
(1969) 03 DEL CK 0008

In the Delhi High Court

Case No : Civil Writ Petition No. 129 of 1968

Lala Ram

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-03-1969

Acts Referred:

Citation : (1969) 5 DLT 622

Hon'ble Judges : P.N. Khanna, J

Bench : Single Bench

Advocate : S. Malhotra and M.R. Gupta, for the Appellant;

Judgement

P.N. Khanna, J.

(1) Shri Lala Ram who was holding a post of a Superintendent in the Office of the Deputy Commissioner, Simla, has filed this writ petition challenging the orders of the Under Secretary (Revenue), Himachal Pradesh Government. Simla, respondent No. 3 directing his retirement with effect from 13th August, 1968, on his completing 58 years of age.

(2) The allegations of the petitioner are that on September 19, 1935 he was officiating as Field Kanungo and holding a substantive post of Patwari on that day. On July 20, 1937 he was confirmed as a 2nd class Field Kanungo against a permanent "vacancy Alter serving in various capacities as Kanungo, Field Kanungo, Sadar Kanungo, Naib Tehsildar, Head Vernacular Clerk, Assistant Superintendent and eventually as Superintendent in the Office of the Deputy Commissioner at Simla, he was confirmed as such (Superintendent in the office of the Deputy Commissioner) with effect from January 19, 1963. On March 31, 1938 the petitioner held a lien on a permanent post of the Kanungo and continued to hold the same without interruption when he was subsequently promoted to the various jobs as mentioned above. On October 31, 1966, the petitioner was serving in connection with the affairs of the State of Punjab. On re-organisation of that State, his services were transferred by the Central

Government to serve in connection with the affairs of the Union Territory of Himachal Pradesh. Accordingly his services could not be dispensed with save under the orders of the central Government, as required under the Punjab Re-Organisation Act.

(3) The petitioner's date of birth is August 14, 1910. He completed the age of 58 years on August 13, 1968. On the said date (August 13, 1938) the Deputy Commissioner, Simla, respondent No. 4 under advice from the Under Secretary (Revenue) to the Government of Himachal Pradesh, Simla, respondent No. 3. informed the petitioner that the Financial Commissioner, Himachal Pradesh, had considered his case for retention in service beyond 58 years and has decided that he cannot avail of the higher superannuation age of sixty years and must be retired on August 13, 1968 (A.N.) on attaining 58 years of age, These facts are not disputed by the respondents.

(4) The petitioner contends that the orders of the Financial Commissioner as conveyed to him through the Deputy Commissioner Simla, are illegal, ultra virus and void in as much as he is entitled to be retained in service till he attains the age of 60 years under the Fundamental Rules and that he could not be removed from service save under due process of law and after holding due enquiries as contemplated under Article 311 of the Constitution of India. The petitioner also submits that the Financial Commissioner Himachal Pradesh, had no jurisdiction to order his removal from the service as he was not competent to do so. Accordingly the petitioner submits that he has a right to be retained in the post under the rules, till August 14, 1970.

(5) According to the respondents, the petitioner was rightly retired at the age of 58 years which according to them is the correct age of Superannuation in his case. They seek support from Rule 56(c) of the Fundamental Rules. The petitioner, it is urged by the learned counsel for the respondents, did not hold any ministerial post on March, 31, 1938.

(6) The petitioner's learned counsel, however, contends that it is not necessary for the petitioner to have held such a ministerial post on March 31, 1938, in order to claim retention in service till the age of 60 years. He also relies on Rule 56(c) of the Fundamental Rules, which he says, support his contention.

(7) Fundamental Rule 56(c) reads as follows :-

"F.R.56(c) A ministerial Government Servant who entered Government service on or before the 31st March, 1938 and held on that date- (i) a lien or a suspended lien on a permanent post, or (ii) a permanent, post in a provisional substantive capacity under clause (d) of Rule 14 and continued to hold the same without interruption until he was confirmed in that post, shall be retained in service till the day he attains the age of sixty years."

According to the learned counsel for the respondents, it is only by reading in between the above lines that it would be clear that in order to continue in service

up to the age of sixty years, the petitioner is required to hold a ministerial Government post not only on the day of his retirement but also on or before March 31, 1938.

(8) The rule as reproduced above is clear. The only requirement is that the person concerned should have "entered Government service" on or before the 31st March, 1933. It does not say that he should be a ministerial Government servant on or before that date. The language of the said rule is clear and it does not stipulate that a ministerial Government servant who claims to take its advantage should also have been such a servant on the said 31st March, 1937. There is, thus no force in the contention of the learned counsel for the respondents.

(9) The learned counsel for the petitioner has also referred into letter No. 3/12/68-HMT dated the 25th March, 1968 which is Annexure P/B .attached to the petition. The relevant portion of this letter reads as follows:-

"I am directed to refer to your letter No. 2-156/67-Rev. 1, dated January 15, 1968 and to state that an employee of the erstwhile Punjab who has been absorbed under the Government of Himachal Pradesh as a result of reorgainsation of Punjab and who entered Government service on or before the 31st March, 1938 and held on that date- (i) a lien or a suspended lien on a permanent post, or (ii) a permanent post in a provisional substantive capacity under clause (d) of Rule 14 and continued to hold the same without interruption, until he was confirmed in that post, shall be retained in service till the day he attains the age of sixty years ; if he held a ministerial post immediately before attaining the age of fifty eight years; The learned counsel for the respondents says that there was no justification to add the last line in this letter. to me, however, it appears that the said line is neither contrary to Rule 56 nor is otherwise in conflict with any other rule. The said letter is merely explaining the intention of Fundamental Rule 56 (c). No other point was urged. It is thus clear that the objection of the respondents is unfounded.

(10) In view of the above there is no merit in the contentions of the respondents. Accordingly the order of respondent No. 3 as conveyed to respondent No. 4 vide his letter No. 296/67-Rev.I, dated the 12th August, 1968 whereby the petitioner was ordered to be retired with effect from August 13, 1968 (A N.) is quashed and the respondents are directed to allow the petitioner to continue in service till he attains the age of superannuation according to the said Rule 56 of the Fundamental Rules as interpreted above or other applicable provisions if any. The respondents shall bear the petitioner's cost Counsel's fee Rs. 50.00.