

(1986) 12 DEL CK 0024

In the Delhi High Court

Case No : Civil Writ Petition Appeal No. 943 of 1986

S.C. Dikshit

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-12-1986

Acts Referred:

Civil Services Fundamental Rules — Rule 56J

Citation : (1987) 12 DRJ 157

Hon'ble Judges : S.S. Chadha, J;S.N. Sapra, J

Bench : Division Bench

Advocate : G.D. Gupta, Gopal Subramaniam, Anita Sachdeva, G.S. Vohra, R.S. Dewan and R.K. Khanna, for the Appellant;

Judgement

S.S. Chadha, J.

(1) This petition under Article 226 of the Constitution of India seeks a writ of certiorari to quash the impugned order dated 23/12/1985 of compulsory retirement passed in exercise of the powers conferred by Clause (j) (i) of Rule 56 of the Fundamental Rules retiring the petitioner from the service of the Delhi Development Authority with immediate effect he having attained the age of 50 years on November 4, 1982.

(2) The record of service of the petitioner is mentioned in paras 5 to 9 of the writ petition in these words. The petitioner initially joined U.P. Civil (Executive Service) in 1958. He served in various capacities/posts in Government of U.P. till 1970. In 1970, the Delhi Development Authority (for short D.D.A.) had invited names of officers for deputation in D.D.A. from U.P. Government. The petitioner was sent on deputation to D.D.A. by the Government of U.P. in 1970. He joined D.D.A. in May, 1970 as Officer on Special Duty in J.J. Department. The petitioner was posted as Additional Secretary (Lease Administration), D.D.A. and remained in this position till 1973. The petitioner was appointed as Additional Secretary (Prosecutions) and he was responsible for the effective enforcement of various statutory provision contained in the D.D.A. Act of 1957. The petitioner was

promoted as Deputy Commissioner (Implementation) in January, 1977. The petitioner was repatriated in September, 1977 to his parent cadre under the U.P. Government. The services of the petitioner were then placed at the disposal of the Delhi Administration who appointed him as a General Manager of Delhi Small Scale Industrial Development Corporation in January, 1978. The petitioner was again repatriated to his parent department and was posted as Secretary-cum-Administrative Officer, Noida where he worked in that capacity till April, 1980. These facts are admitted in the counter-affidavit of the respondents by an averment that paras 5 to 8 of the writ petition in so far as they pertain to record are admitted.

(3) By letter dated 17/4/1980, the D.D.A. made a request that the services of the petitioner were required by the Authority and asked the consent of the Government of U.P. to the deputation of the petitioner and for placing his services at the disposal of D.D.A. in public interest. The petitioner gave his consent and was sent on deputation to D.D.A. in April, 1980 and he joined as Director (Commercial Lands). The D.D.A. proposed to permanently absorb the petitioner against the permanent post of Deputy Commissioner (Implementation) in the time scale of pay of Rs. 1500-2000 with effect from 1/1/1981. A letter dated 23/11/1980 was addressed to the Government of U.P. The State Government by its letter dated 15/12/1980 conveyed no objection to the proposal of absorbing the services of the petitioner who was then on deputation in D.D.A. permanently on a permanent post of Deputy Commissioner (Implementation). The D.D.A. by its letter dated 29/12/1980 informed the petitioner about the conditions of the absorption of the petitioner in D.D.A. with effect from 1/1/1981 in public interest. The petitioner was called upon to give his consent.

(4) By letter dated 30/12/1980, the petitioner gave his consent along with his resignation letter from the U.P. Civil Service (Executive Branch) with effect from 1/1/1981. The resignation letter specifically mentions that the D.D.A. had agreed to absorb the petitioner permanently in its service.

(5) By letter dated 6/4/1981, the State Government accorded sanction to the proposal of absorption of the petitioner, an officer in the Uttar Pradesh Civil (Administrative Branch) Service then on deputation to D.D.A. permanently with effect from 1/1/1981 in public interest. The resignation of the petitioner from Uttar Pradesh Civil (Administrative Branch) Service with effect from 1/1/1981 was accepted. We would make a reference to the terms and conditions contained in this letter in the latter part of the judgment. These facts are also admitted by the D.D.A. in the counter-affidavit. The petitioner was absorbed with effect from 1/1/1981 in the service of D.D.A. against the post of Deputy Commissioner (Implementation).

(6) By the impugned order dated 23/12/1985, the President expressed the opinion that it is in the public interest to do so and, Therefore, in exercise of the powers conferred by Clause (j) (i) of Rule 56 of the Fundamental Rules, the

President thereby retired the petitioner who was Commissioner (Administration), D.D.A. with immediate effect, he having already attained the age of 50 years on 4/11/1982. The President also directed that the petitioner be paid a sum of equivalent to the amount of his pay plus allowances for a period of three months calculated at the same rate at which he was drawing them immediately before his retirement.

(7) Mr. G.D. Gupta, the learned counsel for the petitioner has urged two grounds. The first submission is that the impugned order of compulsory retirement is arbitrary as it is not based on any material which could beside as relevant or germane to the compulsory retirement of the petitioner as the petitioner was never communicated any adverse entry/remarks contained in his confidential reports. In other words, there was no material at all against the petitioner on the basis of which the President could form the opinion of compulsory retirement of the Petitioner in public interest. The second submission is that the very condition precedent for the exercise of power under F.R. 56(j) (i) is that the petitioner should have entered the service before attaining the age of 35 years. The contention is that so far as the petitioner is concerned, he was permanently absorbed in the service of D.D.A. only with effect from 1/1/1981. It is conceded that Regulation 6 of the Delhi Development Authority (Salaries, Allowances and Conditions of Service) Regulations, 1961 extends the general terms and conditions of service of officers and employees of the D.D.A. as governed mutates mutans by the fundamental and supplementary rules applicable to the Central Government officers and employees and by the Central Civil Service (Temporary Service) Rules, 1955 and the orders and decisions issued by the Central Government under these Rules from time to time.

