

(1957) 02 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 136 of 1956

Pt. Sunder Lal Vasudeva

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 01-02-1957

Acts Referred:

Constitution of India, 1950 — Article 309
Contract Act, 1872 — Section 62
Punjab Civil Services Rules — Rule 5.32

Citation : AIR 1957 P&H 140

Hon'ble Judges : Khosla, J

Bench : Single Bench

Advocate : H.L. Sibbal and H.S. Doabia, for the Appellant; L.D. Kaushal, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

Khosla, J.—This is a petition under Article 226 of the Constitution filed by one Sunder Lal Vasudeva who was employed in the Public Works Department, Engineering Branch, of the Punjab Government. He was appointed as candidate Zilladar in 1939 and was confirmed in his post on 1-10-1943. On 22-9-1935 he was recommended for promotion to the post of the Deputy Collector and on 10-4-1956 he was ordered to be comcuisorily retired.

The retirement was ordered by the Governor In terms of a letter issued fay the Chief Secretary to the Punjab Government to all Heads of Departments (Punjab Government letter No. 8562-G-55/16922, dated 29-6-1955). This letter, a copy of which has been placed on the record, informed all Heads of Departments that it had been decided to amend Rule 5.32 of the Punjab Civil Services Rules, Volume II.

"so as to enable Government to examine the record of a Government servant, first on completion of ten years qualifying service, then at the completion of fifteen years" qualifying service and thereafter at any time with the object of

retiring an unsuitable Government servant compulsorily from service".

The letter concluded by saying that necessary amendment to Rule 5.32 of the Punjab Civil Services Rules, Volume II, would issue in due course.

2. The contention of the petitioner in the present case is that the order of compulsory retirement was wholly illegal, because it was not in accordance with any rule properly framed and issued under the provisions of Article 309 of the Constitution, and it is contended that the letter relied upon was without authority and in any event did not constitute a fresh rule or an amendment of the old rule.

3. The short point before me, therefore, is whether the compulsory retirement of the petitioner before the normal age of retirement, was in the present case ordered in a lawful manner.

4. Article 309 of the Constitution provides for the manner in which the conditions of service of persons appointed to public service in India may be laid down. There are two modes provided (a) by Acts of the appropriate Legislature and (b) by the exercise of rule-making authority. The rule-making authority has been given by this article to the President in the case of services and posts in connection with the affairs of the Union and to the Governor or Rajpramukh of a State in the case of services and posts in connection with the affairs of the State.

The petitioner belongs to a service in connection with the affairs of the State and therefore he is governed by rules made by the Governor of the State. The Punjab Civil Services Rules were issued by the Governor of Punjab as is clear from Rule 1.1 of Volume 1, which is in the following terms:--

"These rules, which have been issued by the Governor of the Punjab, under proviso to Article 309 of the Constitution of India (See Appendix 1), may be called the Punjab Civil Services Rules. They shall come into force from the 1st April, 1953."

Appendix 1 merely gives the lists of posts to which these rules apply. The taking of the decision by the Government to frame a rule cannot be equated with the rule itself. In the present case there is no doubt that a decision was taken to amend Rule 5.32 of Volume I, but the rule was not amended. When a rule is made it has to be published, so that all those people to whom it applies can come to know of it.

These rules contain conditions of service and they are therefore part of the terms of the contract between the Government and the employee. If a rule or condition of service goes no further than a decision of Government which is not expressly communicated to the employee, then it cannot bind him. Rules are usually published in the Official Gazette and when that happens it is assumed that they have been brought to the knowledge of everyone, and after such publication no Government employee can complain that he has been taken by surprise by a new term in the contract which was not within his contemplation when he entered service or even at any subsequent time.

In the present case the Governor has not framed any new rule or amended the old one, nor has the public been Informed of the implementation of the decision by publication in the Gazette. It, therefore, cannot be said that there exists a new rule by virtue of which the Government can examine the record of a Government servant and retire him before the usual period of compulsory retirement.

5. I am fortified in this conclusion by a ruling of their Lordships of the Supreme Court in a somewhat analogous matter in -- Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI), In that case a Government servant governed by the Civil Services (Classification, Control and Appeal) Rules was compulsorily retired after 25 years service. It was held that the order of retirement was valid, but in that case the rule which gave Government the absolute right to retire an officer after he completes 25 years service was actually in existence not only at the time the order of retirement was passed but at the time Sham Lal entered service.

Sham Lal entered service in 1923 and the rule was published in the Official Gazette on 15-11-1919. This is what Das J., observed while dealing with the matter-

"The new rules came into operation "ex pro-prio vigore" on their publication in the official Gazette on the 15th November 1919 and their subsequent publication for general information in the form of amendment to the Civil Service Regulations only served to make their exact scope clear."

6. In the present case there has been no proper rule issued by the Governor as required by Article 309 of the Constitution. There has been no publication in the Official Gazette and no communication to the petitioner. I must repeat that the rules constitute the terms of the contract between the employer and the employed and no term can, therefore, be enforceable for binding unless it is known to and accepted by both parties and it can only be known if it is framed in the way required by law and published in the usual manner.

In fact I am extremely doubtful if a new rule can bind old Government servants without their consent, because one party cannot unilateral- ly alter the terms of contract or the conditions of service, but that, however, is a point not before me, and this petition must be allowed on the ground that there is no valid rule according to which the petitioner could have been retired after completing 10 or 15 years service only. The petitioner will, therefore, be deemed to be still in Government service. The petitioner will recover the costs of this petition which I assess at Rs. 100/-.