
(1959) 02 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 523-D of 1958

S. Gian Singh

APPELLANT

Vs

District and Sessions Judge, Delhi and Another

RESPONDENT

Date of Decision : 19-02-1959

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : AIR 1959 P&H 503

Hon'ble Judges : G.D. Khosla, J; Bishan Narain, J

Bench : Division Bench

Advocate : I.M. Lal, for the Appellant; C.K. Daphtary, Solicitor General and Jindra Lal, for the Respondent

Final Decision : Dismissed

Judgement

Bishan Narain, J.—The question that requires to be determined in this writ petition is as to whether Gian Singh under his conditions of services was liable to be retired On his attaining the age of 55 without compliance with the provisions of Article 311 of the Constitution.

2. This case has come before us in the Division Bench in view of the conflict in the decision of Khosla J. in Krishan Dayal v. General Manager, Northern Railway, Baroda House, New Delhi AIR 1954 Punj 245, and that of Mehar Singh J. in Mangal Dass v. Union of India 1958 60 PLR 277.

3. The facts relevant for the decision of this question are not in dispute. Gian Singh entered government service in 1926 as a ministerial servant. He attained the age of 55 on 23-10-1958. At that time he was working as translator in the court of District and Sessions Judge, Delhi. He applied for extension of his service for one year but his application was dismissed by the District and Sessions Judge on the ground "he is not a willing worker and always tries to find excuses and indulges in intrigues. Gian Singh appealed to the High Court on THE administrative side against the decision of the District and Sessions Judge, Delhi,

refusing to extend his period of service. This appeal, however, was dismissed, Aggrieved with his retirement at the age of 55, Gian Singh has filed the present petition in this Court under Article 226 of the Constitution,

4. The petitioner's case is that he is not liable to retirement till he reaches the age of 60 and that his retirement at the age of 55 on the grounds given by the District and Sessions Judge Delhi without complying with the provisions of Article 311, is illegal and void. It is not disputed in the present case that the provisions of Article 311(2) have not been in fact complied with.

5. Now it is well established that when the conditions of service fix an age of compulsory retirement then the retirement of the employee on attaining that age is in accordance with the terms of service. In such a case it is not necessary to comply with the provisions of Article 311(2) of the Constitution. The reason is that such a termination of services is in accordance with the condition of service and no employee has a right to continue in service after attaining the age of compulsory retirement. (Vide *The State of Bombay Vs. Saubhagchand M. Doshi*, and *Parshotam Lal Dhingra Vs. Union of India (UOI)*),

6. It is common ground between the parties that the petitioner's age of compulsory retirement is fixed in F. Rule 56 (b) (i) and this rule has to be construed to determine the age of retirement. Now F. It. 56 reads:

"(a) Except as otherwise provided in the other clauses of this Rule the date of compulsory retirement of a Government servant other than a ministerial servant, is the date on which he attains the age of 55 years. He may be retained in service after the date of compulsory retirement with the sanction of the Local Government on public grounds which must be recorded in writing but he must not be retained after the age of 60 years except in very special circumstances.

(b) (i) A ministerial servant who is not governed by Sub-clause (ii) may be required to retire at the age of 55 years, but should ordinarily be retained in service, if he continues efficient, up to the age of 60 years. He must not be retained after that age except in very special circumstances which must be recorded in writing, and with the sanction of the local Government:

(ii) A ministerial servant --

(1) who enters Government service on or after the 1st April 1938; or

(2) who being in Government service on the 31st March 1938 did not hold a lien or a suspended, lien on a permanent post on that date, shall ordinarily be required to retire at the age of 55 years. He must not be retained after that age except on public grounds which must be recorded in writing, and with the sanction of the Local Government he must not be retained after the age of 60 years except in very special circumstances.

* * * * *

A rule similar to this rule with necessary adaptations is contained in Rule 2026(2)

(a) and (b) of the Indian Railway Establishment Code, Volume II. The decision on construction of the fundamental rule or of the railway rule is a relevant decision on the construction of the other rule.