(8) The petitioner as placed on record a copy of the letter of the Government of U.P. dated 4/3/1971 containing the terms and conditions of absorption of Government servants deputed with undertakings, companies, corporations of public sector. One of the conditions is that a State Government servant who is opting to be absorbed in the service of any aforesaid undertaking etc. and the receiving unit is pressing to appoint him permanently with them in public interest and the State Government has agreed to that shall have to submit his resignation from State Service with effect from the date of his absorption. Another condition is that every such State Government servant shall be taken to have retired on retiring pension in relaxation of Article 485/465 of Civil Service Regulations and he shall be paid proportional pension gratuity, including death-cum-retirement gratuity in ratio of his qualifying pensionable service rendered by him under State Service payment of which shall become due, forthwith. Another condition is that the State Government shall not be liable to pay any other pension as family pension, extraordinary pension etc. and post retirement traveling allowances- nor such an absorbed servant shall be entitled to claim any benefits consequential to such amendment to State pension Rules as may come into force after the date of his absorption. Another condition is that the whole leave account with the State Government in respect of the servant absorbed with

the undertaking etc. shall cease to exist with effect from the date of his absorption. No part of that shall be transferred to the undertaking nor the State Government is liable to pay in this connection any type of leave salary or its contribution. The sanction of the State of U.P. in the letter dated 6/4/1981 contains similar terms in the case of the petitioner. The resignation of the petitioner from Uttar Pradesh Civil (Administrative Branch) Service with effect from 1/1/1981 was accepted. A term is contained that the State Government shall not be liable in relation of Shri Dixit for any other pension as family pension, extraordinary pension and post retirement traveling allowances. The whole leave account relating to Shri Dixit with the State is directed to cease to exist with effect from the date of his absorption. These conditions are similar as are prescribed in the circular dated 4/3/1971". The order in the case of the petitioner dated 6/4/1981 specifically refers to the terms and conditions contained therein. The terms show that there is a complete severance of the status of being in service by the petitioner with the State of U.P. With the acceptance of the resignation of the petitioner from Uttar Pradesh Civil (Administrative Branch) Service with effect from 1/1/1981 the relationship of the petitioner with the State of U.P. came to an end. The State of U.P. no longer remained the parent department. There could be no repatriation of the petitioner to it. If it was done, it would amount to disintegration of the cadre of U.P. and is not permissible.

(9) The absorption of the petitioner in the service of the D.D.A. with effect from 1/1/1981 was the commencement of a new service with the D.D.A. The service of every officer begins when he takes charge of the office to which he is appointed. The petitioner was earlier transferred on deputation or sent on deputation. In that case his lien in the parent department was kept in tact. It was not extinguished. He could be repatriated to his parent department. A person cannot have lien on two posts. The petitioner under the terms of absorption with D.D.A. was made to resign from the U.P. Civil Service and appointed in D.D.A. The word absorption is to be construed in the light of earlier deputation. This absorption is no different to the initial- appointment in D.D.A.'s service.

(10) There could be continuity of the service if special rule or contract of service so provided. None is brought to our notice. There could be continuity if certain factors relevant for that consideration were present. There is no transfer of the credit to the contributory provident fund account of the petitioner when absorbed in the service of the D.D.A. There is no carry forward of the leave earned by the petitioner with the State of U.P. A deputationist who opts for absorption with continuity of service in any statutory body then that organisation not only takes over the liability in regard to leave on average pay, but also earned leave that the person has to its credit at the time of leaving the Government service. The families of Government servant permanently absorbed in the autonomous bodies are eligible for family pension but in the case of the petitioner there is a specific condition that the families would not be eligible for pension. When it is a case of

absorption permanently with continuity of service, the formal resignation is not necessary. There is a provision in the Rules that it would be a case of deemed retirement from Government service.

(11) The sanction issued by the D.D.A. after the permanent absorption of the petitioner in relation to the pay fixation is the clincher. The order dated 3/1/1985 says that the petitioner's pay as on 1/1/1981, the date on which he was absorbed in D.D.A. would be re-fixed as a re-employed pensioner. The petitioner was made entitled to his retiring pension, gratuity etc. from the State of U.P. on the acceptance of his resignation. He became a pensioner. The case of the petitioner is thus clearly of a re-employed pensioner he having snapped his earlier relations with the State of U.P. on the acceptance of the resignation of the service. As his employment with the D.D.A. with effect from 1/1/1981 as a pensioner of the State of U.P. and his entry into the service with D.D.A. was after attaining the age of 35 years, there was no jurisdiction to retire the petitioner under F.R. 56(j)(i) reading as under :--

""56(J)Notwithstanding anything contained in this rule, the appropriate 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 Government servant by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice. (i) If he is in Class I or II service or post and had entered the D.D.A. service before attaining the age of thirty five years after he has attained the age of fifty years....."

Power is conferred under F.R. 56(j)(i) only if the officer entered the service of D.D.A. before attaining the age of 35 years. The impugned order is entitled to be quashed on this short ground.

(12) In view of this, we are not going into the question whether or not there was any material against the petitioner for his compulsory retirement. Any opinion expressed may prejudice either of the parties if and when power is exercised under F.R. 56(j)(ii). The writ petition is allowed. The impugned order is hereby quashed. The petitioner will be treated as in service with continuity of service and all consequential benefits. We make no order as to costs.