
(1981) 01 AHC CK 0044
In the Allahabad High Court
Case No : Second Appeal No. 1568 of 1974

State of U.P.

APPELLANT

Vs

Abdul Mazid Khan

RESPONDENT

Date of Decision : 16-01-1981

Acts Referred:

Constitution of India, 1950 — Article 311(2)
Fundamental Rules, 1963 — Rule 56, 56A

Citation : (1981) 01 AHC CK 0044

Hon'ble Judges : N.N.Mittal, J

Final Decision : Allowed

Judgement

N. N. Mithall, J.

This is a defendants second appeal. The respondent had filed a suit for declaration that the order of retirement dated 2881970 was null and void and plaintiff still continued to be in service and for recovery of certain amount by way of arrears of salary.

The suit was decreed by the trial Court and the appeal by the State of U. P. was also dismissed by the Lower Appellate Court.

According to the case taken up in the plaint, the plaintiff was appointed as a constable in the Civil Police in 1936 and was confirmed in his post. Some times in June 1970, after he had attained the age of 55 years, by an order dated 2881977, he was retired from service. The said order, however, was alleged to be null and void as it was said that it was by way of punishment and hit by Article 311 (2) of the Constitution. It was further alleged that the requirement of Rule 56 of the Fundamental Rules had not been complied with and the salary of two months along with the retirement order should have accompanied the order but nothing was paid to him. On that ground also, the validity of the order was questioned. It was alleged that after the plaintiff had attained the age of 55 years, no order could be passed subsequently retiring him from service and such an order could be passed only before he had attained the age of 55 years.

The lower appellate Court came to the conclusion that the retirement order was not by way of punishment and it did not put any stigma on the plaintiff. It was also held that according to Fundamental Rule 56A, it was not necessary that the pay along with the notice should have been paid at the time of the service of notice and it could be paid within a reasonable time thereafter but the lower appellate Court further went on to hold that since the plaintiff had not been paid salary even till the time of the hearing of the appeal, the said rule was violated. The lower appellate Court also held that the Fundamental Rule 56A was violative of the Constitution and was ultra vires and that no order of retirement could be passed after he had attained the age of 55 years. These findings are being assailed in the second appeal.

As regards the validity of F. R. 56A, it may be stated that by U. P. Ordinance No. VI of 1969, published in U. P. Gazette Extraordinary on the 5th November, 1969, the said rule was drastically amended. Under Section 3 of the said Ordinance, the amended rule was made retrospective in operation and it was clarified therein that notwithstanding any judgment, decree or order of any Court, anything done or purporting to have been done or any action taken or purporting to have been taken under or in relation to the said rule 56 (a) this rule would be deemed to have been in force from the very beginning at the material times. SubClause (2) of Section 2 also empowers the Government to retire a Government servant even after the attainment of the age of 55 years, after giving two months' notice.

Uttar Pradesh Fundamental Rule 56 (Amendment and Validation) Act, 1975 (U. P. Act No. 24 of 1975) was thereafter passed and enforced with effect from 14th August, 1975 amending the provisions of F. R. 56. According to these amended provisions, the power to retire a Government servant at any time after he had attained the age of 55 years was given to the appointing authority. In Section 4 subclause (2) of this Act, a provision was made that with retrospective effect, it will not be necessary under this rule to pay salary of dues for the notice period before or simultaneously with the service of order of retirement and a mere failure to make payment would not invalidate the order. It also provided that this will be so notwithstanding any order, judgment or decree of any Court to the contrary. In view of this provision, the position of law as it stood when the lower appellate Court decided the matter stands drastically changed. According to U. P. Act No. 24 of 1975, the provisions of which have been made applicable retrospectively, under F. R. 56, the plaintiff could be retired even after attaining the age of 55 years and then too it was not necessary that actual payment should have been made to him at the time of the notice of retirement was served on him. On this ground the order of retirement cannot be said to be invalid.

In this connection, reference may also be made to a case, *Krishna Murti Srivastava v. Collector, Agra and others* (1975 A.L.R. 304), wherein it was held that F. R. 56 does not require that the order of compulsory retirement should be passed precisely on the date when the Government servant attains the age of 55 years and that such an order can be passed even after the date when the

Government servant has crossed the age of 55 years. It also negatives the contention that once a Government servant is allowed to cross the age of 55 years without his case being considered and he must be deemed to be in service until his age of superannuation Under the changed circumstances therefore, the contention raised on behalf of the appellant appears to be correct.

I, therefore, find force in this appeal and the same is accordingly allowed. The suit of the plaintiff is dismissed. It is, however, made clear that the plaintiff will be entitled to recover the amount of his salary in lieu of notice from the appellant

However, under the circumstances, the parties are directed to bear their own costs.