

(1978) 07 RAJ CK 0005

In the Rajasthan High Court

Case No : Civil Writ Petition No. 371 of 1977

The State of Rajasthan

APPELLANT

Vs

Dr. Ganpat Singh Bhandari and Another

RESPONDENT

Date of Decision : 21-07-1978

Acts Referred:

Constitution of India, 1950 — Article 16, 226, 227, 309, 311

Citation : (1978) RLW 413 : (1978) 11 WLN 674

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

G.M. Lodha, J.—Respondent Ganpatsingh Bhardari who was Vice Principal of the M.L.V. Government College, Bhilwara was retired under Rule 244(2) of the Rajasthan Service Rules, hereinafter called as "the Rules", by the State Government by order dated 13/14th November, 1975 on his attaining the age of fifty years. The respondent challenged this order by an appeal before the Rajasthan Civil Services Tribunal, Jaipur, hereinafter called as "the Tribunal" under the Rajasthan Civil Services (Service Matters Appellate Tribunal) Act, 1976, hereinafter called as "the Act" by memorandum dated 26-8 76 (Annexure B). The petitioner took preliminary objection in its reply Annexure C challenging the Tribunal's jurisdiction to hear an appeal against the order of retirement under Rule 244(2) of the Rules.

2. The Tribunal heard this objection at length because the same objection was raised in number of other cases pending before the Tribunal and which related to the authority and jurisdiction of the Tribunal under the Act to decide the matter relating to retirement under Rule 244(2) of the Rules which is known in common parlance as compulsory retirement. The Tribunal after hearing this case at length over-ruled the objection of the State on 17-2-1977 by a detailed judgment There was a difference of opinion between the members of the Tribunal, Shri S.N. Deedwania and Shri P.K.B. Kurup consisting the majority came to the conclusion

that such an order of compulsory retirement can be challenged as it is a service matter within the definition given in the Act of 1976. The relevant part of their judgment is as under:

We are, therefore, of the opinion that when an order of retirement against a Government servant is made under Rule 244(2) of the RSR some of the grounds on which the aggrieved Civil Servant can challenge such an order are as follows:

1. That the requisite opinion has not been formed that the efficiency of the civil servant or the Government servant is impaired.
- 2 That the decision is based on collateral grounds
3. That it is arbitrary or malafide decision.
4. That the order is not made by the prescribed authority
5. That the Government servant or the civil servant has neither completed the qualifying service of 20 years nor has attained the age of 50 years.

The above grounds have been mentioned only by way of illustration and are by no means exhaustive. An order under Rule 244(2); in our opinion can be challenged before the Tribunal when it has not been made in accordance with the conditions mentioned in the rule, and the procedure laid down by the Government. Such an order would definitely deny or vary the service constitution to the disadvantage of a Government Servant otherwise) than as a penalty.

3. Shri K.D. Bhargava, the third member of the Tribunal gave a decision of dissent and accepted the objection of the State by holding that the Tribunal has no jurisdiction to entertain an appeal against the order issued under Rule 244(2) of the Rules. The operative portion of the judgment of third Member Shri Bhargava is as under:

What I have mentioned above is in relation to the interpretation of Sub-clause (v) of Section 2(f) of the Act. I am of the opinion that under that sub-clause, the Tribunal has no jurisdiction to entertain an appeal against the order issued under 244(2) of R.S.R.

4. Since the majority was of the opinion that the Tribunal can entertain appeal against an order under Rule 244(2) of the Rules the preliminary objection was over-ruled. The operative part of the impugned judgment is as under:

As per the decision of the majority of members present and hearing the matter the decision of the Tribunal is that the preliminary objection taken by the respondent, that the Tribunal has no jurisdiction to hear the appeal against the order passed under Rule 244(2) of the R.S.R is over ruled.

5. The State of Rajasthan being seriously aggrieved by the rejection of its preliminary objection and entertainment of the appeal against the order of compulsory retirement of the respondent No. 1 has submitted this, writ petition.

6. The contention raised in the memorandum of writ application as such, are as follows:

(a) An order retiring the Government servant under Rule 244(2) of Rajasthan Service Rules is an exercise of absolute right of the State to retire the Government Servant on his completion of his qualifying service on attaining the age of 50 years. There is no right of Government Servant to hold an office alter compliant of the aforesaid period. Consequently, no question of variance or denial of any service condition to the disadvantage of Government Servant by an order is involved in it.

