K. Nagaraj & Ors. Etc. Etc vs State Of Andhra Pradesh & Anr. Etc on 18 January, 1985

Equivalent citations: 1985 AIR 551, 1985 SCR (2) 579, AIR 1985 SUPREME COURT 551, 1985 (1) SCC 523, 1985 LAB. I. C. 746, (1985) 1 APLJ 35, (1985) 1 LAB LN 2, 1985 BLJR 485, 1985 2 LABLN 2, 1985 SCC (L&S) 280, (1985) 1 LABLJ 444, (1985) 51 FACLR 166, (1985) 1 SERVLJ 277

Author: Y.V. Chandrachud

Bench: Y.V. Chandrachud, R.S. Pathak, Sabyasachi Mukharji

PETITIONER:
K. NAGARAJ & ORS. ETC. ETC.,

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH & ANR. ETC.

DATE OF JUDGMENT18/01/1985

BENCH:
CHANDRACHUD, Y.V. ((CJ)
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CHANDRACHUD, Y.V. ((CJ)
PATHAK, R.S.
MUKHARJI, SABYASACHI (J)

CITATION:
1985 AIR 551 1985 SCR (2) 579
1985 SCC (1) 523 1985 SCALE (1)31
CITATOR INFO :
R 1985 SC 724 (15)
D 1986 SC 210 (16,17,26,29)
F 1987 SC 415 (16)
RF 1987 SC1676 (16)
R 1990 SC 334 (98,99)
RF 1992 SC1277 (47,48,97)

ACT:
Civil Service-Age of superannuation-Age reduced to 55 years for all Government employees, other than those in last grade service, in accordance with the election manifesto. to provide greater employment opportunities to the youths-Whether the order and Notifications are unreasonable, arbitrary and violative articles 14,16, 21 and 300-A of the Canstitution-G.O.M.S- 35 (GAD, dated 8.2 83 and Notification

read with the Andhra Pradesh Public Employment (Regulation of Conditions of Service) Ordinance, 1983 omitting Proviso to Rule 2, 56 of the AP Fundamental Rules and Rule 231 of the Hyderabad Civil Service Rule-"Retirement benefits" measuring of-Limits of judicial Review of Policy decisions of the State-Mala fides, burden of proof-Transferred Malice in unknown in the field of legislation.

HEADNOTE:

A new political party called Telugu Desam swept to power in the 1983 Andhra Pradesh Assembly elections, within a month of assuming office, the new Government of Andhra Pradesh, passed an order No. G.O.M.S. 36 GAD Services dated 8.2.83 (appending two Notifications) stating that in order to provide greater employment opportunities to the youths it had decided to reduce the age of superannuation of all Government employees, other than those in the last grade service, from 58 to 55 years with elect from February 28, 1983. Over 18,000 employees and 10,000 public sector employees were superannuated, as a result of the order.

The aggreived employees, therefore filed writ petitions and challenged the constitutional validity of the said order and Notifications under Articles 14, 16, 21 and 300A of the Constitution. According to the petitioners: (i) there was no basis at all for reducing the age of retirement from 58 to 55, as nothing had happened since October 29,1979 on which date the age limit was raised from 55 to 58 years; (ii) providing employment opportunities to the youths has no relevance on the question of fixing the age of retirement; (iii) the government had exercised its power arbitrarily without having regard to factors which are relevant on the fixation of the age of retirement; (iv) the government had acted unreasonably in not giving any previous notice to the employees which would have enabled them to arrange their affairs on the eve of retirement; (v) the government was estopped from reducing the age of retirement to 55 since the employees had acted on the representations made to them in 1979 by increasing the age of retirement from 55 to 58; (vi) as a result of the increase in the age of retirement from 55 to 58 years in 1979, a vested right had accrued to the
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employees. which could be taken away if at all, only from future entrants to the government service; (vii) retirement of experienced and mature persons from government service will result in grave detriment to public services of the State (viii) the decision of the government is bad for a total non-application of the mind to the relevant facts and circumstances bearing on the question of age of retirement like increased longevity; and (ix) the government had not even considered the enormous delay which would be caused in the payment of pensionary benefits to employees who were

retired from service without any pre thought.

The respondent State filed two affidavits traverssing each and every ground of challenge and asserted that the age of retirement was reduced because "it is the duty of the State, within the- limits of its economic capacity and development to make effective provisions to solve the unemployment problem which has gone upto 17,84,699 by December 31, 1 982. The contentions of the State were: (i) the question of the age of superannuation was not referred to the One-man Pay Commission and therefore, its recommendations to increase the age from 55 to 58 was only casual not based on relevant criteria and has no relevance to the present decision of the State to reduce the age of retirement; (ii) as a result of the unwarranted increase in the age of superannuation from 55 to 58 not only was there a one-third increase in the number of unemployed youths but also the chances of promotion of the service personnel had deteriorated resulting in wide spread frustration and unemployment: (iii) the age of retirement was reduced because it is the duty of the State, within its limits of economic capacity and development, to make effective provision to solve the unemployment problem; (iv) the fact that the average expectation of life is about 70 years is not a ground for increasing the age of retirement of Government employees; (v) the general trend was for reducing the age of retirement; (vi) the Government of Kerala and Karnataka had reduced the age of retirement of their employees to 55 and in some other States in India also the age of retirement is 55, (vii) the present decision was taken by the Government in order to fulfill its commitment that it will make welfare measures in order to improve the lot of the common man, and particularly, in order to afford opportunity to qualified and talented unemployed youths whose number was increasing enormously due to expansion of educational facilities; (viii) the present measure was intended to have a salutory effect on the creation of incentives to the deserving employees; and (ix) the question as regards the age of retirement is a pure question of governmental policy affording no cause of action to the petitioners to file the writ petitions.

Rule Nisi was issued on the writ petitions by the court on February 25,1983. The Legislative Assembly of Andhra Pradesh was prorogued on April 9, 1983. On the very next day, i.e. April 10, 1983 the Governor promulgated Ordinance No. 5 of 1983 called the Andhra Pradesh Public Employment (Regulation of conditions of Service) Ordinance, 1983 by which proviso to Rule 2 and Rule 56 of the Andhra Pradesh Fundamental Rules and Rule 231 of the Hyderabad Civil Service Rules-the rule governing the age of retirement- were omitted.

Dismissing the petitions, the Court

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HELD: 1.1 Public interest demands that there ought

to be an age of retirement in public services. The poin of the peak level of efficiency is bound to differ
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from individual to individual for that reason. A common scheme of general application governing superannuation has, therefore, to be evolved in the light of experience regarding performance levels of employees, the need to provide employment opportunities to the younger sections of society and the need to open up promotional opportunities to employees at the lower levels early in their career. Inevitably, the public administrator has to counterbalance conflicting claims while determining the age of superannuation. On the one hand, public services cannot be deprived of the benefit of the mature experience of senior employees; on the other hand, a sense of frustration and stagnation cannot be allowed to generate in the minds of the junior members of the services and the younger sections of the society. The balancing of these conflicting claims of the different segments of society involves minute questions of policy and considerations of varying vigour and applicability which must, as far as possible, be left to the judgment of the executive and the legislature. [
90F-H; 591A-B]

E.P. Royappa v. State of Tamil Nadu, [1974] 2 SCR 348 referred to.

