
(1968) 12 P&H CK 0029
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2276 of 1966

Shri Shashi Bhushan Paul

APPELLANT

Vs

State of Punjab and another

RESPONDENT

Date of Decision : 20-12-1968

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (1968) 12 P&H CK 0029

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Advocate : M.R. Agnihotri, for the Appellant; S.K. Jain for Advocate-General, Haryana, for the Respondent

Final Decision : Allowed

Judgement

B.R. Tuli, J.—The petitioner was born on 27th October, 1911, and in ordinary course his date of super annotation is 27th October, 1969. On 25th June, 1966, respondent I served him with an order retiring him compulsorily from service on attaining the age of 55 years, on the ground that "his record of service was found to be unsatisfactory." The order was actually served upon the petitioner on 16th July, 1966. The petitioner served a notice through his counsel on 10th October, 1966 praying therein that the impugned order, being without jurisdiction and against the rules, should be withdrawn. No relief was granted to him by the respondents and, therefore, he filed the present writ petition in this Court on 24th October, 1966. It was admitted on 25th October, 1966, and was ordered to be heard early and the stay of the operation of the impugned order was refused.

2. In the petition the order dated 25th June, 1966, Annexure "A" to the writ petition, has been challenged to be without jurisdiction, unconstitutional, arbitrary and ultra vires of the powers of the Government on various grounds but the only grounds pressed before me are given in clauses (iv) and (v) of para 6 of the petition which are reproduced below:

(iv) Otherwise also even under this clause (c) of Rule 5.32, the petitioner could be retired only without assigning any reason. The notice on the other hand clearly indicates that his "record of service has been found to be unsatisfactory." Firstly such a ground does not fall within clause (c) of the aforesaid rules and secondly the incorporation of the aforesaid ground in the notice itself amounts to stigmatizing the career of the petitioner for which no opportunity has been given to him;

(v) That the proposed action of retirement amounts to the dismissal or at least removal of the petitioner from his service without affording a proper opportunity. It is not a case of compulsory retirement in public interest. Stigmatizing the career of a Government servant and then to retire him with a blot clearly violates the provisions of clause 2 of Article 311 of the Constitution of India. On this proposition of law there cannot be any doubt in view of the various pronouncements of the Hon"ble Supreme Court of India.

The reply to these grounds given in the return of the Secretary to Government, Punjab, P.W.D., Irrigation Branch, is as under:

(iv) The indication of the fact in the notice that the record of service of the petitioner had been found to be unsatisfactory does not make any difference. The rules empowering Government to retire Government servants with unsatisfactory records of service at the age of 55 after giving due notice are known to all. The only ground where such powers are invoked are unsatisfactory record. Hence whenever such notice is given, it is immaterial if grounds are mentioned therein or not. The moment a Government servant receives such a notice he knows the grounds.

(v) The retirement of a Government servant on his attaining the age of 55 years after giving him 3 months" notice is neither dismissal nor removal from service nor any other kind of punishment under the Punishment and Appeal Rules, 1952 for which any opportunity was required to be afforded.

3. The main argument of the learned counsel for the petitioner is that the appointing authority has the right to notice the petitioner after the attains the age of 55 on giving him three months notice, but without assigning any reason. In the order communicated to the petitioner the reason is stated to be that his service record has been found to be unsatisfactory. This reason given in the impugned order casts a stigma on the petitioner and, therefore, is penal in consequences. This order, therefore, could not be passed without affording an opportunity of showing case against it to the petitioner under Article 311 of the Constitution. In support of his argument the learned counsel has placed his reliance on a judgment of their Lordships of the Supreme Court in *The State of Uttar Pradesh v. Shri Madan Mohan Nagar* 1967 S.L.R. 147 in which their Lordships, after referring to the case of *Jagdish Mitter Vs. The Union of India* (UOI), held is under:

It seems to us that the same test must apply in the case of compulsory

retirement, namely, does the order of compulsory retirement cast an aspersion or attach a stigma to the officer when it purports to retire him compulsorily ? In the present case there is no doubt that the order does cast a stigma on the respondent

The order of compulsory retirement in that case was in these terms:

I am directed to say that the Governor has been pleased to order in the public interest under Article 465A and Note (1) thereof of the Civil Service Regulations, the compulsory retirement with effect from September 1, 1960 of Shri Madan Mohan Nagar, Director, State Museum, Lucknow, who completed 52 years of age on July 1, 1960, and 28 years and 3 months of qualifying service on 31st May, 1960 as he has outlived his utility.