(b) An order of compulsory retirement cannot be said to be a variance of any service condition and consequently, it is not covered by Section 2(f) of the Act as it would, not involve any loss of benefit already earned.

(c) The Tribunal committed a clear error in not appreciating that the legislature deliberately not used the term "compulsory retirement" in the Act.

(d) The Tribunal did not appreciate and committed an error in rejecting the argument that the definition of "service matter" as used in the Act, is restrictive as it uses Service matter" "means" and "not means and includes" The expression "means" used by defining the "service matter" is clear indication of the legislative intent that the definition has to be strictly restricted to the words which have been used in the Section and to give a wider import to the definition by extending the meaning of these words and the words "other service conditions" used in Section 2(f)(v) would be doing violence to the language itself.

(e) That the words "other service conditions" as used in Section 3(f)(v) should have been interpreted by the rule of "ejusdem generis."

7. The ordinary meaning of the expression" "other service conditions" in the context in which it has been used would not include the matter relating to (he compulsory retirement.

8. However when the writ petition was argued before this Court the grounds which were taken in the writ application and which have been reproduced above, were not adhered to. Mr. Rastogi, the learned Advocate General concentrated his arguments on two points only His first contention was that the expression "other service conditions" as used in 2(f)(v) is to be interpreted by the rule of "jusedem generis" and as the words used before the phrase "any other service condition are "pay allowance and pension", any other service conditions "which can be included in Clause (j) should relate to pay allowance & pension or analogous matters only and not to compulsory retirement. This argument of Mr. Rastogi is similar to the one raised before the Trivial In P Radha Krishna naidu and Ors. v. Government of Andhra Pradesh and Ors. 1977 (1) SLR 258, the Hon"ble Supreme Court has observed as follows:

The Andhra Pradesh Administrative Tribunal Order, 1975 confers power on the Tribunal to exercise jurisdiction with respect to appointment allotment or

promotion and other conditions of service of such persons. It is open to a person who complains about an order of compulsory retirement to approach the Tribunal in a given case.

9. Mr Rastogi tried to distinguish the above observations of the Supreme Court by saving that the argument of "ejusdem generis" was not made & considered by the Supreme Court because before the Supreme Court, the Andhra Pradesh law was under consideration where the word used were with respect to a phrase which is missing in the Rajasthan law. The second branch of argument of Mr. Rastogi distinguishing it is that the term appointment used in the Andhra Pradesh law includes the service conditions of compulsory retirement also. It is contended that appointment is a comprehensive term and all service conditions commencing from the stage of appointment and ending; till the stage of termination are included in it. I enquired from Mr. Rastogi if it was so, why the legislature used the phrase "allotment, promotion" after "appointment". The learned Advocate General answered my query by saying that it was as a matter of abundant caution only otherwise the term "appointment" included the service conditions regarding allotment and promotion also I am not inclined to accept this submission for the simple reason that it is well established principle of interpretation of statutes that the legislature never uses a superfluous word, Every word is required to give appropriate meaning. If the term "appointment" was so comprehensive as Mr. Rastogi wants this Court to interpret the Andhra Pradesh legislature would not have used the words allotment or, promotion after the phrase "appointment," and before "other conditions of service" I am of the view that the term "appointment relates to the stage of appointment only and cannot be pressed to the stage of termination as the two stages have got different connotation, implications and meaning.

10. The first term "appointment" means and is used for the purpose of the commencement of the Service of an, employee and termination or retirement means the end of the career. Between commencement and the end, there is a long distance to be travelled by various service conditions in which the employee is sometimes promoted, the seniority is fixed, conditions of leave and pension are regulated so forth and so on. Alphabet A of the English script can never mean inclusion of all alphabets upto "Z" also. The interpretation sought to be given by the learned Advocate General would result in saying that the term "appointment" is so comprehensive, omnibus, omnipotent and omnipresent that it would cover all service conditions. Every phrase and every stage of the service conditions will have to be taken note of separately and the several different and divergent rules or plethora of rules and service conditions cannot be imbibed in one phrase. The other branch of argument advanced by the learned Advocate General is that the principle of "ejusdem generis" should be applied in order to interpret the words "other service" conditions" & in the Rajasthan law since Section 2(f) sub Clause (v) mentions "an order denying or varying pay, allowance or pension and other service conditions", the other service conditions should relate to pay, allowance and pension only and not to compulsory

retirement. The principal "ejusdem generis" cannot be applied here while interpreting Section 2(f)(v) and "other service conditions" used in this sub para would mean all the service conditions mentioned in the Rajasthan Service Rules or other laws on the subject of service.

