
(1955) 04 MP CK 0005

In the Madhya Pradesh High Court

Case No : C. Miscellaneous C. No. 6 of 1954

Shivnath Singh

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 15-04-1955

Acts Referred:

Constitution of India, 1950 — Article 16(1), 226, 311(2), 6(1), 7(2)
Madhya Bharat Retrenchment Rules — Rule 7

Citation : (1955) 04 MP CK 0005

Hon'ble Judges : Shinde, C.J.;Dixit, J

Bench : Division Bench

Advocate : Patankar, for the Appellant; K.A. Chitale, General, for the Respondent

Final Decision : Dismissed

Judgement

Dixit, J.—In this application under Article 226 of the Constitution of India, the Petitioner challenges the validity of his retrenchment from the special Armed Forces of Madhya Bharat and claims that if the retrenchment is void, then he is entitled to get pension in accordance with Notification No. 5 of 1949 dated 14-5-1949 issued by the Department of Defence of Madhya Bharat Government and not under the retrenchment terms contained in Notification No. 180-VII-G(EM) dated 9-7-1949, of the Finance Department.

2. The circumstances giving rise to this petition are that the applicant was member of the Gwalior State Armed Forces and held the rank of Lieutenant in the wireless section of that army. On the formation of Madhya Bharat under Article VI(1) (d) of the covenant when the military forces of the covenanting State became the military forces of the Madhya Bharat State Forces.

Article XVI(1) of the Covenant guaranteed either the continuance in service of the permanent members of the public services of each of the covenanting State on 15-4-1948 or the payment of reasonable compensation.

In accordance with this Article rules fixing compensation payable to retrenched

army personnel, rules for determining their seniority and promotion and of pension and gratuity in the normal course were framed and published by Notification No. 5 of 1949 dated 14-5- 1949, Department of Defence.

The Petitioner states that he became a permanent member of the Madhya Bharat State Army. This is, however, denied by the opponents who averred that in constituting the Madhya Bharat Forces "only status quo was sought to be maintained and therefore, there was no question of organization of integration and as such of those forces nor was the Petitioner permanently absorbed in that forces.

The point that the applicant was or was not permanent member of the Madhya Bharat State Forces is, however, not very material here. For, subsequently on coming into force of the Constitution the armed forces of the State became a part of the armed forces of the Union. And when there after according to a scheme a selection of the members of the State armed Forces for permanent absorption in the Indian Army was made, the applicant was, however, not absorbed in the Indian Army. At this time the Madhya Bharat Government were proposing to constitute a Special Armed Force for the State and in manning that Force they, in consultation with the Government of India, agreed to give preference to eligible members of the State Forces who had not been absorbed in the Indian Army.

A Board was then constituted "for screening out of the Indian State Forces and Non-ISF, personnel of the Madhya Bharat Force for Madhya Bharat." The Petitioner appeared before the Board and was found suitable for Special Armed Force. He took advantage of this offer of the State Government of employment in the Special Armed Forces which took into account his previous army, service and instead of retiring from the Indian Army, chose to be transferred from the Indian State Forces to the Special Armed Forces.

On 5-4-1951 an order appointing the applicant as company commander of 2nd Battalion S.A.F. Indore, until further order was passed. Thereafter on 17-9-1952 he was transferred from the 2nd Battalion S.A.F., to 1st Battalion S.A.F. Gwalior.

In the final scheme of integration of time police department of which the Special Armed Forces were a part, the Petitioner was offered the substantive rank of an Inspector in the S.A.F. He, however declined to accept the position and suggested that he should be ranked as Deputy Superintendent of Police.

This suggestion Was turned down. When the Petitioner refused to serve as Inspector in the S.A.F., he was asked to go on leave preparator to retrenchment and on 22-3-1954 the Commander of S.A.F. passed an order retrenching the applicant from 1-3-1954 "under Clause (a)(7) of Part 1 of the retrenchment rules issued by the Finance Department on 12-7-1949.

It must be stated that when the question of the inclusion in the S.A.F of those members of the Indian State Forces who had not been absorbed in the Indian

Army was under consideration the General Officer Commanding of the Madhya Bharat State Forces addressed a confidential letter dated 8-6-1951 to the Chief Secretary seeking, clarification on certain points, He wrote :

There are still few points which require clarification and concerning which officers about to be transferred from I.S.F. to S.A.F. are making inquiries.

