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**(1981) 07 MAD CK 0013**  
**In the Madras High Court**  
**Case No : Writ Petition No. 3047 of 1978**

P. Karupiah

APPELLANT

Vs

The Inspector General of Police and Another

RESPONDENT

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**Date of Decision :** 15-07-1981

**Acts Referred:**

Constitution of India, 1950 — Article 311, 311(2)  
Tamil Nadu Liberalised Pension Rules, 1960 — Rule 2(3), 3(2)

**Citation :** (1982) ILR (Mad) 432

**Hon'ble Judges :** Nainar Sundaram, J

**Bench :** Single Bench

**Advocate :** K.T. Paulpandian, for the Appellant; A. Sivaji, for Government Pleader, for the Respondent

**Final Decision :** Allowed

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## Judgement

Nainar Sundaram, J.—The Petitioner, while he was Working as Inspector of Police in the Prohibition Enforcement Wing, Madurai South

District, was served with an order dated 12th October, 1977 compulsorily retiring him from service under Rule 2(3) of the Madras Liberalised

Pension Rules, 1960. The order runs as follows:

Thiru P. Karupiah, whose date of birth is 1st July 1924 and who was enlisted as a police constable in this department on 30th September 1944

was promoted to Officiate as Inspector of Police with effect from 1st August, 1976. A.N. He is now working as Inspector of Police in the

Prohibition Enforcement Wing, Madurai South District. He has completed 50 years of age and put in 25 years of qualifying service on date. He has

accumulated a number of punishments and his general record of service has been unsatisfactory. He has cased to be an efficient; and useful

member of the police force and is therefore fit to be retired compulsorily under Rule 3(2) M.L.P.R. 1960.

2. I, Thiru K.V. Subramamam, I.P.S., Deputy Inspected General of Police Prohibitions Enforcement wing, Madras, who is the competent

authority to retire him from service, do hereby order that he compulsorily retired with effect from 31st October, 1977 A.N. in the above

circumstance. He is informed that three months salary due to him will be drawn and paid by the Superintendent of Police, Madurai South District

which he can receive on 31st October, 1977 A.N.

3. He will please acknowledge receipt of this proceedings.

The said order was passed by the second Respondent. There was an appeal by the Petitioner to the first Respondent as against this order and the

first Respondent, by order dated, 4th July, 1978, rejected the appeal of the Petitioner. The Petitioner challenges the orders of the Respondents in

the present writ petition.

2. The main ground of challenge that has been projected by Mr. K.T. Paulpandian, learned Counsel for the Petitioner, and which ground, in my

view has got to be sustained in that though the order passed by the second Respondent on 12th October, 1977 apparently reads as an order of

compulsory retirement in accordance with the rules, yet, it would amount to dismissal or removal from service on charges of misconduct and

negligence and hence Article 311 of the Constitution of India is attracted and inasmuch. as the requirements of the said Article have not been

complied with, the order, is liable to be quashed.

3. Compulsory retirement of a Government servant on proportionate pension before the age of superannuation, but on completion of service for

the prescribed number of years according to the rules in this regard or on attainment of the prescribed age as per the said rules, would not amount

to dismissal or removal from service within the meaning of Article 311, although such compulsory retirement necessarily means termination of

service of the government servant. But there the order, though described as an order of compulsory retirement, is apparently based on charges of

misconduct or inefficiency and the like, it would amount to a punishment and hence removal from service.

4. In Parshotam Lal Dhingra Vs. Union of India (UOI), the Supreme Court

observed as follows:

The position may therefore, be summed up as follows: Any and every termination of service is not a dismissal, removal or reduction in rank. A

termination of service brought about by the exercise of a contractual right is not per se dismissal or removal, as has been held by this Court in

Satish Chandra Anand Vs. The Union of India (UOI), . Likewise the termination of service by compulsory retirement in terms of a specific rule

regulating the conditions of service is not tantamount to the infliction of a punishment and does not attract Article 311(2), as has also been held by

this Court in Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI), . In either of the two above-mentioned cases the

termination of the service did not carry with it the penal consequences of loss of pay, or allowances under Rule 52 of the Fundamental Rules. It is

true that the misconduct, negligence, in efficiency or other disqualification may be the motive or the inducing factor which influences the