1.2 While resolving the validity of policy issues like the age of retirement, it is not proper for the Court to put the conflicting claims in a sensitive judicial scale and decide the issue by finding out which way the balance tilts. That s an exercise which the administrator and the legislature have to undertake. This is so because often, the Court has no satisfactory and effective means to decide which alternative, out of the many competing ones, is the best in the circumstances of a given case. [591E; C]

1.3 It is not that every question of policy is out side the scope of judicial review or that necessarily, there are no manageable standards for reviewing any and every question of policy. If the age of retirement is fixed at an unreasonably low level so as to make it arbitrary and irrational, the Court's interference would be called for though not for fixing the age of retirement but for mandating a closer consideration, of the matter. [591C-D]

2. Fixing the age of superannuation by reducing it from 58 to 55 would be unreasonable or arbitrary if it does not accord with the principles which are relevant for fixing the age of retirement or if it does not subserve any public interest. On the other hand, the Ordinance shall have to be held valid, if the fundamental premise upon which it proceeds has been accepted as fair and reasonable in comparable situations, if its provisions bear nexus with public interest and if it does not offend against the Constitutional limitations either on legislative competence or on the legislative power to pass laws which bear on

fundamental rights. [591G-H: 592A]

3.1 The report of the One-man Pay Commission has to be kept out of consideration in so far as the question of the age of retirement is concerned. The contention that the reversal of the well considered decision of the Commission to raise the age to 58 within a short span of less than three years and a half, as nothing had happened in between warranting a departure from it, is fallacious because the question, as to whether the age of retirement should be raised which was then 55, was not referred to the Commission at all in the terms of reference. Further the decision which the Government took later to increase the age of retirement from 55 to 58 years was not based on the recommendation of the Commission. [595D; C]

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3.2 The Power of a Commission to inquire into a question must depend upon the terms of the reference and not upon the statements made on the floor of the House. [595A]

3.3 A review of retirement benefits would undoubtedly cover the examination of the rules or schemes relating to pension, provident fund, gratuity, encasement of leave etc., but it cannot include the power to examine the question as regards the fixation of the age of retirement. Therefore, paragraph 9 47 of the report of One-man Pay Commission which begins by saying that "since the terms of reference of the Commission cover the review of the existing retirement benefits, the reference would naturally include the age of retirement" was an erroneous and unwarranted reading of the terms of the reference. [594F; E]

4.1 No law can be said to be bad because it is passed immediately on the assumption of office by a new Government. Were this so, every decision taken by a new Government soon after assumption of office shall have to be regarded as arbitrary. I 595E]

4.2 The reasonableness of a decision in any jurisdiction, does not depend upon the time which it takes. A delayed decision of the Executive can also be bad as offending against the provisions of the Constitution and it can be no defence to the charge of unconstitutionality that the decision was taken after the lapse of a long time. Conversely, decisions which arc taken promptly cannot be assumed to be bad because they arc taken promptly. [595F-G]

4.3 Every decision has to be examined on its own merits, in order to determine whether it is arbitrary or unreasonable. Here, the State Government had the relevant facts as also the reports of the various Central and State Pay Commissions before it, 011 the basis of which it had taken a reasonable decision to reduce the age of retirement from 58 to 55. The aid and assistance of a well trained bureaucracy which notoriously, plays an important part not only in the implementation of policies but in their making was also available to the Government. Therefore, the speed with which the decision was taken cannot, without more,

invalidate it on the ground of arbitrariness. [59-G; 596.A-B]

5.1 By and large, in the formulation of matters of legislative policy, the government of the day must be allowed a free, though fair play and there need not necessarily be a uniform age of retirement all over India. Though immutable considerations which are generally or universally true like increased life expectation are as much valid for Jammu and Kashmir as for Tamil Nadu, that cannot justify the conclusion that fixation of the retirement age at 55 in Jammu and Kashmir is invalid since the State of Tamil Nadu has fixed it at 58 or that the age limit should be fixed at 62 or 65. There is no one fixed or focal point of reasonableness. There can be a large and wide area within which the administrator or the legislator can act, without violating the constitutional mandate of reasonableness. That is the area which permits free play in the joints. [596C-D; F]

5.2 The area between the ages of 55 and 58 is regarded in our country as a permissible field of operation for fixing the are of retirement. Neither the American nor the English notions or norms for fixing the retirement age can render invalid the basis which is widely accepted in our country as reasonable for that purpose. [597D-E]

5.3 On the basis of the data furnished in the White Paper presented to the State Legislative Assembly in March 1983 on the question of "reduction in
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the age of superannuation from 58 years to 55 years" by the new Telugu Desam Party controlled State Government, the reduction of the age of retirement from 58 to 55, in the instant case is not hit by Article 14 or 16 of the Constitution and the State Government or the Legislature has not acted arbitrarily or irrationally. The precedents within our country itself for fixing the retirement age at 55 or for reducing it from 58 to 55 and their acceptance depending upon the employment policy of the Government of the day make it impossible to lay down an inflexible rule that 58 years is a reasonable age for retirement and 55 is not. If the policy adopted for the time being by the Government or the Legislature is shown to violate recognized norms of employment planning, it would be possible to say that the policy is irrational since, in that event, it would not bear reasonable nexus with the object which it seeks to achieve. The reports of the various Commissions show that the creation of new avenues of employment for the youth is an integral part of any policy governing the fixation of retirement age. Here, the impugned policy is actuated and influenced predominantly by that consideration. [604C-F]

However, the question of age of retirement should always be examined by the Government with more than ordinary care, more than the State Government has bestowed upon it in this case. The fixation. Of age of retirement has minute and

multifarious dimensions which shape the lives of citizens. Therefore, it is vital from the point of view of their well-being that the question should be considered with the greatest objectivity and decided upon the basis of empirical data furnished by scientific investigation. What is vital f`or the welfare of the citizens is, of necessity, vital for the survival or the State. Care must also be taken to ensure that the statistics are not perverted to serve a malevolent purpose. [604F-H]

6. It is well settled that Article 311(2) of the Constitution is attracted only when a civil servant is reduced in rank, dismissed or removed from service by way of penalty, that is to say, when the effect of the order passed against him in his behalf is to visit him with evil consequences. The termination of service of an employer on account of his reaching the age of superannuation does not amount to his removal from service within the meaning of Article 311(2). Here there being no arbitrariness in the fixation of reduced retirement age, there is no violation of Article 311(2) of the Constitution, either. [605C; F]

Satish Chandra V Union of India[1953] SCR 655; Shyam Lal v. State of U.P., [1955] 1 SCR 26; State of Bombay v. ,Saubhagchand M. Doshi, [1958] SCR 571 ; Purshotam Lal Dhingra v. Union of India, [1958] SCR 828; P. Balakotiah V. Union of India, [1958] SCR 1052; Bishun Narain Misra v. State Union of Uttar Pradesh, [1965] 1 SCR 693, relied on.

Moti Ram Deka v. General Manager. North Frontier Railway, [1964] 5 SCR 683 explained.

7. Though an ordinance can be invalidated for contravention of the constitutional limitations which exist upon the power of the State legislature to pass laws it cannot be declared invalid for the reason of non-application of mind, any more than any other law call be. An executive act is liable to be struck

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down on the ground of non-application of mind. Not the act of a Legislature. The power to issue an ordinance is no an executive power but is the power of the executive to legislate. The power of the Governor to promulgate an ordinance is contained in Article 213 which occurs in Chapter IV of Part VI of the Constitution. The heading of that Chapter is "Legislative Power of the Governor". This power is plenary within. its field like the power of the State Legislature to pass laws and there are no limitations upon that power except those to which the legislative power of the State Legislature is subject. [607C; A-B]

A.K. ROY v. Union of India. [1982] 2 SCR 272 at pp. 282, 291; R K Garg v. Union of India, [1982] 1 SCR 947 at pp. 964, 967; High Court of Andhra Pradesh v. V V. S. Krishnamurthy, [1979] 1 SCR 26; Motiram Dake v. General Manager, North Frontier Railway, [1964] 5 SCR 683 distinguished.

8. If a rule of retirement can be deemed to deprive a

person of his right to livelihood, it will be impermissible to provide for an age of retirement at all. That will be contrary to public interest because the Slate cannot afford the luxury of allowing Its employees o continue in service after they have passed the point of peak performance. Rules of retirement do not take away the right of a person to his livelihood: they limit his right to hold office to a stated number of years. [608D-E]

9.1 The burden to establish mala fides is a heavy burden to discharge. Vague and casual allegations suggesting that a certain act was done with an ulterior motive cannot be accepted without proper pleadings and adequate proof, both of which are conspicuously absent in these writ petitions. Besides the ordinance making power being a legislative power, the argument of mala fides is misconceived. The legislature, as a body, cannot be accused of having passed a law for an extraneous purpose. If no reasons are so stated as appear from the provisions enacted by it. Its reasons for passing a law or those that are stated in the Objects and Reasons. Even assuming that the executive, in a given case, has an ulterior motive in moving a legislation, that motive cannot render the passing of the law mala fide. This kind of 'transferred malice' is unknown in the field of legislation. [608G-H; 609A-B]

9.2 The amendment made to the Fundamental Rules in the exercise of power conferred by Articles 309 by which the proviso to Rule 2 was deleted reirospectively, with effect from February 23, 1983 by G.O.M.S. dated P 17-2-83 was a valid exercise of legislative power. The rules and amendments made under the proviso to Article 309 can be altered or repealed by the Legislature but until that is done the exercise of the power cannot be challenged as lacking in authority. [610B-C]

9.3 It is well-settled that the service rules can be as much amended, as they can be mader, under the proviso to Article 309 and that, the power to amend these rules carries with it the power to amend them retrospectively. The power conferred by the proviso to Article 309 is of a legislative character and is to be distinguished from an ordinary rule making power. The power to legislate is of a plenary nature within the field demarcated by the Constitution and it includes the power to legislate retrospectively. [609H; 610A-B]

B.s. Vadera v. Union of India, [1968] 3 S.C.R. 575 582-55, Raj Kumar v. Union of India [1975] 3 S.C.R. 963, 965, followed

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JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition Nos. 1073-1100, 1117-19 1229-95, 142 -1554, 1746-2140, 2155-2271, 2396-2459. 1198-1217, 1302-12, 1314-15, 1566-1641, 1140-70, 2360-95, 1643-1725,2272-2329,2152,2332,2339,2491,3486-89, 2498-2521, 2522, .533-74,2611-2638 and 2531 of 1983.

