

P. Radhakrishna Naidu & Others vs Government Of Andhra Pradesh And Others on 9 December, 1976

Equivalent citations: 1977 AIR 854, 1977 SCR (2) 365, AIR 1977 SUPREME COURT 854, 1977 (1) SCC 561, 1977 LAB. I. C. 537, 1977 2 SCR 365, 1977 SERVLJ 211, 1977 (1) LABLN 412, 1977 U J (SC) 84, 1977 (1) SERVLR 258

Author: A.N. Ray

Bench: A.N. Ray, M. Hameedullah Beg

PETITIONER:

P. RADHAKRISHNA NAIDU & OTHERS

Vs.

RESPONDENT:

GOVERNMENT OF ANDHRA PRADESH AND OTHERS

DATE OF JUDGMENT 09/12/1976

BENCH:

RAY, A.N. (CJ)

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RAY, A.N. (CJ)

BEG, M. HAMEEDULLAH

CITATION:

1977 AIR 854

1977 SCR (2) 365

1977 SCC (1) 561

ACT:

Constitution of India, Articles 16, 32 and 311, Government servant's compulsory retirement, whether violates Ban 16A- re-employment by semi-Government Institutions, whether within the scope of 32--Availability of alternative remedy.

HEADNOTE:

On the completion of their 25 years of qualifying service, the appellants were compulsorily retired in public interest, and were to receive 3 months salary in lieu of notice. Thereafter, the respondent Government passed a general order forbidding re-employment of compulsorily retired persons in semi-Government institutions. The appellants filed writ petition under Art. 32 of the Con-

stitution challenging the compulsory retirement orders as violative of Article 16 and the ban on such re-employment as a stigma under Art. 311.

Dismissing the petitions, the Court,

HEADING 16 does not prohibit the prescription of reasonable rules for compulsory retirement. The provision for compulsory retirement in public interest after the completion of a certain period of qualifying service or attainment of a certain age, applies to all Government servants and as such it is not open to challenge either under Art. 16 or under Art. 311, and the individual application of the order in a given case cannot offend Art. 16. [367-D-H]

T. C. Shivacharana Singh V. State of Mysore A.I.R. 1965 S.C. 280, applied.

Union of India v. Col. J.N. Sinha, & Anr. [1971] 1 S.C.R. 791; Tara Singh etc. v. State of Rajasthan & Ors. [1973] 3 S.C.R. 1002, and B. Narayana Murthy & Ors. v. State of Andhra Pradesh etc. [1971] Supp. S.C.R. 741, referred to.

(2) The Government order forbidding re-appointment of compulsorily retired persons as a stigma within the meaning of Article 311 is not an infringement of fundamental rights, and the enforcement of violation of Article 311 does not come within the scope of Art. 32. The ban is not against anyone individually and has a reasonable basis and some relation to the suitability for employment or appointment to an office. [367A-B, 369 A-B]

Krishna Chander Nayar v. Chairman, Central Tractor Organisation & Ors. [1962] 3 S.C.R. 187; Shyam Lal v. State of U.P. [1955] 1 S.C.R. 26; Tata Engineering and Locomotive Company Ltd. v. Assistant Commissioner of Commercial Taxes & Anr. [1967] 2 S.C.R. 751 and Hukumchand Mills Ltd. v. The State of Madhya Bharat & Anr. [1964] 6 S.C.R. 857, referred to.

(3) The Government of Andhra Pradesh has by an administrative order constituted a review committee for each department to review orders of retirement in public interest and to revoke and modify the same, if necessary. petitioners made representations to the review committee, and are not justified in applying to this Court. [370A-B]

JUDGMENT:

ORIGINAL JURISDICTION: Petition No. 97 of 1976. (Under Article 32 of the Constitution of India).

S. Ramchandra Rao and B. Kanta Rao for the appellants in W.P. No. 97/76.

S. Ramachandra Rao and A. Subba Rao, for the appellants in W.P. No. 114/76.

Niren De, Attorney General, P.p. Rao, Sr. Advocate and T.V.S. Narasimhachari, for the respondents in W.P. No. 97/76.

P. Parmeshwara Rao, and G. Narayana Rao, for respondents in W.P. No. 114/76.

The Judgment of the Court was delivered by RAY, C.J. These writ petitions challenge the compulsory retirement of the petitioners. The petitioners were retired compulsorily under order dated 23 September, 1975. The order dated 23 September 1975 in the case of the first petitioner in writ petition No. 97 of 1976 may be referred to as typical of orders in the case of other petitioners. This order stated first that the said first petitioner completed 25 years of qualifying service on 24th July, 1975. The order next stated that the Commissioner of Police being the authority to make a substantive appointment to the post of Inspector of Police is of opinion that it is in public interest to retire the persons mentioned in the order.