(a) it is apparent that the officers are being transferred from I.S.F. to S.A.F. and therefore it will be continuation of service without break. Is this correct?

(b) will the age for superannuation be 55 years and 25 years service as applicable to other Civil Servants?

(c) If at any future date retrenchment takes place will the officer be entitled to receive the present retrenchment terms for the combined Service (ISF plus SAF) at that time?

(d) Will officers be eligible to be trained and transferred to Civil Police from SAF?

(2) Is it permissible for officers to take the mustering out term now from ISF and enter the SAF on fresh engagement (i.e., the service would not be reckonable for pension)?

Officers electing this procedure would of course enter SAF in their present rank in ISF.

To this letter the Deputy Secretary in the Police Department replied on 12-3-1951 as follows :

2. The state Government have considered the points mentioned in the confidential memorandum under reply with the following results:

(a) The reply to your query is in the affirmative.

(b) They will be entitled to the same pensionary benefit as are applicable to the civilian personnel of the Madhya Bharat Government.

(c) The reply to your query is in the affirmative.

(d) The reply to your query is in the affirmative subject to the requirements of the officers in Civil Police and fitness of the officers concerned to be absorbed therein.

(3) The answer to the query in para 2 of your letter is in the affirmative. There is no objection to ISF officers selected for appointment in SAF taking their mustering out terms from the Army. They can enter S.A.F. on fresh engagement terms. The terms to be offered to each individual officer would naturally vary from individual to individual and depend on the merits of each case.

3. On 9-3-1951 the Commander of the S.A.F. issued an order to the effect that the Defence Department Notification No. 5 of 1949 will apply to S.A.F. personnel "who are and who will be retrenched by Madhya Bharat Government." On

20-6-1953 the Commandant 1st Battalion S.A.F. wrote to Shivnath Singh a letter which ran as follows:

On publication of the structure of the Special Armed Force as annexure III in the Special M.B. Gazette of 29-5-1953, some officers referred to the portion where it says that Coy. Comds. and Cav. Wing Comd. will be Inspectors and the note (ii) of Annexure "D" of Home Deptt., resolution and have expressed that under these circumstances they would prefer retrenchment under M.B. Government Gazette Notification No. 5/49 than to continue as inspectors Coy. Comds.

The publication is clear. Those who do not want to continue as inspectors have still the opportunity of the benefit of the retrenchment concessions. Officers will therefore take a definite decision and inform this office of it on or before 26-6-53 so that any action required can be taken.

4. The Petitioner contends that his retrenchment from the S.A.F. is contrary to the rules and regulations applicable to his case; that under the defence Department Notification No. 5/49 he could not be retrenched and if the retrenchment is valid, then the matter of his pension ought to be dealt with according to the said notification and not under Notification No. 180/VII G (EM) dated 9-7-1949 of the Finance Department, and that he has been discriminated against in as much as whereas some other members of the ISF retrenched from the S.A.F. have been given the benefit of the Defence Department Notification No. 5/49, he has been denied that benefit and that the application of the retrenched terms issued by the Finance Department entails loss of Rs. 13 in his a pension amount. On these facts the Petitioner prays :

(a) this Honourable Court be pleased to issue a writ of mandamus directing the State of Madhya Bharat to deal with the case of the Petitioner according to the Defence Department Notification No. 5/49 and given him all his rights and facilities as per terms and rules contained therein.

(b) further be pleased to issue a writ of prohibition against the State directing them not to deal with his case by applying Finance Department Notification No. 180/VII-G(EM) dated 9-7-1949.

(c) further be pleased to declare that he has been wrongfully retrenched and therefore he is entitled to hold the same post.

5. In the affidavit filed on behalf of the Government opposing the petition, it has been stated that the applicant's retrenchment has been in accordance with the relevant rules; that the Petitioner has failed to disclose how his retrenchment is in violation of any of the fundamental rights guaranteed to him under the Constitution; that no order was ever passed or any undertaking given by the Government making the Defence Notification No. 5/49 applicable to ISF personnel retrenched from SAF; and that in no case has the Government made an order giving the benefit of that notification to any such person retrenched from S.A.F.

