

(1988) 02 KL CK 0057
In the High Court Of Kerala
Case No : O.P. No. 10917 of 1987

P.S. Mahadevan

APPELLANT

Vs

The Reserve Bank of India and Another

RESPONDENT

Date of Decision : 20-02-1988

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 226
Reserve Bank of India Act, 1934 — Section 7(1)

Citation : (1988) 1 KLJ 421

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : P. Sukumaran Nayar, for the Appellant; B. S. Krishnan, for the Respondent

Judgement

K. Sreedharan J.

1. Petitioner, an officer Grade-A in the Reserve Bank of India (hereinafter referred to as "the Bank"), has been compulsorily retired with effect from 31st December, 1987. The said order is under challenge. The petitioner is a holder of M. Sc. Degree in Statistics. In 1952 he was appointed as Clerk Grade - II in the Bank. While he was working at the Bombay office of the Bank he was transferred to the Trivandrum Office in 1961. He was selected and appointed as Sub Accountant in the year 1965. That post was later re-designated as "Staff Officer Grade-A". The petitioner availed of the facility of non-transferability. On account of that, he was not eligible for and could not secure further promotions in the service. The petitioner was continuing in the Trivandrum office of the Bank. He has put in more than 35 years of service; of which for more than 21 years he had been an Officer. When he attained the age of 55 he was found suitable to be retained in service. Accordingly, in terms of the provisos to Regulation 26 (1), the Governor of the Bank, with the prior approval of the Central Board decided that the petitioner shall continue in service upto the age of 58. The petitioner will attain the age of 58, on 22.1.1989. By reason of the decision taken by the

Governor in terms of the Provisos to Regulation 26 (1), the petitioner has a right to continue in service till 22.1.1989. However, on 22.12-87 he was served with Ext.Pl letter stating that the Governor; with the prior approval of the Central Board, has decided to retire him with effect from the close of business on 31-12-87. The said letter is challenged on the ground that the order compulsorily retiring the petitioner was passed on extraneous considerations, that relevant matters were not taken into consideration, that the order is punitive in nature and that the Staff Regulations are arbitrary and violative of the principles contained in Art. 14 of the Constitution.

2. A detailed counter affidavit has been sworn to by a Deputy Manager, Department of Administration, Central Office. Bombay, on behalf of 1st respondent. It is averred therein that when the Sub-Accountants were upgraded as Class-I officers and redesignated as Staff Officers Gr. II in 1970, the petitioner opted for non-transferability, that the service of the petitioner could not be gainfully utilised by the Bank, that the petitioner had already passed the stage of usefulness to the Bank, that his continuance in the service would be a drain on public funds, that the proper authority formed the opinion that the petitioner had become dead-wood, that the petitioner though was not entitled to any notice or pay in lieu of notice he was offered three months' pay on compassionate grounds, that he has been retired from the service in the overall interest of the Bank, that the Bank has absolute discretion to retire an employee after he reaches the age of 50, that since the Bank has exercised such power vested in them, a writ petition to challenge such a decision is mis-conceived, that the service of the petitioner was extended beyond the age of 55 as contemplated by Regulation 26 (1) and that the said extension will not confer any right on the petitioner to continue till he completes the age of 58. It is further averred that the decision was taken with the previous approval of the Committee of the Central Board after finding that the petitioner is not useful to be in service of the Bank, that the power has been exercised with bona fides, and that it is only by virtue of the discretionary powers vested in the Bank under the 3rd proviso to Regulation 26(1) the petitioner was compulsorily retired.

3. The petitioner filed a reply affidavit countering all the averments made by the respondent in the counter affidavit. In reply to that an additional counter affidavit has also been filed by the Bank.

4. For a proper understanding of the matters in issue I think it is worthwhile to read clauses (1) and (2) of the Reserve Bank of India (Staff) Regulations, 1948 It is in the following terms.

26(1) An employee, other than an employee in t Class IV, shall retire at 58 years of age and an employee in Class IV at 60 years of age;

Provided that an employee who attains the age of superannuation on any day other than the first during a calendar month, shall retire on the last day of that month;

Provided further that in the case of an employee in Class IV who has reached the age of 55 years the Bank may, in its discretion, retire him after giving two months' notice in writing if in the opinion of the competent authority his efficiency is found to have been impaired;

Provided further that the Bank may, in its discretion, retire an employee, other than an employee in Class IV, at any time after completion of 50 years of age;

Provided further in the case of an employee, other than an employee in Class IV, who has attained the age of 55 years, his continuance in a service upto the age of 58 years shall be subject to his being found suitable to be retained in service.

26 (2) The power conferred by the provisos to sub-regulation (1) shall be exercised by the Governor, with the prior approval of the Central Board in the case of officers and by the Manager, subject to such general or special instructions as may be issued by the Governor, in the case of other employees".

