

## State Of Maharashtra And Ors. vs V.S. Naik on 6 May, 1980

**Equivalent citations:** AIR1980SC1095, (1980)82BOMLR642, 1980LABLC641, 1980SUPP(1)SCC229, 1980(12)UJ636(SC), AIR 1980 SUPREME COURT 1095, 1980 LAB. I. C. 641, 40 FACLR 470, 1980 UJ (SC) 636, (1980) 2 SERVLR 492, (1980) 2 LAB LN 159, (1980) 2 SCWR 103, (1980) 2 SCJ 264, (1980) MAH LJ 573

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**Bench:** N.L. Untwalia, P.N. Shinghal, V.D. Tulzapurkar

### JUDGMENT

V.D. Tulzapurkar, J.

1. This appeal, by special leave, raises the short question whether the impugned notice-cum-order of compulsory premature retirement from service passed against the respondent was in strict compliance with Rule 8 Note (1) of the Revised Pension Rules, 1950 ?

2. The respondent joined as a Clerk in the office of the Register of Firms on 1st June 1943. On 1st December, 1959 he was promoted to the post of a Senior Clerk. On 17th March 1970 he was promoted as Head Clerk and thereafter on completion of 30 years' of qualifying service under the Revised Pension Rules 1950, by the impugned notice-cum order dated 3rd October 1975 he was retired from service with effect from 10th January 1976. The respondent made a representation on 22nd October 1975 to the Industries Commissioner and Director of Industries, Bombay against the said compulsory retirement. On 2nd January 1976 he received a reply from the Joint Secretary Law and justice Department, State of Maharashtra, stating that the Government did not consider it necessary to review his case. On 7th January 1976 the respondent filed a writ petition in the Bombay High Court being Miscellaneous Petition No. 16 of 1976 challenging the said compulsory retirement on several grounds. The High Court by its judgment and order dated 21st August, 1979 allowed the petition, struck down the impugned order and directed the State Government to re-instate the respondent in service as if he had never been retired from service with all the consequential benefits of such re-instatement. The High Court took the view that the said compulsory retirement of the respondent was not in strict compliance of Rule 8, Note (1) of the Revised Pension Rules, 1950 inasmuch as the exact reasons for such retirement had not been recorded in writing as required by Note (1) to the said Rule. Since the respondent's petition succeeded on this short ground the High Court did not deal with or discuss the other grounds on which the impugned retirement was challenged. The State Government has come up in appeal against the decision of the High Court.

3. Since the point raised in the appeal pertains to the question whether Rule 8, Note (1) of the revised Pension Rules, 1980 was strictly complied with while issuing the impugned notice cum-order of compulsory retirement in the case of the respondent, it will be proper to set out the Rule together with Note (1) which runs thus:

8. A Government servant may retire from service any time after completing 30 years' qualifying service provided that he shall give in this behalf notice in writing to the appropriate authority, at least three months before the date on which he wishes to retire. Government may also require a Government servant to retire any time after he has completed 30 years' qualifying service provided that the appropriate authority shall give in this behalf a notice in writing to the Govt. servant at least three months before the date on which he is required to retire.

NOTE (1) The authority competent to serve notice on Govt. servant who have completed 30 years qualifying service should be the Head of Department in respect of Govt. Servants whom the Head of Deptts. or lower authorities are competent to appoint The power of requiring Govt. servants to retire should be restricted to retirement on public grounds, such as impairment of efficiency of a Govt. servant against whom it is not desirable to make a formal charge of inefficiency or a Govt. servant ceasing to be fully efficient but not to such a degree as to warrant his retirement on compassionate pension. The exact reason should be recorded in writing in each case.

4. It is an admitted position that the impugned notice cum order dated 3rd October, 1975 compulsorily retiring the respondent with effect from 10th January 1976 was issued under the aforesaid. Rule 8 read with Note (1). It is further admitted that the impugned notice-cum-order was served on the respondent giving him full three months before the date on which he was asked to retire. It is also not disputed that the said notice-cum-order merely stated that the respondent was being retired on public ground but no specific ground or reason was indicated therein but that is not the requirement of Rule 8 read with Note (1). The only requirement of Note (1) is that the exact reason should be recorded in writing in each Case, presumably in the concerned file dealing with the servant or somewhere before notice under Rule 8 is issued. In other words, whenever challenged, the State Government must be in a position to produce before the Court the recorded reasons for ordering the compulsory retirement of a Government servant under the Rule, In the instant case, the State Government was directed by the Govt. to give inspection to the respondent of all the relevant records and pursuant to the directions, the respondent took inspection of the relevant documents and it was found by him that on one of the documents the following noting had been made under date 24 9-1975:

We may serve a notice of retirement on public grounds on Shri Naik, Head Clerk under Rule 8 of the Revised Pension Rules 1960 for impairment of his efficiency in the work assigned to him: vide I &LD file kept below.

5. The question is whether the aforesaid noting made in the file of the respondent records the exact reason for compulsorily retiring him in compliance of Rule 8 read with Note (1) ? On construction of Note (1) to Rule 8 the High Court has held that the public grounds are confined only to two

situations (reasons) specified therein and it has further taken the view that merely stating that the respondent may be retired on public ground, namely, for impairment of his efficiency in the work assigned to him is not sufficient compliance with Note (1) to Rule 8. According to the High Court Note (1) requires that not only should it be recorded that the employee's efficiency was impaired but also that it was not desirable to make a formal charge of inefficiency against him and since the noting in question did not state so it fell short of the requirement of Rule and, therefore, the impugned notice cum-order was liable to be struck down. Counsel for the appellants have contended that on both the aspects the High Court's view is erroneous and unsustainable and we find considerable force in the contention.

