

S.C. Jain vs State Of Haryana And Anr on 4 November, 1985

Equivalent citations: 1986 AIR 169, 1985 SCR SUPL. (3) 727, AIR 1986 SUPREME COURT 169, 1986 LAB. I. C. 199, 1986 RECENT LAWS 114, 1986 UJ (SC) 145, 1986 SCC (L&S) 145, (1986) 1 LAB LN 284, 1985 (4) SCC 645, (1985) 3 SERVLR 425, (1986) 1 SUPREME 698, (1986) 1 SERVLJ 108, (1985) 2 CURLR 363

Author: R.B. Misra

Bench: R.B. Misra, E.S. Venkataramiah

PETITIONER:

S.C. JAIN

Vs.

RESPONDENT:

STATE OF HARYANA AND ANR.

DATE OF JUDGMENT 04/11/1985

BENCH:

MISRA, R.B. (J)

BENCH:

MISRA, R.B. (J)

VENKATARAMIAH, E.S. (J)

CITATION:

1986 AIR 169

1985 SCR Supl. (3) 727

1985 SCC (4) 645

1985 SCALE (2) 926

CITATOR INFO :

R 1987 SC1933 (10)

ACT:

Punjab Civil Services Rules, Vol. II, Part II, Rule 5. 32(c) and Punjab Civil Service Rules Vol. I Part I, rule 3.26 (c) and (d) - Premature retirement - Rule 3. 26 (c) - Applicability of - Whether Rule 3.26(c) provides immunity to Superintending Engineers.

HEADNOTE:

Rule 3.26 (c) of the Punjab Civil Service Rules Vol. I part 1 enacts: "The following are special rules applicable to P.W.D. Officers :-

1. Except as otherwise provided in this sub-

clause, Government employees in the Haryana Service of Engineers Class I (B&R, I.B. and Electricity) must retire on reaching the age of 58 years, and may be required by the competent authority to retire on reaching the age of 50 years if they have not attained the rank of superintending Engineer.

The Respondent - State of Haryana by its order No.11/3-BR (Estt)-6-81 dated 18 December 1981 retired the appellant, a superintending Engineer, prematurely after he attained the age of 50 years in pursuance of the provisions contained in rule 5.32(c) of the Punjab civil Service Rules, Vol.II Part II and Rule 3.26(d) of the Punjab civil Services Rules, Vol. I, Part I as applicable to the State of Haryana. The appellant's promotion to higher and higher posts in quick succession in the past unmistakably indicated that the authorities were satisfied with his work and integrity. He was promoted to the post of Superintending Engineer on 27th May 1971. The appellant made several representations against the order of premature retirement, but did not receive any reply despite repeated reminders. Ultimately, he challenged the impugned order of premature retirement by a writ petition in the High Court of Punjab and Haryana on the ground, inter alia, that in view of the clear provisions contained in rule 3.26(c) of Punjab Civil Services rules Vol. I, Part I (as applicable to Haryana), which are special rules applicable to the public works Department

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Officers, the general rule contained in rule 3.26(d) empowering the Government to compulsorily retire a public servant has no application in his case. The High Court dismissed the writ petition in limine.

Allowing the appeal,

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HELD: 1. The order of the High Court dated 5th January, 1984 is set aside. The order of premature retirement dated 18th December 1981 is quashed. The appellant shall be deemed to be in continuous service. He is entitled to his salary, emoluments and other consequential benefits to which he would have been entitled to if he had not been prematurely retired. [738 G]

2.(i) Rule 3.26(2), Which is a special rule applicable to Government employees in the Haryana Service of Engineers Class 1, will govern the case of the appellant as the special overrides the general. Admittedly, he was working as the Superintending Engineer for the last so many years on the date when the impugned order of his premature retirement was passed by the Governor. This rule provides as immunity to the engineer who has attained the rank of Superintending Engineer in the B.W.D. (B&R Branch) had always the immunity ever since the provision for premature retirement came into force. The old corresponding rules do not improve the position for the State-respondent. [734 E; 738 E]

2(ii) Rule 3.26(d) is applicable to all government employees but not to engineers of the P.W.D. for whom there is a special rule. It is a supplement to rule 3.26(a) because it supplies the procedure to be adopted in case of premature retirement of other Government servants. [735 E-F]