The order thereafter states that in exercise of the powers conferred by Clause (a) of sub-rule (2)/sub-rule 2(A) read with Clause (a) of sub-rule (2) of rule 3 of the Andhra Pradesh Liberalised Pension Rules, 1961/sub-rule (1) of rule 2/rule 3 read with sub-rule (1) of rule 2 of the Andhra Pradesh Government Servants Premature Retirement Rules, 1975, the Commissioner of Police directs that the person mentioned in the order shall retire in public interest from service with effect from the date of service of the order and that he shall be paid a sum equivalent to the amount pay and allowances for 3 months in lieu of notice calculated at the same rate at which he was drawing immediately before the date on which the order is served on him. The Government of Andhra Pradesh passed a general order dated 28 November, 1975. In that Government order it is stated that in several Government orders recited therein, orders for the premature retirement of the Government servants in public interest had been issued in those cases after giving 3 months previous notice in writing or after giving 3 months salary in lieu of such notice. The 28 November, 1975 order next states that an instance came to the notice of the Government that a Government servant after compulsory retirement as per orders mentioned above was re-appointed in a cooperative institution as executive officer. Though the reappointment of the incumbent was in the Semi-Government Institution, his re-appointment was stated to be irregular and contrary to the intention of the Government in retiring corrupt and inefficient persons. The Government order directed that all the Departments of the Secretariat, all Heads of Department, and all Collectors etc., should ensure that on no account persons who are retired prematurely in pursuance of orders issued by the Government should be re-instated or re-appointed in any Semi-Government or Quasi-Government Institutions.

The petitioners challenged the compulsory retirement orders as violation of Article 16. The petitioners also challenged the Government order forbidding re-appointment of compulsorily retired persons in Semi-Government or Quasi-Government Institutions as a stigma within the meaning of Article 311.

At the outset it should be stated that enforcement of violation of Article 311 does not come within the scope of Article 32. The challenge to the Government order forbidding re-appointment of compulsorily retired persons as a stigma within the meaning of Article 311 is, therefore, not an

infringement of fundamental rights.

The petitioners challenged the orders of compulsory retirement as an infraction of Article 16. It is not known how the petitioners have been discriminated against other persons because no such person is impleaded as a respondent and there are no allegations to that effect. During the subsistence of the Presidential Order issued under Article 359(1) it is not competent to invoke Article 14 for enforcement of any fundamental rights. Articles 14 and 16 are to a certain extent overlapping in regard to rights of equality.

Equality of opportunity for all citizens in matters relating to employment is not violated by provisions for compulsory retirement of Government servants in public interest after the completion of a certain period of qualifying service or attainment of a certain age. This Court has consistently taken the view that compulsory retirement does not involve any civil consequences. See *Union of India v. Col. J. N. Sinha and Another*(1) and *Tara Singh etc. v. State of Rajasthan and Ors.*(3) A writ petition under Article 32 can lie only for infringement of fundamental rights. See *B. Narayana Murthy and Ors. etc. v. State of Andhra Pradesh etc.*(3) The general order for compulsory retirement is applicable to all employees. The individual application of the order in a given case cannot offend Article 16. It cannot be suggested that an order for compulsory retirement in the case of one person is denial of equality of opportunity relating to employment because another person in employment has not been compulsorily retired.

Article 16 does not prohibit the prescription of reasonable rules for compulsory retirement. A question arose in *T.C. Shivacharana Singh v. State of Mysore* (4) whether a rule providing for compulsory premature retirement from Government service violates Article 16. This Court said that the law in relation to the validity of rules permitting compulsory premature retirement from Government ser-

(1) [1971] 1 S.C.R. 791. (2) [1975] 3 S.C.R. 1002. (3) [1971] Supp S.C.R. 741. (4) A.I.R. 1965 S.C. 280.

vice is well-settled by prior decision of this Court which does not require to be reconsidered. The ratio is that the provision for compulsory retirement in public interest applies to all Government servants and as such it is not open to challenge either under Article 14 or under Article

16. In *Shyam Lal v. State of U.P.*(1) the appellant had been compulsorily retired. The order was challenged as violating Article 311. This Court held that there is no stigma involved in compulsory retirement. Compulsory retirement does not amount to a dismissal or removal and, therefore, it is not within the vice of Article 311.

