(1987) 09 MP CK 0006

In the Madhya Pradesh High Court

Case No : M. P. No. 1766 of 1985

Surendra Pratap Singh Kushwaha APPELLANT

Vs

State Bank of Indore, Indore RESPONDENT

Date of Decision : 15-09-1987

Acts Referred:

Citation : (1988) JLJ 104

Hon'ble Judges : N.D. Ojha, C.J;K.K. Adhikari, J

Bench : Division Bench

Advocate : B.C. Jain, for the Appellant; C.M. Chaphekar and * A.K. Khaskalam, for the Respondent

Final Decision : Allowed

Judgement

N.D. Ojha, C.J.—This writ petition has been filed with a prayer that the order retiring the petitioner from service communicated to him by telegram dated 8-6-1985 (Annexure P-7) may be quashed and the respondent State Bank of Indore, Yashwant Niwas Road, Indore, be directed to continue the petitioner in service.

2. Return has been filed by the respondent. From a perusal of the writ petition and the return it appears that the petitioner was employed with the respondent as a clerk-cum-cashier. He was confirmed on that post. Subsequently, by an order dated 22-9-1981, a copy whereof has been attached as Annexure R-3 with the return, the Managing Director of the respondent Bank, consequent upon holding of a written test and an interview before the Interview Committee, approved the promotion of the petitioner to the Officer''s Junior Management Grade Scale I under Group ''A'' on probation for a period of one year with effect from 1-10-1981.

3. It has been stated in paragraph 10 of the writ petition that subsequently the petitioner was confirmed as an officer on the promoted post. The fact of the petitioner being confirmed has been admitted in para 10 of the return where it

has been stated that confirmation of the petitioner on completion of one year is not denied. The impugned order is sought to be justified in the return and also during the course of arguments by learned counsel for the respondent on the basis of the second proviso to the Regulation No. 19 (1) of the State Bank of Indore (Officer''s) Service Regulations, 1979 (hereinafter referred to as the Regulations). Regulation No. 19 (1) and its first two provisos which are relevant for consideration of the point in issue are reproduced below :-

19 (1) An officer shall retire from the service of the Bank on attaining the age of fifty eight years or upon the completion of thirty years'' service whichever occurs first :

Provided that the Competent Authority may, at its discretion, extend the period of service of an officer who has attained the age of fifty eight years or has completed thirty years'' service as the case may be, should such extension be deemed desirable in the interest of the Bank :

Provided further that an officer may, at the discretion of the Executive Committee, be retired from the Bank''s service after he has attained 50 years of age or has completed 25 years'' service as the case may be, by giving him three months'' notice in writing or pay in lieu thereof.

4. The stand taken on behalf of the respondent is that the case of the petitioner was scrutinized and since he was completing the age of 55 years on 8-6-1985, he was retired with effect from that date by sending to him the order contained in the telegram (Annexure P-7).

5. It has been urged by the learned counsel for the petitioner that even if the order dated 8-6-1985 may be treated to be one under the second proviso to Regulation No. 19 (1) of the Regulations, it was liable to be quashed inasmuch as the said second proviso was ultra vires, as it contained no guide line and left it entirely at the discretion or sweet will of the Executive Committee to pick and choose and retire any employee of the Bank under the said proviso while retaining similarly situated other employees in its service. According to him, the power conferred by this proviso is discriminatory as well as arbitrary.

6. In this connection it was pointed out that the second proviso virtually stood on the same footing as provisions which entitled the termination of services of a permanent employee merely by giving him three months'' notice, which have been struck down by the Supreme Court in various cases on the ground that they conferred discriminatory and arbitrary power.