Government to take action under the terms of the contract of employment or the specific service; rule, nevertheless, if right exists, under the

contract or the rules, to terminate the service the motive operating on the mind of the Government is as Chagla C.J. has said in Shrinivas Ganesh

Vs. Union of India, wholly irrelevant. In short, if the termination of service is founded on the right flowing from contract or the service rules then

prima facie, the termination is not a punishment and carries with it the evil consequences and so Article 311 is not attracted. But even if the

Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting

the punishment of dismissal, or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination

of service is sought to be founded on misconduct, negligence inefficiency or other disqualification, then it is a punishment and the requirements of

Article 311 must be complied with.

5. The tests have been recognised by Judicial precedents to find out as to whether an order of compulsory retirement would tantamount to

punishment. The first is whether the action is by way of punishment and to find out that, if necessary that a charge or imputation against the officer

is made the condition of the exercise of the power; the second is whether by

compulsory retirement the Officer is losing the benefit he has already earned as he does by dismissal or removal. In this connection, reference may be made to the decision of the Supreme Court in *The State of Uttar Pradesh Vs. Madan Mohan Nagar*, and the decision of a Division Bench of this Court, consisting of Venkataraman and Krishnaswamy Reddy JJ., in *P. Shankar Rao Vs. The Government of India and Another*, .

6. In *The State of Uttar Pradesh Vs. Madan Mohan Nagar*, the Order of retirement stated that the officer had outlived his utility. It was contended before the Supreme Court that the reason that the officer had outlived his utility did not show that the order of compulsory retirement amounted to an order of dismissal or removal because in every case of compulsory retirement it was implied that the person had outlived his usefulness. The Supreme Court held that in that case the order in question did cast a stigma on the officer.

7. It is now settled that where there are no express words in the order of compulsory retirement itself which would throw a stigma on the government servant, the Court would not delve into secretariat files to discover whether some kind of stigma could be inferred on such research.

This proposition has been recognised by the Supreme Court in *I.N. Saksena Vs. State of Madhya Pradesh*, as well as in *The State of U.P. Vs.*

*Ram Chandra Trivedi*, . Pronouncements to the same effect have also been made by Mohan J., one in *Lakshminarayanan v. Secy. to the Govt. of*

*Tamil Nadu* (1978) 2 M.L.J. 198 and another; in *R. Srinivasan v. Govt. of Tamil Nadu* (1978) 2 M.L.J. 161. The learned Judge, in the earlier

case, laid down that stigma must stem from the order itself and not be drawn out by a speculative process by reading into the order any innuendo

from other circumstances or possibilities or suspicions.

8. In the present case, there is no necessity to delve into the Secretariat files to discover whether some kind of stigma could be inferred on such

research. The words used in the impugned order are explicit and leave no room for ambiguity. It is categorically stated that the Petitioner has

accumulated a number of punishments and his general record of service has been unsatisfactory and he has ceased to be an efficient and useful

member of the police force. These expressions definitely cast a stigma on the Petitioner and the order in question would amount to a punishment

and is removal from service so as to attract Article 311 of the Constitution of India. In this view, as stated above, the submission of the learned

Counsel for the Petitioner has got to be sustained. Inasmuch as the requirements of Article 311 of the Constitution of India have not been complied

with, I am obliged to interfere in writ proceedings.

9. Mr. A. Sivaji, learned Counsel representing the Respondents, would draw my attention to the decision of the Supreme Court in Mayongbam

Radhamohan Singh Vs. The Chief Commissioner (Administrator), Manipur and Others, . But that is of no avail to the Respondents because the

order dealt with that decision is one of compulsory retirement without casting any stigma as in the instant case. The learned Counsel would also

draw my attention to another judgment of the Supreme Court in Tara Singh and Others Vs. State of Rajasthan and Others, . There again, the order

in question did not contain any stigma against the Petitioner therein so as to attract the applicability of Article 311 of the Constitution of India.

10. In the said circumstances, this writ petitions has got to be allowed and the same is allowed and the orders of the Respondents are quashed. But

there will be no order as to costs in the writ petition.