(Under Article 32 of the Constitution of India) AND Writ Petition Nos. 4218,4571 and 5266-5280 of 1983 Under article 32 of the Constitution of India) AND Transfer Case Nos. 44-339 of 1983 K.K. Venugopal S.S Ray, P.P. Rao, V.M. Tarkuade and R K. Garg, V. Jogayya Sharma, M.P. Rao, Sudarsh Menon, T. V.S N. Churi, G. Narasimhulu, A. Subba Rao, M.K.D. Namboodiry, H.S. Guru Raj Rao, S. Markandeya, A.T.M. Sampath, D.K. Garg, Nikhil Chandra and A K Panda for the Petitioners. L.N. Sinha, Attorney General, Anil B. Divan,B. Parthasarthi and K.R. Chaudhary for the Respondents.

G.N. Rao for the State.

Miss A. Subhashini for the Union.

The Judgment of the Court was delivered by CHANDRACHUD, C. J. In the elections held to the Legislative Assembly of Andhra Pradesh in January 1983, a new political party called Telugu Desam was swept to power. It assumed office on January 9, 1983. On February 8, 1983 an Order (G.O. Ms. No. 36) was issued by the Government of Andhra Pradesh stating that it had decided to reduce the age of superannuation of all Government employees, other than in the last Grade Service, from 58 to 58 years. Two notifications issued in exercise of the power conferred by the Proviso to Article 309 read with Article 313 of the Constitution was appended to that order. The relevant Fundamental Rules were amended by the first notification, while the corresponding rules of the Hyderabad Civil Services Rules were amended by the second notification. By these notifications, every Government servant, whether ministerial or non-ministerial but not belonging to the last Grade Service, who had already attained the age of 55 years was to retire from service with effect from February 28, 1983. Speaking to the Government employees in the Secretariat premises the next day, the Chief Minister justified the reduction of the retirement age from 58 to 55 years on the ground that it had become necessary to provide greater employment opportunities to the youths. Over 18,000 Government employees and 10,000 public sector employees were superannuated as a result of the order.

These writ petitions were filed by the Andhra Pradesh Government employees to challenge the aforesaid order and the notifications on the ground that they violate Articles 14, 16, 21 and 300A of the Constitution. The case of the petitioners as laid in the writ petitions is that there was no basis at all for reducing the age of retirement from 58 to 55; that the age of retirement was increased from 55 to 58 by the Government of Andhra Pradesh by a notification dated - October 29, 1979 and nothing had happened since then to justify reduction of the age of retirement again to 5 i; that providing employment opportunities to the youths h Is no relevance on the question of fixing the age of retirement; that the Government had exercised its power arbitrarily without having regard to factors which are relevant on the fixation of the age of retirement; that the Government had acted unreasonably in not giving any previous notice to the employees which would have enabled them to arrange their affairs on the eve of retirement; that the Government was estopped from reducing the age of retirement to 55, since the employees had acted on the representation made to them in 1979

by increasing the age of retirement from 55 to 58; that as a result of the increase in the age of retirement from 55 to 58 years in 1976, a vested right had accrued to the employees, which could be taken away, if at all, only from future entrants to the Government service; that retirement of experienced and mature persons from Government service will result in grave detriment to public services of the State; and that, the decision of the Government is bad for a total non-application of mind to the relevant facts and circumstances bearing on the question of the age of retirement, like increased longevity. The petitioners aver that the Government had not even considered the enormous delay which would be caused in the payment of pensionary benefits to employees A who were retired from service without any pre- thought.

A counter-affidavit was filed on behalf of the State of Andhra Pradesh by Shri R. Parthasarathy, Joint Secretary in the Finance Department of the State, at the stage of admission of the writ petitions. It is stated in that affidavit that the recommendation of the one Man Pay Commission appointed by the Government of Andhra Pradesh. after which the age of retirement was increased to 58 in 1979, has no relevance to the present decision of the State to reduce the age of retirement; that the fact that the average expectation of life is about 70 years is not a ground for increasing the age of retirement of Government employees; that the general trend was for reducing the age of retirement; that the Government of Kerala and Karnataka had reduce the age of retirement of their employees to 55, though it was earlier increased from 55 to 58; that in some States in India the age of retirement is 55 and not 58; the present decision was taken by the Government in order to fulfill its commitment that it will take welfare measures in order to improve the lot of the common man, and. particularly, in order to afford opportunities to qualified and talented unemployed youths whose number was increasing enormously due to expansion of educational facilities; that the Government employees was stagnated in the lower positions due to the increase in the age of retirement from 55 to 58: and that, the present measure was intended to have a salutary effect on the creation of incentives to the deserving employees The affidavit says further that the question as regards the age of retirement is a pure question of Governmental policy affording no cause of action to the petitioners to file the writ petitions. The affidavit asserts that the Government had reviewed the situation arising out of the enhancement of the age of retirement from 55 to 58 in 1979 and that it was revealed that on account of the enhancement of the age of retirement, the chances of promotion of the service personnel had deteriorated resulting in widespread frustration and unemployment. The inconvenience alleged by the petitioners in the matter of payment of their pension and other retirement benefits was imaginary, since the Government was making extensive arrangements to disburse such benefits expeditiously. By the counter-affidavit, the Government of Andhra Pradesh denied that any of the provisions of the Constitution were violated by the impugned decision to reduce the age of retirement.

Another affidavit was filed on behalf of the Government of Andhra Pradesh, after the rule nisi was issued in the writ petitions.

The affidavit is sworn by Shri A.K. Sharma, Deputy Secretary to Government of Andhra Pradesh. Finance and Planning. It is stated in that affidavit that the question of the age of superannuation was not referred to the one Man Pay Commission of Shri A. Krishnaswamy, which was appointed by the Andhra Pradesh Government on November 3, 1 977; that the recommendation made by the Pay

Commission was casual and was not based on relevant criteria; that as many as 12,04,008 educated youths were left without employment on September 30, 1979 as a result of the unwarranted increase in the age of superannuation from 55 to 58; that the number of unemployed youths had grown to 17,84,699 by December 31, 1982; and that, the age of retirement was reduced because it is the duty of the State, within the limits of its economic capacity and development to make effective provision to solve the unemployment problem. The rest of the averments i`1 this affidavit are on the same lines as in the affidavit of Shri R. Partbasarathy.

