

S.P. Dubey vs M.P.S.R.T. Corpn. And Anr on 23 October, 1990

Equivalent citations: 1991 AIR 276, 1990 SCR SUPL. (2) 328, AIR 1991 SUPREME COURT 276, 1991 LAB. I. C. 1373, (1990) 4 JT 236 (SC), 1991 CRILR(SC MAH GUJ) 49, 1990 (4) JT 236, 1991 (1) SCC(SUPP) 426, 1991 SCC (SUPP) 1 426, 1991 SCC (L&S) 1010, (1991) 16 ATC 939, (1991) 1 CURLR 58, (1990) 61 FACLR 755, (1991) JAB LJ 97, (1991) 1 LAB LN 339, (1991) MPLJ 1, (1990) 6 SERVL R 24

Author: Kuldip Singh

Bench: Kuldip Singh, S.C. Agrawal

PETITIONER:

S.P. DUBEY

Vs.

RESPONDENT:

M.P.S.R.T. CORPN. AND ANR.

DATE OF JUDGMENT 23/10/1990

BENCH:

KULDIP SINGH (J)

BENCH:

KULDIP SINGH (J)

AGRAWAL, S.C. (J)

CITATION:

1991 AIR 276 1990 SCR Supl. (2) 328

1991 SCC Supl. (1) 426 JT 1990 (4) 236

1990 SCALE (2) 819

CITATOR INFO :

D 1991 SC 310 (2,3)

ACT:

Road Transport Corporation Act, 1950: S. 34/M.P. State Road Transport Corporation Employees Service Regulations. 1964: Regulation 59--Private company taken over and merged with Corporation--Age of Superannuation of existing staff at 60 years specifically protected--Whether amenable to State Service Rules--Whether Regulation can override the directions issued under the Act.

HEADNOTE:

The age of superannuation for the employees of the private transport company in which the appellant was initially employed was 60 years. When the said company was taken over by the State on August 31, 1955, the notification specifically provided that the existing staff would not be adversely affected with regard to terms and conditions of service. Again, when the services of the staff of the taken-over company were transferred to the respondent-Corporation established under s. 3 of the Road Transport Corporation Act, 1950, the memorandum dated May 4, 1962 recited the same assurance. A resolution passed by the Board of Directors of the Corporation on the same day also reiterated the said assurance. Subsequently, when the State Government issued directions on October 29, 1963 to the Corporation under s. 34 of the Act the said assurance was embodied therein too. However, Regulation 59 of the M.P. State Road Transport Corporation Employees Service Regulations, 1964 framed by the Corporation under s. 45(2)(c) of the Act provided that the employees of the Corporation were liable to compulsory retirement on the date of their completion of 58 years of age unless specifically permitted to continue.

When the appellant was sought to be retired from service in terms of Regulation 59 of the said Regulations on attaining the age of 58 years with effect from June 30, 1984 by a notice dated May 25, 1983, he challenged it by a petition under Article 226/227 of the Constitution. It was dismissed by the High Court on the view that on August 31, 1955 when the appellant became State Government employee his age of superannuation came to be governed by the statutory rules under Article 309 of the Constitution and the age of retirement of the State servants under the said rules being 58 years the appellant was rightly retired.

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Allowing the appeal, the Court,

HELD: 1. The appellant was entitled to continue in service upto the age of 60 years.

2.1 When the State Government takes over a private company and gives an assurance that conditions of service of the existing staff would not be adversely affected, it is but fair that the State Government should honour the same.

2.2 In the instant case, the appellant was in service of the company from 1947 to August 30, 1955 in which the age of superannuation of the employees was 60 years. The company was taken over by the State Government with effect from August 31, 1955 by a notification of the same date which specifically stated that the existing staff of the company would not be adversely affected with regard to their conditions of service. The State Service Rules which fixed the age of superannuation at 58 years could not thus be made applicable to the appellant and other employees of the taken-over company.

