

(1960) 01 MP CK 0003

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 319 of 1958

S.S. Pandey

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 04-01-1960

Acts Referred:

Fundamental Rules — Rule 56, 74, 86

Citation : AIR 1961 MP 293 : (1961) JLJ 996

Hon'ble Judges : P.V. Dixit, C.J;K.L. Pandey, J

Bench : Division Bench

Advocate : J.P. Dwivedi and Y.S. Dharmadhikari, for the Appellant; H.L. Khaskalam, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Pandey, J.—This petition under Articles 226 and 227 of the Constitution is directed against certain orders passed and action taken in the case of the Petitioner who was in service under the State Government.

2. The petitioner was substantively employed in class I service as Economic Botanist to the State Government. A departmental enquiry was started against him on 4th December, 1951, when charges were sent to him. The enquiry dragged on for more than a year. On 24th April, 1952, while the enquiry was pending, he was informed that he was due to retire on 14th April, 1953, and that he might, if he liked, apply for leave preparatory to retirement. About seven months later, on 6th November, 1952, to be more precise, the petitioner wrote to say that he would avail of the leave after termination of the enquiry.

Thereupon, on 11th November, 1952, he was intimated that leave Preparatory to retirement, if due, might be availed of without waiting for the departmental enquiry to conclude. The petitioner repeatedly wrote to say that he would avail of the leave only after conclusion of the enquiry. On 10th March, 1953, the State Government passed an order appointing S. G. Kolte to be in charge of current

duties of the Economic Botanist and directed him to take over from the Petitioner on the forenoon of 14th March, 1953, on his retirement on superannuation (Ex. A-8.)

On 12th March, 1953, another order was passed refusing to the petitioner leave after superannuation for the reason that he neither applied for leave in time nor was any leave Previously refused on grounds of public interest. The petitioner was also directed to retire on 14th March, 1953 and to hand over charge to S. G. Kolte (Ex. A-10). On 13th March, 1953, yet another order was Passed dropping the enquiry. A copy of that order was forwarded to the petitioner and he was again directed to hand over charge on the forenoon of 14th March, 1953, as already ordered, to S. G. Kolte (Ex. A-12).

The petitioner claimed that he received this communication on 14th March, 1953, made forthwith an application (Ex. A-13) for six months" leave preparatory to retirement and then handed over the charge of his office. The Petitioner repeatedly requested for an order on his leave application dated 14th March 1953, but he was intimated that the order had already been communicated to him and that he must be deemed to have retired (exs. A-16 and A-17). The Petitioner also filed an appeal to the Governor of Madhya Pradesh, but it was dismissed on 11th September, 1954 (Ex. A 23).

3. The Petitioner prays for issuance of a writ of certiorari to quash the order of the State Government dated 13th March, 1953, dropping the enquiry and directing him to hand over the charge of his office and also the order dated 11th September 1954 dismissing his appeal. He has also requested for a direction that he should be deemed to be still in service and that his application for leave dated 14th March, 1953, should be deemed to be, and dealt with as, one made under Fundamental Rule 86.

4. The main argument in support of the Petition is that, since a departmental enquiry was pending against the Petitioner, he could not either retire or go, or be allowed to go, on leave. The relevant provisions of the Fundamental Rules governing this matter are these:-

"Except as otherwise provided in other clauses of this rule, the date of compulsory retirement of a Government servant, whether ministerial or non-ministerial, is the date on which he attains the age of 55 years. He may be retained in service after that date, if he is willing to be retained and the competent authority considers him fit and efficient to discharge his duties. No such Government servant shall be retained after the age of 58 years, except on public grounds to be recorded in writing (such as greater public interest), and with the sanction of the State Government".

F. R. 56 (a) (a)

"A Government servant under suspension, on a charge of misconduct, shall not be required or permitted to retire but shall be retained in service until the

enquiry into the charge is concluded and a final order is passed by a competent authority". L. G. O. 2

"Leave should not be granted to a Government servant who is to be dismissed or removed from service for misconduct or general inefficiency if such leave will have the effect of postponing the date of dismissal or removal, or to a Government servant whose conduct is at the time forming, or is in the near future about to form, the subject of departmental enquiry."

