Shivacharana Singh T.G. & Ors vs State Of Mysore on 13 March, 1964

Equivalent citations: AIR 1965 SUPREME COURT 280, 1967 2 LABLJ 246 15 FACLR 224, 15 FACLR 224

Bench: K.N. Wanchoo, J.C. Shah, N.R. Ayyangar

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           CASE NO.:
Writ Petition (civil)  184-195 of 1963

PETITIONER:
SHIVACHARANA SINGH T.G. & ORS.

RESPONDENT:
STATE OF MYSORE

DATE OF JUDGMENT: 13/03/1964

BENCH:
P.B. GAJENDRAGADKAR (CJ) & K.N. WANCHOO & J.C. SHAH & N.R. AYYANGAR & S.M.
SIKRI

JUDGMENT:
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JUDGMENT 1965 AIR (SC) 280 The Judgment was delivered by GAJENDRAGADKAR, C.J Per Gajendragadkar, C.JThis is a group of twelve petitions filed under Art. 32 of the Constitution, seeking to challenge the validity of note 1 to rule 285 of the Mysore civil services Rules, 1958 (hereinafter called the rules), framed by the Governor of Mysore in exercise of his powers under the proviso to Art. 309 of the Constitution. Though the facts in all these petitions are not exactly the same. The points raised by them are common, and so, we would mention the facts in Writ Petition No. 194 of 1963 and deal with that petition on the merits. Our decision in that petition will naturally govern the other writ petitions in this group. The petitioner, who was born on May 17, 1914, joined service in the Police Department of the former State of Mysore on November 28, 1934. In 1939 he was promoted as sub-inspector of police and in 1948, he became a police inspector. On July 31, 1961 he was served with a notice issued by the Government of Mysore informing him that Government considered it was necessary in the public interest to retire him from service under note 1 to rule 285 of the rules and notice was accordingly given to him intimating to him that he will be retired as from November 15, 1961. The petitioner contends that under rule 95(a) he was entitled to remain in service until he completed 55 years of age which means that he would have retired in normal course on May 17, 1969. Since the notice served on him by the Government of Mysore under the impugned note to rule 285 prematurely retires him, he contends that the said order as to premature retirement is invalid, because it purports to have been passed in exercise of the powers conferred on the Government under note 1 to rule 285 and this latter note is constitutionally invalid. It appears that after the notice was served on the petitioner, he made a representation to the Government through

proper channel. In this representation he urged that the action which the Government intended to take against him was unjust and illegal and he pleaded that he had a very good record of service and did not deserve to have his service curtailed by nearly eight years by asking him to retire prematurely as from November 15, 1961. The Government, however, was not impressed by the plea made by the petitioner and on November 14, 1961 a final order was passed terminating the petitioner's service from November 15, 1961. That, in brief, is the background of the present petition.Rule 95(a) of the rules undoubtedly provides that the date of superannuation of a Government servant is the date on which he attains the age of 55 years; and it authorizes the Government to retain the Government servant in service even after the date of superannuation, if the said servant is physically fit and if the continuance of the said Government servant in service is found to be on public grounds. In such a case the grounds of public interest had to be mentioned in the order and the servant may be continued until he attains the age of 60 years.