As per Regulation 26 (1) an employee of the Bank other than an employee in Class-IV should retire at the age of 58 years. The third proviso states that the bank "may retire an employee other than one belonging to Class IV at any time, after the completion of 50 years of age. According to the fourth proviso an employee other than an employee in Glass-IV who has attained the age of 55 can continue in service up to the age of 58 subject to his being found suitable to be retained in service. Thus the cumulative effect of the provisos is that an employee other than one in Class-IV is liable to be retired from service at any time after completing the age of 50 years. His continuance beyond the age of 55 up to 58 is subject to his being found suitable to be retained in service. Can an officer who attained the age of 55 and who has been found suitable to be retained in service up to the age of 58 be retired before he completes the age of 58? This question arise for consideration in this petition.

5. It is well settled that a public servant can be compulsorily retired From service in public interest. That right conferred on the appropriate authority is an absolute one. That power can be exercised subject to the condition that the concerned authority must be of the opinion that it is in public interest to do so. If the authority bona fide forms that opinion the correctness of that opinion cannot be challenged before court. The aggrieved party can approach the court only on the allegation that the requisite opinion has not been formed or that the decision is based on collateral grounds or that it is an arbitrary decision. The impugned order in this case is being attacked on the ground that the opinion was formed on irrelevant grounds and that the relevant matters have not been taken note of. It is also contended that the decision was not one based on public interest.

6. Various considerations may weigh with an authority while exercising the power to compulsorily retire an officer. That authority may feel that a particular post may be usefully held in public interest by an officer more competent than the one who is holding the post. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient

officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. In *Gian Singh Mann Vs. High Court of Punjab and Haryana and Another*, Their Lordships observed:-

In our opinion the expression (public interest) in the context of premature retirement has a well settled meaning. It refers to cases where the interests of public administration require the retirement of a government servant who with the passage of years has prematurely ceased to possess the standard of efficiency, competence and utility called for by the Government service to which he belongs. No stigma or implication of misbehaviour is intended, and punishment is not the objective.

Thus, it is now settled that even though the right conferred on the appropriate authority to retire a subordinate compulsorily is an absolute one the object of its exercise should not be to punish him. It is also clear that an officer can be compulsorily retired only if he ceases to dispense the standard of efficiency, competence and utility called for by the service.

7. The Bank is amenable to the writ jurisdiction of this court under Article 226 of the Constitution. It is an authority coming within the meaning of Art. 12 of the Constitution. Employment under it is a public employment. The employees under the Bank are therefore entitled to a declaration of being in employment when their dismissal or removal is found to be in contravention of the well settled principles of law. Sri B. S. Krishnan, learned Counsel representing the Bank, rightly and fairly conceded the position that the employment under the Bank is a public employment. There can be no distinction between a person directly under the employment of the Government and a person under the employment of the Bank. The Bank should be equally bound to sub-serve the equality clauses of the Constitution in the matter of employment and in its dealings with the employees *Chinnappa Reddy, J., in The Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee*, observed:

In a country like ours which teems with population, where the State, its agencies, its instrumentalities and its Corporations are the biggest employers and where millions seek employment and security, to confine the applicability of the equality clauses of the Constitution, in relation to matters of employment, strictly to direct employment under the Government is perhaps to mock at the Constitution and the people. Some element of public employment is all that is necessary to take the employee beyond the reach of the rule which denies him access to a court to enforce a contract of employment and denies him the protection of Arts. 14 and 16 of the Constitution. After all employment in the public sector has grown to vast dimensions and employees in the public sector often discharge as onerous duties as civil servants and participate in activities vital to our country's economy. In growing realisation of the importance of employment in the public sector, Parliament and the Legislatures of the States have declared persons in the service of local authorities, Government companies

and statutory corporations as public servants and extended to them by express enactment the protection usually extended to civil servants from suits and prosecution. It is, therefore, but right that the independence and integrity of those employed in the public sector should be secured as " much as the independence and integrity of civil servants.

These observations have been reiterated by a larger Bench in the decision in A.L. Kalra Vs. Project and Equipment Corporation of India Ltd.,

8. It is trite law that a public servant can be retired compulsorily only in public interest. The public interest in relation to public administration envisages the retention of honest and efficient employees in service and dispensing the services of those who are inefficient, deadwood or corrupt and dishonest. Therefore, premature retirement of the inefficient, corrupt or dead-wood should subserve the public interest. (Vide Brij Mohan Singh Chopra Vs. State of Punjab,).