6. On the question of the validity of the applicant's retrenchment from the S.A.F. Mr. Patankar learned Counsel for the Petitioner made the submission that in the matter of conditions of service, pension and other matters regarding the services the applicant was governed by the Defence Department Notification No. 5/49 dated 14-5-1949; that the Notification was a law made by the Raj Pramukh in the exercise of his power under Article VII(2)(b) of the Covenant; that this law gives to the applicant a statutory right to continue in service upto the age of fifty five and until the completion of twenty-five years of service and that therefore, the applicant could not be retrenched from service at all.

Learned Counsel referred us to - Bholanath J. Thaker Vs. The State of Saurashtra, as supporting his contention. Relying on - The State of Bihar Vs. Abdul Majid, learned Counsel proceeded to argue that the rule of English Law that a Civil servant holds office at the pleasure of the Crown and his services can be terminated at any time without cause assigned, has not been adopted in India and that, therefore even if the Notification No. 5/49 was not a law, in as much as it prescribed the age of superannuation, the State could not claim the right to retire or retrench the applicant before he attained the age of superannuation on the doctrine that he held office at the pleasure of the head of the State.

It is plain that the basis of the contention of the learned Counsel is the applicability of Notification No. 5/49. If that notification is not applicable to the applicant, as I will presently endeavour to show, then the contention put forward by the learned Counsel must fall. Assuming for the present that the Petitioner's case is governed by the Notification. No. 5/49, the contention that the applicant had a statutory right to continue in service until the age of superannuation cannot be acceded to.

A glance at the notification is sufficient to show that it is not a law or a statute laying down the conditions of service and rules for pension and other matters regarding the service. It merely embodied administrative directions for regulating the compensation payable to retrenched personnel of Madhya Bharat Forces, seniority and promotion of the members of the forces and the normal age of superannuation.

The rules embodied in the Notification merely informed the members of the forces the general conditions of their service and the age at which they would have to retire in the normal course. The rules did not give any member Of the forces an indefeasible right to remain in service until he attained the age of superannuation.

This is clear from the fact that the Notification itself while indicating the normal age of retirement lays down the manner in which retrenchment under the Notification should be carried out and the pension that should be paid to the retrenched personnel. There is thus no force in the contention that under the aforesaid Notification the applicant was, as of right, entitled to be continued in service until he attained the age of superannuation.

The decision of the Supreme Court in "Bho-lanath's case (A)", is not applicable here for the simple reason that in that case Bholanath was held entitled to continue in service until he attained the age of 60 years, because on an enactment of the Ruler of Wadhawan State which gave Bholanath a statutory right to continue in service until the age of sixty.

Here, as I have pointed out above, the Notification No. 5/49 did not confer any such statutory light on the Petitioner. To me the matter seems to be concluded by the decisions of this Court in - "Munshiram v. State of Madhya Bharat" AIR 1954 Mad 54 (C) and -"Vijay" Shankar v. State of Madhya Bharat" AIR 1954 Mad 177 (D), where it has been held that an order of retirement before the age of superannuation on proportionate pension pursuant to a policy of retrenchment is a retirement in the normal course and not a removal within the meaning of Article 311(2).

Mr. Patankar sought to get over the effect of these decisions by suggesting that in view of the observation of the Supreme Court in *The State of Bihar Vs. Abdul Majid*, namely that the rule of English Law that a civil servant holds office at the pleasure of the Crown has not been fully adopted in India, the decisions in AIR 1954 Mad 54 (C) and AIR 1954 Mad 177 (D), which were based on the case of - "*Lilawati Mutatkar v. State of Madhya Bharat*" AIR 1952 Mad 105(E), require reconsideration.

I do not find anything in these cases which runs counter to what the Supreme Court has held in the "*State of Bihar v. Abdul Majid (B)*". In the case of "*Lilawati Mutatkar (E)*", it was pointed out by me that civil servants hold office at the pleasure of the President, Governor or the Raj Pramukh as the case may be, and the State has the power to terminate their employment at pleasure at any time for any reason stated or unstated and that this right of the State cannot in any way be abridged or controlled or clogged by any rule made by the Government or a Department of the State with regard to the age of retirement.