Interpreting this order, their Lordships held as under:

In the present case there is not only the question of implication but a clear statement appears on the face of the order that the respondent had outlived his utility; in other words, it is stated that he was incapacitated from holding the post of Director, State Museum, Lucknow. The order clearly attaches a stigma to him and any person who reads the order would immediately consider that there is something wrong with him or his capacity to work.

This judgment was followed by Sarkaria J. in Mangal Singh v. Punjab State 1968 S.L.R. 98. In that case an A.S.I. of Police was compulsorily retired from service on attaining the age of 55 years after serving him with three month's notice under Rule 5.32(c) of the Punjab Civil Services Rules Volume II. The impugned order in that case read as under:

Officiating Assistant Sub-Inspector Mangal Singh No. 189/KTH/ of district Jullundur will attain the age of 55 years on 16th February, 1967. Now the age of superannuation has been raised from 55 to 58 years. But this concession can be given only to those Government employees who are honest, efficient and possess integrity. I am satisfied that this is not a fit case to be permitted to avail of the benefit of the raised age of superannuation. He should be served with a copy of this notice that his services are not required in Police Department after he attains the age of 55 years. This is a three month's notice to him and that he should retire on the expiry of this notice.

Applying the test laid down by their Lordships of the Supreme Court in the case cited above, the learned Judge held-

it is clear that in the instant case the stigma to the Government servant has been attached more deeply and clearly in the language of the impugned order than the one conveyed by the words used in the orders impugned before the Supreme Court in Jagdish Mitter's case and in Madan Mohan Nagar's case. The order first recites that continuance of a Government employee beyond the age of 55 years in service is a concession which is available to only those employees who are honest, efficient and possess integrity. It then says that the Deputy Inspector-

General of Police (appointing authority) is satisfied that this is not a fit case to be permitted to avail the benefit of the raised age of superannuation.

Anyone who reads this order will be left in no doubt that the petitioner was not allowed to continue in service beyond the age of 55 years because he was neither honest nor efficient, nor possessed integrity. The order carries an indelible stigma which might debar the Government servant from getting even private employment after his retirement. It thus clearly operated as a punishment, and by the test laid down by the Supreme Court, must be deemed to amount to "dismissal or removal from service" within the meaning of Article 311(2) of the Constitution.

A little later the learned Judge observed as under :

It is true, that under the Service Rules of the State the tenure held by a Government servant on attaining the age of 55 years is of a precarious character in the sense that his services can be validly terminated by serving upon him three months' notice by the Government without assigning any reason under clause (c) of Rule 5.32 of the Civil Services Rules, Volume II. This can, however, be done in a straight-forward and direct manner without assigning any reason, and, in such a case, Article 311 of the Constitution will not apply, irrespective of the fact that the authority was motivated by the fact that the service record of the Government servant as regards honesty, efficiency and integrity, was not good. However, if instead of following that course, the authority chooses to exercise its power to compulsorily retire the Government servant by an order in which it brands him "unfit" to be retained in service on account of his being dishonest, inefficient, or of doubtful integrity, as a punitive measure, Article 311(2) of the Constitution will be attracted with full force, and the order of compulsory retirement will, in substance, be construed as an order of "dismissal" or "removal" from service within the meaning of the aforesaid Article. In the instant case, the authority has followed this latter course and the order of compulsory retirement on the face of it, bars and condemns the petitioner in unmistakable terms as unfit for service. It visits him with serious penal consequences.

I am in respectful agreement with the observations made by Sarkaria J. in the above cited case. A Division Bench of this Court, of which I was a member, considered in *State of Punjab and another v. Darshan Singh* 1968 S.L.R. 734, that the words "work and conduct has not been found satisfactory" in the order of removal attached stigma to the public servant. It is thus apparent that the impugned order casts stigma on the petitioner and it could not have been passed without following the procedure laid down in Article 311 of the Constitution. The order cannot therefore be sustained.

4. For the reasons given above, this petition is allowed with costs and the impugned order Annexure "A" to the writ petition is quashed. Counsel's fee Rs. 100/-.