
(1972) 07 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 39 of 1972

Randev Singh	Vs	APPELLANT
The State of Himachal Pradesh		RESPONDENT

Date of Decision : 03-07-1972

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Himachal Pradesh General Clauses Act, 1968 — Section 15

Citation : (1972) 1 ILR HP 223

Hon'ble Judges : R.S. Pathak, C.J

Bench : Single Bench

Advocate : P.N. Nag, for the Appellant; B. Sita Ram, General, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Pathak, C.J.—The Petitioner is a Forest Ranger. He joined the Forest Department of the Sirmur State in the year, 1934 and when that State merged in the Himachal Pradesh Administration in 1948, the Petitioner became a member of the Himachal Pradesh Forest Department. He was confirmed as a Forest Ranger in the year 1957. The Petitioner says that as he was suffering from bleeding piles, he applied to the Conservator of Forests on May 26, 1971, that he should be transferred to the Nahan Division either to perform range duty or on special duty because the journeys at high altitudes were proving injurious to his health. The Petitioner was 56 years old at that time. On July 20, 1971 the Conservator of Forests made an order retiring the Petitioner from service under Fundamental Rule 56(j). The Petitioner challenged the validity of that order by Civil Writ Petition No. 178 of 1971 and applied for an interim order staying the operation of the impugned order. On November 8, 1971, the interim relief prayed for was granted. The Petitioner resumed duty and thereafter on January 4, 1972 a fresh order retiring him from service was made under Fundamental Rule 56(j). By the latter order of retirement, the Conservator of Forests attempted to remove the shortcomings alleged in the earlier order of retirement. The earlier

order notified merely that in pursuance of Fundamental Rule 56(j) the Petitioner stood retired from service upon the expiry of three months. The latter order was more detailed and explicit. It notified that in pursuance of Fundamental Rule 56(J) the Petitioner stood retired from service in the public interest upon the expiry of three months. It also stated that the Petitioner had complained about unfitness "due to bleeding piles, pyreia and weak eye-sight vide his application dated 25-5-1971, 9-7-1971, 10-8-1971, 11-9-1971 and 1-11-1971 accompanied by medical certificates dated 9-7-1971, 10-8-1971, 10-9-1971 and 26-10-1971". The Petitioner now challenges the order dated January 4, 1972.

2. The first contention on behalf of the Petitioner is that as the Petitioner was appointed Forest Ranger by the Chief Conservator of Forests who was the "Appointing Authority" under Notification No. Ft. 43-203/49 of July 3, 1954, the order under Fundamental Rule 56(j) terminating his services could have been passed by that authority only and not by the Conservator of Forests who was an inferior authority. At one stage during the hearing, there was serious dispute whether the Petitioner was in fact appointed by the Chief Conservator of Forests, but ultimately the learned Advocate-General appearing for the Respondents admitted that that was so. The learned Advocate-General, however, contends that the Notification of 1952 no longer holds the field and that Notification No. A-88-45/56-II, dated January 30, 1962, as amended by Notification No. A-88-45/56-II, dated March 27, 1972, now indicates that for the category to which the Petitioner belongs the appointing authority is the Conservator of Forests. There has been much debate on the question whether the amended Notification of 1962 applies at all. Shri P.N. Nag, learned Counsel for the Petitioner, urges that the Notification can be applied only for the purpose of imposing penalties. The preamble to that Notification reads:

In supersession of the Secretariat Administration Department Notification of even number, dated 21-11-1960 and in exercise of the powers conferred upon him by Part III and Part IV of the Schedule to the Central Civil Services (Classification, Control and Appeal) Rules, 1957 read with Clause (b) of Sub-rule (2) of Rule 14 of the said rules, the Lieutenant Governor, Himachal Pradesh, is pleased to specify hereunder the appointing, punishing and appellate authorities in respect of the subordinate services in the various departments of Himachal Pradesh and the penalties which may be imposed....