7. There can be no doubt that the rule now under consideration is not happily worded. It could have more explicitly fixed the age of compulsory retirement. However as I read it the meaning of the rule is fairly clear. In my view F. Rule 56 (b) (i) fixes the age of compulsory retirement at 55 years. It is however laid down that the services of a ministerial servant may be continued till the employee reaches the age of 60 provided that two conditions are fulfilled. These conditions are (1) that the services are to be continued ordinarily up to the age of 60 and (2) that the employee continues to remain efficient throughout this period.

These conditions to my mind exclude the employee's right to remain in service till he attains the age of 60 years. The use of the word "ordinarily" indicates that the authorities are under no obligation to continue a ministerial servant in service after the age of 55 though normally his services may be so continued. This continuation of service however depends on the exercise of discretion or option by the employer and the employee has no right to claim it. The word "ordinarily" cannot be equated with "necessarily" or "invariably" or "inevitably" and the servant cannot demand an order of continuation of his service after the age of 55 years.

The mention of the second condition relating to efficiency leads to the same conclusion. Services of an employee are liable to termination if at any time he ceases to be efficient but this cannot be done without complying with the provisions of Article 311(2) of the Constitution. There was no necessity of making specific mention of efficiency in this rule if the age of retirement was intended to be fixed at 60 years because otherwise also he could be so retired after he had been given an opportunity to put his case before the authorities.

In my view the rule fixes the age of retirement of a ministerial servant at the age of 55 years and after attaining that age he has no right to be retained in service. A retirement on attaining that age is in accordance with conditions of his service and does not amount to punishment so as to attract Article 311(2) of the Constitution.

8. This rule has been subject matter of construction by the Government as well as by the various High Courts and with the exception of the view expressed by Mehar Singh J. in Mangal Dass's case 1958 60 PLR 277, the decision has unanimously been that the rule fixes the age of compulsory retirement at 55 years.

9. Under Rule 2002 of the Railway Establishment Code, Volume II, the power of interpreting the rule is given to the President. In 1932 the word "ordinarily" in this rule was construed by the President. This rule is reproduced in *Basanta Kumar Pal v. The Chief Electrical Engineer* AIR 1956 Gal 93. It reads:

" "Ordinarily" -- In view of the occurrence of the word "ordinarily" in F. Rule 56(b) (2046(2)), a ministerial Government servant can be retired from Government service between the age of 55 and 60 years on grounds other than those of efficiency and that in such a case he has no claim to be retained in service upto the age of 60 years. The purpose of F. Rule 56 (2046) is not to confer upon Government servants any right to be retained in service upto a particular age but to prescribe the age beyond which they may not be retained in service."

This construction to my mind indicates that the age of compulsory retirement has been fixed by the rule under consideration to be 55 years. Again on 17th July, 1954 the Government of India, Ministry of Home Affairs, issued a Memorandum which laid down that the case of ministerial Government servants who are governed by F. Rule 56 (b) (J) should be reviewed periodically between the ages of 55 and 60 years to ensure that they are retained in service beyond the age of 55 years only if they continued to be efficient.

This Memorandum is reproduced in Kesava Rao Naidu v. Director of Posts and Telegraphs AIR 1958 AP 697 and is operative only if the age of compulsory retirement is fixed at 55 years. It is not necessary to reproduce the Memorandum in this judgment. It appears to me that the Government view is in favour of the view that under this rule the age of retirement has been fixed at 55 years.

10. The railway rule 2046 (2) (a) contained in the Railway Establishment Code came up for consideration before a Division Bench of the Allahabad High Court in Raghunath Narain Mathur Vs. Union of India (UOI), In that case their Lordships held : --

"The Railway authorities have an unfettered option to retire a person at the age of 55 though, normally speaking, they are expected to continue persons in employment, unless they are inefficient, until they reach the age of 60. But it is solely for them to decide whether a man shall be retained or not after the age of 55. The word "ordinarily" does not take away their right to retire him and it cannot be ignored."

