
(2000) 10 P&H CK 0122

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1904 of 1983

Union of India

APPELLANT

Vs

Kishan Singh

RESPONDENT

Date of Decision : 13-10-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 14
Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 123

Citation : (2000) 10 P&H CK 0122

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Judgement

M.L. Singhal, J.—Kishan Singh was appointed in the Civilian Road Construction Force in the Central Reserve Engineering Force and attached with defence services. He was governed by the Central Civil Services (Classification, Control and Appeal) Rules, 1965. His service were terminated vide order dated 30.7.1980 which was served on 5.8.1980 and he was informed that his services would stand terminated with effect from 1.9.1980 forenoon as a measure of compulsory retirement under Rule 56(i)(ii) of the Fundamental Rules.

2. He challenged the order of compulsory retirement passed against him by Shri J.M. Rai, Brigadier Chief Engineer Project Beacon c/p 56 APO dated 30.7.1980 (ibid) saying that the same is illegal, null and void, in effective, against the principles of natural justice, in violation of service rules, mala fide, without jurisdiction and unwarranted with consequential relief that he is entitled to all benefits of service as if he had never been compulsorily retired.

3. Union of India contested the suit of the plaintiff. On the pleadings of the parties, the following issues were framed :-

1. Whether the civil Court has got no jurisdiction to entertain and try this suit ?
OPD

2. Whether the impugned order is illegal and null and void as alleged in the plaintiff ? OPP

3. Relief.

Sub-Judge First Class, Gurdaspur, vide order dated 8.4.1982, decreed the plaintiffs suit in view of his finding that there was no application of mind by the disciplinary authority while ordering his compulsory retirement and in retiring him compulsorily from service, no public interest was involved.

4. Not satisfied with the judgment and decree of Sub-Judge First Class, Gurdaspur dated 8.4.1982, Union of India went in appeal which was dismissed by learned District Judge, Gurdaspur vide order dated 16.5.1983. Still not satisfied, the Union of India has come up in further appeal to this Court.

5. I have heard the learned counsel for the parties and have gone through the record.

6. In my opinion, the view taken by the learned Courts below does not call for any interference. Respondent was compulsorily retired from the service of Union of India in terms of rule 56(i)(ii) of the Fundamental Rules, In terms of this rule, he could be compulsorily retired from the service of the Union of India only in public interest. Union of India failed to furnish material before the Court so that Court could form an opinion whether the plaintiff had been retired in public interest. If the material which weighed with the Union of India while retiring him compulsorily from service was not produced before the Court for enabling it to form an opinion whether public interest was involved, the order retiring him compulsorily from service cannot be allowed to stand. In this case, the plaintiff had made application to the Court dated 10.3.1981 under Order II Rule 14 CPC calling upon the Union of India to produce his ACR record. Union of India filed reply to that application stating that service records and personal files were not maintained. As regards the proceedings of the review committee regarding compulsory retirement, it was replied that those were privileged and unpublished documents, the disclosure whereof would not be in public interest and further the correctness of the opinion of the review committee and its legality and validity could not be challenged in a Court of law. Relevant material was kept back from the Court, It was held in Registrar, High Court of M.P., Jabalpur v. Rajabai Gorkar (km.) and another, 1995(5) SLR 158 by the Hon'ble Supreme Court that where it was not discernible from the order of compulsory retirement that it had been passed in public interest, the order of compulsory retirement cannot be sustained and is bad in law. In 1995(5) SLR 158 (supra), Kumari Rajabai Gorkar, a Ministerial Officer in the High Court was compulsorily retired in exercise of powers conferred by Rule 42(1) of the M.P. Civil Services (Pension) Rules, 1976. That sub-rule entitles the appointing authority to compulsorily retire a government servant in public interest, if he or she has completed 25 years of qualifying service. The order by which she was compulsorily retired did not on the face of it say that the action was taken in public interest. However, in the suit