3. The heading 'Compulsory Retirement' is wide enough to include premature retirement within its fold. Government employee in the Haryana service of Engineers has no right to continue in service if he has reached the age of superannuation which is 58 years in the case of engineers. He has perforce to retire unless he has been granted an extension. Likewise an engineer who has not reached the age of superannuation but is made to retire prematurely, his retirement is as much a compulsory retirement as that of an employee who has attained the age of superannuation. It will not be correct to say that the age of superannuation in case of engineers who have not attained the rank of Superintending Engineers has been reduced to 50 years. [735 A-C]

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M. Narasimhachar v. The State of Mysore, 119601 1 S.C.R. 981 A relied upon.

JUDGMENT :

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4953 of 1985.

From the Judgment and Order dated 5.1.1984 of the Punjab and Haryana High Court in Civil writ Petition No. 4546 of 1983.

Dr. Y.S. Chitale, and A.K. Ganguli for the Appellant. Harbans Lal, I.S. Goel, C.V. Subba Rao and R.N. Poddar for the Respondents.

The judgment of the Court was delivered by MISRA, J. Special leave granted. This appeal by special leave is directed against the order of the high Court of Punjab and Haryana dated 5th January, 1984 dismissing the writ petition in a service matter.

The appellant joined service as a Sub-divisional Officer (Assistant Engineer in Class II on 28th August 1953 in the former State of PEPSU. On 1st November 1956 the State of PEPSU and Punjab were merged and the appellant was integrated in the service of the reorganized State of Punjab. He worked on this post for about eight years and during the period he was posted at various places in the State and was assigned different kinds of duties. The authorities being satisfied with his performance, he WAS prompted to the post of Executive Engineer in Class Gazetted on 24th May, 1961. he was allowed to cross the efficiency bar immediately when it became due. On this post he worked for about ten years. Considering the efficiency and suitability of the appellant he was confirmed on the post of Executive Engineer in Class I Gazetted on 1st April 1965.

On 1st November 1966 the State of Punjab was bifurcated into the State of Punjab and the State of Haryana. On the reorganisation of the State of Punjab the petitioner came to be allocated to the service of the State of Haryana. In the new State also his performance was excellent and the authorities satisfied with his meritorious services, gave him a selection grade of the post of Executive Engineer. The admission of the appellant to the selection grade itself is indication of the fact that the authorities were satisfied with his work, honesty, integrity and his capability. In due course the appellant was also promoted to the post of Superintending Engineer on 9th February, 1970. He had hardly worked for about a month when he was reverted but not because of any complaint against him or his inefficiency but because one of the posts of Superintending Engineers was reduced by the Government. The appellant being junior-most was reverted. But when the post of a Superintending Engineer again fell vacant the State of Haryana promoted the appellant to the said post promptly on 27th May 1971. On account of his meritorious service he was found fit to be posted first as Additional Director of Technical Education, Haryana for about four years and thereafter as Director P.W.D. (B & R) Research Laboratory at Nilokheri. The work of the P.W.D. Laboratory was highly specialised and skilled and required care, precision and accuracy and only officers of the merit and proven ability, competence and having research aptitude are posted there. The appellant was considered to be the most appropriate officer for that post.

The appellant by a letter dated 19th October, 1981 was offered the post of Superintending Engineer on deputation to the Delhi Development Authority. This offer was made to the appellant in view of the request from the Delhi Development Authority for names of suitable officers. Again on 11th December 1981 the appellant received a telegram from the office of the Engineer-in-Chief seeking the willingness of the appellant for nomination for the post of Civil Engineer for an assignment with the Government of Libya. Shortly thereafter the appellant received an other offer from the office of the Engineer-in-Chief, Haryana P.W.D. (B & R), Chandigarh on 15th December, 1981. This offer was pursuant to the request of the management of Dayanand University, Rohtak asking for names of Superintending Engineers for the post of Chief Engineer. This offer was made only to the Superintending Engineers who were considered competent by Engineer-in-Chief, Haryana P.W.D.(B & R), Chandigarh.

The sequence of events and the promotion of the appellant to higher and higher posts in quick succession speak for themselves and they unmistakably indicate that the authorities were satisfied with his work and integrity. So far all was well with him.