In "*State of Bihar v. Abdul Majid (B)*", the observation that the rule of English Law that a civil servant holds office at the pleasure of the Crown has not been fully adopted in Section 240, Government of India Act, was made with reference to the question whether a civil servant has a right of action for wrongful dismissal and it was observed that

to the extent that the rule that Government servants hold office during pleasure has been departed from by the statute, the Government servants are entitled to relief like any other person under the ordinary law and that relief must be regulated by the Code of Civil Procedure.

The question whether when a rule has been made by the Government with regard to the age of retirement a civil servant can be retired before the age of superannuation and whether by such a rule the State's power to terminate the employment at pleasure at any time is fettered did not arise for consideration in "*State of Bihar v. Abdul Majid (B)*."

I may here be pardoned if I point out that what I said on this point in "Lilawati Mutatkar"s case "(E)", has been approved by a Division Bench of the Allahabad High Court in - Jagannath Prasad Vs. State of U.P. and Others, In my judgment the contention of the applicant that he could not be retrenched and was entitled, as of right, to continue in service until the age of superannuation is altogether untenable and must be rejected.

7. The next and the main contention advanced on behalf of the Petitioner is that he is entitled to pension in accordance with the Defence Department Notification No. 5/49 dated 14-5-1949. The Notification on the face of it is applicable to the personnel of the Madhya Bharat Forces. Before us it is not the case of the Petitioner that as he was retrenched from the Forces, he is, therefore governed by that Notification.

Learned Counsel for the applicant also did not dispute the fact that the Notification does not terms, apply to the applicant. What he contended was that it was by virtue of an undertaking given in the letters exchange between the General Officer Commanding Madhya Bharat Forces and the Chief Secretary and the order issued on 9-3-1951 by Brig. Chandorkar Commander of the Special Armed Forces that the Notification in question became applicable to him when he was retrenched from the Special Armed Forces.

I am unable to read any such undertaking to the Petitioner or order of the Government with regard to the applicability of Notification No. 5/49 in the letter dated 12-3-1951 that was sent in reply by the Deputy Secretary to the Government to General Officer Commanding Madhya Bharat Forces.

It is noteworthy that in letter dated 8-1-1951 namely, "if at any future date retrenchment takes place will the officers be entitled to receive the present retrenchment terms for the combined Service. (ISF plus SAF) at that time? the emphasis was put on the point of the combined service in the ISF and SAF being taken into account if the retrenchment takes place at a future date.

There is nothing in the question to indicate that the General Officer Commanding sought clarification on the point whether the retrenchment terms contained in Notification No. 5/49 would be applicable to those transferred from the ISF to the SAF, permanently absorbed therein and then at some future date retrenchment from the SAF itself.

It is possible that when the General Officer Commanding put the question referred to above, he had in mind cases of those who on their being transferred from ISF were only provisionally, taken in SAF but not ultimately absorbed therein.

The distinction between a person retrenched after being first absorbed permanently in the SAF and a person provisionally taken in the SAF after his transfer from the ISF and then retrenched is very material. A person falling in the latter category can claim that as he has been retired from ISF itself, he is entitled

to the benefit of the retrenchment terms under the Notification No. 5/49.

But a person permanently taken in the SAF and retrenched thereafter can make no such claim in the absence of any order, of the Government making the retrenchment terms contained in Notification No. 5/49 applicable to those retrenched from the SAF itself.

In these circumstances from the mere fact that the question put by the General Officer Commanding was answered by the Deputy Secretary in the affirmative, it cannot be concluded that the Government gave undertaking to the Petitioner that he would have the benefit of the retrenchment terms under Notification No. 5/49 or that the Government passed an order making the Notification applicable to those retrenched in certain specified circumstances after their transfer from ISF to SAF.

8. As to order issued by the Commander of the SAF on 9-3-1951 it has not been made clear by the Petitioner whether the Commander had the authority to issue such an order on his own initiative. On the other hand it has been averred by the non-Petitioners that the Commander was not competent to issue any such order that its correctness "is in active examination of the Government and is pending decision."