3. Furthermore, the said assurance was also incorporated

in the directions issued by the State Government to the Corporation under s. 34 of the Act. The Corporation could not frame regulations contrary to the said directions and the age of superannuation which the appellant was enjoying under the State Government could not be altered to his disadvantage by the Corporation. Regulation 59 framed by the Corporation was, therefore, not applicable to the appellant.

The General Manager, Mysore State Road Transport Corporation v. Devraj Urs and Anr., [1976] 2 SCC 862, referred to.

4. Since the appellant had already attained the age of 60 years, he was only entitled to two years emoluments. The respondents are directed to pay the same to him within three months. [334B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1731 of 1986.

From the Judgment and Order dated 26.4. 1985 of the Madhya Pradesh High Court in Misc. Petition No. 1729 of 1984.

Avadh Behari and S.K. Gambhir for the Appellant.

Rameshwar Nath, V.S. Dabir, Rajinder Narain for the Respondents.

The Judgment of the Court was delivered by KULDIP SINGH, J.S.P. Dubey, employed with the Madhya Pradesh State Road Transport Corporation, was retired from service on his attaining the age of 58 years. He claims that the age of superannuation was 60 years and as such his retirement at 58 was illegal.

We may state the necessary facts. Dubey joined service as a junior clerk with the Central Provinces Transport Service Limited (hereinafter called the company) in the year 1947. The Board of Directors of the company by a resolution dated July 30, 1954 fixed the age of superannuation of all its employees except the drivers as 60 years. The company was purchased and taken Over by the State of Madhya Pradesh by a notification dated August 31, 1955. The relevant part of the said notification is as under:

"The undertaking will as from the 31st August, 1955 be entitled 'The Central Provinces Transport Services (under Government Ownership)". So far as the public is concerned there will be no change or interruption in the course of business and the continuity of operation will not be disturbed and the existing staff will not be adversely affected with regard to terms and conditions of their services. The statutory instrument to be made in due course will provide, among other things that all the rights and liabilities of the Central Provinces Transport Services Ltd. will become the

rights and liabilities of the Central Provinces Transport Services (Under Government ownership) and from a legal point of view the staff, customers and contractors can look to the Central Provinces Transport Services (Under Government ownership) to discharge all the obligations and exercise all the rights that at present rest with the Central Provinces Transport Service Ltd., Rules for the conduct of business of the above constituted Board of Management are being published separately."

It is thus obvious that the Government continued to maintain the Central Provinces Transport Services as a separate entity. The conditions of service, of the staff of the taken-over company, were specifically protected.

The State of Madhya Pradesh was recognised under the States Reorganisation Act, 1956. The Central Government, by a notification dated February 28, 1961, extended the provisions of Road Transport Corporation Act, 1958 (hereinafter called 'the Act') to the State of Madhya Pradesh with effect from April 1, 1961. Thereafter the Madhya Pradesh Government acting under Section 3 of the Act established the Madhya Pradesh State Road Transport Corporation (hereinafter called Corporation) with effect from May 21, 1962. The Madhya Pradesh Government issued two memorandums on May 4, 1962. By one memorandum the services of the concerned employees including Dubey-were transferred to the Corporation and by the second it was clarified that the said transfer was subject to the conditions that their service would be treated as uninterrupted and their pay-scales and conditions of service would not be affected. On the same day and Board of Directors of the Corporation passed a resolution to the following effect:

"Resolved that the services of the employees employed under M.B.R. and C.P.T.S. on 31.5.1962 are transferred to the Corporation temporarily until further orders from 1.6.1962 on the following conditions:

1. The pay scale and conditions of service are not affected by the transfer.
2. The transfer will not be considered as interruption of services.
3. In case of employees coming under the category of workman as defined under the Industrial Disputes Act, 1947, the Corporation in the event of retrenchment will pay compensation on the basis that the services had been contin-

ued and had not affected by transfer."

