

GOVT. OF TAMIL NADU

v.

P.A. MANICKAM ETC.

FEBRUARY 27, 1996

[S.P. BHARUCHA AND B.L. HANSARIA. JJ.]

Fundamental Rule 56(d) : Explanation II.

Service law—Compulsory retirement—G.O.Ms. No. 761 Public (Services A) Department dated 19.3.1973—Review Committees—Procedure to be followed for scrutiny in matters relating to compulsory retirement—Employees compulsorily retired in public interest—Matter not referred to Review Committee six months before the employee attained the age of 50 years or completed 25 years of service in accordance with Government instructions—Challenge—High Court holding that there was a duty cast on the Head of Department to consider every one of the cases of the employees who were due for review in accordance with instructions—If an officer's name was not sent to the Review Committee his name cannot be sent for consideration for compulsory retirement—Consequently it directed reinstatement of employees with consequential benefits—State appeal—Held view taken by High Court cannot be sustained—Held the rule prescribes a starting point i.e. attaining the age of fifty years or completion of 25 years service—It does not provide a terminu ad quem—Government can consider premature appointment at any time after the starting point—Direction to Head of Department is only to send cases for review and not to carry out and complete the review before prescribed dates.

Union of India & Ors. v. Nasirimiya Ahmadmiya Chauhan, [1994] Supp. 2 SCC 537, referred to.

State of Uttar Pradesh v. Chandra Mohan Nigam & Ors., [1978] 1 SCR 521, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 352 of 1996 Etc. Etc.

From the Judgment and Order dated 6.4.84 of the Madras High Court in W.A. No. 143 of 1981.

A. Mariarputham for the Appellant.

V. Balachandran, V. Ramasubramaniam, Mahabir Singh and V. Balachandran for the Respondents.

The following Order of the Court was delivered :

C.A. Nos. 4159 and 4158 of 1996 (Arising out of *S.L.P. (C) Nos. 3843/86 & 4988/85* :)

Special leave granted.

C.A. No. 4126/85 :

Learned counsel for the appellant states that the respondent in this appeal has died and he has instructions to withdraw this appeal. This appeal is dismissed as withdrawn.

This is a batch of appeals arising from judgment and orders of the High Court of Madras. The principal judgment of the High Court was delivered by a full Bench and that is the subject matter of C.A. No. 352/85. In the other matters the Full Bench judgment was followed.

The respondent in each of these appeals was an employee of the appellant, State of Tamil Nadu. He was compulsorily retired from service in the public interest after he had attained the age of 50 years. He challenged the order of retirement on the ground that the provisions of the rule and the directions of the State Government applicable to compulsory retirement had not been followed. The Full Bench came to the conclusion that the case of the respondent had to be upheld and he was reinstated or treated as reinstated, as the case might be, with consequential benefits.

The rule in question is Fundamental Rule 56(d), which reads thus :

"F.R. 56(d) : Notwithstanding anything contained in this rule, the appropriate authority shall if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice in writing or three months pay and allowances in lieu of such notice, after he has attained the age of fifty years or after he has com-

pleted twenty five years of qualifying service. Any Government servant who has attained the age of fifty years or who has completed twenty-five years of qualifying service may likewise retire from service by giving notice of not less than three months in writing to the appropriate authority."

The State Government, by G.O.Ms. No. 761 Public (Services A) Department dated 19.3.1973, gave directions for the constitution of review committees and the procedure to be followed for scrutiny in matters relating to compulsory retirement. Clause 4 thereof reads thus.

"The Government also direct that cases coming up for retirement during the first half year of any year shall be sent up for review before the 1st July of the previous year. The case of persons who are due for review in the second half of any year shall be sent before the 1st January of the year."

