

(1998) 05 SC CK 0056
In the Supreme Court Of India
Case No : C.A. No. 5197 of 1993

Meghraj Urkudaji Tempe

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 13-05-1998

Acts Referred:

Maharashtra Civil Services (Pension) Rules, 1982 — Rule 10(4)

Citation : (1998) 4 AD 550 : AIR 1998 SC 2119 : (1998) AIRSCW 1999 : (1998) 4 JT 137 : (1998) 3 SCALE 589 : (1998) 5 SCC 221 : (1998) SCC(L&S) 1315 : (1998) 3 SCR 419 : (1998) 5 Supreme 22

Hon'ble Judges : S. P. Bharucha, J;M. Jagannadha Rao, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M. Jagannadha Rao, J.—The appellant contends that the notice dated 23.1.89 for compulsory retirement issued under Rule 10(4Xa)(i) of the Maharashtra Civil Services (Pension) Rules, 1982 is bad inasmuch as the procedure indicated in the Circular issued by the State Government on 1.9.1983 has not been followed before the appellant crossed 50 years and his case must be deemed to have been reviewed in his favour before he crossed 50 years. In such a situation, a second review after he crossed 50 years is, according to the appellant, not permissible. It is also contended that it is not open to the respondent while issuing notice on 23.1.1989 to apply the norms prescribed in a latter Circular dated 12.5.1986. It is contended that while the 23.1.1983 Circular prescribes a standard of 'not less than average', the Circular dated 12.5.1986 prescribes a more stringent standard of 'not less than good'. If review had been undertaken before the appellant crossed 50 years, then it would have been sufficient if the appellant satisfied the standard of 'less than average' - which, in fact, he did - as per the norms prescribed by the circular dated 1.9.1983. The contention of the appellant is that the circular dated 1.9.1983 is binding on the Government and is intended to see that the general power under Rule 10(4)(a)(i) is not used arbitrarily.

2. After hearing learned senior counsel on both sides, we were prima facie inclined to accept the above contention of the appellant. But we have come to notice a two Judge Bench decision in Suryakant Govind Oke Vs. State of Maharashtra, , wherein it has held that even if an officer's case has not been reviewed before he crossed 50 years, his case can be reviewed under the circular dated 12.5.1986 read with Rule 10(4)(a)(i) of the Rules, and that this could be done even after he has crossed 50 years. We have, therefore, thought it fit that the case is to be decided by a three Judge Bench.

3. In this context, we are of the view that the decisions in State Bank of India and Others Vs. Samarendra Kishore Endow and Another, , K. Chelliah Vs. The Industrial Finance Corporation of India and another, and in Brij Mohan Singh Chopra Vs. State of Punjab, decided by Benches of two Judges and also a decision of three Judges Bench in State of Uttar Pradesh Vs. Chandra Mohan Nigam and Others, all concerning the effect of Circulars/guidelines dealing with compulsory retirement are also relevant.

4. We direct accordingly that the papers be placed before the Hon'ble the Chief Justice of India, for being listed before a Bench of three learned Judges.