One of the petitioners, namely, the first in writ petition No. 97 of 1976, challenged the order of compulsory retirement on the ground that he did not complete 25 years of service. He alleged that he was appointed on 10 September, 1952 and, therefore, the order of compulsory retirement dated 23 September, 1975 is bad. The State on the other hand contends that the correct date of appointment of the first petitioner is 25 July, 1950. In writ petitions the Court does not go into

disputed questions of fact, like date of appointment as in the present case. In *Tata Engineering and Locomotive Company Ltd. v. Assistant Commissioner of Commercial Taxes & Anr.* (a) this Court said that the exercise of jurisdiction in writ matters is not desirable if facts have to be found on evidence. This Court has also said that there may be exceptions. One such exception is when action is taken under an invalid law or arbitrarily without the sanction of law. In the present case there is no aspect of either kind.

Further it has to be observed that in the present writ petitions several petitioners have combined as petitioners. Their causes of action are separate and independent. Each is alleged to be an instance of individual assertion of constitutional right in regard to facts and circumstances of each case. Where several petitioners combine for alleged violation of their rights, it is difficult for court to go into each and every individual case. In the present case the affidavit evidence on behalf of the State is preferred and, therefore, the first petitioner cannot agitate the question of disputed date of appointment.

In *Krishna Chandra Nayar v. Chairman, Central Tractor Organization and Others*(3) this Court considered the imposition of a ban against one man, namely, the petitioner in that case from being ever taken into Government service. He was a temporary servant and his services were terminated by giving him pay and allowances in lieu of notice for one month. This Court found that case to be one of arbitrary imposition of ban against the employment or appointment one individual to an office.

(1) [1955] 1 S.C.R. 26. (2) [1967] 2 S.C.R. 751. (3) [1962] 3 S.C.R. 187.

Krishna Chander's case (*supra*) is of no aid to the petitioners in the present case. The ban is not challenged here. In Krishna Chander's case (*supra*) the ban was challenged as an arbitrary act against one individual. In the present case the ban is not against anyone individually but it is not to employ in Quasi-Government service or Semi-Government service, persons who are compulsorily retired from Government service. The ban has a reasonable basis and has some relation to the suitability for employment or appointment to an office. When compulsory retirement is made in public interest it will be an exercise in futility if Government servants who are compulsorily retired are again employed in Government service or Semi-Government service or Quasi-Government service.

The petitioners challenged the orders for compulsory retirement also on the ground that reference to so many rules was made and, therefore, it was not possible for the petitioners to know under what provision the orders for compulsory retirement had been made. It is not open to the petitioners to challenge the orders on that ground. The orders specifically mention that compulsory retirement is made in public interest. The State affidavit evidence is that petitioners No. 4 and 5 in writ petition No. 97 of 1976 are governed by Hyderabad Civil Service Regulations and the rest of the petitioners are governed by Andhra Pradesh Liberalised Pension Rules, 1961. Rule 292 of the Hyderabad Civil Service Regulations and sub-rule (2) (a) of rule B of the Andhra Pradesh Liberalised Pension Rules, 1961 are similar. Both the rules confer power on the authority to require Government servant to retire in the public interest from service on the date on which he completes 25 years of qualifying

service or attains 50 years of age. Rule 2(1) of the Andhra Pradesh Government Servants' Premature Retirement Rules, 1975 is also worded in similar language. The wording of the rules relating to retirement in public interest is identical in all the three sets of rules mentioned above. The mere fact that three different rules were mentioned in the impugned orders without scoring out the rules which are not applicable to a petitioner in one case cannot be any grievance for the reason that in each case the relevant rule is identically worded. The omission on the part of the officers competent to retire the petitioners in not scoring out the rules which are inapplicable to a particular individual does not render the order bad. The reason is that one of the rules is applicable to him and the omission to strike out the rules which are not applicable will not in any manner affect the applicability of the rule mentioned. Further this Court has taken the view that a wrong reference to power will not vitiate any action if it can be justified under some other power under which the Government can lawfully do the act. See *Hukumchand Mills Ltd. v. The State of Madhya Bharat and Another*(1). In the present case the valid rule is mentioned in each case.

(1) [1964] 6 S.C.R. 857.

The Government of Andhra Pradesh has by an administrative order constituted a review committee for each department to review orders of retirement in public interest and to revoke and modify the same, if necessary. The petitioners made representations to the review committee. The petitioners yet choose to come to this court. The petitioners are not justified in applying to this court. The petitioners obtained rules in these two cases during the vacation. A similar matter came before this Court on 29 April, 1976 and this Court did not issue any rule. If the attention of this Court had been drawn to that order, perhaps no rule would have been issued in these matters.

The Andhra Pradesh Administrative Tribunal Order, 1975 confers power on the Tribunal to exercise jurisdiction with respect to appointment, allotment or promotion and other conditions of service of such persons. It is open to a person who complains about an order of compulsory retirement to approach the Tribunal in a given case.

For the foregoing reasons, the writ petitions are dismissed. There will be no order as to costs.

M.R.
dismissed.

Petitions