Rule Nisi was issued on the writ petitions by this Court on February 25, 1983. The Legislative Assembly of Andhra Pradesh was prorogued on April 9, 1983. On the very next day, that is, on April loth Governor of Andhra Pradesh promulgated Ordinance No. 5 of 1983 called 'the Andhra Pradesh Public Employment (Regulation of Conditions of Service) Ordinance.' The Ordinance was passed "to regulate the recruitment and conditions of service of persons appointed to Public Services and posts in connection with the affairs of the State of Andhra Pradesh and the officers and servants of the High Court of Andhra Pradesh". We are not concerned in these writ petitions with clauses 3 to 9 of the Ordinance which mostly regulate conditions of service. Clause 10(1) of the Ordinance prescribes that every Government employee, not being a workman and not belonging to Last Grade Service shall retire from service on the afternoon of the last day of the month in which he attains the are of 55 years. Clause 10(2) provides that every Government employee, not being a workman but belonging to the Last Grade Service, shall retire from service on the afternoon of the last day of the month in which he attains the age of 60 years. Clause 10(3) provides that every workman belonging to the Last Grade Service or employed on a monthly rate of pay in any service notified as Inferior, shall retire from service on the afternoon of the last day of the month in which he attains the age of 60 years. Workmen belonging to Ministerial Service or any service other than the Last Grade Service notified as Inferior have to retire on the afternoon of the last day of the month in which they attain the age of 55 years. By clause 15, All Rules and Regulations made under the proviso to Article 309 or continued under Article 3 l 3 of the Constitution or made under any other law for the time being in force, governing the recruitment and conditions of service of the Government employees, continue to be in force in so far as they are not inconsistent with the provisions of the Ordinance. Clause 16 of the Ordinance provides that no amendment to the Fundamental Rules shall be deemed to be invalid merely by reason of the fact that the proviso to rule 2 of the Fundamental Rules laid down that the said rules shall not be modified or replaced to the disadvantage of any person already in service. It provides further that all amendments made to the Fundamental Rules and particularly the amendments made by the notification dated February 8, 1983, shall be and shall be deemed always to have been made validly and shall have effect notwithstanding anything to the contrary contained in the proviso to rule 2 of the Fundamental Rules as if the Ordinance was in force on February 8, 1983. Clause 16 of the Ordinance declares that every amendment made before or after the commencement of the Ordinance to the Fundamental Rules and the Hyderabad Civil Services Rules, shall be and shall be always deemed to have applied to all Government employees whether appointed before or after the amendment. Clause 18 of the Ordinance provides by sub-clause (i) that the proviso to rule 2 of the Fundamental Rules shall be and shall be deemed always to have been omitted. Rule 56 of the Fundamental Rules is omitted by Clause l 8(ii) while Rule 231 of the Hyderabad Civil Services Rules is omitted by clause 19 of the Ordinance. The age of retirement was previously governed by these two Rules.

The arguments advanced before us fall under distinct heads, learned counsel having shared their burden equitably. Shri Venugopal challenged the Ordinance on the ground that it is unreasonable. Shri Tarkunde challenged it on the ground that the superannuation of the employees by reduction of the age of retirement amounts, in the circumstances, to 'removal' of the employees within the meaning of Article

311. The challenge of Shri Siddhartha Shankar Ray is based on the ground of a total non application of mind. Shri R.K. Garg, who appears in a group of three Transferred Cases, contends that the Ordinance is bad because it supersedes all industrial adjudications and overrules even settlements arrived at between the management and the employees. Shri P.P. Rao contends that the Ordinance is bad because. whereas in the case of compulsory retirement a notice of three months is required to be given by the Government under the relevant rules, in the case of superannuation of employees who had already attained the age of 55 on February 8, 1983; when the first Order was issued, the impugned law gives to the employees a notice of 20 days only since all such employees had to retire on February 28, 1983. Shri P P. Rao also challenges the retrospective deletion of the proviso to Rule 2 of the Fundamental Rules as being arbitrary. Shri Gururaj Rao challenges the Ordinance on the ground that it runs into the teeth of the recommendation which the Andhra Pradesh One Man Pay Revision Commission had made in 1979 in pursuance of which the age of retirement was raised from 55 to 58. Shri A.T.M. Sampath laid stress on the lack of acceptable reasons to justify the issuance of the Ordinance Like some of the other learned counsel, he suspects the bona fides of the state Government in issuing the Order and the Ordinance. It was suggested by the petitioners, though somewhat in passing, that the object of the State Government in reducing the age of retirement was to get rid of n senior members of Government service whose loyalty was thought to be not above suspicion.

This is the broad outline of the petitioners' case. We will presently set out the specific contentions advanced before us but, before doing so. it would be necessary to indicate the approach which in our opinion, should be adopted while examining a question of the present nature, namely, the fixation of the age of retirement. Barring a few services in a few parts of the world as, for example, the American Supreme Court, the terms and conditions of every public service provide for an age of retirement. Indeed, the proposition that there ought to be an age of retirement in public services is widely accepted as reasonable and rational. The fact that the stipulation as to the age of retirement is a common feature of all of our public services establishes its necessity, no less than its reasonableness Public interest demands that there ought to be an age of retirement in public services The point of the peak level of efficiency is bound to differ from individual to individual but the age of retirement cannot obviously differ from individual to individual for that reason. A common scheme of general application governing superannuation has therefore to be evolved in the light of experience regarding performance levels of employees, the need to provide employment opportunities to the younger sections of society and the need to open up promotional opportunities to employees at the lower levels early in their career. Inevitably, the public administrator has to counter balance conflicting claims while determining the age of superannua tion. On the one hand, public services cannot be deprived of the benefit of the mature experience of senior employees; on the other hand, a sense of frustration and stagnation cannot be allowed to generate in the minds of the junior members of the services and the younger sections of the society. The balancing of these

conflicting claims of the different segments of society involves minute questions of policy which must as far as possible, be left to the judgment of the executive and the legislature. These claims involve considerations of varying vigour and applicability. Often, the Court has no satisfactory and effective means to decide which alternative, out of the many competing ones, is the best in the circumstances of a given case. We do not suggest that every question of policy is outside the scope Of judicial review or that, necessarily, there are no manageable standards for reviewing any and every question of policy. Were it so, this Court would have declined to entertain pricing disputes covering as wide a range as cars to mustard-oil. If the age of retirement is fixed at an unreasonably low level so as to make it arbitrary and irrational, the Court's interference would be called for, though not for fixing the age of retirement but for mandating a closer consideration of the matter. "Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14."(l) But, while resolving the validity of policy issues like the age of retirement, it is not proper to put the conflicting claims in a sensitive judicial scale and decide the issue by finding out which way the balance tilts. That is an exercise which the administrator and the legislature have to undertake. As stated in 'The Supreme Court And The Judicial Function'(2): "Judicial self-restraint is itself one of the factors to be added to the balancing process, carrying more or less weight as the circumstances seem to require".

We must therefore approach the problem before us with a view to determining whether the age of retirement has been reduced from 58 to 55 unreasonably or arbitrarily. Such a fixation of age would be unreasonable or arbitrary if it does not accord with the principles which are relevant for living the age of retirement or if it does not subserve any public interest. On the other hand, the Ordinance shall have to be held valid, if the fundamental premise upon which it proceeds has been accepted as fair and reasonable in comparable situations, if its provisions bear nexus with public interest and if it does not offend against the constitutional limitations either on legis-

(l) E.P Rovappa. State of Tamil Nadu, [1974] 2. SCR

348. (2) Edited by Philips B. Kurland, Oxford and IBH Publisning Co., Page 13.

lative competence or on the legislative power to pass laws which bear on fundamental rights.

Shri Venugopal, who led the argument on behalf of the petitioners, contends that the provisions of the Ordinance whereby the age of retirement is reduced from 58 to 55 are arbitrary and irrational and hence violative of Articles 14 and 16 of the Constitution for the following reasons:

> (a) The age of superannuation was increased from 55 to 58 years with effect from October 29, 1979 after an elaborate and scientific inquiry by a One-Man Pay Commission;

(b) The State Government issued the order reducing the age of retirement within one month of the assumption of office by it. In the very nature of things, no scientific investigation could have been made, no material gathered and no statistics compiled as regards the number of employees who will retire, the number of persons who would get fresh employment and the hardship caused to the

superannuated employees by the delay in the payment of retirement benefits to them. Neither the social nor the economic consequences of so grave a decision could have been or were in fact considered by the Government;

(c) The reason given by the Government that promotional opportunities had deteriorated as a result of the increase in the retirement age from 55 to 58 is fanciful and non-existent. That result is indeed produced by the impugned action of the State Government In 1979, when the age of retirement was increased from 55 to 58 years, promotional opportunities were denied to the employees because, those who would have retired at the age of 55 got a fresh lease of life for another years. Now, when their turn for promotion has come at about the age of 55, they have been superannuated;

(d) The theory that reduction in the age of retirement provides employment opportunities to educated youths is fallacious. The various Pay Commissions have expressed the view that persons who are required to retire at an early age are compelled by necessity to seek other employments. Even otherwise, not more than one per cent of the unemployed educated youths are likely to get employment as a result of the reduction in the age of retirement from 58 to 55. That is because, not more than 18,000 vacancies arose on account of the reduction in the age of retirement.