7. In reply it was urged by the learned counsel for the respondent that the second proviso did not confer any such unguided or arbitrary power on the Executive Committee of the Bank as was urged by the learned counsel for the petitioner. According to him, the words "should such retirement be deemed desirable in the interest of the Bank" should be read at the end of the second proviso in the same manner as the words "should such extension be desirable in

the interest of the Bank" which occur in the first proviso. The effect of so reading the second proviso would be that just as extension of the period of service of an officer beyond the age of 58 years could be granted under the first proviso of Regulation No. 19 (1) of the Regulations only if it was deemed desirable in the interest of the Bank, so also an order of retirement of an employee from service could be passed even before he attained the age of superannuation prescribed in the main part of Regulation No. 19 (1) of the Regulations only if it was deemed desirable in the interest of the Bank. It is settled law that when constitutionality of a provision is challenged and it is possible without doing violance to the language used therein to sustain the said provision by writing or reading it down recourse to such an interpretation should be preferred to the alternative of striking it down.

8. After reading Regulation No. 19(1) of the Regulations and its first two provisos together, we are of the opinion that interpreting the second proviso in the manner urged by learned counsel for the respondent would not do violence to the language used therein. Regulation No. 19 (1) prescribes that an officer shall retire from the service of the Bank on attaining the age of fifty eight years or upon the completion of thirty years'' service, which ever occurs first. It thus prescribes the age of superannuation of an officer of the Bank. The three provisos of Regulation No. 19 (1) carve out exceptions to the aforesaid general rule. We are not concerned in the instant case with the third proviso. When the first proviso contemplates that recourse to the action referred to therein as an exception to the general rule can be taken only if it is deemed desirable in the interest of the Bank, we see no reason why the said restriction may also not be read in the second proviso which deals with curtailment of the normal age of retirement.

9. In this view of the matter, we are of the opinion that the requirement of being desirable in the interest of the Bank will apply also to the action taken under the second proviso of Regulation No. 19 (1) of the Regulations. On being so read, it cannot be said that power conferred by the second proviso is unguided, discriminatory or arbitrary.

10. It was then urged by learned counsel for the petitioner that even if the second proviso of Regulation No. 19 (1) is read in the manner stated above, the impugned order dated 8-6-1985 yet deserved to be struck down inasmuch as neither the said order nor even the return indicates that the impugned action was taken by the respondent on the ground that it was deemed desirable in the interest of the Bank.

11. Having gone through the order as also the return filed on behalf of the respondent, we are of the opinion that there is substance in this submisson. The impugned order apparently does not contain any averment that it had been considered desirable in the interest of the Bank to retire the petitioner. Even in the return, although it has been stated that the case of the petitioner was scrutinized, it has not been stated that on such scrutiny it was found, keeping in

view the work and conduct of the petitioner, that his retirement was desirable in the interest of the Bank. In this connection it may also be pointed out that as already noted above, the petitioner was a confirmed clerk-cum cashier of the Bank and after being successful in the written test and facing an Interview Committee he was found suitable for promotion to the Officers'' Junior Management Grade Scale I on 22-9-1981. Further, as stands admitted even in the return, on completion of one year''s probation which was a condition prescribed in the order of promotion, the petitioner was confirmed on the promoted post. It can, therefore, safely be presumed that till after expiry of one year from 22-9-1981 the work and conduct of the petitioner was found to be satisfactory and there was nothing till that date on the basis of which it could be said that it was desirable in the interest of Bank to compulsorily retire the petitioner The impugned order was passed on 8-6-1985. Nothing has been stated in the return as to what transpired in between on the basis of which the Executive Committee of the Bank was of the opinion that it was desirable in the interest of the Bank to compulsorily retire the petitioner. In Hans Raj Vs. State of Punjab and Others, , the appellant Hansraj had been compulsorily retired on completion of 25 years of service under the Punjab Civil Services (Premature Retirement) Rules, 1975. It was held quashing the order of compulsory retirement that: -

If the power was exercised in public interest one would have expected some whisper about it in the impugned order.

11. In view of the aforesaid discussion, it is apperent that the respondent has failed to establish that the impugned order was passed in the interest of the Bank.

12. In the result, this writ petition succeeds and is allowed and the impugned order dated 8-6-1985 communicated to the petitioner by telegram (Annexure P-7) is quashed. Necessary declaration must follow that the petitioner continues in service uninterruptedly and is entitled to all the benefits to which he would have been entitled had he continued in service. The petitioner shall be entitled to costs, including counsel''s fee of Rs. 250/-, if certified. The outstanding amount of security, if any, be refunded to the petitioner.