instituted by the respondent- employee, a written statement was entered wherein it was pleaded that the action was taken in public interest. No details or particulars in regard to the nature of public interest were mentioned in the written statement in support of the plea that the action was taken in public interest, nor did the appellant or the respondent-State adduce evidence in that behalf. Respondent- employee's suit was dismissed. Her appeal was also dismissed. Against the dismissal, second appeal was filed in the High Court. Learned Single Judge of the High Court, who heard the second appeal, came to the conclusion that the defence of the action being in public interest was not established by evidence as was required to support the action. High Court allowed the second appeal, Registrar, High Court of M.P. went in further appeal to the Hon''ble Supreme Court. In the appeal, the Hon''ble Supreme Court held that order of compulsory retirement cannot be struck down merely because while drafting the order, it was not stated that action was initiated in public interest if it could be shown to the Court that action was taken in public interest. It was thus held by the Hon''ble Supreme Court that compulsory retirement can be ordered in public interest and material has to be placed before the Court so that the Court could satisfy itself whether any compulsory retirement in public interest was or was not involved. In *Dattaram Sadashiv Rane v. The State of Maharashtra*, 1973(2) SLR 449, the Hon''ble Division Bench of the Bombay High Court held that it is the duty of the State to satisfy the Court that it formed an opinion that it was not in public interest to continue the petitioner in service on the basis of some material which could be considered to be relevant material. When an order of compulsory retirement is challenged in a writ petition under Article 226 of the Constitution of India, privilege of non-disclosure of material cannot be claimed by the State u/s 123 of the Evidence Act without even placing before the Court sufficient material to uphold the plea of their privilege. When the State was called upon to meet the ground that there was no material for a decision of compulsory retirement, it is incumbent on the State to produce whatever material is relevant and if there is anything in respect of which privilege has to be claimed to indicate why the privilege is claimed and to state further that the Head of the Department or the Minister concerned had applied his mind carefully to the documents and had come to the conclusion that the documents should not be disclosed in the public interest. In the absence of such affidavit and such particulars, an inference can be drawn that the State has not produced any material because there is no material which can be the basis of the decision of the Government.

7. In *Baldev Raj Chadha Vs. Union of India (UOI) and Others*, , the Hon''ble Supreme Court held that "when an order is challenged and its validity depends on its being supported by public interest the State must disclose the material so that the Court may be satisfied that the order is not bad for want of any material whatever which, to a reasonable man reasonably instructed in the law, is sufficient to sustain the grounds of public interest justifying forced retirement of the public servant."

8. In *Union of India v. K.R. Tahiliani and another*, 1980(1) SLR 847, it was held by the Hon "ble Supreme Court that rule 56(j) of Fundamental Rules vests an absolute right in the appropriate authority to retire a government servant in public interest, yet absolutism and arbitrariness are contrary to the scheme of the rules. Hon"ble Supreme Court emphasised the fact that even while exercising power under Rule 56(j), the State will take care not to act arbitrarily, misguided by the absolute expression in the rule.

9. It was held in *Sukhdeo v. The Commissioner, Amravati Division and another*, 1996(3) RSJ 199 : 1996(3) SCT 613 (SC) by the Hon"ble Supreme Court that government must scrutinize the entire record of service particularly for the last period of service before retiring one compulsorily from service. It was held in *Brij Mohan Singh Chopra Vs. State of Punjab*, that the purpose and object of retiring one compulsorily is to weed out the inefficient, corrupt, dishonest or dead-wood from the government service. This right of the Govt. is well established which is generally exercised in accordance with relevant service rules. The scope and ambit of exercise of this absolute power depends on the provisions of Rules and it is always subject to Constitutional limitations. From the view taken in this pronouncement, it quite clearly emerges that the order of compulsory retirement can be passed in public interest. In this case, it is not discernible from the impugned order that it had been passed in public interest so that the Court could see for itself and form an opinion whether the impugned order had been passed in public interest. The Court sent for the ACR record of the respondent-plaintiff. One Shri Balwinder Singh, UDC, GREF, Western Front came present before this Court on 10.10.2000 and stated that he could not bring ACR record of the respondent for production before the Court as the record had since been destroyed. He stated that ACR record was retained for 15 years. It has come in the statement of DW1 in cross- examination that four reports of the plaintiff were considered by the screening committee and he was unfit in three such reports. Context in which the word "unfit" was used, could have been well understood if the ACR record had been produced before the Court for enabling it to form an opinion whether public interest was involved in retiring him compulsorily from service. Unfit could be unfit for promotion or for retention in service. If he was recorded as unfit in 3 reports, why was he not retired compulsorily from service after the receipt of the first ACR in which he had been declared unfit. Impugned order is sketchy and totally silent as to the shortcomings, want of integrity, misconduct, misdemeanour or other essential qualities in him which led the disciplinary authority to conclude that his retention in service beyond 55 years of age was not in public interest. The propriety of the opinion of the disciplinary authority could be judged only by referring to his service record.

For the reasons given above, I am of the opinion that this regular second appeal is totally bereft of merit. It is accordingly dismissed. Plaintiff- respondent shall have interest @ 12% per annum payable with effect from the date when he was compulsorily retired till payment is made to him.

10. Appeal dismissed.