(e) The careful planning by the employees of their important affairs of life like the construction of a house, the marriage- of a daughter or the repayment of loans, has been suddenly set at naught by the reduction in the age of retirement;

(f) Two of the most relevant circumstances bearing upon the fixation of the age of retirement have been ignored by the State Government: increase in longevity and the prevailing age of retirement in public sector undertakings; and

(g) No consideration was given to the plain and direct con sequence of the reduction in the age of retirement, namely, that the State exchequer would have to find and pay Rs. 70 crores on one single day by way of retirement benefits, for which no budgetary provision was made It would appear from these contentions as also from the contions advanced by the other learned counsel that the main plank of the petitioners' case is that the decision to reduce the age of retirement from 58 to 55 is unconstitutional because it is arbitrary, irrational and unconnected with the object which it seeks to achieve.

In this connection, the first ground of challenge to the reduction of the age of retirement is that the One-man Pay Revision Commission appointed by the Government of Andhra Pradesh had recommended that the age of retirement should be increased from 55 to 58, that the said recommendation was accepted by the State Government and consequently, the age of retirement was raised to 58 with effect from October 29, l 979. It is contended that the reversal of that well-considered decision within a short span of less than three and a half years is patently unscientific and arbitrary, especially since no fresh investigation was undertaken to examine the validity of the recommendation made by the One- man Pay Commission.

The very foundation of this argument is fallacious By G.O. NO. 745 dated November 3,1977 the Government of Andhra Pradesh had appointed Shri A. Krishnaswamy, a retired member of the l.A.S. as One-man Pay Revision Commission to review the structure of the different scales of pay, dearness allowance and other compensatory allowances of all categories of employees of State Government, local bodies, aided institutions, work-charge establishments etc. The terms of reference of the Commission were enlarged by the Government by an order dated January 28, 1978 SO as to require the Commission to review the existing retirement benefits available to all categories of employees referred to above and to examine the question of extension of retirement benefits to the work-charged establishments. The question as to whether the age of retirement should be raised.

p73 Ordinance which mostly regulate conditions of service. Clause 10(1) of the Ordinance prescribes that every Government employee, not being a workman and not belonging to Last Grade Service shall retire from service on the afternoon of the last day of the month in which he attains the are of 55 years. Clause 10(2) provides that every Government employee, not being a workman but belonging to the Last Grade Service, shall retire from service on the afternoon of the last day of the of the Commission cover the review of the existing 'retirement benefits', the reference "would naturally include the age of retirement." This was an erroneous and unwarranted reading of the terms of reference. A review of retirement benefits would undoubtedly cover the examination of the rules or schemes relating to pension, provident fund, gratuity, encasement of leave, etc, but it cannot include the power to examine the question as regards the fixation of the age of retirement. The Commission says in the same paragraph, as a possible justification of its consideration of the question of the age of retirement, that "it was mentioned on the floor of the House that this issue is referred to the Commission" Our attention has been drawn in this behalf to a statement made in the Andhra Pradesh Legislative Council on September 20, 1976 by the then Finance Minister, Shri G. Rajaram, to the effect that one of the terms of reference to the Commission was to review the existing retirement age of Government employees. We regret to say that the Finance Minister was not properly briefed when he made that statement. In any case, the power of a Commission to enquire into a question must depend upon the terms of the Reference and not upon the statements made on the floor of the House. The fact that the Commission discussed the question of the age of retirement in passing shows that it was not properly seized of that question. The discussion of an important matter like the age of retirement is done in four brief paragraphs which occupy less than two pages of the Commission's report. We do not blame the Commission for this hurried and inadequate treatment of an important question. That question was not within its purview. The State Government is therefore justified in its contention that the question of the age of retirement was not referred to the Commission and that the decision which the Government took later to increase the age of retirement from 55 to 58 was not based on the recommendation of the Commission. The report of the Commission has therefore to be kept out of consideration in so far as the question of the age of retirement is concerned and no argument can be founded on the fact that the view of the Commission was ignored or that nothing had happened since the date of the report to justify a departure from it.

As regards Shri Venugopal's argument at (b) above, the fact that the decision to reduce the age of retirement from 58 to 55 was taken by she State Government within one month of the assumption of office by it cannot justify the conclusion that-lt the decision is arbitrary because it is unscientific in

the sense that it is not backed by due investigation or by compilation of relevant data on the subject. Were this so, every decision taken by a new Government soon after assumption of office shall have to be regarded as arbitrary. The reasonableness of a decision, in any jurisdiction, does not depend upon the time which it takes. A delayed decision of the executive can also be had as offending against the provisions of the Constitution and it can be no defense to the charge of unconstitutionality that the decision was taken after the lapse of a long time. Conversely, decisions which are taken promptly cannot be assumed to be bad because they are taken promptly. Every decision has to examined on its own merits in order to determine whether it is arbitrary or unreasonable. Besides, we have to consider the validity of a law regulating the age of retirement. It is untenable to contend that a law is bad because it is passed immediately on the assumption of office by a new Government. It must also be borne in mind that the question as to what should be the proper age of retirement is not a novel or unprecedented question which the State Legislative had to consider. There is a wealth of material on that subject and many a Pay Commission has dealt with it comprehensively. The State Government had the relevant facts as also the reports of the various Central and State Pay Commissions before it, on the basis of which it had to take a reasonable decision. The aid and assistance of a well-trained bureaucracy which, notoriously, plays an important part not only in the implementation of policies but in their making, was also available to the Government. Therefore, the speed with which the decision was taken cannot, without more, invalidate it on the ground of arbitrariness.

The contentions of Shri Venugopal which arc set out in paragraphs (c) to (g) above and, partly in paragraph (b) itself, are by and large matters of legislative policy in the formulation of which the Government of the day must be allowed a free, though fair play. Indeed, the acceptance of argument advanced by the various counsel for the petitioners must lead to the conclusion that there, has to be a uniform age of retirement all over India. If reduction of the retirement age from 58 to 55 is to be regarded as arbitrary on the ground that it overlooks the advance made in longevity, fixation of retirement age at 58 is also not likely to sustain the charge of arbitrariness. The argument could still be made that improvement in the expectation of life requires that the age of retirement should be fixed at 60 or 62 or even at 65. Then again, though immutable considerations which are generally or universally true like increased life-expectation are as much Jammu and Kashmir as for Tamil Nadu, that cannot justify the conclusion that fixation of the retirement age at 55 in Jammu and Kashmir is invalid since the State of Tamil Nadu has fixed it at 58. Both can fall within the constraints of the Constitution and neither the one nor the other can be considered to be arbitrary or unreasonable. There is no one fixed or focal point of reasonableness. There can be a large and wide area within which the administrator or the legislator can act, without violating the constitutional mandate of reasonableness. That is the area which permits free play in the joints. The following table will show the variation in the retirement age which exists at present in the various States in India:

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State	Retirement Age
Haryana	58 years
Jammu & Kashmir	55 years
Karnataka	1979-58 years 1981-55 years

Kerala	1967-55 years 1968-58 years 1969- 55 years 1984-58 years
Madhya Pradesh	58 years; Reduced to 55 years 1967; enhanced to S years in 1970.
Maharashtra	58 years
Orissa	Previously 55 years; enhanced to 58 years.
Rajasthan	55 years (Reduced from 58 years to 55 years about 12 years back)
Uttar Pradesh	58 years (Reduced to 55 years in 1962; enhanced to 58 years)
Tamil Nadu	58 years (For District Judges, lowered from 58 to 55 years)
West Bengal	58 years (since 1961)

.tb .9"

It is clear from this table that the area between the ages of 55 and 58 is regarded in our country as a permissible field of operation for fixing the age of retirement. Neither the American nor the English notions or norms for fixing retirement age can render invalid the basis which is widely accepted in our country as reasonable for that purpose.

On the question of policy regarding the fixation of retirement age, it will be useful to draw attention to the views expressed upon that question from time to time by the various Pay Commissions.