11. During the course of argument, it was put to Mr. Rastogi, the learned Advocate General as to whether he would term the retirement of a Government employee who has not attained the age of 55 years and who has completed only 22 years qualifying service as a denial of service condition or not. Mr. Rastogi was fair enough to concede that if instead of retiring a person under Rule 244(2) on completion of 25 years service he is retired at 22 years completion of service it would be certainly a denial of service condition. Then again the question is incase Rule 244(2) requires that a Government employee can be removed from service by way of compulsory retirement even after qualifying 25 years service only if his efficiency is impaired : where in a case it is found that there is no finding of impairing efficiency or such a finding is based on no evidence, can it be said that Rule 244(2) which is certainly a service condition, has not been denied? It is a different matter where on the facts and circumstances of the case, the Tribunal holds that the conditions mentioned in Rule 244(2) have been correctly complied with then of course it would be only enforcement of service condition, if the employee has been retired compulsorily. But in a case of reverse type, namely where the Tribunal on the basis of the consideration of case finds that an employee has been retired even though the two conditions mentioned in Rule 244(2), namely the completion of the 25 years qualifying service and the condition mentioned in the note below Rule 214, which is also a part of rule as per judgment of the Supreme Court in Tara Singh and Others Vs. State of Rajasthan and Others, are not complied with or are not fulfilled. If the Tribunal comes to the conclusion that an employee has been retired compulsorily under Rule 24(2) without completion of qualifying age of 25 years or/and without his efficiency having been impaired as required by the note, the Tribunal can certainly say that there has been denial of service condition contained in Rule 244(2) of the Rajasthan Service Rules.

12. I am, therefore, of the opinion that any wrong application of Rule 244(2) either on facts of a particular case or by misinterpretation of the rule or by misunderstanding or by mistake of law would be denial of a service condition within the meaning of Sub-clause (v) of Section 2(f) of the Rajasthan Civil Services (Service Matters Appellate Tribunal) Act, 1976 and, therefore, would come within the definition of service matters as provided in Section 2(i)(v) against which an appeal lies to the Service Tribunal. In view of my above finding, the impugned judgment of the Tribunal requires no interference and is liable to be upheld.

13. Mr. Rastogi, learned Advocate General invited my attention to the Rajasthan Vidhan Sabha debates by making a reference to the printed reports of the Rajasthan Legislative Assembly at page 163 of 20.1.1976 wherein one of the

Hon"ble members of the Assembly moved an amendment for inclusion of compulsory retirement in Clause 2(f). The concerned Minister Shri Gulab Singh Shaktawat, opposed this amendment for inclusion of compulsory retirement on the ground that an employee can always appeal to the senior office is and there is no necessity of including it in the Service Tribunal Act. Mr. Rastogi pointed out that the Rajasthan Legislative Assembly by a voice vote rejected this amendment of Shri Ramanand Agrawal the then ML A. in the Rajasthan Legislative Assembly and, therefore, it can be taken as the legislative intention to exclude the compulsory retirement from the definition of service matters. Mr. Rastogi also pointed out from the Select Committee Report wherein dissenting opinion was given by a legislator pointing out that it was unfortunate that compulsory retirement was not included in the bill.

