

(1990) 01 MP CK 0008
In the Madhya Pradesh High Court
Case No : M.P. No. 938 of 1989

Rajdhar Prasad Shrivastava

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 10-01-1990

Acts Referred:

Madhya Pradesh Panchayat Niyam, 2008 — Rule 154

Citation : (1991) 36 MPLJ 56 : (1991) MPLJ 56

Hon'ble Judges : T.N. Singh, J; S.K. Dubey, J

Bench : Division Bench

Advocate : A.K. Upadhyaya, for the Appellant; H.D. Gupta, for the Respondent

Judgement

T.N. Singh, J.

The petitioner was employed as Lower Division Clerk in Zila Panchayat, Guna. He has assailed in this matter the order Annexure P-10, passed on 2-6-1988 by the Secretary, Zila Panchayat. By that order, he has been superannuated on his attaining age of 55 years on 3-6-1988.

The short contention pressed by his counsel is that statutory rules have been given a go-bye in rendering the impugned order. Relevant rules are extracted in the petition. Those are parts of Rule 154 of M. B. Panchayat Niyam, Samvat 2008. Admittedly, the petitioner was a Class III employee and, therefore, reliance is placed on the following provisions which we extract from Annexure R-1 of the return :

?1? mifu;e ?1? ds LFkku ij fuEufyf[kr mifu;e LFkknfir fd;k tk;s] vFkkZr %&

?1? ?v? prqFkZ oxZ deZpkfj;ksa ds vfrfjDr vU; deZpkfj;ksa ds fy, vfuok;Z Isok fuo`fr dh vk;q 55 o"kZ gksxhA prqFkZ oxZ ds deZpkfj;ksa ds fy, vfuok;Z Isok fuo`f?k vk;q 60 o"kZ gksxhA ?[k? prqFkZ oxZ ds deZpkfj;ksa ds vfrfjDr vU; deZpkfj;ksa dks mudh "kkjhfd mi;qDrrk rFkk dk;Z n{krk ds vk/kkj ij 55 o"kZ dh vk;q ds i"pkr Isok o`f) dh tk ldsxh fdUrq lk/kkj.k 56 o"kZ dh ^^vk;q ds i"pkr bl

izdkj dh o`f) ugha dh tk ldsxhA**

However, at para 5 of the petition is extracted other parts of Rule 154 and those are also reproduced below as the afore-extracted provision has substituted sub-rule (1) of Rule 154 by amendment made in 1968. Sub-rules (2) and (3) are as follows :

^^154?1? Isok fuo`f?k & 65 o"kZ ls vf/kd vk;q okyk deZpkjh] iapk;r dh Isok esa ughs jg ldsxk vkSj 60 o"kZ ls vf/kd vk;q ds deZpkjh dks ,d lkFk ,d o"kZ ls vf/kd vof/k ds fy, dk;Z djus dh Loh?fr ugha nh tk;sxhA

?2? izfr o"kZ 1 tuojh dks ,sls deZpkfj;ksa dh ,d lwph rS;kj dh tk; xh ftudh vk;q vkxkeh 1 tqykbZ dks 60 o"kZ ls vf/kd gks tk; xhA

?3? mDr lwph ij iapk;r dh cSBd esa vkSj mu deZpkfj;ksa dh lwph ij ftuds laca/k esa bu fu;eksa ds vuqlkj vf/kdkfj;ksa dks vf/kdkj fn;s x;s gSaA lacaf/kr vf/kdkjh fopkj djsaxs vkSj deZpkfj;ksa dh Isok&fuo`f?k] vodk"k xzg.k vkfn ds laca/k esa vkns"k nsaxsA**

Our attention is drawn by Shri Upadhyaya to Annexures P-4, P-8 and P-9. The first one is a letter dated 14-6-1988 written by the Chairman of the Panchayat and it is addressed to the Principal Secretary, the Panchayat and Social Welfare Department of State Government. It relates to the subject of extension of petitioner's employment. In this letter, it is stated that the petitioner Rajdhar Prasad Shrivastava was physically fit and he was efficient and competent and deserved to be employed till he attained the age of 58 years, it is also stated that proposal in that regard was being considered in the Panchayat meeting. By Annexure P-8, a direction was made to the Panchayat Secretary by the Chairman on 1-6-1988 for placing the matter regarding extension of employment of the petitioner in the meeting. It appears that the Secretary made an endorsement in respect to that order on the next date. He noted that petitioner's period of employment was over and as such, he could only be continued in employment further by the Chairman at his own risk and responsibility. However, he directed the agenda for the proposed meeting to be circulated. Annexure P-9 is dated 2-6-1988 which contains the agenda of the meeting. Item No. 1 of the Agenda refers to petitioner's case.

