
(2004) 01 BOM CK 0078
In the Bombay High Court
Case No : C.A.J. P.I.L. No. 115 of 2003

Vasantrao Vishnu Mangore

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 14-01-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 ALLMR 674 : (2004) 3 BomCR 554 : (2004) 3 LLJ 67

Hon'ble Judges : C.K. Thakker, C.J.; S.A. Bobde, J

Bench : Division Bench

Advocate : V.P. Patil, for the Appellant; J.S. Pawar, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

C.K. Thakker, C.J.—In this petition, a policy decision of the State of Maharashtra vide Government Resolution dated February 2, 1999 is challenged. By the said policy decision, the Government has decided that the Government employees whose age of superannuation was enhanced from 58 to 60 years would retire at the age of 58 instead of 60 years.

2. The grievance of the Petitioner is that such a decision is arbitrary, irrational and violative of Articles 14 and 19 of the Constitution of India. It was also contended that no reasons have been given by the Respondent State as to why the age of superannuation was required to be reduced from 60 to 58 years. It was stated that earlier, the age of superannuation was fixed as 60 years on the basis of the recommendation of V Pay Commission and though the said question was not referred to any subsequent Pay Commission, the action has been taken which is improper and illegal. Employees and citizens were never informed as to what weighed with the State Government; for reducing the age of superannuation from 60 to 58 years. The action, therefore, requires to be interfered with. Moreover, every citizen of the country and a resident of the State, like the Petitioner, has right to know the reasons for taking such decision by the State Government and the State of Maharashtra may be directed to file an

affidavit so that the Court may be able to appreciate the grounds for coming to the conclusion whether the action is arbitrary, irrational or unreasonable.

3. In our opinion, the point is finally concluded by a decision of the Supreme Court in *K. Nagaraj and Others Vs. State of Andhra Pradesh and Another*, . Almost an identical situation had arisen in that case. The age of retirement was 58 years for the employees of the State of Andhra Pradesh. It was, however, reduced by an action of the State Government to 55 years. The said action was challenged, inter alia, on the ground that it was violative of Articles 14, 16, 19 and 311 of the Constitution. Dealing with the question and observing that it was a policy decision, their Lordships of the Apex Court observed:

"Barring a few services in a few parts of the world as, for example, the American Supreme Court, the terms and conditions of every public service provide for an age of retirement. Indeed, the proposition that there ought to be an age of retirement in public services is widely accepted as reasonable and rational. The fact that the stipulation as to the age of retirement is a common feature of all of our public services establishes its necessity, no less than its reasonableness. Public interest demands that there ought to be an age of retirement in public services. The point of the peak level of efficiency is bound to differ from individual to individual but the age of retirement cannot obviously differ from individual to individual for that reason. A common scheme of general application governing superannuation has therefore to be evolved in the light of experience regarding performance levels of employees, the need to provide employment opportunities to the younger sections of society and the need to open up promotional opportunities to employees at the lower levels early in their career. Inevitably, the public administrator has to counter balance conflicting claims while determining the age of superannuation. On the one hand, public services cannot be deprived of the benefit of the mature experience of senior employees; on the other hand, a sense of frustration and stagnation cannot be allowed to generate in the minds of the junior members of the services and the younger sections of the society. The balancing of these conflicting claims of the different segments of society involves minute questions of policy which must, as far as possible, be left to the judgment of the executive and the legislature. These claims involve considerations of varying vigour and applicability. Often, the Court has no satisfactory and effective means to decide which alternative, out of the many competing ones, is the best in the circumstances of given case".

4. The Court proceeded to state:

"We do not suggest that every question of policy is outside the scope of judicial review or that, necessarily, there are no manageable standards for reviewing any and every question of policy. Were it so, this Court would have declined to entertain pricing disputes covering as wide a range as case to mustard-oil. If the age of retirement is fixed at an unreasonably low level so as to make it arbitrary and irrational, the Court's interference would be called for, though not for fixing the age of retirement but for mandating a closer consideration of the matter."

5. Our attention was invited by the learned counsel for the Petitioner to observations in paragraph 12 of the reported case. It was also submitted that if the action is unreasonable or irrational even though it may be a policy decision, the judicial scrutiny is not foreclosed.

6. There can be no two opinions about the said proposition of law. True it is that in paragraph 28, the Supreme Court considered the data which was placed before the Court. But it is equally true that the Court observed that it is a policy matter and it is for the State to take appropriate decision. Ordinarily, in exercise of extra-ordinary jurisdiction under Article 226 of the Constitution, therefore, this Court will not interfere in such matters.

7. It was then contended that the change effected was unlawful. The policy of the Government should be consistent and uniform. We are unable to uphold the contention. In *K. Nagaraj (supra)* also, a similar contention was raised and negatived.

8. In this connection, it may be profitable if we refer to another decision of Supreme Court in *Col. A.S. Sangwan Vs. Union of India (UOI) and Others*, . In that case, in pursuance of the policy in vogue in 1964, a select list was prepared and the name of the Petitioner was included. Before he could be appointed to the post in question, however, the policy was changed. He approached the High Court by filing a writ petition under Article 226 of the Constitution, contending that once a policy decision had been taken and made known to the citizens, it would be arbitrary to depart from it overnight by making a fresh selection and without an antecedent reformulation of policy. The High Court found substance in the argument and accordingly the changed policy was held arbitrary and violative of Article 14 of the Constitution and action was set aside. The, Union of India approached the Supreme Court.

9. Allowing the appeal and setting aside the order of the High Court, the Supreme Court observed that a policy once formulated is not good for ever it is perfectly within the competence of the Union of India to change it rechange it, adjust it and readjust it according to the compulsions of circumstances and imperatives of national considerations. A Court cannot give directive as to how the Government should act, except to state that the obligation not to act arbitrarily and to treat all employees equally is binding on the Government because it functions under the Constitution and not over it.

10. In *K. Nagaraj (supra)*, the Apex Court concluded that "while resolving the validity of policy issues like the age of retirement, it is not proper to put the conflicting claims in a sensitive judicial scale and decide the issue by finding out which way the balance tilts. That is an exercise which the administrator and the legislature have to undertake."

11. In *Bennett Coleman and Co. and Others Vs. Union of India (UOI) and Others*, , dealing with the import policy of the newspaper adopted by the Government, the Apex Court said:

"The argument of the petitioners that Government should have accorded greater priority to the import of newsprint to supply the need of all newspaper proprietors to the maximum extent is a matter relating to the policy of import and this Court cannot be propelled into the unchartered ocean of Government policy."

12. For the reasons aforesaid and in the light of the law laid down by the Supreme Court, in our opinion, the petition deserves to be dismissed and is accordingly dismissed.

13. Parties be given ordinary copy of this order duly authenticated as true copy by the Sheristedar of this Court.

14. Issuance of certified copy expedited.