The State Government issued directions dated October 29, 1963 to the Corporation under Section 34 of the Act. Relevant part of the directions is as under:

"The members of the staff of the Madhya Bharat Roadways and Central Provinces Transport Services, who have opted to serve under the Corporation in pursuance of the notices issued to them by the Commerce and Industry Department or any

authority of the Madhya Bharat Road-

ways and Central Provinces Transport Service shall be employed by the Corporation subject to such regulations as may be made by it under Section 45(2)(c) of the 'Road Transport Corporation Act, 1950' (Central Act LXIV of 1950), and subject to 'such assurance as may have been given to them by the State Government.'

The Corporation framed regulations called The Madhya Pradesh State Road Transport Corporation Employees Service Regulations, 1964." Regulation 59 which provided the age of superannuation was as under:

"Employees of the State Transport are liable to compulsory retirement on the date of their completion of fifty eight- years of age unless specifically permitted by the Corporation to continue in service for a specified period thereafter, but he must not be retained after the age of 60 years, without the sanction of State Government."

The corporation issued a notice dated May 25, 1983 to Dubey informing him that he was due to retire from service on June 30, 1984 on attaining the age of 58 years. He challenged the said notice by way of a writ petition under Article 226/227 of the Constitution of India before the Madhya Pradesh High Court at Jabalpur, The High Court by its judgment dated April 26, 1985 dismissed the writ petition. The present appeal by way of special leave petition is against the judgment of the High Court.

The High Court, following its earlier Division Bench judgment, came to the conclusion that on August 31, 1955 when the appellant became State Government employee his age of superannuation came to be governed by the statutory rules under Article 309 of the Constitution of India operating in respect of the Government employees of the State of Madhya Pradesh and the age of retirement of the State servants under the said rules being 58 years the appellant was rightly retired.

The appellant was in service of the company from 1947 to August 30, 1955. Admittedly, the age of superannuation of the company employees was 60 years. The Government of Madhya Pradesh took over the company with effect from August 31, 1955 by a notification of the same date. The notification specifically stated that the existing staff of the company would not be adversely affected with regard to their conditions of service. It is no doubt correct that on August 31, 1955 rules were operating in respect of the State Government employees according to which the age of superannuation was 58 years but the persons who were in service with the company were taken into Government service with a specific assurance that their conditions of service were.. not to be adversely affected. When the State Government takes over a private company and gives an assurance of the type it is but fair that the State Government should honour the same. Thus, the State Service rules which fixed the age of superannuation at 58 years could not be made applicable to the appellant and other employees of the taken-over company. We, therefore, do not agree with the reasoning of the High Court.

It was then urged that on the transfer of appellant's service to the Corporation he was governed by the Regulations framed by the Corporation under the Act and Regulation 59 provided 58 years as the age of superannuation. We do not agree with the contention. The State Government issued directions under Section 34 of the Act which we have reproduced above. The said directions are binding on the corporation. This Court in *The General Manager, Mysore State Road Transport Corporation v. Devraj and another*, [1976] 2 SCC 862 interpreting Section 34 of the Act held as under:

"Directions given by the State Government are binding on the corporation and it cannot depart from any general instructions issued under sub-section (1) of Section 34 except with the previous permission of the State Government. Such instructions have the force of law Therefore breach of the directions given by State Government in the matter of disciplinary action against the respondents was a breach of the statutory duty and made the action of the corporation amenable to the jurisdiction of the High Court under Article 226 of the Constitution".

The State Government and also the Corporation had given assurance to the appellant and other employees who were transferred to the Corporation that their conditions of service would not be adversely affected. The said assurance was incorporated in the directions issued under the Act. The Corporation cannot frame regulations contrary to the directions issued by the State Government under Section 34 of the Act. The age of superannuation which the appellant was enjoying under the State Government could not be altered to his disadvantage by the Corporation. We are, therefore, of the view that Regulation 59 framed by the Corporation was not applicable to the appellant. He was entitled to continue in service upto the age of 60 years.

We, therefore, allow the appeal with costs and set aside the judgment of the High Court. The appellant has already attained the age of 60 years. He is only entitled to two years emoluments. The respondents are directed to pay the same to the appellant within three months from today. We quantify the costs as Rs.5,000.

P.S.S.

Appeal allowed.