# Smt. S. R. Venkataraman vs Union Of India & Anr on 2 November, 1978

## Equivalent citations: 1979 AIR 49, 1979 SCR (2) 202, AIR 1979 SUPREME COURT 49, 1978 LAB. I. C. 1641, (1978) RAJ LR 110, (1979) 2 SCR 202 (SC), 37 FACLR 425, 1979 (1) LABLJ 25, 1979 SCC (L&S) 216, (1978) 2 LAB LN 479, (1979) 1 SCWR 66, 1979 (2) SCC 491

## Author: P.N. Shingal

## Bench: P.N. Shingal, O. Chinnappa Reddy

PETITIONER:
SMT. S. R. VENKATARAMAN

Vs.

RESPONDENT:
UNION OF INDIA & ANR.

DATE OF JUDGMENT02/11/1978

BENCH:
SHINGAL, P.N.
BENCH:
SHINGAL, P.N.
REDDY, O. CHINNAPPA (J)

CITATION:
1979 AIR 49 1979 SCR (2) 202
1979 SCC (2) 491
CITATOR INFO :
D 1980 SC 563 (26)
E&D 1991 SC 818 (25)

ACT:
Fundamental Rules-Rule 56(j) (i)-order of Compulsory retirement in 'public interst'-Nothing on record to justify the order -Order if should be set aside.
Administrative Law-Administrative action-An abuse of power-What is- order based on non-existing fact-Effect of.
Words and Phrases- 'Malice in fact' and 'Malice in law'-Explained and distinguished.

HEADNOTE:
The appellant who was working as Joint Director, Family

Planning in the Directorate-General of the All India Radio was prematurely retired from ser vice. She made a representation, but it was rejected.

In her writ petition under Art. 226 of the Constitution she alleged that she had a long and clean record of nearly three decades but that baseless allegations had been made against her, because of malicious vendetta of the then Chairman of the Central Board of Film Censors. She also alleged that the impugned order was arbitrary and capricious and that the retiring authority had not applied its mind to the record of her case.

The writ petition was dismissed in limine.

On the appeal, the first respondent conceded that there was nothing on the record to justify the impugned order, and that the Government was not in a position to support that unfair order.

Allowing the appeal,

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HELD: (1) There was nothing on the record to show that the Chairman of the Central Board of Film Censors was able to influence tho Central Government m making the impugned order. It was not therefore the case of the appellant that there was actual malicious intention on the part of the Government in making the alleged wrongful order so as to amount to malice in fact. [205E]

(2) Malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse or for want of reasonable or probable cause. [205G] .

Shearer & Anr. v. Shields, [1914] A.C. 508 at p. 813 referred to.

(3) It was not necessary to examine the question of malice in law as it was trite law that if a discretionary power had been exercised for an unauthorised purpose, it was generally immaterial whether its repository was acting in good faith or in bad faith. [205H-206A]

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Pilling v. Abergele Urban District Council. [1950] 1 K.B. 636: referred to.

(4) The principle which is applicable in such cases is that laid down by Lord Esher M.R. in 24 Q.B.D. 371 at p. 375, and followed in (1924) 1 Ch. 48 3. [206C-D]

(5) When a public body is prompted by a mistaken belief in the existence of a non-existing fact or circumstance it will be an error of fact. That is so clearly unreasonable that what is done under such a mistaken belief might almost be said to have been done in bad faith. [206E]

(6) When the respondent conceded that there was nothing on record to justify the impugned order, that order must be set aside for it amounts to an abuse of the power which was vested in the authority concerned as it had admitted the influence of extraneous matter. [206H-207A]

(7) It will be a gross abuse of legal power to punish a

person or destroy her service career in a manner not warranted by law by putting a rule which makes a useful provision for the premature retirement of Government servants only in the "public interest", to a purpose wholly unwarranted by it, and to arrive at quite a contradictory result. [206F]

(8) An administrative order which is based on reasons of fact which do not exist must be held to be infected with abuse of power. [206G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2764 of 1977.

(From the Judgment and order dated 24-11- 76 of the Delhi High Court in C.R.P. No. 1264/76).

M. K. Ramamurthi and Faqir Chand for the appellant. P. N. Lekhi and Girish Chandra for the respondent. The Judgment of the Court was delivered by SHINGHAL J., This appeal by special leave is directed against an order of the Delhi High Court dated November 24, 1976, dismissing the appellant's writ petition in timing.

The appellant was promoted to the post of Director in the All India Radio after some thirty years of service under the Government of India. She was working as Joint Director, Family Planning, in the Directorate General of the All India Radio, when she was served with an order dated March 26, 1976, retiring her prematurely from service, with immediate effect, on the ground that she had already attained the age of 50 years on April 11, 1972, and the President was of the opinion that her retirement was in the "public interest". The appellant made representation on April 6, 1976, but it was rejected on July 1, 1976. She therefore filed a writ petition in the Delhi High Court under article 226 of the Constitution in which she, inter alia, made a mention of the hostile attitude of one V. D. Vyas who took over as Chairman of the Central Board of Film Censors from her on February 11, 1972. She also made a mention of the adverse remarks made by Vyas in her service record after she had ceased to work under him which, according to her, were "totally unfounded, biased, malicious and without any justification". She stated that "her integrity had never been considered doubtful 28 years before or 4 years after the period of 21 months she spent under him." It was also contended that some baseless allegations were made against her because of "malicious vendetta" carried on by Vyas, and that the order of premature retirement was not in public interest but was "arbitrary and capricious", and that the retiring authority had not "applied its mind to the record" of her case. It was particularly pointed out that as he was confirmed in the post of Director on April 28, 1973, with retrospective effect from July 10, 1970, any adverse remark in her confidential report before that date could not legitimately form the basis of the order of her premature retirement. The appellant also pointed out that the order cast a stigma on her conduct, character and integrity and amounted to the imposition of one of the major penal ties under the Central Civil Services (Classification, Control and Appeal)Rules, 1965.

