do so".

14. For the reasons as noticed above, I do not find advisable to interfere with the impugned order of compulsory retirement passed against the petitioner. The writ petition is accordingly dismissed being devoid of any merits. But on the facts and circumstances of the present case the parties are liable to bear their own costs.