Chapter XXXVII of the Report of the Second Central Pay Commission (1959) deals with the question as to the 'Age of Superannuation'. The history and background of the fixation of age of superannuation traced in that Chapter make useful reading. Prior to 1917, the superannuation rule applicable to both ministerial and non ministerial staff was that a Government servant who had attained the age of 55 might be required to retire; but that, in order to avod depriving the State of the valuable experience of efficient officers and adding unnecessarily to the non-effective charges, the rule should be applied with discretion and, whenever it was applied, reasons should be recorded. In its general effect, here, the rule favoured the retention in Government service of officers who had attained the age of 55, and required inefficiency to be established as the condition of compulsory H retirement. This was considered injurious to the efficiency of the public service, on the ground that most officers lost their keenness and initiative at the age of 55. The rule was, accordingly, changed so as to make retirement at 55 the normal practice, and retention in service beyond that age the exception. A distinction was, however, made between ministerial and non-ministerial officers, presumbly because, it was thought that the duties of the

former did not suffer from the effects of advancing age as did those of the others; and it was decided, in effect, that, subject to continued efficiency, ministerial officers should be retained in service till they attained the age of 60. This distinction was, however, abolished in 1937-38, partly as a measure of relieving unemployment-which was acute at that time-but largely in recognition of the invalidity of the distinction and on the consideration that the uncertainty which attended the service of senior men beyond 55 had a disturbing effect on those who were looking forward to succeeding them.

Paragraph 5 of the Commission's Report mentions that the Varadachariar Commission had recommended earlier that the age for compulsory retirement should be 58 years for all services- pensionable and non-pensionable-with an option to the Government to retire an employee on the ground of loss of efficiency, at the age of 55. That recommendation involved reduction of the age of superannuation in the case of Class IV servants and in the case of industrial and workcharged staff outside the Railways, as well as raising the age for others. But, for some reason or the other, only the latter question was considered and it was ultimately decided in 1949, that there should be no change in the position. The main grounds for the decision were that the majority of persons retiring at the age of 55 were not capable of rendering efficient service any further; their replacement at the age of 55 by younger men would serve the interests of efficiency better; and that, the retirement age should be so fixed as would release men at an age when they would still be fit to render service to the country in other spheres of their choice, even though not wholly capable of keeping up with the fast tempo of Government work, or of meeting its other exacting requirements. It was observed that Government service ages employees quicker and that, the question was one of balancing limited use to Government of such men against, perhaps, their better usefulness to the nation at large.

Paragraph 6 of the Commission's Report shows that the question was reconsidered in 1963 when, the only additional argument advanced against an upward change its adverse effect on educated unemployment. It was recognized that its actual effect would A be small but, importance was attached to its probable impact on public opinion. The earlier decision to maintain the age of retirement at 55 was re-affirmed but, in view of the widespread shortage of trained personnel, it was decided that extension of service beyond that age might be given liberally on the ground of public interest, more specially in the case of scientific and technical personnel. The continuing shortage of trained man-power led to a further review of the problem in 1958; but, apart from laying down the criteria for grant of extension and re-employment, and re-emphasizing the need to retain technical and scientific personnel beyond the age of superannuation, the only significant advance on the earlier decisions was that re- employment or extension might be granted upto two years at a time. thus notwithstanding the recommendation of the Varadachariar Commission, the age of superannuation laid down for the non-ministerial staff more than 40 years earlier and for ministerial staff more than 20 years earlier, continued

to be in force when the Second Central Pay Commission took up that question for examination.

There was an "extraordinary unanimity of opinion"

amongst Heads of Departments, distinguished retired public servants, public men and economists who gave evidence before the Commission that the age of superannuation should be raised, the only difference being as to whether it should be raised to 58 or 60 years. The great majority of the employees' organizations were also in favour of increasing the age of retirement, the only exception being the All India Railwaymen's Federation. That Federation did not consider the age of 55 as the age of the onset of senile inefficiency, but it was of the opinion that the age of superannuation should not be raised in view of the then prevailing large-scale unemployment. Some of the reasons on which there was unanimity for increasing the age of retirement were; the continuing mental and physical efficiency of most of the Government servants at the age of 55; the increased expectation of life resulting from improved public health conditions; and, the national waste involved in sending men and women into enforced idleness while they were still capable of rendering efficient service. The Commission found that there was an overall improvement in public health as shown by the decline in death rate and the increase in expectancy of life at birth. What was even of greater relevance, the Commission found that there was improvement in the expectancy of life in the fifties, that is to say, amongst people in the age group of 50 to 60. The data supplied to the Commission by the Comptroller and Audi-

tor-General showed that, at least in the case of Gazetted and Class 111 employees, there was a significant increase in the percentage of persons who lived for two years or more after superannuation. On this data, the Commission concluded in paragraph 11 of its Report: "Thus, however valid may have been the view taken in 1971, and re-affirmed in 1937-38, that the age of 55 was normally the dividing line between health and efficiency on the one side, and marked physical deterioration and decline in efficiency On the other, there is sufficient reason to think that is no longer so, and that the deviding line can be safely moved a few years upwards."

The Commission then adverted to the prevailing ages of retirement in foreign countries and reiterated that whether we go by our own "vital statistics" or by the age of retirement prevalent in other countries, there was a clear case for raising the age of superannuation "substantially" above 55 years.

In paragraph 15 of the Report, the Commission considered the effect of increasing the age of retirement on the employment situation and concluded that the likely repercussion of increasing the age of retirement on educated unemployment would not be substantial. After talking into account all the relevant considerations, including the fact that most Government servants themselves do not wish to continue in service until they are worn out and have "one foot in the grave", the Commission

summed up its findings by saying that there was "much in favour of and very little against raising the age of superannuation". The Commission recommended that the age of superannuation should be 58 for all classes of public servants including those for whom the retirement age then was 60.

The recommendation of the Second Central Pay Commission that the age of retirement should be raised from 55 to 58 years was not accepted by the Government initially because, it felt that raising the age of retirement would reduce employment opportunities in the immediate future. However. the Government reviewed the position subsequently and raised the age of retirement to 58 years with effect from December 1, 1962. The main considerations which weighed with the Government in reaching this decision were: The shortage of experienced and trained man-power which could be met partly by raising the age of retirement; the insignificant effect which raising the age of retirement would have on employment opportunities; and, the improved life expectation.

The Third Central Pay Commission (1973) dealt with the question of age of superannuation in Chapter 60 of its Report. Paragraph 3 of that Chapter shows that whereas some Service Associations Demanded that the age of superannuation should be increased to 60 years on account of increased longevity and on account of the fact that a large number of Government employees were not free from family responsibilities until much later in life because of late marriages, some of the Associations suggested that the age of retirement should be reduced again to 55 years mainly with a view to improving the promotional prospects and providing increased employment opportunities to the educated unemployed in the country.

The conclusions of the Third Central Pay Commission can be summed up thus:-(1) There was a further improvement in the expectancy of life at birth as revealed by the provisional 1971 Census figures; (2) There was improvement in the expectancy of life between the ages of 50 and 55 years, which was of great relevance on the question of fixation of the age of superannuation; (3) There was an appreciable increase since 1950 in the percentage of survivors among the Central Government employees during about ten years after retirement; (4) Though reduction in the age of superannuation to 55 years would result in making about 96,000 additional jobs available, that factor was counter-balanced by the circumstance that a large number of retired Government employees are obliged to take up some employment or the other after retirement, due to the increased cost of living and the growing family responsibilities. A reduction in the age of superannuation would not therefore, ipso facto, improve the overall employment position for the educated unemployed; (5) Any increase in the age of superannuation beyond the age of 58 would reduce, during the period of the increase, employment opportunities for a very large number of technical, engineering and professional students passing out from the universities, technical institutions and industrial training institutes ; and, (6) The age of retirement should not be changed frequently since it has a vital bearing on the career prospects of and the retirement benefits available to Government employees and since it is an important factor in the attractiveness of Government service. For these reasons, the Commission recommended that the age of superannuation should continue to be 58 years for the Central Government employees with the modification that the retirement should take effect from the afternoon of the last day of the month in which the employee attains the age of superannuation.

