

K. Kandaswamy vs Union Of India & Anr on 1 September, 1995

Equivalent citations: 1996 AIR 277, 1995 SCC (6) 162, AIR 1996 SUPREME COURT 277, 1995 (6) SCC 162, 1995 AIR SCW 4056, 1995 LAB. I. C. 2709, (1995) 2 CURLR 996, (1995) 31 ATC 479, (1996) 1 LAB LN 170, (1996) 1 LAB LJ 979, (1996) 1 APLJ 34, 1995 SCC (L&S) 1361, (1995) 71 FACLR 989, (1995) 4 SCT 567, (1995) 7 JT 80 (SC)

Author: K. Ramaswamy

Bench: K. Ramaswamy, B.L Hansaria

PETITIONER:

K. KANDASWAMY

Vs.

RESPONDENT:

UNION OF INDIA & ANR.

DATE OF JUDGMENT 01/09/1995

BENCH:

RAMASWAMY, K.

BENCH:

RAMASWAMY, K.

HANSARIA B.L. (J)

CITATION:

1996 AIR 277

1995 SCC (6) 162

JT 1995 (7) 80

1995 SCALE (5) 439

ACT:

HEADNOTE:

JUDGMENT:

O R D E R Leave granted.

This appeal by special leave arises from the order dated November 19, 1990 made in O.A. No. 641/88 by the Central Administrative Tribunal, Madras Bench. Undisputed facts are that the

appellant is an I.P.S. direct recruit cadre officer (1966) in the Tamil Nadu Police Service. At the relevant time he was Addl. Inspector General of Police. On the basis of recommendation by the Review Committee on June 12, 1986 for considering his case for promotion, the Government of India had called for a special report and the State Government had submitted its report on June 12, 1987. Therein it was stated that since his posting as Deputy Inspector General of Police, Coimbatore, there were persistent reports of his acquiring large assets and of his getting money from his subordinates. While no specific evidence of receiving money from his subordinates was forthcoming, he himself had come up with a request for permission to acquire a coffee estate in the name of his wife for Rs.25 lakhs on the basis that he would pay Rs.5 lakhs by mortgaging his house and rest of the amount by bank loans. Formal enquiries indicated that the estate would be worth about at least Rs.60 lakhs. As the transaction appeared to be highly suspicious, confidential preliminary enquiries were made by the Directorate of Vigilance and Anti-Corruption into the source for this large amount. It was stated that in the C.Rs. of the period from April 1, 1985 to September 30, 1985, it has been recorded that his work as Managing Director, Tamil Nadu Police Housing Corporation, Madras, was not satisfactory. It has also been recorded that his integrity during this period could not be certified, as he came out with a proposal about purchase of an estate by his wife and son valued at a few lakhs. An officer with not much of patrimony to boast about, the transaction is full of suspicion. Government have been requested to have this further verified through the Vigilance Agency. It was also noted that pending further the reports, the entries on verification of the integrity was awaited.

On consideration of the above report, the Government of India in its proceedings dated August 20, 1987 recorded thus:

"The undersigned is directed to enclose copies of briefs regarding a proposal to retire Shri K. Kandaswamy, I.P.S. (TN:1966) from Indian Police Service under rule 16(3) of AIS (DCRB) Rules, 1958, with the request that it may kindly be placed before the Central Establishment Board/ Appointments Committee of the Cabinet Secretariat for consideration and orders."

Pursuant thereto, decision was taken to compulsorily retire the appellant from service and order was passed to compulsorily retire to appellant from service under the impugned order dated February 9, 1988.

Shri S. Sivasubramaniam, the learned Senior counsel for the appellant, contended that the appellant had all through unblemished record of service. The assets with regard to the poultry business conducted by his wife and son were enquired and found accounted for, there was no further evidence to conclude that the appellant is having any disproportionate assets. When a crime was registered against him, after recommendation for his retention in the service, the order of compulsory retirement is not a bona fide exercise of power. There is no report submitted by the Vigilance or the Anti-Corruption Department regarding the alleged disproportionate assets. His admission was only of having Rs.5 lakhs worth house. Therefore, the view taken by the Government to compulsorily retire the appellant from service is clearly arbitrary and untenable. We find no force in the contention.