9. Provisos to Regulation 26(1) does not mention public interest as a touch stone in the exercise of the powers conferred therein. Un-bridled power de-hors public interest is provided by the said regulation. The necessity for indicating public interest as the real guiding factor for compulsory retirement is regarded by law as quite essential in all rules dealing with compulsory retirement. An action could thus be taken for compulsory retirement of an officer only if it is in the opinion of the appropriate authority that it is so to do in public interest. The absence of any reference to public interest in provisos 3 and 4 to Regulation 26(1) lays it open to the attack that it is devoid of any guidance to the authorities who are empowered to exercise power conferred thereunder. According to the learned Counsel representing the Bank, public interest should be read into all activities of the Bank. In support of this argument reliance was placed on Section 7(1) of the Reserve Bank of India Act, 1934. As per that clause, after consultation with the Governor of the Bank, the Central Government may give directions to the Bank as it may consider necessary in public interest. So, according to Counsel, all actions of the Bank should be taken as having been done in public interest, I find it difficult to accept this argument. The fact that the Central Government may give direction to the Bank in public interest, will not make all the actions of the Bank in public interest. The action of the Bank should be in accordance with the regulations. The regulations do not prescribe any guideline. Nor do they state that actions of the Bank should be in public interest Therefore, so, much of the provisos to Regulation 26(1) which empowers the authorities to retire an employee otherwise than in public interest is unconstitutional and void as being violative of Article 14 of the Constitution. So, I declare it as such.

10. In the instant case by Ext. RI (a) dated 13th March, 1985 the petitioner was allowed to continue in the service of the Bank beyond the age of 55 years subject to the provisos to Regulation 26 (1) As stated earlier officer who has attained the age of 58 years can continue in service upto the age of 58 years only on his being found suitable to be retained in service by the Bank. As per clause (2) of

Regulation 26 the said suitability should be found by the Governor with the prior approval of the Central Board. The petitioner completed the age of 55 on 22-1-1986. He has been found suitable by the Bank for continuing in service till he completes the age of 58. There-after can he be retired compulsorily on the ground of his having become deadwood. No-where in the counter affidavit it has been stated that the performance of the petitioner subsequent to 21-1-1986 was of such a nature that the petitioner proved himself to be in-efficient, in-competent or that he lost all his utility. Incidents which are relied on in the counter affidavit to state that he has become dead-wood are those which took-place prior to the decision evidenced by Ext. R1 (a). Those incidents are irrelevant. They ought not have been taken not of, after having found that the petitioner was suitable to continue in service tilt he completes the age of 58. As per the fourth proviso to Regulation 26(1) the suitability was assessed for the petitioners continuance in service upto the age of 58. The assessment was not for continuing in service beyond the age of 55. There is vast difference between the above two circumstances. When the Bank found the petitioner suitable for continuance in service upto the age of 58 years it was not reasonable to retire the petitioner before he completes the age of 58. According to Sri. B. S. Krishnan, learned Counsel representing the respondents. Ext.R1(a) was issued subject to the provisos to Regulation 26(1) and therefore on any" day after Ext. R1 (a) the Bank could retire the petitioner compulsorily. I find it difficult to accede to this argument. Firstly, the suitability that was to be assessed was one for continuing in service upto the age of 58. When once that suitability has been assessed it was not open to the Bank to say that the petitioner had become dead-wood. The second reason for rejecting the argument of the learned Counsel is the following: If the officer whose suitability has been assessed as contemplated by the fourth proviso to Regulation 26(1) and if he can be retired ou any subsequent day, the officer will have to be under the threat of being compulsorily retired through out the entire period of three years. Each moment he will be in the fear of his being sacked by an order of compulsory retirement. An officer cannot be put in such a tender hook at the evening of his official career. The Democlese's sword of compulsory retirement should not be allowed to hang over the employee like that. Therefore, I hold that an officer who has been found suitable to continue in service up to the age of 58 cannot be compulsorily retired on the ground that he has become dead-wood In D. Ramaswami Vs. State of Tamil Nadu, Their Lordships considered the validity of the order compulsorily retiring a person shortly after he was promoted to a responsible post relying on some adverse entry noted in his service book years back. Their Lordships observed:

In the face of the promotion of the appellant just a few months earlier and nothing even mildly suggestive of ineptitude or inefficiency thereafter, it is impossible to sustain the order of the Government retiring the appellant from service.

That decision applies on all fours to the facts of this case. In the case of the

petitioner it is worthwhile to note that there had been no adverse entry in his service records and no such entry had ever been communicated to the petitioner either.

11. The petitioner has narrated the meritorious service rendered by him to the Bank. Those averments have not been specifically denied in the counter affidavit. The circumstances sought to be highlighted in the counter affidavit are those which took place prior to the decision evidenced by Ext. R1(a). They are irrelevant in considering the feasibility of an order to compulsorily retire the petitioner from service. In view of what has been stated above, I hold that the order terminating the service of the petitioner with effect from 31-12-1987 is illegal. I set aside the same. The petitioner will be deemed to be in service of the Bank. He will be entitled to all consequential benefits.