The Third Tamil Nadu Pay Commission (1978) has also dealt with the question of the age of retirement. The Commission noticed that the age of retirement was more than 60 in some of the develop-

ing countries, the economic development of which was comparable to that of India. The age of retirement is 70 years in Brazil and Peru, 65 years in Chile, 63 years in Philippines and 64 years in Lebanon. The Commission examined the co-relationship between increase in the age of retirement and unemployment amongst the educated youth with "a deep sense of concern" and observed that the number of jobs released by retirement would be very marginal as compared with the total number of job seekers and that, therefore, it was not fair to shift the focus of the problem of unemployment to the age of superannuation of the Government employees. In support of this view, it quoted the International Labour Organisation (The World Employment Programme): "The three pillars of a strategy for fuller employment are rural development, labour intensive public works programmes and the reduction of capital intensity of industrialisation." Observing that the dimensions of unemployment problem should not deter the Government from improving the service conditions of its employees. the Commission concluded that there was a case for increasing the retirement age of the State Government employees to 58 years.

Our attention was also drawn to the views expressed on "Employment Policy" in the Sixth Five Year Plan (1980-85). It is observed therein that lasting solutions to unemployment problems had to be found within the framework of a rapid and employment-oriented economic growth; that suitable measures had to be evolved in the short term in a co-ordinated way, particularly for the benefit of the weaker sections; and that, since the dimension and gravity of educated unemployment vary from State to State, a decentralised approach should be adopted on the district employment plan. According to the Sixth Five Year Plan, unemployment would not be eliminated within the Sixth Plan unless efforts were immediately made to make the current unemployed more employable through short-term training and vocational programmes and unless special employment programmes are directed towards their absorption.

Soon after the assumption of office, the Government of Andhra Pradesh presented a White Paper to the State Legislative Assembly in March 1983 on the question of reduction in the age of superannuation from 58 years to 55 years in respect of Government employees, employees of Panchayat Raj Institutions, Local Bodies and aided Educational Institutions for whom the pensionary liability is borne by Government". After stating that the Krishnaswamy Commission was appointed on November 3, 1977 for the sole purpose of examining the question of ' retirement benefits" and that the question of retirement age was not included in its terms of reference, the White Paper says that although the Government had accepted the recommendations of the Commission almost in their entirety, it did not accept its recommendation that the age of retirement should be increased from 55 to 58 years. By a notification dated September 17, 19,9 the recommendations of the Commission B in regard to the revision of pay scales were accepted by the Government but, not so the recommendation regarding increasing the age of retirement from 55 to 58 years. it was later, in October 1979, that the Government decided on its own to increase the age of retirement from 55 to 58 years. The specific case of the State Government on the question of reduction of the age of retirement from 58 to 55 years is stated thus:

> "As a result of revision of the age of superannuation upwards from 55 years to 58 years, the normal channels of promotions that would have opened up had the retirements taken place in the normal course, were choked. Consequently the resultant vacancies at the direct recruitment level which would have arisen in the chain of appointments that would follow each retirement, were also blocked for 3 years continuously, thereby denying the promotion opportunities to inservice personnel and employment opportunities for the unemployed causing a great deal of frustration all round. It is estimated that on an average there would be approximately 6,500 retirements each year from Government departments, Panchayat Raj Institutions and also Aided Institutions, where pensionary liability is borne by Government. Government, therefore, decided to revise the age of superannuation from 58 years to 55 years so that the unemployed talented youth who were eagerly awaiting chances of appointment could get opportunities of employment. Besides, experienced deserving inservice personnel whose legitimate aspirations for promotion were thwarted could also now look for this much awaited promotion. Government were thus able to create promotional avenues to serving employees at various levels and create opportunities for appointment against about 18,000 posts in Government, Panchayat Raj and aided educational institutions alone, not to speak of the opportunities that were created in the various Corporations etc, owned or controlled by Government."

The White Paper explains that in order to ensure that the employees who had retired by the end of February 1983 should get their pensionary benefits without delay, the Government had constituted a special Pension cell in the Finance Department, by a notification dated February 16, 1983. The function of that cell is to "monitor the progress of settlement of pension eases" In addition, it is said, the Government had issued instructions by a notification dated February 14, 1983 for payment of "anticipatory pension" at 3110th of the last pay drawn in all cases wherein the sanction of pension was delayed.

on the basis of this data, it is difficult to hold that in reducing the age of retirement from 58 to 55, the State Government or the Legislature acted arbitrarily or irrationally. There are precedents within our country itself for fixing the retirements age at 55 or for reducing it from 58 to 55. Either the one or the other of these two stages is regarded generally as acceptable, depending upon the employment policy of the Government of the day. It is not possible to lay down an inflexible rule that 58 years is a reasonable age for retirement and 55 is not. If the policy adopted for the time being by the Government or the Legislature is shown to violate recognised norms of employment planning, it would be possible to say that the policy is irrational since, in that event, it would not bear reasonable nexus with the object which it seeks to achieve. But such is not the case here. The reports of the various Commissions, from which we have extracted relevant portions, show that the creation of new avenues of employment for the youth is an integral part of any policy governing the fixation of retirement age. Since the impugned policy is actuated and influenced predominatly by that consideration, it cannot be struck down as arbitrary or irrational. We would only like to add that the question of age of retirement should always be examined by the Government with more than ordinary care, more than the State Government has bestowed upon it in this case. The fixation

of age of retirement has minute and multifarious dimensions which shape the lives of citizens. Therefore, it is vital from the point of view of their well-being that the question should be considered with the greatest objectivity and decided upon the basis of empirical data furnished by scientific investigation. What is vital for the welfare of the citizens is, of necessity vital for the survival of the State. Care must also be taken to ensure that the statistics are not perverted to serve a malevolent purpose Shri V.M. Tarkunde, who appears for some of the petitioners, A limited his argument to the contention that arbitrary fixation of retirement age amounts to "removal" from service and is therefore violative of Article 311 (2) of the Constitution This argument has to be rejected because of our conclusion that the reduction of the age of retirement from 58 to 55 in the instant case is not hit by Article 14 or Article 16, since it is not arbitrary or unreasonable in the circumstances of the case. But, apart from this position, we find it difficult to appreciate how the retirement of an employee in accordance with a law or rules regulating his conditions of service can amount to his "removal" from service. It is well-settled that Article 311 (2) is attracted only when a civil servant is reduced in rank, dismissed or removed from service by way of penalty, that is to say, when the effect of the order passed against him in this behalf is to visit him with evil consequences. See Satish Chandra v. Union of India,(1) Shyam Lal v. State of U P.,(1) State of Bombay v. Saubhagchand M. Doshi,(3) Purshottam Lal Dhingra v. Union of India(4) and P. Balakotiah v. Union of India(5). Besides, the point made by Shri Tarkunde is concluded by a Constitution Bench decision of this Court in Bishun Narain Misra v. State of Uttar Pradesh (6) In that case, the Government of Uttar Pradesh and raised the age of superannuation from 55 to 58 years by a Notification dated November 27, 1957 but reduced it again to 55 years by a Notification dated May 25, 1961. The appellant therein, who had attained the age of 55 years on December 11, 1960 and was continued in service when the age of retirement was raised to 58 years, was one of those who had to retire on December 31, 1961 as a result of reduction of the age of retirement to 55. It was held by this Court that the termination of service of an employee on account of his reaching the age of superannuation does not amount to his removal from service within the meaning of Article 311 (2). Learned counsel contends that this decision is of doubtful authority since the Court based its opinion on the majority judgment in Moti Ram Deka v. y,General Manager, North Frontier Railway(7), in which the Court was not called upon to consider and did not consider the validity of a rule of superannuation. It is true that in Moti Ram Deka, the Court was concerned to G (1) [1953] S.C.R. 655.

(2) [1955] 1 S.C.R.26.

(3) [1958] S.C.R. 571.

(4) [1958] S.C.R. 828.

(5) [1958] S.C.R.1052.

(6) [1965] I S.C.R. 693.

(7) [1964] 5 S.C.R 683.

determine the validity of Rules 148 (3) and 149 (3) of the Railway Establishment Code which provided for the termination of the service of a permanent servant by a mere notice But, interestingly, the judgment in Bishun Narain Mishra shows that it was the appellant therein who relied on the decision in Moti Ram Deka in support of his contention that the rule by which the age of retirement was reduced to 55 years amounted to removal within the meaning of Article 311 (2) The Court held that the decision in Moti Ram Deka had no application to the case before them since "that case did not deal with any rule relating to age of retirement". (See page 696 of the Report). It was after noticing this distinction that the Court observed that the very case, namely, Moti Ram Deka's case on which the appellant relied, contained the observation that the rule as to supperannuation or compulsory retirement resulting in the termination of service of a public servant did not amount to removal from service The Court, in Bishun Narain Misra, came independently to the conclusion that "as the rule in question only dealt with the age of superannuation and the appellant had to retire because of the reduction in the age of superannuation it cannot be said that the termination of his service which thus came about was removal within the meaning of Article 311".