14. Above references, according to me, have got no bearing for interpreting phrase "other service matters" contained in Clause 2(f)(v) Legislative intention can be guide only when there is some ambiguity or two interpretations possible in a given case. It may be that the legislators who gave dissenting note or who moved an amendment Were having some sort of over enthusiasm or zeal for getting compulsory retirement included in the relevant section of service matters. It may also be possible that they might not have at that stage of the bill, gone into the delicacy of understanding the meaning of the phrase "other service conditions" which the Court has interpreted now. The possibility that a particular provision of bill might have been misunderstood or not correctly understood by the legislator, cannot also be ruled out. The views of an individual legislator cannot be taken note of by this Court. The fact that a dissenting note was given by a legislator is of no relevance what-so-ever while interpreting the phrase "other service conditions" on a judicial review of the Act. The fact that the Legislative Assembly rejected the amendment of Shri Ramanand Agrawal for an express inclusion of the term of compulsory retirement under service matters, also is of no consequence in interpreting the phrase "service conditions" because I have already pointed out that the amendment might have been moved on a close scrutiny of above.

15. On a close scrutiny of the above submission of the learned Advocate General in relation to the proceedings of Legislative Assembly or the Select Committee, I am of the view that they cannot take his case any further. The case of the State will have to swim or sink, stand or fall, solely on the basis of the interpretation of the phrase "other conditions of service" as used in the definition of "service matters" under the Act and, therefore, no help can be taken to exclude the consideration of compulsory retirement cases from the definition of other service conditions by resorting to the Legislative Assembly proceedings.

16. The Tribunal has given detailed reasons for holding that the cases of compulsory retirement covered by Rule 244(2) of the Rajasthan Service Rules, are included in the definition of service matter as the term service conditions mentioned in Section 2(f)(v) include them. I have already held above that I am

in complete agreement with the view taken by the Service Tribunal. Not only that, I am also of the view that the Service Tribunal was not correct in circumscribing the scope of the appeal by giving certain illustrations which it has done at page 14-15 of the judgment. To me it appears that the right of appeal is unrestricted, unfettered and limited only to the extent as to whether the conditions mentioned in Rule 244(2) inclusive of the note are fulfilled in a particular case or not. Although the employee has not come in a writ application as he could not have filed the same because the order was in its favour, I would like to clarify that the illustrations given by the Tribunal for showing the limits, of cases where the Tribunal can interfere in appeal, should be treated only as illustrative and not exhaustive. The Tribunal has itself observed that the illustrations are not exhaustive.

17. The learned Advocate General then argued that the service condition would not include the compulsory retirement because if compulsory retirement is done on any extraneous condition or on account of malice of fact or law it would be hit by Article 311(2) and would be treated as penalty. His submission was that since the cases of penalty are excluded from the purview of the Service Tribunal, the cases of compulsory retirement also would be excluded if the two conditions mentioned in Rule 244 are not fulfilled and compulsory retirement is made on the ground of malice. I repeatedly enquired from Mr. Advocate General whether he can substantiate this argument with any authority, but no such authority was available. I can understand an order of any Tribunal or authority being quashed by the High Court on the ground of malice but there is a vast distance to be travelled between an adjudication of malice and jumping to the conclusion that it would lead to a penalty or penal consequences as contemplated by *Parshotam Lal Dhingra Vs. Union of India (UOI)*. The difference I have pointed out above cannot be ignored, as an act may be malicious will be liable to be struck down, nonetheless it need not be treated as penalty. In *Dhingra's* case and other 4 cases decided thereafter on that branch of law, the Supreme Court has repeatedly said that if earned benefits are taken away it would certainly result in penal consequences warranting the invoking Article 311 of the Constitution. However, according to me that has got no bearing so far as the question of decision on the point whether compulsory retirement is covered by the definition of "other service conditions" under the present Act, is concerned. I am therefore, of the opinion that this submission of the learned Advocate General also cannot be sustained.

18. It may be pointed out here that the analogous provision regarding the service matters which are to be considered by the Service Tribunals of the various States usually cover the cases of compulsory retirement. Section 4 of the Uttar Pradesh Public Services (Tribunals) Act, 1976 read with Section 5(a) of it covers a case of compulsory retirement as Section 5-B expressly says that any interim order cannot be granted in case of compulsory retirement. This means that the Tribunal can adjudicate upon the validity or correctness or propriety of the order of compulsory retirement but is restrained by the legislature from

granting interim order only. Section 4, 5A and 5B are reproduced below for ready reference:

4. If any person who is or has been a public servant, claims that in any matter relating to employment as such public servant this employer or any officer or authority subordinate to the employer has dealt with him in a manner Which is not in conformity with any contract, or-

(a) in the case of a Government Servant, With the provisions of Article 16 or Article 311 of the Constitution or with any rules or law having force under Article 309 or Article 313 of the Constitution;

(b) in the case of a servant of a local authority or a statutory Corporation; with Article 16 of the Constitution or with any rules or regulations having force under any Act of Legislature constituting such authority or Corporation;

he shall refer such claim to the Tribunal & the decision of the Tribunal there on shall, subject to the provisions of Articles/226 and 227 of the Constitution, be final.