The High Court posed the question : what is the effect of not referring the matter of his compulsory retirement to the review committee six months before the employee attains the age of 50 years or completes 25 years of service. It held that there was a duty cast on the heads of departments to consider every one of the cases of employees who were due for review in accordance with the instructions and, "in such circumstances it shall be presumed that it an officer's name had not been sent up to the review committee, the Heads of Departments and the Government considered that there were no grounds for sending up the proposal to the review committee in respect of that officer We are, therefore, of the opinion that if an officer's name who is due to attain the age of 50 years or has completed 25 years of service had not been sent to the review committee it shall be presumed that there was no ground for sending his name for consideration for compulsory retirement and that it is in those circumstances the competent authority had not referred the matter to the review committee."

The High Court went on to say that "it may even be presumed that there was an assessment in favour of further continuance of the officer and any review subsequent to the attainment of 50 years of age shall be considered to be a second review....."

On a plain reading of the rule and the instructions, the view taken by the High Court cannot be sustained. The rule permits the appropriate authority to retire any Government servant after he has attained the age of 50 years or after he has completed 25 years of qualifying service. The rule prescribes a starting point, which is the attaining of the age of 50 years or the completion of 25 years of service, but it does not prescribe a terminus *ad quem*. It is, therefore, open to the appropriate authority under the rule to consider the case of a Government servant for premature retirement at any time after the aforementioned starting points. The direction contained in the Government Order aforementioned, even assuming that it is mandatory, does not assist the respondents for the only direction is to the heads of departments to send up cases coming up for retirement for review : those coming up for retirement during the first half of any year before 1st July of the previous year and those due for retirement in the second half of any year before 1st January of that year. The direction is not to carry out and complete the review before such dates.

Learned counsel for the respondents drew our attention to Explanation-II of the Fundamental Rule which states that the three months notice may be given before the Government servant attains the age of 50 years provided that the retirement takes place after he has attained that age. The Explanation is only intended to enable the three months' notice to be given before an officer attains the age of 50 years so that he may be compulsorily retired immediately he attains that age. It cannot be read as imposing any condition that can assist the respondents.

Learned counsel for the appellant drew our attention to the judgment of this Court in *Union of India & Ors. v. Nasirniya Ahmadmiya Chauhan*, [1994] Suppl. 2 SCC 537. The case dealt with a rule and Government instructions similar to those aforementioned. This Court held that a Government servant could not say that, though the order of retirement was justified on the basis of the service record, it was liable to be quashed since there was a violation of the Government instructions. The Government instructions were only guidelines laid down by the Government.

Learned counsel for the respondent cited the judgment in *State of Uttar Pradesh v. Chandra Mohan Nigam & Ors.*, [1978] 1 S.C.R. 521. The rule with which the Court was concerned was similar to the provisions of Fundamental Rule 56(d), but the instructions issued by the Government of

India in that case stated :

"Six months before an officer attains the age of 55, his record should be carefully examined by the State Government, or if the officer is serving under the Central Government, by the Central Government, and a provisional judgment formed whether he should be retired on attaining the age of 55 years."

This Court said that the correct position that emerged from the rule read with the procedural instructions was : "Once a review has taken place and no decision to retire on that review has been ordered by the Central Government, the officer gets a lease in the case of 50 years upto the next barrier at 55 and, if he is again cleared at that point, he is free and untrammelled upto 58 which is his usual span of the service career."

It will have been noticed that the Government instructions in Nigam's case were that the record of the officer should be examined before he attained the stated age and it was therefore that this Court held as it did. In the case before us the instructions are not that the service record should be examined but that heads of departments should send up the service record of officers who are about to reach the aforementioned starting points before the stated dates.

In C.A. No. 352/85 this Court, when it granted special leave, noted that the respondent had attained the age of superannuation and it directed that he would be entitled to all the necessary benefits flowing from the impugned order and judgment irrespective of the result of the appeal. That direction must stand.

We are of the view that, in the other appeals, if the respondents have already been paid amounts in excess of what they should have received by reason of this judgment, such excess shall not be recovered.

The appeals are allowed accordingly. The judgments and orders under appeal are set aside and the writ petitions filed by the respondents dismissed. There shall be no order as to costs.

Appeals allowed.