The theme of Shri Siddhartha Sbankar Ray's argument is "non application of mind". He made it clear that his argument should not be construed as a challenge to the power or jurisdiction of the Governor to issue the impugned Ordinance and that his sole attempt was to show that the Ordinance was passed in a hurry, as a result of which, considerations which are relevant to the fixation of retirement age were ignored. The instances of non- application of mind cited by the learned counsel are these:

> The inclusion o f the employees of the High Court within the sweep of the Ordinance in violation of the provisions of Chapters V and VI of the Constitution; the inclusion of the employees of the Legislature Secretariat within the Ordinance; the extension of the Ordinance even to the daily rate workers; and, finally, the fact that nothing worthwhile is likely to be achieved by the passing of the Ordinance since, at the highest, it would create employment at this point of time only, for about 19,500 employees After that point of time passes, the same state of affairs will continue since the age of retirement will be merely substituted by 58 in place of 55 years.
>
> It is impossible to accept the submission that the Ordinance can be invalidated on the ground of non- application of mind. The power to issue an ordinance is not an executive power but is the power of the executive to legislate. The power of the Governor to promulgate an ordinance is contained in Article 213 which occurs in Chapter IV of Part VI of the Constitution. The heading of that Chapter is ' Legislative Power of the Governor". This power is plenary within its field like the power of the State Legislature to pass laws and there are no limitations upon that power except those to which the legislative power of the State Legislature is subject Therefore, though an ordinance call be invalidated for contravention of the constitutional limitations which exist upon the power of the State Legislature to pass laws it cannot be declared invalid for the reason of non-

application of mind, any more than any other law can be. An executive act is liable to be struck down on the ground of non-application of mind. Not the act of a Legislature.

On the question as to the legislative character of the ordinancemaking power, we may refer to the decisions of this Court in A.K. Roy v. Union of India(1) and R.K. Garg v. Union of India(2).

Shri Ray raised upon a decision of this Court in High Court of Andhra Pradesh v. V.V.S. Krishnamurthy,(3) which has taken the view that in regard to the servants and officers of the High Court, Article 229 of the Constitution makes the power of` their appointment, dismissal, removal, compulsory retirement, etc., including the power to prescribe their conditions of service, the sole preserve of the Chief Justice and no extraneous executive authority can interfere with the exercise of that power. This decision cannot assist the petitioners since, it deals with the limitations on the executive power Of the Government to interfere with the power of the Chief Justice under Article

229. The executive cannot encroach upon that power. The decision of this Court in Moti Ram Deka which was also cited by the learned counsel, does not touch the point raised by him.

Though Shri Ray presented his argument in the shape of a challenge to the Ordinance on the ground of non- application Of mind, the real thrust of his argument was that the hurry with which the Ordinance was passed shows the arbitrary character of the action taken by the State Government. We have already rejected the contention of haste and hurry as also the argument that the provi-

(1) [1982] 2 S.C.R. 272 at 282, 291.

(2) 11982]1 S.C.R. 947 at 964, 967.

(3) [1979]1 S.C.R. 26.

sions of the Ordinance are, in any manner, arbitrary or unreasonable and thereby violate Articles 14 and 16 of the Constitution.

Shri R.K. Garg, who appears in Transfer Cases Nos. 70, 71 and 72 of 1983, challenges the validity of the Ordinance on the ground that, casting all established norms aside, it fixes the age of retirement at 55 years, notwithstanding industrial adjudications and even settlements arrived at between employers and employees. Relying upon certain decisions of this Court like Maneka Gandhi v. Union India(1) and State of Madras v. V.G. Row(2) in support of his submission that arbitrariness invalidates laws, counsel contends that a law which overrules an industrial adjudication or settlement is fundamentally unreasonable or arbitrary and must, therefore, be held to be violative of Article 14 of the Constitution. It was also urged by counsel that by reducing the age of retirement to 55 years, the Government employees were deprived of their right to livelihood. There is no substance in this latter argument because, if a rule of retirement can be deemed to deprive a person of his right to livelihood, it will be impermissible to provide for an age of retirement at all. That will be contrary to public interest because the State cannot afford the luxury of allowing its employees to continue in service after they have passed the point of peak performance. Rules of retirement do not

take away the right of a person to his livelihood: they limit his right to hold office to a stated number of years. This argument of the learned counsel can be rejected for other reasons also, we do not propose to deal with these Transferred Cases since, there is nothing on record to show that there are any industrial adjunctions or settlements between employers and employees providing for an age of retirement for any section of industrial workers. These Transferred Cases will be delinked from the other Writ Petitions and will be listed for hearing later, so that they can be dealt with upon their own facts. If the question raised by Shri Garg is academic, it will be needless to consider it.

The argument of mala fides advanced by Shri A.T. Sampat, and adopted in passing by some of the other counsel, is without any basis. The burden to establish ma/a fides is a heavy burden to discharge. Vague and casual allegations suggesting that a certain act was done with an ulterior motive cannot be accepted without proper pleadings and adequate proof, both of which are conspi-

(1) [1978] 2 S.C.R. 621 at 659, 685, 689 and 702. (2) 11952] S.C.R. 597 at 607.

cously absent in these writ petitions. Besides, the ordinance-making A power being a legislative power, the argument of mala Fides is misconceived. The legislature, as a body, cannot be accused of having passed a law for an extraneous purpose. Its reasons for passing a law are those that are stated in the Objects and Reasons and if no reasons are so stated, as appear from the provisions enacted by it. Even assuming that the executive, in a given case, has an ulterior motive in moving a legislation, that motive cannot render the passing of the law mala fide. This kind of 'transferred malice' is unknown in the field of legislation.

Finally, there is no substance in the contention that the amendment to the Fundamental Rules, whereby the proviso to rule 2 was deleted, is beyond the powers of the rule- making authority or the Legislature. The Fundamental Rules and the amendments thereto are issued by the State Government under the powers delegated to it by the Civil Services (Governors' Provinces) Delegation Rules 1926, the Civil Services (Classification, Control and Appeal) Rules 1930, and under the Proviso to Article 309 of the Constitution. The Fundamental Rules which came in to force with effect from January 1, 1972 were amended earlier by G.O. Ms. No. 128 dated April 29, 1969. By that amendment, a proviso was added to rule 2 which reads thus:

> "Provided that the rules shall not be modified or E; replaced to the disadvantage of any person already in service."

By G.O. Ms. No. 48 dated February 17, 1983 this proviso was deleted with retrospective effect from February 23, 1979. The contention of the petitioners is that the proviso which conferred a benefit upon Government servants by protecting their conditions of service, cannot be amended so as to empower the Government to alter those conditions to their prejudice and, in any event, they cannot be amended retrospectively so as to take away rights which had already accrued to them The simple answer to this argument is that the amendment of February 17, 1983 to the Fundamental Rules was made by the Government of Andhra Pradesh in exercise of the powers conferred by the proviso to Article 309 read with Article 313 of the Constitution. It is well-settled that the service rules can be as much amended, as they can be made, under the proviso to Article 309 and that, the power to amend

these rules carries with it the power to amend them retrospectively. The power conferred by H the proviso to Article 309 is of a legislative character and is to be distinguished from an ordinary rule making power. The power to legislate is of a plenary nature within the field demarcated by the Constitution and it includes the power to legislate retrospectively. Therefore, the amendment made to the Fundamental Rules in the exercise of power conferred by Article 309, by which the proviso to rule 2 was deleted retrospectively, was a valid exercise of legislative power. The rules and amendments made under the proviso to Article 309 can be altered or repealed by the Legislature but until that is done, the exercise of the power cannot be challenged as lacking in authority. (See B.S. Vaderu v. Union of India;(1) Raj Kumar v. Union of India(2).

These then are the main points in controversy on which counsel made their contentions. For reasons aforesaid, we reject those contentions and dismiss these Writ Petitions. There will be no order as to costs.

S.R. Petitions dismissed.

(1) [1968] 3 S C.R. 575, 582 585.
(2) [1975] 3 S.C.R. 963, 965.