
(1978) 05 AHC CK 0075
In the Allahabad High Court
Case No : Second Appeal No. 2929 of 1968

Union of India

APPELLANT

Vs

Durga Prasad

RESPONDENT

Date of Decision : 23-05-1978

Acts Referred:

Fundamental Rules, 1963 — Rule 56(b)(2), 56(b)(J)

Citation : (1978) 05 AHC CK 0075

Hon'ble Judges : Deoki Nandan, J

Final Decision : Allowed

Judgement

Deoki Nandan, J.

This is a defendant's second appeal in a suit for declaration that the order for retiring the plaintiff from service is illegal, and for a decree for recovery of Rs. 7000/ as arrears of pay and recovery of pendentelite and future pay at Rs. 220.00 p. m. with annual increments. It was also claimed in the suit that the order dated 1851963 reducing the plaintiff by three stages may be declared to be illegal. The trial court dismissed the suit, but the lower appellate court had decreed it on the finding that a ministerial employee who has not attained the age of 60 years could not be prematurely retired under Fundamental Rule 56 without serving upon him a notice of not less than 3 months.

It appears that the learned District Judge fell into an error because Fundamental Rule 56 which was in force on the date on which the plaintiff attained the age of superannuation, was not brought to his notice, and, instead the Rule as it stood after substitution by a notification dated 21st July, 1965 was placed before him.

The relevant facts may now be stated. The plaintiff was an employee of the Post Office, having joined as a class IV servant on 121927 and having been promoted to Class III as a clerk in the year 1947. It has concurrently been found by the two courts below that the plaintiff's date of birth was 9th June, 1906 and not 1909, as wrongly claimed by him. According to the Fundamental Rule 56 (b)(i)

as it stood on 9th June, 1961 when the plaintiff attained the age of 55 years.

"A ministerial servant who is not governed by subclause (ii) may be required to retire at the age of 55 years, but should ordinarily be retired after that age except in very special circumstances, which must be recorded in writing and with the sanction of the Local Government."

Subclause (ii) did not apply to the plaintiff's case because he was a ministerial servant who had entered Government service before 1st April, 1938. In the Fundamental Rule 56 as it stood at that time, there was no requirement of giving 3 months notice in case a Government servant wanted to retire, or the Government wanted to retire him, on his attaining the age of 55 years or completing 30 years of service. Clause (j) of the Fundamental Rule 56 relied upon by the learned District Judge, was introduced into the rule on its substitution by the notification dated 21st July, 1965. The plaintiff had attained the age of 55 years on 9th June, 1961. In exercise of its powers under Fundamental Rule 56 as it stood at that time, the Government decided not to retire the plaintiff at that stage but to continue him in service, by an order dated 10th June, 1961, for a period of 6 months thereafter, and again, by a 2nd order dated 10th December, 1961, for a further period of 6 months. The plaintiff was thereafter ordered to retire with effect from 10th June, 1963. Now, according to the plaintiff's date of birth, he could have been retired on the 10th June, 1961, or on the 10th June, 1963, after he had attained the age of 55 years. It was open to the Government to retain him in service if he continued to be efficient upto the age of 60 years. The rule did not require the Government to serve any notice on the plaintiff, for refusing to extend his services beyond the 9th June, 1968 and asking him to retire with effect from 10th June, 1963.

In the result the appeal succeeds and is allowed. The judgment and decree of the court of the District Judge. Meerut, in Civil Appeal No. 7 of 1968 are set aside and the decree of the trial court, dismissing the plaintiff's suit is restored with costs throughout.