

(1968) 01 MAD CK 0028
In the Madras High Court

Rama Rao (T.)		APPELLANT
	Vs	
Divisional Superintendent, Southern Railway and Another		RESPONDENT

Date of Decision : 08-01-1968

Acts Referred:

Citation : (1969) 1 LLJ 583

Hon'ble Judges : P.S. Kailasam, J

Bench : Single Bench

Judgement

P.S. Kailasam, J.—This petition is filed by a chief clerk in the Southern Railway for the issue of a writ of certiorari calling for the records connected with the order of the Divisional Superintendent, Personnel Branch, Southern Railway, dated 3 November 1967, retiring the petitioner from service on three months' notice, and quashing the said order. The impugned order of retirement, dated 3 November 1967, may be extracted:

You have attained the age of 55 years on 12 July 1966 (afternoon). It has been decided by Dy. C.C.S./Gen./Mas. to retire you from railway service on three months' notice.

You are allowed to avail 21 days' leave on average pay and 404 days' leave on half-average pay for which you are eligible from 7 November 1967. This leave and the period of notice will run concurrently. You will be treated as having retired from railway with effect from 4 January 1969 afternoon.

Rule 2046 of the Indian Railway Establishment Code regulates the age of retirement of railway servants. Rule 2046 (Fundamental Rule 56) provides that except as otherwise provided in the said rules, every railway servant shall retire on the day he attains the age of 58 years. In the case of a ministerial railway servant, who entered service on or before 31 March 1938, and held on that date a permanent post in a provisional substantive capacity under 01. (d) of Rule 2008 and continued to hold the same without interruption until he was confirmed in that post shall be retained in service till the day-he attains the age of sixty

years. The petitioner having entered service on 8 March 1937, is entitled to the benefit of this rule as well and he is entitled to be retained in service till he attains the age of sixty years. But Clause (h) of the rule provides that notwithstanding anything contained in the rule the appointing authority shall, if it is of the opinion that it is in the public interest to do so, have the absolute right to retire any railway servant on attainment of the age of 66 years or thereafter by giving him notice of not less than three months in writing.

2. The petitioner attained the age of 55 years on 12 July 1966, and after he attained the age of 55 years and when he was running the fifty-sixth year this notice was given. According to Clause (ft) a railway servant can be retired, if, in the opinion of the authority, it is in the public interest to do so, by giving him not less than three months" notice. In this case the three months" notice has been given. It was contended on behalf of the petitioner that the leave-period to which the petitioner was entitled was made to run concurrently with the period of notice and that this is not legal. I am unable to accept this contention, for all that is required under Clause (h) is three months" notice and this has been provided for in the notice.

3. It was next contended that the notice was discriminatory in that the petitioner, who had two censures, was retired, while persons with equally bad records were continued in service after 55 years. This question cannot be gone into as the satisfaction of the authority, as to whether a person should be retired in public interest or not, is subjective, and the decision of the authority cannot be questioned.

4. Sri Damodara Rao, the learned counsel for the petitioner, submitted that the order ex facie did not show that the petitioner was retired in public interest and, therefore, the order is not valid. When the order ex facie does not recite that the petitioner was retired in public interest, the Court is entitled to look into the records to satisfy itself whether the retirement was made in public interest. On the records it cannot be said that the authorities were not justified in retiring the petitioner in public interest.

5. It was next contended that a public servant was not likely to have been retired unless his service was not satisfactory and that the authorities were of the opinion that it was not desirable to continue him in service which in effect would mean that the officer was not being continued in service due to a stigma. If a railway servant is retired due to a stigma it was submitted that the provisions of Article 311 will be attracted, and the procedure prescribed by that article should be followed.

6. The plea that the very fact that a public servant was compulsorily retired before he reached the age of superannuation would itself amount to a stigma was negated by the Supreme Court in I.N. Saksena Vs. State of Madhya Pradesh, . The test laid down by the Supreme Court there is at p. 430:

...Where an order requiring a Government servant to retire compulsorily contains

express words from which a stigma can be inferred, that order will amount to a removal within the meaning of Article 311. But where there are no express words in the order itself which would throw any stigma on the Government servant, we cannot delve into Secretariat files to discover whether some kind of stigma can be inferred on such research....

In *The State of Uttar Pradesh Vs. Madan Mohan Nagar*, , the Supreme Court reiterated its decision in *Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI)*, where it was held:

... When an authority wants to terminate the services of a temporary servant, it can pass a simple order of discharge without casting any aspersion against the temporary servant or attaching any stigma to his character. As soon as it is shown that the order purports to cast an aspersion on the temporary servant, it would be idle to suggest that the order is a simple order of discharge. The test in such cases must be : does the order cast aspersion or attach stigma to the officer when it purports to discharge him ? If the answer to this question is in the affirmative, then notwithstanding the form of the order, the termination of service must be held, in substance, to amount to dismissal.

7. The result of the two decisions is that the order of retirement of the petitioner can be sustained, if prima facie the order does not contain express words from which a stigma can be inferred. If there are words which throw any stigma, then the order of retirement would amount to removal within the meaning of Article 311. In this case, as already stated, the order does not disclose any reason at all, and applying the test laid down by the Supreme Court in the two decisions cited above the validity of the order cannot be questioned.

8. Sri Damodara Rao, the learned counsel, submitted that, if so construed it would lead to anomalous results in that an order in which valid reasons are given for retiring a railway servant in public interest would be held to come under Article 311 while an order in which no reasons are given whether there are grounds to retire in public interest or not, the retirement will be valid. It cannot be said that the argument thus put is without substance. But the two decisions of the Supreme Court cited are very explicit to allow of any further controversy. The writ petition is therefore dismissed. No order as to costs.