It appears that on 15th December, 1981 the appellant applied for casual leave for four days from 21st to 24th December, 1981 and the station leave from 19th to 27th December which was sanctioned by the office of the Chief Engineer on 17th December 1981. When he was availing the leave he received a telegram intimating that his casual leave and station leave have been cancelled. Neither the telegram nor the confirmatory letter dated 21st December, 1981 received subsequently disclosed the reason for the cancellation of leave. The appellant, therefore, had to join and resume his duties as per instructions in the said telegram. The appellant received the impugned order No.11/3-BR (Estt)-6-81 dated 18th December, 1981 from the Government on 29th December, 1981 prematurely retiring him from service after attaining the age of 50 years. The impugned order of premature retirement dated 18th December, 1981 is in the following terms:

"Whereas the Governor of Haryana is of the opinion that it is in the public interest to retire shri S.C. Jain, superintending Engineer, Haryana P.W.D. (& R Branch) from service after attaining the age of 50 yrs.

Now, therefore, in pursuance of the provisions contained in rule 5.32(c) of the Punjab Civil Service Rules Vol. II, Part II and rule 3.26(d) of the Punjab Civil Services Rule Vol. I, Part I as applicable to the State of Haryana, the Governor of Haryana in the public interest hereby orders the payment of three months pay and allowances in lieu of notice to Shri S.C. Jain, Superintending Engineer and retires him from Haryana Government Service with effect from the date of receipt of this order.

By Order of the Governor.

Sd/- Commissioner & Secretary to Govt. Haryana PWD B & R Branch."

The appellant made several representations against the order of premature retirement on 25th January, 1982, 26th April, 1982, 25th July 1982 to the respondents with copies forwarded to the Chief minister of Haryana, Minister for P.W.D., Haryana and the Engineer-in-Chief P.W.D. & R Branch, Haryana. The appellant, however, did not receive any reply despite repeated reminders. The appellant also separately submitted representation to the Chief minister, Haryana in January 1982. The same was forwarded to the then Minister for P.W.D. (B&R), Kanwar Ram Pal Singh for examining the representation in detail, who after examining the position made the following remarks on the representation itself:

"Recommended strongly restoring him to his original post.

Sd/- Ram Pal Singh P.W.M. 25th April 1982"

Despite the recommendation of the P.W.D. minister the appellant got no relief. Under the circumstances he was constrained to take recourse to court of law and he challenged the impugned order of premature retirement by filing a writ petition in the High Court of Punjab and Haryana on grounds inter alia that in view of the clear provisions contained in rule 3.26(c) of Punjab Civil Services Rules Vol. I, Part I (as applicable to Haryana), which are special rules applicable to the Public works Department officers, the general rule contained in rule 3.26(d) empowering the Government to compulsorily retire a public servant has no application to the present case. Curiously enough the High Court dismissed the writ petition in limine by a cryptic order: 'No merit. Dismissed. The appellant has now approached this Court by special leave. He has taken all those grounds taken by him in the writ petition.

Dr. Y.S. Chitale appearing for the appellant forcefully urged that in view of the provisions of rule 3.26(c) of the Punjab Civil Service Rules, Vol. I, Part I, the appellant could not be retired prematurely. We heard the counsel for the parties on this point first and indicated that if the first contention of Dr. Chitale was not accepted we would hear the counsel for the parties on other points involved in the case. Having heard the counsel for the parties at some length we are of the view that

the first point raised by Dr. Chitale is Formidable and the appeal w st succeed on this point alone. It is, therefore, not necessary to hear the parties on other points involved in the case.

In order to appreciate the contention of Dr. Chitale it will be pertinent to quote rule 3.26(a) to 3.26(d) of the Punjab Civil Services Rules, Vol. I, Part I applicable to the present case (1980 Print) :

COMPULSORY RETIREMENT 3.26(a) Except as otherwise provided in other clauses of this rule, every Government employee shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. he must not be retained in service after the age of compulsory retirement, except in exceptional A circumstances with the sanction of the competent authority in public interest, which must be recorded in writing:

Provided that the age of compulsory retirement for class IV Government employee shall be sixty years: Provided further that a Government employee whole date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age OF fifty- eight or sixty years as the case may be-

(b).....