Provided that no reference shall ordinarily be entertained by the Tribunal until, the claimant has exhausted this, departmental remedies under the rules applicable to him.

5A No interim order (whether by way of injunction or stay or in any other manner) shall be passed by the Tribunal on or in any proceedings relating to any reference unless-

(a) copies of such reference and application for interim order, along with all documents in support of the plea for such interim order are furnished to the party against whom such petition is filed, and

(b) at least fourteen days time is given to such party to file a reply and opportunity is given to it to be heard in the matter:

Provided that the Tribunal may dispense with the requirements of (a) and (b) and may, for reasons to be recorded, make an interim order, as an exceptional measure, if it is not vacated earlier, cease to have effect on the expiry of, the period of 14 days from the date OP which it is made unless the said requirements have been complied with before the expiry of the said period and the Tribunal has continued the operation of that order.

5B Notwithstanding anything in the foregoing sub-sections, the Tribunal shall have no power to make an interim order (whether by way of injunction or stay or in any other manner) in respect of an order made or purporting to be made by an employer for the suspension, dismissal, removal, reduction in rank, termination, compulsory retirement or reversion of a public servant, and every interim order (whether by way of injunction or stay or in any other manner), in respect of such matters Which was made by a Tribunal before the date of commencement of this sub-section and which is in force on that day, shall stand

vacated.

19. Similar analogous provisions contained in the Andhra Pradesh Administrative Tribunals have been taken note of by the Supreme Court in the case referred to above and it has been held by the Supreme Court that the Andhra Pradesh law covets the cases of compulsory retirement so far as jurisdiction of Service Tribunals is concerned, It may be pointed out that in the Andhra Pradesh Act express exclusion has been made in the cases; of matters involving dismissal, removal or reduction in rank of a person who is a member of civil services of the State but there is no exclusion so far as compulsory retirement cases are concerned Section 6(1) and (3) of the Andhra Pradesh Act is reproduced below for ready reference:

6. Jurisdiction, powers and authority of the Tribunal : (1) Save as other Wise expressly provided in this Order, the Tribunal shall exercise all the jurisdiction, powers and authority which, immediately before the commencement of this Order were exercisable by all courts (except the Supreme Court) with respect to appointment, allotment, or promotion to any public post, seniority of persons appointed, allotted or promoted to such post and all other conditions of service of such persons.

(3) Notwithstanding anything contained in subparagraph, the Tribunal shall have no jurisdiction with respect to any muter involving the dismissal, removal or reduction in rank of a person who is a member of a civil service of the State or who holds a civil post under the State, if the provisions of Clause (a) or Clause (b) or Clause (c) of the proviso to Clause (2) of Article 311 of the Constitution apply to, or in relation to, such dismissal, removal or reduction in rank.

20. It would not be out of place to point out that in our Act also if the legislature wanted to take out of the jurisdiction of the Service Tribunal, the cases of compulsory retirement, it could have none so by an express clause but the same has not been done. The principle of law is also well settled that what has not been expressly excluded, cannot be excluded by resort to the principle of interpretation and that, too, by implication.

21. I am, therefore, of the view that the judgment of the Tribunal holding that the cases of compulsory retirement of the Government servants are included in the phrase service condition" referred to in Section 3(f)(v) of the Rajasthan Civil Services (Service Matters Appellate Tribunals) Act, 1976, is correct and requires no interference.

22. The writ application of the State is, therefore, dismissed with costs.

23. As a consequence of rejection of the writ application, I also order that the stay order dated 3-11-1977 granted by this Court staying further proceedings before the Rajasthan Civil Services Appellate Tribunal, Jaipur and all consequential orders in pursuance of it are hereby vacated. The Tribunal would now proceed with the appeal on merits expeditiously.