

(1990) 02 SC CK 0028
In the Supreme Court Of India
Case No : Civil Appeal No. 1899 of 1989

M.P. Pradhan

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 16-02-1990

Acts Referred:

Fundamental Rules — Rule 56

Citation : AIR 1990 SC 891 : (1990) 60 FLR 537 : (1990) 1 JT 335 : (1991) 2 LLJ 107 : (1990) 1 SCALE 218 : (1990) 2 SCC 539 : (1990) 1 SCR 410 : (1990) 1 UJ 589 : (1990) 1 UPLBEC 454

Hon'ble Judges : V. Ramaswami, J;Kuldip Singh, J

Bench : Division Bench

Advocate : G.B. Pai, S. K. Patri and J.R. Das, for the Appellant; B. Dutta, Govind Das, Sushma Suri and Indra Sawhney, for the Respondent

Final Decision : ALLOWED

Judgement

Kuldip Singh, J.—The question for our consideration in this appeal is whether the appellant is governed by Fundamental Rule 56(c)(i) and as such entitled to superannuation at the age of 60 years.

2. Fundamental Rule 56(c)(i) is reproduced as under:

(c) A ministerial Government servant who entered Government service on or before the 31st March, 1958 and held on that date:

(i) a lien or a suspended lien on a permanent post, or...shall retire from service on the afternoon of the 1st day of the month in which he attains the age of sixty years.

3. The appellant joined service as paid apprentice in the Collectorate of Etawah, Government of Uttar Pradesh on 1st July, 1937. On the same day he was asked to officiate in the post of Arranger. He was sent back to the post of paid apprentice on 24th December, 1937 but was again appointed as Arranger in officiating capacity on 3rd of January 1938. While holding the post of paid

apprentice he had been appointed in various posts on officiating basis. He was finally promoted and appointed to a permanent post of Copyist in a substantive capacity on 1st of August, 1941. He came to the Government of India on deputation in March 1943 and thereafter retired from service on attaining the age of 58 years in February 1976.

4. The appellant claimed that having entered Government service on permanent basis before 31st March, 1938 he was entitled to continue in service till the age of 60 years under Fundamental Rule 56(c)(i) and his retirement on attaining the age of 58 years was illegal. The Central Administrative Tribunal, Principal Bench, New Delhi dismissed the application of the appellant holding that the appellant was only an apprentice under training prior to 1st of August, 1941 and as such was not holding any employment under the State on permanent basis. According to the Tribunal the appellant was appointed to the Government service on permanent basis to the post of Copyist on 1st of August, 1941 and as such he did not come within the purview of Fundamental Rule 56(c)(i).

5. We have examined the admitted entries in the service book of the appellant which are on the record. These entries show that the appellant joined service as paid apprentice on substantive permanent basis on 1st of July, 1937. It is correct that from 1st of July, 1937 up to 1st of August, 1941 he has been shown in the service book to be appointed in officiating capacity to various posts but the fact remains that his basic appointment as paid apprentice was permanent. The finding of the Tribunal that the appellant was made permanent for the first time as Copyist on 1st August, 1941 cannot be accepted in the face of clear entries in the service book showing that he joined as paid apprentice on permanent basis on 1st of July, 1937. Joining as paid apprentice on permanent basis cannot be anything else but entering Government service on permanent basis and since the entry was before 31st March, 1938 Fundamental Rule 56(c)(i) is attracted and the appellant is entitled to remain in Government service till the age of 60 years.

6. In the reply affidavit on behalf of the respondents in the court below, it is stated as under:

The petitioner joined Government Service under the provincial Government of Uttar Pradesh on 1.7.1937 against a post of paid apprentice. It appears there were a few permanent posts of paid apprentice under the State Government, Petitioner was appointed against one of them in Collectorate, Etawah.

7. The respondents repeated their stand in the counter filed by them in this Court in the following terms:

It is submitted that the petitioner joined Government service under the Provincial Government of Uttar Pradesh on 1.7.1937 against a post of Paid Apprentice". It appear that there were a few permanent posts of paid apprentice under the State Government. The petitioner was appointed against one of them in the Collectorate, Etawah.

8. We are, therefore, of the view that the Tribunal erred in denying the benefit of Fundamental Rule 56 (c)(i) to the appellant. We allow the appeal with costs and set aside the judgment of the Central Administrative Tribunal under appeal and we hold that the appellant was entitled to continue in Government service till he attained the age of 60 years. The appellant has already completed 60 years and as such he be paid two years emoluments with all consequential benefits including any enhancement in the fixation of pension and other post retirement benefits. We quantify the costs as Rs. 3,000.