3. Shri Nag relies upon Rule 14(2)(b) of the Central Civil Services (Classification, Control and Appeal) Rules, which declares that the penalties specified in Rule 13 may be imposed by the authority specified in this behalf by a general or special order of the President, or where no such order has been made, by the appointing authority or the authority specified in the Schedule in this behalf. He says that the Schedule brought in by the Notification of 1962 prescribes the "appointing authority" merely for the purpose of applying Rule 14(2)(b). Now the preamble to that Notification no doubt mentions that the Notification has been made under Rule 14(2)(6). But it also mentions that it has been made under Parts III and IV

of the Schedule, and when we turn to Part III of the Schedule, we find that in respect of posts in Union territories, the "appointing authority" has been shown as the "head of office or such other authority as may be specified by the Administrator". Apparently, this entry in the Schedule recognises power in the Administrator to specify the authority who will function as the "appointing authority" in respect of Union territory posts. It appears that it is that power to which reference is made in the preamble to the Notification of 1962. If that conclusion is sound, then the inference must be that the Schedule set out in the Notification of 1962 specifies the "appointing authority" for the purpose of making appointments and not, as Shri Nag has contended, only for the purpose of applying Rule 14(2)(b) when imposing penalties. This is also clear from the fact that the Schedule in the Notification of 1962 designates the appellate authorities also, and that would have been wholly relevant if the Schedule was designed for the purpose of Rule 14(2)(b) alone. In my opinion, the contention of the learned Advocate-General must be accepted that the "appointing authority" in respect of Forest Rangers must now be discovered from the terms of the amended Notification dated March 27, 1962. Reading that Notification as amended, it is clear that the Conservator of Forests is the "appointing authority" in respect of employees of class III services and posts in the Forest Department who are posted in his office or circle. It is not disputed that the Petitioner falls in that category, and that the officer who issued the impugned order is the relevant Conservator of Forests.

4. Fundamental Rule 56(j) provides that a Government servant may be compulsorily retired at the age of 55 years by the "appropriate authority", and Note I to the Fundamental Rule declares that the appointing authority is the "appropriate authority". Consequently, it must be held that the Conservator of Forests who issued the impugned order was the "appropriate authority" for the purpose of taking action in respect of the Petitioner under Fundamental Rule 56(j).

5. Shri Nag then contends that we must not look to the Notification of March 27, 1962 for finding out who is the "appointing authority" because, he says, that must be discerned from Rule 2(a) of the Central Civil Services (Classification, Control and Appeal) Rules where the expression "appointing authority" is defined. He points out that the definition does not refer to the Notification of 1962. Now the definition contained in Rule 2(a) sets out the meaning of the expression "appointing authority" only for the purpose of construing that expression where used in those rules. Rule 11 provides for appointments to classes II, III and IV of the Central Civil Services, and nowhere does it employ the expression "appointing authority". On the contrary, Rule 11 refers to the Schedule and, as I have pointed out, the entry in Part III of the Schedule relating to Union territory posts mentions as the "appointing authority" either the "head of office or such other authority as may be specified by the Administrator". This submission on behalf of the Petitioner must also fail.

6. Shri Nag then urged that as the Chief Conservator of Forests appointed the Petitioner, it is he alone who can terminate the Petitioner's services, and if subsequently the Conservator of Forests has been designated as the "appointing authority" in respect of Forest Rangers, that will not affect the Petitioner. He urges that if an authority has the power to appoint, he alone has the power to dismiss, and he relies upon Section 15 of the Himachal Pradesh General Clauses Act. I have carefully perused that section and I do not see how it assists the submission now made. What it says is that the authority which has the power to appoint also has the power to dismiss. What is more, it also clearly says that it has the power to dismiss a person whether appointed by it or by some one else. The position is in marked contrast with that found in Section 18 of the Assam General Clauses Act, 1915 which was considered by the Supreme Court in *State of Assam v. Kripanath Sarma* AIR 1967 S.C. 4591 Accordingly, the Conservator of Forests had power to pass the impugned order under Fundamental Rule 56(j) even though the Petitioner was appointed by the Chief Conservator of Forests.

