Jai Ram vs Union Of India (Uoi) on 22 January, 1954

Equivalent citations: AIR1954SC584

Author: B.K. Mukherjea

Bench: Chief Justice, B.K. Mukherjea, Ghulam Hasan

JUDGMENT

B.K. Mukherjea, J.

1. This appeal, which has come before us on special leave obtained by the plaintiff appellant, is directed against a judgment of a Letters Patent Bench of the High Court of Punjab dated the 10th July 1952, reversing, on appeal, a decision of a single Judge of that Court passed in Second Appeal No. 884 of 1950.

2. The suit, out of which the appeal arises, was commenced by the plaintiff, in the Court of the Subordinate Judge at Ambala for a declaration that the order passed by the Government of India, which is the defendant in the suit, retiring the plaintiff from his service was wrongful, void and inoperative and that the plaintiff should be deemed to continue still in the service of the defendant.

The material facts, which are for the most part uncontroverted, may be shortly narrated as follows:

> The plaintiff entered the service of the Government of India as a clerk in the Central Research Institute at Kasauli on the 7th of May, 1912. Under Rule 56 (b) (i) of Chapter IX of the Fundamental Rules, which regulate the civil services, a ministerial servant may be required to retire at the age of 55 but should ordinarily be retained in service if he continues efficient, till the age of 60 years.
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> The plaintiff was to complete 55 years on the 26th November 1946. It appears, however, that in 1945 he himself was anxious to retire from service & on the 7th of May 1945 wrote a letter to the Director of the Institute to the following effect:
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> "Sir, Having completed 33 years' service on the 6th instant I beg permission to retire and shall feel grateful if allowed to have the leave admissible."

This permission was not granted by the Director of the Institute on the ground that the plaintiff could not be spared at that time. The plaintiff renewed his prayer by another letter dated the 30th May 1945. In that letter it was stated that owing to the untimely death of his brother, his family circumstances did not permit him to serve the Institute any longer. He, therefore, prayed for leave

preparatory to retirement -- four months on average pay and the rest on half average pay -- from, 1st of June 1945, or the date of his availing the leave, to the date of superannuation which was specifically stated to be the 26th of November 1946.

The letter plainly indicates that the impression in the mind of the plaintiff was that he was due to retire on the 26th of November 1946 and all that he wanted was that he might be granted leave preparatory to retirement from 1st of June 1945 or as early as possible after that. This time also the plaintiff's prayer was refused and the Head of the Institute endorsed a note on his application that he could not be spared.

A third application was presented by the plaintiff on the 18th of September 1945 praying for reconsideration of his petition and urging one additional ground in support of the same, namely, that the war was already at an end. This application too shared the fate of its predecessors and the Director of the Institute did not agree to his retirement.

After this the plaintiff kept silent for nearly 8 months and on the 28th May 1946 he made his fourth application which, it appears, met with a favourable response. In this application also it was stated that the plaintiff would attain the age of 55 years on the 27th of November 1946 and he prayed, therefore, that the full amount of preparatory leave, as was admissible to him under the rules, might be granted to him. The Director of the Institute sanctioned the leave and the question as to how much leave and of what kind would be available to him was left to the decision of the Accountant-General, Central Revenues.

On the 11th of July 1946 the Accountant-General communicated his order to the Director of the Institute and his decision was that the plaintiff was entitled to leave preparatory to retirement on average pay for six months from 1st June 1946 to 30th November 1946 and on half average pay for five months and twenty-five days thereafter, the period ending on 25th of May 1947. Just 10 days before this period of leave was due to expire, the plaintiff on the 16th of May 1947 sent an application to the Director of the Institute stating that he had not retired and asked for permission to resume his duties immediately. The Director informed him in reply that he could not be permitted to resume his duties, as he had already retired, having voluntarily proceeded on leave preparatory to retirement.

The plaintiff continued to make representations but ultimately the matter was concluded so far as the Government of India was concerned by a letter dated the 28th of April 1948 in which it was stated that the plaintiff having availed himself of the full leave preparatory to retirement due to him and having actually retired from service of his own volition, the question of his having any right to return to duty and to continue service till the age of 60 years did not at all arise. It was in consequence of this letter that the present suit was filed by the plaintiff on the 5th of July 1949.

3. The legality of the Government communication mentioned above has been attacked in the plaint substantially on a two-fold ground. The first ground alleged is, that under Rule 56 (b) (i), Chapter IX of the Fundamental Rules, the age of retirement is not 55 but 60 years. The rule no doubt gives the Government a right to retire a ministerial servant at the age of 55, but that can be done only on the

ground of his inefficiency. Consequently, before a servant coming within that category is required to retire at 55, it is incumbent upon the Government to give him an opportunity to say what he has to say against his premature retirement in accordance with the provision of Section 240(3) of the Government of India Act, 1935 and unless this is done, the order terminating his service cannot be held to be valid.

The other contention is, that although the plaintiff on his own application obtained leave preparatory to retirement, yet there was nothing in the rules which prevented him from changing his mind at any subsequent time and expressing a desire to continue in service provided he indicated this intention before the period of his leave expired.