It is not in controversy, and has in fact been specifically stated in the order of premature retirement dated March 26, 1976, that the appellant was retired in the "public interest" under clause (j) (i) of rule 56. of the, Fundamental Rules. That rule provides as follows,-

> "(j) Notwithstanding anything contained in this rule the appropriate authority shall, if it is of the opinion that it is in. the public interest to do so have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of notice.
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> (i) If he is in Class I or Class II service or post and had entered Government service before attaining the age of thirty five years, after he has attained the age of fifty years."

It is also not in dispute that the power under the aforesaid rule had to be exercised in accordance with the criteria and the procedure laid down in office memorandum No. F.33/13/61- Ests (A), dated 23rd June, 1969, of the Ministry of Home Affairs, Government of India. It is however the grievance of the appellant that her premature retirement was not made in accordance with the requirements of the rule and the memorandum, but was ordered because of malice, and was arbitrary and capricious as the Government did not apply its mind to her service record and the facts and circumstances of her case. It has been speci fically pleaded that the power under F.R. 56(j)(i) has not been exercised "for the furtherance of public interest" and has been based on "collateral grounds". The appellant has pointed out in this connection that her service record was examined in March, 1976, by the Departmental Promotion Committee, with which the Union Public Service Commission was associated, and the Committee considered her fit for promotion to the selection grade subject to clearance in the departmental proceedings which were pending against her, and that she was retired because of bias and animosity. Our attention has also been invited to the favourable entry which was made in her confidential report by the Secretary of the Ministry.

Mr. Lekhi, learned counsel for the Union of India, produced the, relevant record of the appellant for our perusal. While doing so he frankly conceded that there was nothing on the record which could justify the order of the appellant's premature retirement. He went to the extent of saying that the Government was not in a position to support that unfair order.

We have made a mention of the plea of malice which the appellant had taken in her writ petition. Although she made an allegation of malice against V. D. Vyas under whom she served for a very short period and got an adverse report, there is nothing on the record to show that Vyas was able to influence the Central Government in making the order of premature retirement dated March 26, 1976. It is not therefore the case of the appellant that there was actual malicious intention on the part of the Government in making the alleged wrongful order of her premature retirement so as to amount to malice in fact. Malice in law IS, however, quite different. Viscount Haldane described it as follows in Shearer and another v. Shield,(1) 'A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken to know the law, and he must act within the law. He may, therefore be guilty of malice in law, although, so far the state of his mind is concerned, he acts ignorantly, and in that sense innocently." Thus

malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse or for want of reasonable or probable cause.

It is however not necessary to examine the question of malice in law in this case, for it is trite law that if a discretionary power has been exercised for an unauthorised purpose, it is generally immaterial whether (1) [1914] A.C. 808 at p. 813.

its repository was acting in good faith or in bad faith. As was stated by Lord Goddard C.J., in Pilling v. Abergele Urban District Council(1), where a duty to determine a question is conferred on an authority which state their reasons for the decision, "and the reasons which they state show that they have taken into account matters which they ought not to have taken into account, or that they have failed to take matters into account which they ought to have taken into account, the court to which an appeal lies can and ought to adjudicate on the matter."

The principle which is applicable in such cases has thus been stated by Lord Esher M.R. in The Queen on the Prosecution of Richard West brook v. The Vestry of St. Paneras(2). "

> If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion."

This view has been followed in Sedlar v. Sheffield Corporation.(3) We are in agreement with this view. It is equally true that there will be an error of fact when a public body is prompted by a mistaken belief in the existence of a nonexisting fact or circumstance. This is so clearly unreasonable that what is done under such a mistaken belief might almost be said to have been done in bad faith; and in actual experience, and as things go, these may well be said to run into one another.

The influence of extraneous matters will be undoubted where the authority making the order has admitted their influence. It will therefore be a gross abuse of legal power to punish a person or destroy her service career in a manner not warranted by law by putting a rule which makes a useful provision for the premature retirement of government servants only in the "public interest", to a purpose` wholly unwarranted by it, and to arrive at quite a contradictory result. An administrative order which is based on reasons of fact which do not exist raust therefore be held to be infected with an abuse of power.

So when it has been conceded by Mr. Lekhi that there was nothing on the record which would justify the impugned order dated March 26, 1976, of the appellant's premature retirement under clause (j) (i) of (1) [1950] 1 K.B. 636.

(2) 24 Q.B.D. 371 at p. 375.

(3) [1924] 1 Ch 483.

Rule 56 of the Fundamental Rules, and that the Government was not in a position to support that unfair order, that order must be set aside, for it amounts to an abuse of the power which was vested in the authority concerned. The appeal is allowed with costs and it is ordered accordingly.

N.V.K, Appeal allowed.