7. The next contention of Shri Nag is that a reasonable opportunity should have been afforded to the Petitioner before action was taken to terminate his services under Fundamental Rule 56(j). Whether a person should or should not be compulsorily retired in the public interest under Fundamental Rule 56(j) is a matter in the discretion of the "appropriate authority" and so long as the discretion is not exercised arbitrarily no complaint can be made. Where, however, the question is whether Fundamental Rule 56(j) comes into play at all, for example, because it is disputed that the Government servant has reached the age prescribed therein, an opportunity must be given to the Government servant while deciding that question. See *State of Orissa v. Dr. Bina Pani Dei* AIR 1967 S.C. 12692. No opportunity is necessary where the question is merely whether the Government servant, who admittedly has reached the prescribed age, should be compulsorily retired.

8. There is the further contention on behalf of the Petitioner that the provision in the Notification of 1962 prescribing the Conservator of Forests as the "appointing authority" for Government servants of the Forest Department posted or serving in his office or circle and the Chief Conservator of Forests as the "appointing authority" for Government servants in his office contravenes Articles 14 and 16 of the Constitution. No foundation has been laid in the writ petition for that contention, and it is only in paragraph 10(g) of the rejoinder affidavit that the Petitioner has attempted to make out a case. But nothing said there indicates that because the Conservator of Forests had been shown as the "appointing authority" in the case of one group of Government servants and the Chief Conservator of Forests in the case of another, any prejudice is occasioned to the former. The attack on the ground of unconstitutional discrimination must be rejected.

9. It is next pointed out that although an order under Fundamental Rule 56(j) had previously been made against the Petitioner on the ground that he was

medically unfit to continue in service, subsequently he was in fact taken back 2. State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, into service thus demonstrating that he was now considered medically fit. It is urged that, therefore, the passing of the order immediately thereafter under Fundamental Rule 56(j) retiring him on the ground of medical unfitness can only be described as arbitrary. Reference is also made to the provision that a Government servant taking leave on medical grounds must not be allowed to resume duty unless there is satisfactory proof of physical fitness, and it is said that in view of that provision it must be presumed that the Petitioner was found medically fit when he was allowed to resume duty. The contention is entirely falacious. The Petitioner was compulsorily retired under Fundamental Rule 56(j) on July 20, 1971. He filed C.W.P. No. 178 of 1971, and this Court made an interim order suspending the operation of the order of compulsory retirement. As is clear from the return filed by the Respondents, it was because of that interim order of the Court that the Petitioner was recalled to service. It was not because he was found medically fit.

10. Finally, it is contended on behalf of the Petitioner that Fundamental Rule 56(j) is ultra vires inasmuch as the expression "public interest" is not sufficiently definite so as to protect the rule from misuse. Reference is made to Kirpa Ram Gupta v. R.K. Talwar AIR 1970 All. 2693. In that case, however, the majority of a Full Bench of the Allahabad High Court, of which I was a member, held the provision to be ultra vires because there was nothing in the provision to control the exercise of power by the "appropriate authority". The expression "in the public interest" was also absent. Subsequently that expression was introduced in the provision, and the validity of the amended provision was upheld by the same High Court in Nanak Saran Srivastava v. State of U.P. A.L.J. 1970 All. 12884

11. The petition fails and is dismissed with costs.

12. As regards Civil Writ Petition No. 178 of 1971, the impugned order of retirement dated July 20, 1971 stood superseded by the later order of retirement dated January 4, 1972 and as the later order has been found to be valid, the earlier order of retirement is no longer operative. The result is that the writ petition has become infructuous. It is accordingly dismissed, but there is no order as to costs.