The next case in point of time is Krishan Dayal and Others Vs. General Manager, Northern Railway, Baroda House, New Delhi, My learned brother, Khosla J., dealt with this very Rule 2046 and after examining its language and taking other matters into consideration agreed with the conclusions of the Division Bench in Raghunath Narain Mathur Vs. Union of India (UOI),

11. The Calcutta High Court had to deal with the F. Rule No. 56 (b) (i) in Hirendra Nath Roy v. State of West Bengal and Sinha J. came to the conclusion that under this rule a ministerial servant was liable to compulsory retirement at the age of 55 years. This decision is not printed in full but I have found it in AIR 1955 (Gal) 2343.

This rule then came up for decision by the Supreme Court in *Jai Ram Vs. Union of India (UOI)*, In the Supreme Court case the ministerial servant relying on F. Rule 56 (b) (1) had urged that he was not liable to retirement before the age of 60. Their Lordships after reproducing the relevant portion of the rule observed:

"We think that it is a possible view to take upon the language of rule 56 (b) (i) that a ministerial servant coming within its purview has normally the right to be retained in service till he reaches the age of 60. This is conditional undoubtedly upon his continuing to be efficient. We may assume therefore for purposes of this case that the plaintiff had the right to continue in service till 60 and could not be retired before that except on the ground of inefficiency."

Their Lordships of the Supreme Court then proceeded to say that by itself this construction of the rule did not afford any solution of the question involved in that case. Their Lordships held that the plaintiff had voluntarily retired at the age of 55 and therefore he had no grievance in the matter. In view of his voluntary retirement they dismissed the appeal of *Jai Ram*. Relying on these observations of the Supreme Court, *Mehar Singh J., in Mangal Dass*" case 1958 60 PLR 277, has come to the conclusion that the age of compulsory retirement under this rule is 60 years.

With respect to the learned Judge I find myself unable to hold that the Supreme Court has, in the case of *Jai Ram*, come to the conclusion that F. Rule No. 56 (b) (i) fixes the age of retirement at 60 years. In my view the Supreme Court has not construed the rule at all but has proceeded to assume the interpretation of the rule as suggested by the appellants to be correct and then the appeal has been decided on that basis.

The Supreme Court has neither interpreted the rule nor has laid down any principle of construction which would lead me to come to the conclusion that under this rule the age of retirement is 60 years, The use of the words "possible" and "assume" in the passage reproduced above makes it clear that the Supreme Court did not purport to give any decision on the construction of this rule. This conclusion is in consonance with the decisions of other High Courts which had to deal with the matter.

12. In *Basanta Kumar Pal Vs. The Chief Electrical Engineer and Others*, *Sinha J.*, while construing Rule 2046 relied on Allahabad and Punjab judgments and distinguished the Supreme Court decision. He came to the conclusion that the age of retirement under this rule is 55 years. A Division Bench of Andhra Pradesh High Court in AIR 1958 AP 697, also came to the same conclusion.

13. It, therefore, follows that the weight of authority is overwhelmingly in favour of the view that under F. Rule No. 56 (b) (i) the age of compulsory retirement is 55 years.

14. There is another way of looking at the matter. The fundamental Rule 56 (b) (i) and the railway rule No. 2046 contained in the Railway Establishment Code,

relate to All India Services. In this context it would not be proper and reasonable that we should take a view which is in conflict with the views expressed on the subject by all other High Courts. A dissenting view of this type must result in confusion and such a confusion should be avoided in matters relating to All India services if at all possible.

For all these reasons I hold that under F. Rule No. 56 (b) (i) the age of compulsory retirement is 55 years and in this view of the matter it must be held, with great respect, that the decision of Mehar Singh J., in Mangal Dass" case 1958 60 PLR 277, is not in accordance with law.

15. There is no doubt that if the age of retirement is 55 years then the petitioner has no valid grievance against his retirement at the age of 55 years. I may state here that the mere mention of certain grounds on which the District and Sessions Judge decided not to continue Gian Singh in service after he had reached the age of superannuation does not affect the matter in any way. Refusal to extend employment of Gian Singh beyond 55 does not amount to any punishment nor deprivation of any right vested in him.

16. For these reasons, I would dismiss this petition with costs. Counsel's fee Rs. 50/-.

G.D. Khosla, J.

17. I agree.