4. The trial Court negatived both these contentions and dismissed the plaintiff's suit. In the opinion of the Subordinate Judge it was discretionary with the Government under Fundamental Rule 56 (b) (i) either to require a ministerial servant to retire at 55 or to allow him to continue in service till 60 and there was no breach of statutory obligation in this case by reason of the fact that the plaintiff was made to retire before the age of 60.

On the other point the Subordinate Judge held that there was no statutory rule under which a Government servant could claim to resume his previous duties as a matter of right by merely choosing to return before the expiry of the period of his leave. This could be done only with the permission of the superior authority which was absent in the present case.

5. This decision of the trial Court was affirmed on appeal by the District Judge at Ambala. The plaintiff thereupon took a second appeal to the High Court of Punjab and the appeal was heard by Falshaw, J. sitting singly. The learned Judge allowed the appeal, upholding both the contentions raised by the plaintiff and decreed the suit. Against this decision there was a further appeal to a Bench of the same High Court under Clause 10 of the Letters Patent and the Letters Patent Bench reversed the judgment of the single Judge and dismissed the plaintiff's suit. The plaintiff has now come up to this Court and Mr. Umrigar, who appeared in support of the appeal, reiterated before us both the contentions that were pressed on behalf of his client in the Courts below.

6. As regards the first point, Mr. Umrigar lays stress mainly upon Rule 56 (b) (i) of Chapter IX of the Fundamental Rules which is worded as follows:

> "A ministerial servant who is not governed by Sub-clause (ii) may be required to retire at the age of 55 years, but should ordinarily be retained in service, if he continues efficient, up to the age of 60 years. He must not be retained after that age except in very special circumstances, which must be recorded in writing, and with the sanction of the local Government."

We think that it is a possible view to take upon the language of this rule that a ministerial servant coming within its purview has normally the right to be retained in service till he reaches the age of 60. This is conditional undoubtedly upon his continuing to be efficient. We may assume, therefore, for purposes of this case that the plaintiff had the right to continue in service till 60 and could not be

retired before that except on the ground of inefficiency. But that by itself affords no solution of the question that requires consideration in the present case.

Here the plaintiff was not compelled or required to retire by anybody. If the Government required him to retire in terms of the Fundamental Rule 56 (b) (i), it might be argued that he should have been an opportunity to show that he was still efficient and able to discharge his duties and consequently could not be retired at that age. But here the situation was entirely of the plaintiff's own seeking and his own creation.

Ever since May 1945 when he had not even completed his 54th year, the plaintiff began making importunate requests to his official superior to allow him to retire from service. It will be noticed that in his first application he mentioned the fact of his having completed 33 years of service as a ground for obtaining the permission prayed for. There is, in fact, a rule in the Civil Service Regulations under which a retiring pension is granted to an officer who is permitted to retire after completing service for 30 years. It is not clear whether this rule which relates to superior service was at all applicable to the plaintiff. But it is a fact that in his applications for leave preparatory to retirement he laid great stress on two facts, one of which was the length of his service and the other that he was to reach the age of superannuation in November 1946.

Ultimately when his application was granted, the leave, which was allowed to him, was on the basis of his retiring from service on the 27th November, 1946. He was given post-retirement leave for a period of about six months from that date in terms of Rule 86, Chapter X of the Fundamental Rules on the ground that he had previously applied for leave which was at his credit but it was refused on the, ground of requirements of public service. The plaintiff could not have got this period of leave except on the footing that his service ended on the 27th November, 1946. Rule 56 (b) (i), which speaks of a ministerial servant being 'ordinarily' retained in service till 60, does not, in our opinion, contemplate a case of this description and does not preclude a ministerial servant from waiving, by express agreement, a right to which he might otherwise have been entitled under this rule.

When a servant has attained the age of 55 years and for some reason or other himself confesses his inability to continue in service any longer and seeks permission for retirement, we consider it to be a useless formality to ask him to show cause as to why his service should not be terminated. Section 240(3) of the Government of India Act, 1935 could not have any possible application in such circumstances. The first contention of the appellant must, therefore, in our opinion fail.

7. In view of our decision on this point, the other point practically loses its force. It may be conceded that It is open to a servant, who has expressed a desire to retire from service and applied to his superior officer to give him the requisite permission, to change his mind subsequently and ask for cancellation of the permission thus Obtained; but he can be allowed to do so long as he continues in service and not after it has terminated.

As we have said above, the plaintiff's service ceased on the 27th of November 1946; the leave, which was allowed to him subsequent to that date, was post-retirement leave which was granted under the special circumstances mentioned in F. R. 86. He could not be held to continue in service after the

26th of November 1946, and consequently it was no longer competent to him to apply for joining his duties on the 16th of May 1947, even though the post-retirement leave had not yet run out. In our opinion, the decision of the Letters Patent Bench of the High Court is right and this appeal should stand dismissed. In view of the fact that the plaintiff is a pauper and has not been permitted to draw his pension as yet, we make no order as to costs.