
(1994) 11 SC CK 0024
In the Supreme Court Of India
Case No : Civil Appeal No. Of 1994

Suryakant Govind Oke

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 10-11-1994

Acts Referred:

Citation : (1995) 71 FLR 771 : (1995) 2 SCC 420 Supp

Hon'ble Judges : M. K. Mukherjee, J; A. S. Anand, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.S. Anand and M.K. Mukherjee. JJ,

1. Leave granted.

2. The appellant has called in question an order of the Maharashtra Administrative Tribunal. Bombay dated 24-12-1992. Brief facts need a notice.

3. The appellant joined the service of Zilla Parishad at Thane and was promoted as Class II Gazetted Officer in 1966. He was promoted as Class 1 Gazetted Officer in April 1980 and was promoted as Deputy Director, Agriculture in 1982. The appellant was promoted and posted as Joint Director Agriculture in June 1984 and in August 1987 he was served with a notice of compulsory retirement. The date of birth of the appellant is 9-9-1932. Under the rules, the appellant was to retire on attaining the age of 58 years in 1990. The appellant put in issue the notice of compulsory retirement through Writ Petition No. 5133 of 1987 in the High Court of Bombay which was transferred for its disposal in accordance with law to the Maharashtra Administrative Tribunal and was dismissed by the Tribunal.

4. Before the Tribunal, the appellant had raised two arguments. The first was that proper procedure for compulsory retirement of the appellant had not been followed and the second was that there was no sufficient material available with the respondent to infer that the appellant had outlived his utility and that it was

to public interest to compulsorily retire him. The Tribunal after reference to a number of judgments rendered by this Court held that there had been no violation of the procedure and negatived the first argument. While rejecting the second argument the Tribunal found that the reviewing authority had taken into consideration the confidential record of the appellant from 1981-86 and since it revealed that the work of the appellant had been rated "less than good" for most of the period, the order of compulsory retirement did not suffer from any infirmity.

5. Learned Counsel for the appellant has not seriously controverted the findings of the Tribunal so far as the rejection of the first argument is concerned. The second argument has, however, been reiterated before us. The case of the appellant is that the respondent could review his case to determine whether he should be compulsorily retired or not before he had crossed the age of 50 and that a second review was permissible at the age of 55 and since no first review had been conducted before the appellant reached the age of 50 years he could not have been directed to be compulsorily retired on the basis of only the second review conducted when the appellant was of 55 years of age. Learned Counsel further urged that the promotion of the appellant in September 1982 would show that his record was satisfactory till then and, therefore, in 1987 he could not have been compulsorily retired, as the record of preceding five years was required to be looked into, before an order of compulsory retirement could be made.

6. Learned Counsel for the respondent on the other hand submitted that in accordance with Rule 10(1) and Rule 10(4)(a)(i) of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as "the Rules" read with Circular No. SRC-1085/1029/43/15 dated 12-5-1986 the case of the appellant was reviewed at the age of 55 and since the service record of the appellant for the preceding five years revealed that he had been rated as "less than good" he was rightly retired compulsorily. Learned Counsel then submitted that for the promotion of the appellant in September 1982, the record which had been considered was only up to 1980-81 and since the confidential record from 1981-86 showed that for four years the appellant had been given the rating as "less than good", the respondent was justified in making an order of compulsory retirement.

7. Under Rule 10(1) of the Rules, every Government servant other than a Class IV servant shall retire from service on the afternoon of the last date of the month in which he attains the age of 58 years. Sub-rule (4)(a)(i) of the Rules provides that notwithstanding anything contained in Sub-rule (1) of Rule 10, the appropriate authority, if it is of the opinion that it is in the public interest to do so, may direct compulsory retirement of the Government servant by giving him a notice of not less than three months in writing in Form 30 or in Form 31, as the case may be, or three months' pay and allowances in lieu of such notice, where the Government servant had entered the service before attaining the age of 35

years, after he, attained the age of 50 years. Government Circular No.1085/1029/43/15 dated 12-5-1986 which took into account and superseded the earlier circulars dated 2-9-1977, 1-9-1983 and 30-11-1984 provides in para (a) as follows:

The procedure of review of gazzeted Government servants who have entered Government service before the age of 35 years, at the time of attaining 50 years of age, or completing 30 years of qualifying service, whichever is earlier, to be reviewed only once should be continued. However, present criteria for retaining a gazetted Government servant in service beyond this limit like physical fitness, integrity beyond doubt and a remark which is ft not less than average in confidential report; should be changed to physic fitness, integrity beyond doubt and remarks of not less than good in the confidential reports.

Para 3 of the Circular reads thus:

The cases of Government servants whose review has been taken at the age of 50-55 years should now be reviewed as per the criteria mentioned at (A)(B)(C) above. A copy of Government Circular C.A.D. No. CER 1277/562/13 dated 7-7-1977 for indicating classification of confidential reports is enclosed herewith.

8. A conjoint reading of the above two paras of the circular show that the cases of Government servants, Class I gazetted, may be reviewed once and the review may take place at the age of "50-55" years. Undoubtedly in this case, review has taken place at the age. of 55 in so far as the appellant is concerned. We are not persuaded to accept the argument that when there was no first review before the employee reached the age of 50 years, there could be no review at the age of 55, to determine whether the employee deserved to be continued in service. The Rules and the Circular do not; prohibit the review at the age of 55. A perusal of the confidential record of the appellant which has been extracted by the Tribunal in its order in para 8, and about the correctness of which there is no dispute, shows that during the period 1981-86 the appellant had been rated, for four years "less than good". Since, the record which had been taken into account for the promotion of the appellant in September 1982 was the one which was available up to 1980-1981, the argument of learned Counsel for the appellant that the record of the appellant till 1982 was 'good' has no basis. In the counter-affidavit to the writ petition filed by the respondent in the High Court of Bombay it was categorically asserted that when the appellant was promoted to the post of Superintending Land Development Officer, Pune, in the higher post in the Maharashtra Agriculture Service, Class I, his confidential record upto 1980-81 only was taken into consideration. The Special Review Committee in 1987 had considered the appellant's confidential record for the period of preceding five years i.e., for the period 1981-86 to determine whether the appellant was required to be compulsorily retired and since the confidential record was not found to be. of the standard prescribed by the Government under the Circular referred to above, it could not be said that the respondent did not have any material available before it to direct compulsory retirement of the appellant. The

opinion of the respondent that the appellant was not fit for continuance in service was based on a proper consideration of the material on the record. The remarks in the confidential record are of direct relevance. For the period 1981-86, the appellant was rated "less than good" for four years. There was, thus, sufficient material available with the authorities to direct compulsory retirement of the appellant.

9. We are, therefore, of the view that the opinion expressed by the Tribunal does not call for any interference. The appeal consequently fails and is dismissed. There shall, however, be no order as to costs.