

(1994) 04 AHC CK 0022
In the Allahabad High Court
Case No : Special Appeal No. 238 of 1993

Puran Singh Thapa

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-04-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Employment (Standing Orders) Act, 1946 — Section 13B
Uttar Pradesh Industrial Disputes Act, 1947 — Section 6, 6N

Citation : (1994) 3 AWC 1493

Hon'ble Judges : V.K. Khanna, J;G.P. Mathur, J

Bench : Division Bench

Advocate : L.C. Srivastava, for the Appellant;

Final Decision : Dismissed

Judgement

V.K. Khanna, J.—The Appellant was a work-charge employee in the Irrigation Department of the State of Uttar Pradesh who was working on the post of m Operator. On 27-2-1993 the Executive Engineer, Upper Ganga Canal Modernisation Project-III (world Bank) Roorkee gave a notice to the Appellant that in accordance with para 29 of the irrigation Manual of Orders, the Appellant having completed the age of 58 years will be discharged from the service. The Appellant in the writ petition challenged the aforesaid notice which was dismissed by the learned Single Judge in limine on the ground that there was no merit in the writ petition. The presents special appeal has been filed against the aforesaid decision of the teamed Stogie Judge.

2. Learned Counsel for the Appellant hi the present special appeal has urged the following points:

(i) There is no age of retirement prescribed for the work charge employees and thus the view taken that the Petitioner was liable to be discharged after reaching the age of superannuation i.e. 58 years is erroneous.

(ii) That the Irrigation Department comes within the definition of Industry and thus the age of retirement could only be provided under the Standing Orders and no age of retirement having been provided under the Standing Orders the Appellant can not be made to retire at the age of 58 years.

(iii) That the impugned notice discharging the Appellant from service amounts to retrenchment and the discharge of the Appellant from service is in complete violation of provisions of Section 6 and 6-N(c) of the Industrial Disputes Act. The first question which arises for determination in this case is as to what was the status of the Appellant when he was employed as work charged employee in the Irrigation Department.

3. Chapter I, Section IV-C of Irrigation Manual of Orders provides for work charged establishment. Clause 26 provides that work charged establishment will include such establishment as is employed upon the actual execution, as distinct from the general supervision, of a specific Work or of sub-works of a specific project or upon the subordinate supervision of departmental labour, stores and machinery in connection with such a work or sub-work. Clause 27 provides that in all cases previous sanction of the competent authority is necessary; which would specify in respect of each appointment (i) the consolidated rate of pay (2) the period of sanction and (3) the full name (as given in the estimate) of the work and the nature of the duties on which the person engaged would be employed. Clause 28 is rather important which provides that for financial rules and instructions in regard to work-charged establishment, see paragraphs 458 to 463 and 667 to 669 of the Financial Handbook Vol, VI. Paragraph 458 to 463 of the Financial Handbook; Vol. VI provides as to how payment to work-charged establishment will be made.

4. From the aforesaid it is, therefore, clear that work charged employee is also an employee of the State Government and the duties are also assigned by the competent authority of the State Government. The work to be performed by the work charged employee has to be supervised by the competent authority. The remuneration to the work charged employee has to be paid from the Government fund. Clause 29(2)(iii) provides that discharge on grounds of inefficiency and irregularity is already permissible under the normal rules. It is, therefore, clear that the Disciplinary control is also with the competent authority of the State Government. From all these provisions it is, therefore, clear that the Appellant is a Government servant whose service conditions are governed by the relevant orders passed by the State Government.

5. The next question which arises for determination is as to whether in respect of work charged employee whether any superannuation age has been provided under any statutory provision or under any Government Order. In the Special Appeal a counter affidavit has been filed in which Government Order dated 27th February 1982 has been annexed which clearly shows that the posts have been classified in four categories on the basis of the Second Pay Commission. The four categories are Category "A" which carries a Pay scale the maximum of which is

not less than Rs. 1720/- The category "B" posts contains the pay scale of which the maximum pay scale does not exceed Rs. 1720/- Category C posts are such non gazetted posts which carries the minimum pay scale of Rs. 354/ or above and all other non gazetted posts are included in category D?

6. Alongwith the counter affidavit Annexure CA 1 has been filed which shows that on August 7, 1970 a provision was made to the effect that no work charged employee shall remain in service ordinarily after attaining the age of superannuation and is fixed for equivalent post in the regular establishment. It was also clarified that the age of superannuation for the employees who are in the pay scale of Rs. 305-5-360-6-390 is 60 year and the age of superannuation for the remaining employees is 31 years.

7. Admittedly the Petitioner is drawing salary of more than Rs. 390/- and thus the age of superannuation in his case would be 58 years. In this very connection it will have to be seen as to whether the Industrial Employment (Standing Orders. Act) will have any application to the Appellant's case. Section 1KB of the aforesaid Act provides as follows:

13-B. Act not to apply to certain Industrial establishment:

Nothing in this Act shall apply to an Industrial establishment in so far as the workmen employed therein are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, civil Services (Temporary Service) Rules. Revised 1 wave Rules, civil service Regulations, civilians in Defence Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment code or any other rules or Regulations that may be notified in this behalf by the appropriate Government in the official Gazette, apply.

As the provisions of Fundamental Rules apply in the case of the Appellant, In view of the provisions of Section 13-B, the provisions of Industrial Employment (Standing Orders) Act will not apply. The argument raised by the learned Counsel for the Appellant that as there is no age of superannuation provided by the Standing Order the Appellant can not be retired at the age of 58 years has got no force.

8. The last question which has to be examined is as to whether the notice discharging the Appellant from service amounts to retrenchment. A bare perusal of Section 6-N of the U.P. Industrial Disputes Act will clearly show that the provisions do not apply to the case of a person who reaches the age of superannuation. This argument has also no force.

9. For the reasons stated above, in our opinion the notice of discharge has rightly been given in accordance with the provisions of Clause 29 of the Irrigation Manual of Orders which provides that workers who are at or above the age of superannuation should be made to retire. The Appellant has admittedly reached the age of superannuation and thus was liable to be retired and the notice can

not be said to be suffering from any error of law apparent on the face of the record requiring interference by thin court in exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution. The Special appeal is accordingly dismissed.