6. In our view, the judgment of the High Court clearly suffers from two infirmities which we will presently indicate. Rule 8 confers power upon the State Government to retire a Government servant at any time after he has completed 30 year's of qualifying service for pension by serving upon him written notice at least 3 months before the date on which he is required to retire while note (1) indicates in what circumstances the said power could be exercised by the State Government and it says that the said power should be restricted to retirement of the employee "on public grounds, such as, impairment of efficiency of a Government servant against whom it is not desirable to make a formal charge of inefficiency or a Government servant ceasing to be fully efficient but not to such a degree as a warrant his retirement on compassionate pension." User of the expression such as which follows the expression "public grounds" clearly shows that the two categories of public ground are illustrative and not exhaustive. It is difficult to appreciate how in face of such language the High Court could take the view (which has been expressed at not less than three places in the judgment) that the public grounds on which a Government servant may be retired under the Rule were restricted only to two categories of cases specified therein and that there was no other category in which recourse to power of compulsory retirement could be taken under this Rule. Similarly it is difficult to appreciate how the High Court has taken the view that where a Govt servant is sought to be retired for impairment of his efficiency under this Rule, an additional reason was required to be stated before passing the order of compulsory retirement, namely, that it was not desirable to make a formal charge of inefficiency against him. Note (1) clearly stated that the exact reason should be recorded in writing in each case and in the instant case the exact reason has been recorded in the noting made in the file concerning the respondent, namely, 'for impairment of his efficiency in the work assigned to him'. In other words, the impairment of efficiency of the respondent in the work assigned to him was the reason why he was sought to be compulsorily retired on public ground. Whether it was desirable or not to make a formal charge of inefficiency against him cannot be said to be any additional reason required to be stated. It would merely be an opinion formed by the authorities concerned that it was not desirable to level a formal charge of inefficiency against him the formation of such opinion was not the reason for directing compulsory retirement. Presumably, after qualifying service of 30 years had been put in by the respondent the authorities concerned formed the opinion that it would not be desirable to level a charge of inefficiency against him, so that the respondent could earn his full pension which entitlement would have been thrown in jeopardy if an inquiry on a charge of inefficiency were to be launched against him. In our view, therefore, the impugned notice-cum order dated 3rd October 1975 compulsorily retiring the respondent with effect from 10th of January, 1976 was in strict and full compliance of Rule 8 Note (1) of the Revised Pension Rules 1950 and the compulsory retirement of the respondent cannot be struck down on this

ground.

7. We have already stated that in the view the High Court took on the main point discussed above, it did not deal with or discuss the other grounds on which the respondent sought to challenge his compulsory retirement under the impugned notice cum order dated 3rd October, 1975, Since we reached a contrary conclusion on that point, we asked Counsel whether the matter should be remanded or we should hear the other grounds of challenge and dispose of the matter finally and Counsel for both the parties agreed to latter course being followed.

8. Out of the several other grounds on which the impugned notice-cum-order dated 3rd October 1975 was challenged by the respondent before the High Court, Counsel for the respondent pressed only one ground before us, namely, that the impugned notice-cum-order had been issued mala fide and in that behalf took us through the entire material available on record, particularly the letter dated 29th February 1973 addressed by the respondent to the Secretary, Industries and Labour Department Sachivalaya, Bombay complaining about the harassment meted out by Shri Shinde, the Registrar of Firms to the employees of the office including the respondent and Counsel urged that Shri Shinde was always acting against the interest of the respondent, had spoiled his confidential record on the basis of which the ultimate action of compulsorily retiring him was taken and as such the same, having been taken mala fide was liable to be struck down. It is impossible to accept this contention for reasons we briefly indicate. May be, the respondent had some grievances against Shri Shinde we have not investigated whether they were frivolous or justified but we proceed on the assumption that he had justifiable grievances against Shri Shinde but what about the respondent's confidentials prior to Shri Shinde's joining as Registrar of Firms in September, 1970? We have gone through his confidential reports from 1965-66 to 1969-70 and these are far from complimentary to him. The material on record also shows that right from 1948 down to 1974-75 there were adverse remarks made against him which were duly communicated to him from time to time and in 1961 as a result of departmental enquiry held against him and the finding recorded therein his increment was withheld for one year. The record shows no improvement but persistent deterioration in his efficiency. It was by reason of such record for several years that the impugned decision was taken. Further, the impugned action came to be suggested by Shri Palande, Industries Commissioner and Director of Industries on an overall consideration the Respondent's record and not by Shri Shinde and ultimately the State Government took the decision to retire the respondent under Rule 8. It is difficult to shift the mala fides, if any of Shri Shinde and describe them to the Industries Commissioner against whom the respondent has no grievance whatever. This challenge, therefore, fails.

9. Since no other ground was urged the appeal must be allowed, Accordingly, we allow to appeal, set aside the judgment and order of the High Court and dismiss the respondent's writ petition. As regards costs, they will abide by the order made by this Court on 18th October, 1979 at the time of granting special leave.