It is seen that the Government of India had requested the State Government to send special report on the integrity of the appellant. As stated earlier, the Government had sent the report. The report thus contained specific averment, namely, that the appellant himself had come forward seeking permission to purchase Coffee Estate worth Rs.25 lakhs, which on enquiry was found to be worth Rs.60 lakhs. The authorities also had information of the alleged unauthorised collections made by the appellant through subordinates. That may be an assumption. But the fact remains that the appellant himself had come forward to purchase a coffee estate worth Rs.25 lakhs, he admitted that a poultry farm is run by his wife and son and he claims that he had home worth Rs. 5 lakhs and he would obtain loans from the Bank for the purchase of the huge Estate worth Rs.25 lakhs.

The question, therefore, is whether the Government of India was not justified in doubting the integrity and whether it is based on no evidence.

As seen in the light of documents and in the light of the specific permission sought by the appellant himself on the basis of the special report submitted by the State Government, the Government of India through its appropriate Committee reached the conclusion that in view of the doubtful integrity it would not be desirable in the public interest to retain the appellant in service. Accordingly, they have compulsorily retired the appellant from service. Compulsory retirement does not amount to dismissal or removal from service within the meaning of Article 311 of the Constitution. It is neither punishment nor visits with loss of retiral benefits; nor does it cast stigma. The officer would be entitled to the pension that he has actually earned and there is no diminution of the accrued benefits. The object of compulsory retirement of the Government employee is public interest. If the appropriate authority bona fide forms that opinion, the correctness thereof on merits cannot be challenged before courts, though it may be open to the aggrieved employee to impugn it. But the same may be challenged on the ground that requisite opinion is based on no evidence or has not been formed or the decision is based for collateral grounds or that it is an arbitrary decision.

While exercising the power under Rule 56 (j) of the Fundamental Rules, the appropriate authority has to weigh several circumstances in arriving at the conclusion that the employee requires to be compulsorily retired in public interest. The Government is given power to energise its machinery by weeding out dead wood, inefficient, corrupt and people of doubtful integrity by compulsorily retiring them from service, when the appropriate authority forms bona fide opinion that compulsory retirement of the Government employee is in the public interest, court would not interfere with the order. In *S. Ramachandra Raju vs. State of Orissa* [(1994) 3 SCC 424], a Bench of this Court to which one of us (K. Ramaswamy, J.) was a member, considered the entire case law and held that "the Government must exercise its power only in the public interest to effectuate the efficiency of the service. The dead wood needs to be removed to augment efficiency. Integrity in public service needs to be maintained. The exercise of power of compulsory retirement must not be a haunt on public servant but must act as a check and reasonable measure to ensure efficiency of service and free from corruption and incompetence. The officer would live by reputation built around him. In an appropriate case, there may not be sufficient evidence to take punitive disciplinary action of removal from service. But his conduct and reputation is such that his continuance in service would be a menace to public service and injurious to public interest. The entire service record or character rolls or confidential reports maintained would furnish the backdrop material for consideration by the

Government or the Review Committee or the appropriate authority. On consideration of the totality of the facts and circumstances alone; the Government should form the opinion that the Government officer needs to be compulsorily retired from service. Therefore, the entire record more particularly, the latest, would form the foundation for the opinion and furnish the base to exercise the power under the relevant rule to compulsorily retire a Government officer."

Higher the ladder the officer scales in the echolons of service, greater should be the transparency of integrity, honesty, character and dedication to duty. Work culture and self-discipline augment his experience. Security of service gives fillip to accelerate assiduity to stay in line and measure up to the expected standards of efficiency by the Government employee. Thereby, they ultimately aid to achieve excellence in public service. The security of service provided by Article 311 of the Constitution and the statutory rules made under proviso to Article 309 would thus ensure to remove deficiency and incompetence and augment efficiency of public administration. The rights - constitutional or statutory - carry with them corollary duty to maintain efficiency, integrity and dedication to public service. Unfortunately, the latter is being overlooked and neglected and the former unduly gets emphasised. The appropriate Government or the authority would, therefore, need to consider the totality of the facts and circumstances appropriate in each case and would form the opinion whether compulsory retirement of a Government employee would be in the public interest. The opinion must be based on the material on record; otherwise it would amount to arbitrary or colourable exercise of power.

Considered from this perspective and the material on record, we are of the considered view that the decision taken by the Government of India cannot be held to be arbitrary, unjustified or based on no evidence. It is made clear that our observations may not be construed as any finding on the alleged disproportionate assets of the appellant. We are informed that a criminal case is pending trial and the criminal Court would decide the case without in any way getting influenced by any of the observations made by us.

The appeal is accordingly dismissed. But in the circumstances without costs.