(c) The following are special rules applicable to P.W.D. Officers :-

(1) Except as otherwise provided in this sub-

clause, Government employees in the Haryana Service of Engineers, Class I (B & R, I.B. and Electricity) must retire on reaching the age of 58 years, and may be required by the competent authority to retire on reaching the age of 50 years if they have not attained the rank of Superintending Engineer.

(2) Subject to the requirements of this sub-clause as to re-appointment, the competent authority may, in special circumstances, which should be recorded in writing, grant an extension of service, not exceeding three months, to a Chief Engineer. (3) No Chief Engineer shall, without re-appointment, hold the post for more than five years, but re-appointment to the posts may be made as often, and in each case for such period not exceeding five years as the competent authority may decide: Provided that the term of re- appointment shall not extend more than three months beyond the date on which the Government employee attains the age of 58.

(d) The appointing authority shall, if it is of the opinion that it is in the public interest 60 to do, have the absolute right to retire any Government employee, other than Class IV Government employee by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice:-

(i) If he is 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; and

(ii) (a) If he is in class III Service or post, or

(b) If he is in class I or Class II service or post and entered Government service after attaining the age of thirty-five years;

after he has attained the age of fifty-five Years. The Government employee would stand retired immediately on payment of three months' pay and allowances in lieu of the notice period and will not be in service thereafter."

Rule 3.26(c), which is a special rule applicable to Government employees in the Haryana Service of Engineers Class I, will govern the case of the appellant as the special overrides the general. Admittedly he was working as the Superintending Engineer for the last so many years on the date when the impugned order of his premature retirement was passed by the Governor. This rule provides an immunity to the engineer who has attained the rank of Superintending Engineer. The appellant, therefore, gets the protection of clause (l) of rule 3.26(c).

Shri Harbans Lal appearing for the State of Haryana in reply refutes the contention raised by Dr. Chitale and contends that the second part of rule 3.26(c)(l) only authorises the Secretary to Government in consultation with the Finance Department, to reduce the age of superannuation below 58 and above 50 with regard to class I officers of the P.W.D. if they have not attained the rank of Superintending Engineers. This rule according to him is an enabling provision authorising the secretary to Government to reduce the age of superannuation of all Class I officers of the P.W.D. if they have not attained the rank of Superintending Engineers and if they did so then all such officers who have attained 50 years should retire.

The contention of Shri Harbans Lal has absolutely no force for a variety of reasons: Firstly, the heading 'Compulsory Retirement' is wide enough to include premature retirement within its fold. A Government employee in the Haryana service of Engineers has no right to continue in service if he has reached the age of superannuation which is 58 years in the case of engineers. he has perforce to retire unless he has been granted an extension. Likewise an engineer who has not reached the age of P superannuation but is made to retire prematurely, his retirement is as much a compulsory retirement as that of an employee who has attained the age of superannuation. It will, in our opinion, not be correct to say that the age of superannuation in case of engineers who have not attained the rank of Superintending Engineers has been reduced to 50 years. his contention, if accepted, would result in an absurdity. The inevitable result will be that all Executive Engineers will have to retire at the age of 50 which could never have been intended by the rule makers. The argument of the learned counsel for the State is a desperate one indeed- L Shri harbans Lal tried to bring this case within the fold of rule 3.26(d). This rule gives the appointing authority the absolute right to retire any Government employee other than class IV Government employee by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such

notice.

This rule is applicable to all Government employees but not to engineers of the P.W.D. for whom there is a special rule. In our opinion it is a supplement to rule 3.26(a) because it supplies the procedure to be adopted in case of premature retirement of other Government servants. We get support for our view from *M. Narasimbachar v. The State of Mysore*, [1960] 1 S.C.R. 981. That case involved the interpretation of article 294 provides that a Government servant in superior or inferior service who has attained the age of fifty five years may be required to retire unless the Government considers him efficient and permits him to remain in service. But as the premature retirement of an efficient Government servant imposes a needless charge on the State this rule should be worked with discretion. Article 297 laid down that a Government servant in superior service who has attained the age of fifty-five years may at his option retire from service on a superannuation pension. It was sought to be urged in that case that article 297 gave option to the public servant whether he retires at that age or not.