Rule 285 deals with retiring pension and it provides that a retiring pension is granted to a Government servant who is permitted to retire after completing qualifying service for thirty years or such less time as may, for any special class of Government servants, be prescribed. Note 1 to this rule provides inter alia that Government may, in special cases, require any Government servant to retire any time after he has completed 25 years' qualifying service or on attaining 50 years of age if such retirement is considered necessary in the public interest, provided that the appropriate authority shall give in this behalf a notice in writing to the Government servant at least three months before the date on which he is required to retire. The note further provides that a Government servant who retires or is retired, only in the manner indicated above, shall be granted a retiring pension not exceeding such proportion of average emoluments and subject to such maximum limits as are specified in Chap. XIX It would thus be clear that though the normal age of retirement under rule 95(a) is 55 years, under rule 285 it is competent to the Government to retire, compulsorily, a Government servant prematurely, if it is thought that such premature retirement is necessary in the public interest. This power can, however, be exercised only in cases where the Government servant has completed 25 years' qualifying service or has attained 50 years of age. In other words, ordinarily retirement by superannuation occurs after attaining 55 years or completing 30 years' service, while premature retirement can be forced on the Government servant if he has either completed 25 years of service or has attained 50 years of age. In the case of premature compulsory retirement, the Government servant is entitled to pension as indicated in note 1 to rule 285.Sri Venkataranga Ayyangar contends that this rule is invalid, because it contravenes Art. 14 as well as Art. 16(1) of the Constitution. In our opinion, this contention can no longer be entertained, because it is concluded by a long series of decisions of this Court. Recently, a Special Bench of this Court had occasion to consider the validity of rules 148(3) and 149(3) contained in the Indian Railway Establishment Code in Moti Ram Deka v. North-east Frontier Railway-Civil Appeals Nos. 711 to 714 of 1962 and 837 to 839 of 1963, dated 5 December 1963 1964 (2) LLJ 467]. In dealing with the problem raised in that case, this Court has made it perfectly clear that so far as the question of compulsory retirement is concerned, it must be taken to be concluded by several decisions of this Court. This Court then examined the relevant decisions on this point beginning with the case of Shyam Lal v. State of Uttar Pradesh 1954 (2) LLJ 139] and it has observed that the law in relation to the validity of the rules permitting compulsory premature retirement of Government servants must be held to be well-settled by those decisions and need not be reopened. The only exception the

majority judgment made in that behalf was that it may be necessary to consider whether such a rule of compulsory retirement would be valid if, having fixed a proper age of superannuation, it permits a permanent servant to be retired at a very early stage of his career. This consideration does not arise in the present case, because as we have already seen, note 1 to rule 285 requires that the Government servant against whom an order of compulsory retirement is proposed to be passed must have completed either 25 years of active service or attained 50 years of age. We are, therefore, satisfied that the point which Sri Venkataranga Ayyangar wants to raise before us in the present petition is clearly concluded by the decisions of this Court and cannot be allowed to be reopened.Sri Venkataranga Ayyangar, however, attempted to argue that there are certain observations made by this Court in the case of General Manager. Southern Railway v. Rangachari 1962 AIR(SC) 36] which support his contention. In that case, this Court was called upon to consider the validity of certain railway circulars and that needed an examination about the scope and effect of the provisions of the different clauses of Art. 16 read with Art. 14 of the Constitution; the question of compulsory retirement did not fall to be considered in that case. Dealing with the scope and effect of Art. 16(1), it was observed that the narrow construction of the expression "matters relating to employment"

> occurring in Art. 16(1) could not be accepted, because it would lead to anomalous results. In that connexion, it was pointed out that it would not be open to the State to prescribe different scales of salary for the same or similar posts, different terms of leaves or superannuation for the same or similar posts. It is on these observations that reliance is placed by Sri Venkataranga Ayyangar. It is obvious that these observations have no relevance to the point with which we are concerned in the present petition. We are not dealing with different rules of compulsory retirement at all, the impugned note applies to all Government servants, and as such, is not open to a challenge under Art. 14 or 16 (1). Therefore, we do not think Sri Venkataranga Ayyangar is justified in contending that these observations support his argument.
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> It is true that in his petition the petitioner has made certain allegations against the Home Minister Sri Channabasappa and has suggested that the order terminating his services prematurely is due to his whims and fancies, and he has characterized the said order as both arbitrary and illegal. According to the Petitioner, his past record is free from blemish and the Government was not, therefore, justified in coming to the conclusion that it was in the public interest to retire him compulsorily. The allegations made by the petitioner in that behalf are very vague and unsatisfactory, and so, it would be idle to contend that if the impugned note is valid, the order terminating the services of the petitioner can still be challenged on the ground that it is not justified on the merits or is illegal or arbitrary. Whether or not the petitioner's retirement was in the public interest, is a matter for the State Government to consider, and as to the plea that the order is arbitrary and illegal, it is impossible to hold on the material placed by the petitioner before us that the said order suffers from the vice of mala fides.The result is, all the petitions Nos. 184 to 195 of 1963 fail and are dismissed. There would be no order as to costs.