Some stress was laid by the learned Counsel for the applicant on the fact that the Commander sent copies of his order to the Secretary in the Police Department of the Government and to the Accountant General. I fail to see how the mere sending of copies to these authorities can make the order one of competent authority, if the Commander had in fact no authority to issue the order. The letter addressed on 20-6-1953 by the Commandant, First Battalion SAF to the Petitioner does not advance the Petitioner's case any further.

The letter does not clarify anything or give any assurance to the applicant that on retrenchment he would have the benefit of the terms under Notification No. 5/49. All that it says is that those who do not wish to serve as Inspectors in the Force "have still an opportunity of the benefit of the retrenchment concessions." On this material I find myself unable to hold that the Government gave any undertaking to the Petitioner or passed an order that he would be entitled to the benefit of the retrenchment terms mentioned in Notification No. 5/49.

Learned Counsel for the applicant draws our attention to the fact that when the Petitioner made a representation to the Inspector General of Police, he wrote a letter (annexure 0 to the petition) to the Government saying that the contention of the Petitioner as also of other officers that they should have been retrenched under the rules and terms contained in Notification No. 5/49 was correct.

The Inspector General of Police further stated in the letter that

these officers have been retrenched in the process of Integration under Rule 7(a) of the Madhya Bharat Retrenchment Rules. Until and unless they have been absorbed in Madhya Bharat they would not be governed by the rules in force in

Madhya Bharat and therefore they would be governed by the above mentioned Notification.

In my opinion this letter cannot be of any assistance to the Petitioner in this case for the reason that before us it is not the Petitioner's case that he was not permanently absorbed in SAF or as the Inspector General of Police says "in Madhya Bharat and that his retirement on his refusal to serve as an Inspector was a retirement from the ISF itself.

In paragraphs 4 and 13 of the petition the applicant has distinctly said that "he was permanently appointed in the rank of Captain Company Commander in the Special Armed Forces, Madhya Bharat? and that "his retrenchment from SAF is against the law and Rules and Regulations applicable to his case?. It is this case which the learned Counsel sought to support contending that the Notification No. 5/49 was applicable to the Petitioner by reason of an undertaking given by the Government.

It was open to the Petitioner to adopt the stand taken by the Inspector General of Police in his letter and frame his petition accordingly. But he did not. No relief can, therefore, be claimed by him in this petition on that footing.

9. Learned Counsel for the applicant also urged that certain officers of the Special Armed Forces, retrenched in circumstances similar to those in which he was retrenched, were given the benefit of the retrenchment terms under Defence Department Notification No. 5/49 and thus in denying that benefit to him he has been discriminated against.

On this point the reply of the opponents is that the officers to whom the applicant instanced as having been given the benefit of the Notification No. 5/49 were excluded from the initial constitution of the Special Armed Forces and that there was no analogy between their cases and the case of the Petitioner who was not so excluded; and that in the case of one non-Gazetted officer, namely Subedar-Major Aktar Ali an order retrenching him and giving the benefit of terms under Notification No. 5/49 was passed by the officer Commanding of the 1st Battalion and not by the Government.

As to this contention it is sufficient to say that in the absence of an order of the government making the notification in question applicable to persons transferred from ISF to SAF and retrenched thereafter and specifying the circumstances of its applicability, the applicant cannot clearly say that there is an order, of the Government which is discriminatory or that the retrenchment terms given to him are not in consonance with that order.

10. For all these reasons I have, arrived at the conclusion that the applicant has failed to make out a case for interference under Article 226 of the Constitution of India.

Before parting with this case I must, however, say that on the return filed by the opponents it is somewhat disconcerting to find that the question of the

applicability, of the retrenchment terms under the Defence Department Notification No. 5/49 to persons transferred from ISF to SAF, and retrenched afterwards, should have been dealt by the officers concerned without there being a proper order of the competent authority and that the Government should have apparently done nothing so far to remove the welter of confusion that has consequently arisen.

I hope that the Government will now give immediate attention to the Petitioner's representation and place beyond doubt, one way or the other, the question of the applicability of the Notification No. 5/49 to him and to Ors. similarly situated.

11. In the result I would dismiss this petition without any order as to costs.

Shinde, C.J.

12. I agree.