This Court interpreting article 297 held that this article was complementary to article 294(a) which gives government the power of keeping Government servants in service beyond the age of 55 years. Article 297 allows the Government servant, if the Government wants to keep him in service after 55 years to opt for retirement. It does not mean that it is entirely at the option of the Government servant to continue beyond the age of 55 years and the Government cannot retire him at that age if he does not exercise the option.

That decision involved the interpretation of different rules but the reasoning adopted in that case is applicable in the construction of rule 3.26(d) of the Punjab Civil Services Rules.

Shri Harbans Lal in support of his contention referred to the old corresponding rules. The relevant portion of the old rules is quoted hereunder:

"Rule 3.26 of C.S.R. (pb) 1941 Edition. Compulsory Retirement 3.26 (a) Except as otherwise provided in the other clauses of this rule the date of compulsory retirement of a Government servant, other than a ministerial servant, is the date on which he attains the age of 55 years. He may be retained in service after the date of compulsory retirement with the sanction of competent authority on public grounds, which must be recorded in writing, but he must not be retained after the age of 60 years, except in very special circumstances.

(b).....

(c) The following are special rules applicable to particular services :-

(i).....

(ii) Except as otherwise provided in this sub-

clause Civil Engineers of the Public works Department must retire on reaching the age of 55 years, and may be required by the competent authority to retire on reaching the age of 50 years if they have not attained the rank of Superintending Engineer.

Rule 3.26 of Punjab C.S.R. Vol. I, Part I, 1953 Edition.

Compulsory Retirement 3.26(a) Except as provided in other clauses of this rule, the date of compulsory retirement of a Government servant other than a Class IV Government servant, is the date on which he attains the age of 55 years. he must not be retained in service after the age of compulsory retirement, except in exceptional circumstances with the sanction of competent authority on public grounds, which must be recorded in writing.

(b)-

(c) The following are special rules applicable to particular services

(i)....

(ii) Except as otherwise provided in this sub- clause, Government servants in the Punjab Service of Engineers Class I (B & R, I.B. and Electricity) must retire on reaching the age of 55 years, and may be required by the competent authority to retire on reaching the age of 50 years, if they have not attained the rank of Superintending Engineer.

Rule 3.26 of Punjab Civil Services Rules, Volume I, Part I. 1963 Edition.

Compulsory Retirement 3.26(a) Except as provided in other clauses of this rule, the date of compulsory retirement of a Government servant which he attains the age of 58 years. He must not be retained in service after the age of compulsory retirement, except in exceptional circumstances with the sanction of competent authority on public grounds, which must be recorded in writing.

(b)....

(c) The following are special rules applicable to P.W.D. Officer:-

(1) Except as otherwise provided in this sub-

clause, Government servants in the Punjab Service of Engineers, Class I (B & R, I.B. Electricity) must retire on reaching the age of 58 years, and may be required by the competent authority to retire on reaching the age of 58 years if they have not attained the rank of Superintending Engineer. Clause (d) inserted in rule 3.26 vide Notification No. 4118-3FR-74/24837 dated 12th July 1974. 3.26(d) The appointing authority may, if it is of the opinion that it is in the public interest so to do, retire any Government servant, other than a Class IV Government servant, by giving him a notice of not less than three months in writing:

(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, and

(ii) "

A bare perusal of the old rules will indicate that an engineer who has attained the rank of Superintending Engineer in the P.W.D. (B & R Branch) had always the immunity ever since the provision for premature retirement came into force. The old corresponding rules do not improve the position for the State. They rather support the contention of the appellant.

We enquired from Shri Harbans Lal Whether any other engineer in the Engineering Service of P.W.D. who had attained the rank of Superintending Engineer had ever been prematurely retired and he frankly admitted that there has been no such case.

For the foregoing discussion the appeal must succeed. It is accordingly allowed with costs and the order of the High Court dated 5th January, 1984 is set aside. The writ petition stands allowed and the order of premature retirement dated 18th December, 1981 is quashed. The appellant shall be deemed to be in continuous service. He is entitled to his salary; emoluments and other consequential benefits to which he would have been entitled to if he had not been prematurely retired.

M.L.A.

Appeal allowed.