S. R. 18 under F. R. 74.

"Leave at the credit of a Government servant in his leave account shall lapse on the date of compulsory retirement provided that if in sufficient time before that date he has -

(1) formally applied for leave and been refused it, or

(2) ascertained in writing from the sanctioning authority that leave if applied for would not be granted,

in either case the ground of refusal being the requirements of the public service, then the Government servant may be granted, after the date of retirement, the amount of leave so refused subject to a maximum of six months".

F. R. 86 (a).

5. In our opinion, the rules inhibiting retirement or grant of leave pending a departmental enquiry were framed in the interest of Government. They are designed to secure, firstly, that the delinquent Government servant should be available for continuing the enquiry and, secondly, that the enquiry carried to conclusion should be fruitful. If a Government servant proceeded against is permitted to retire, he would cease to be under the administrative control of Government and the enquiry against him would be rendered infructuous. The rules do not however give to a Government servant a right either to insist that the enquiry initiated against him must be carried to conclusion or that he must be retained in service until such conclusion. It is always open to Government to drop at any time an enquiry started against any Government servant,

6. In the instant case, quite apart from the fact that the petitioner was not under suspension and L. G. O. 2 under F. R. 56 (a) (a) did not in terms apply to his case, there is the further fact that, before he was required to retire, the departmental enquiry against him was dropped. There was, therefore, no inhibition against his retirement on attaining the age of superannuation even under the rule on which he relies.

7. There is no basis for the Petitioner's grievance that he was retired suddenly. He was informed time and again that he would be retired on attaining the age of superannuation. In this connection, we may refer to Ex. R-15 dated 19th November, 1952. An endeavour was made to show that the petitioner had not received a copy of that demi-official letter, which was forwarded to him. We have

looked into the appropriate Despatch and Receipt Registers and we are satisfied that it was sent from the office of the Director of Agriculture on 27th November, and received in the petitioner's office on the following day.

The contention that there was no formal order of Government regarding the petitioner's retirement is also not well-founded. We may mention Exs. A-8 and A-10, both of which were formal orders passed before the date of his compulsory retirement, duly authenticated in the manner provided by Clause (2) of Article 166 of the Constitution by a person authorised so to do. In our opinion, the petitioner was validly retired on the date of his compulsory retirement.

8. We have next to consider the Petitioner's claim relating to leave Preparatory to retirement. We can understand the case of a Government servant who, being misled by the pendency of a departmental enquiry against him, thinks that he could not get such leave and does not apply for it. The position here was entirely different. The petitioner was repeatedly asked to apply for leave preparatory to retirement, perhaps because, if he did so, it was intended to drop the departmental enquiry against him.

For obvious reasons, he could not be compelled to apply for, or be on, leave nor could he reasonably expect to be told that if he applied for leave, the enquiry against him would be dropped. He was, however, left in no doubt that if only he applied for the leave sufficiently before the date of superannuation, it would be made available to him. Even then he obdurately declined to avail of it. His contention that if he had proceeded on leave preparatory to retirement, the enquiry would have been continued in his absence* is entirely unfounded.

As a matter of fact, the enquiry could not proceed in his absence. Having taken the leave Preparatory to retirement, it was open to him not to return to duty unless, in order to continue the enquiry, Government gave him an extension, which is what he wanted. In the circumstances, we are satisfied that he refused to avail of the leave preparatory to retirement and, on his superannuation, the leave due to him lapsed. Since he is himself to blame for it, he is, in our opinion, not now entitled to any leave under F. R. 86.

9. It was accepted before us that the petitioner had no right to extension of service or re-employment, though he could be considered for either. That being so, his contention that the abrupt action of Government in dropping the enquiry and requiring him to retire denied to him an opportunity of being so considered is of no avail.

10. In our opinion, there is no merit in this petition which must fail. Accordingly we dismiss the petition and direct that the petitioner shall bear his own costs and pay from out of the security deposit the costs of the respondents. Hearing fee Rs. 50/-. The remaining amount of security deposit shall be refunded to the petitioner.