As per Annexure P-10, however, without stating any reason therein, the petitioner was superannuated on his attaining the age of 55 years. There is no manifestation in the order of events that preceded or even of the requirements of statutory provisions.

Shri H. D. Gupta, appearing for the respondent, has made his submissions on the construction of the relevant provisions aforequoted. His main contention is that those employees who would have preferred employment beyond 55 years had to apply for that purpose and in this case, the petitioner has not placed before the Court the application made by him in that regard. Counsel has also submitted that no employee has any right to get extension in service beyond 55 years and

it is the discretion of the employer to do so. It is also his contention that any employee who claims benefit of the Rule aforequoted, has to take steps to satisfy the authorities concerned that he was efficient in service and he possessed good health. His further contention is that the order by which the employee is superannuated is not required to manifest consideration of physical fitness or efficiency of the employee and no reasons are to be given for refusal of extension contemplated under the relevant provisions.

We have given anxious consideration to the submissions seriously pressed by Shri Gupta. However, we are not satisfied by his vocal contentions. The relevant rule, Rule 154, has to be read in its entirety, and not piecemeal. What appears very clear is that the Panchayats are required to take steps to make up their minds whether to continue in service further any employee who has attained the age of 55 years. In clear and categorical terms, a duty is cast on the Panchayats to do so every year on the 1st January. A list has to be prepared by the Panchayats in that regard as manifested in the Rule aforequoted. The contents of the list are printed in the Schedule appended to the Rule and of that, col. 7, is also important. Some entries are required to be made in that column regarding decision to be taken in regard to the extension to be granted or superannuation made in respect of any particular employee. If that makes any meaning, there is no doubt, there must appear entries in that column in regard to the physical fitness and efficiency or competence of the employee concerned to serve for a further period of three years. Evidently, in such matters, material is required to be collected from the A. C. Rs. to be noted in that column.

We are unable to appreciate Shri Gupta's contention that absolute discretion is vested under the Rule aforequoted in the Panchayat as an employer to refuse extension in any particular case and this we say in the context of the different provisions of Rule 154. The discretion is coupled with the duties and those are specifically enumerated in the Rules. Those duties must be fulfilled before discretion could be exercised in regard to superannuation or otherwise. Even if it is accepted that the Secretary had the authority to issue the impugned order, Annexure P-10, he could not be deemed to have been authorised thereunder statutorily to give a go-bye to the requirements of the statutory provisions. Even if the decision in the meeting was pre-empted by the Secretary by passing the impugned order, Annexure P-10, he was duty-bound still to apply his mind to the relevant statutory provision and to pass order in accordance therewith. The arbitrary action of the Secretary in passing the impugned order is exemplified by his noting aforequoted and by the fact that the agenda having contained the matter, he should not have usurped the function of the Zila Panchayat Committee in dealing with the matter put on the agenda of the meeting. The impugned order is, therefore, double defective and is not sustainable in law in any view of the matter.

Even in the return, no material has come that will support the impugned order on factual foundation. There is nothing to be read in the return concerning physical

incapacity or of inefficient service of the petitioner as would have disentitled him from continuing in service beyond 55 years. Nothing has come on record to satisfy us that the impugned order Annexure P-10 was validly passed keeping in view the statutory provisions aforequoted. The petitioner has definitely received a shabby treatment and there is ample reason for supposing that the Secretary acted hastily for reasons best known to him.

For all the foregoing reasons aforesaid, the impugned order Annexure P-10 is quashed. Because the petitioner's statutory right contemplated under Rule aforequoted to be considered for extension has been seriously impaired, he is entitled for a direction and that is made. He shall be deemed to be continuing in service till such time as his case is not considered properly and disposed of according to law. He will be paid arrear salary due for forced non-employment within two months. The petitioner shall report to duty within two weeks and his case for extension in service shall be considered on his joining service. No costs.

In the result, petition succeeds to the extent indicated above.

C. C. today