Raj Kishore vs State Of Uttar Pradesh And Anr. on 19 November, 1953

Equivalent citations: AIR1954ALL343, AIR 1954 ALLAHABAD 343

JUDGMENT

Agarwala, J.

1. This is an application under Article 226 of the Constitution of India praying that a writ of mandamus, certiorari or such other writ as may be proper be issued declaring that the decision of the Government retiring the petitioner from service prematurely is illegal, void and inoperative, and directing that the petitioner be re-instated in his substantive post. The facts briefly stated are as follows:

2. The petitioner, Raj Kishore, entered Government service in the office of the Director of Agriculture, Uttar Pradesh, in the year 1923 as an apprentice and having worked on various posts rose to the position of Head Assistant in the pay-scale of Rs. 300-20-400. The petitioner had an unblemished record of service and got honoraria and special pay getting promotions sometimes superseding his seniors. In 1951 the Government of Uttar Pradesh, opposite party No. 1, on the recommendation of the Director of Agriculture, opposite party no. 2, appointed the petitioner in a leave vacancy as a Personal Assistant to the Director of Agriculture, opposite party No. 2, in the pay-scale of Rs. 350-25-500. This was in consideration of his honest and efficient work and integrity. The work of the petitioner as Personal Assistant was found so satisfactory that in June 1952 the Director of Agriculture, opposite party No. 2, recommended to the Government for the petitioner's appointment to another ex-cadre gazetted post of Personal Assistant to the Principal of the Agriculture College of Kanpur in the same scale of pay, viz., Rs. 350-25-500.

But this was the turning point in the petitioner's career. For some mysterious reason, according to the petitioner, the said post was ordered to be held in abeyance till the petitioner was got rid of by being compulsorily retired prematurely. As soon as the petitioner was compulsorily retired the post was resurrected and one Sri J. P. Verma, a Stenographer to the Minister for Agriculture and Revenue, U. P., was appointed to the post in May 1953. What transpired in the meanwhile may now be told. Scenting some trouble the petitioner applied for leave on 15th April 1953. On 18th April 1953, a letter signed by the Director of Agriculture was received by the petitioner intimating to him that "it was the policy of the Government laid down in Government Order" noted therein to retire such officials as have completed more than 25 years of qualifying service and "advising him to proceed on leave preparatory to retirement immediately and to apply for such leave within 7 days from the receipt thereof." On April 25, 1953, a reply to this letter was sent by the petitioner pointing out that he would ,be completing his 30 years of service and 50 years of age on 6-11-1953 and he might, at least, be allowed to continue till that date and might be allowed to proceed on leave as

already applied for on 15-4-1953, and the petitioner would then later consider whether it would be in his interest to follow the said advice.

The petitioner, thereupon, was served with an order of 29th May 1953, issued by the Director of Agriculture informing him that the Government had decided to retire him and had sanctioned him four months' leave preparatory to retirement retrospectively from 28-4-1953. Aggrieved by the said order the petitioner sought an interview with the Minister for Agriculture and Revenue, Uttar Pradesh, for securing redress, but it was not granted. Ultimately the petitioner submitted a representation on 20-7-1953 to the Government through the Director of Agriculture, pointing out that the premature compulsory retirement of the petitioner more than five years before time was not warranted by the rules of service or any rule of law or any valid recommendation, made by any legal authority and the action of the opposite parties will cause great financial loss to him to the tune of Rs. 22,000/- or Rs. 23,000/-besides a recurring loss of Rs. 31/- or 32/- per month as his pension would stand reduced by that amount. But no reply was given to the petitioner. Hence he filed the present petition in this Court, on the 20th August 1953.

3. Under Rule 53 of the Financial Handbook, Volume II issued by the authority of the Government of the United Provinces the rule or normal retirement of a Government servant is as follows:

> "Except as otherwise provided in other clauses of this rule the date of compulsory retirement of a Government servant, other than a Government servant in inferior service is the date on which he attains the age of 55 years. He may be retained in service after the date of compulsory retirement with the sanction of the Government on public grounds, which must be recorded in writing but he must not be retained after the age of 60 years except in very special circumstances."

4. The rule under which the petitioner was compulsorily retired js Rule 465 of the Civil Service Regulations as adapted in the Uttar Pradesh. The rule after its amendment in 1948 now stands as follows:

> "(1) A retiring pension is granted to a Government servant who is permitted to retire after completing qualifying service for 25 years or on attaining the age of 50 years."

(2) A retiring pension is also granted to a Government servant who is required by Government to retire after completing 25 years or more of qualifying service."

Appended to this is a note which, is as follows:

> "GOVERNMENT retains the right to retire any government servant after he has completed 25 years' qualifying service without giving any reasons, and no claim to special compensation on this account shall be entertained. This right shall only be exercisable by Government in the Administrative Department, where it is in the public interest to dispense with the services of a government servant who has outlived his useful ness."

Before its amendment in the year 1948, the period of qualifying service for compulsory retirement was 30 years instead, of 25 years.

5. G. O. No. 0-1297/11-3-25-1948, dated May 3, 1949 provided that before passing an order of compulsory retirement under Rule 465, it was necessary in accordance with the provisions of Section 240(3) of the Government of India Act, 1933, as adapted, to give the Government servant concerned 'a reasonable opportunity' of showing cause against the action proposed to be taken in regard to him. The G. O. went on to add, "It is not, however, necessary for this purpose to adopt the elaborate procedure laid down in Rule 55 of the Civil Services (Classification Control and Appeal) Rules for formal proceedings against Government servants before removing them from service, because such compulsory retirement was conceived as a 'penalty1 under rule 49 of the Civil Services (Classification Control and Appeal) Rules. Nor is any special compensation admissible to the affected official."

Procedure to be followed by the Heads of Departments and other principal Heads of offices was also laid down and this was that "these offices will submit to the Government in the Administrative Department concerned twice a year a list of officials who will have completed 25 years or more of qualifying service or attained the age of 50 years during the six months ending June 30 and December 31. The list should be in two parts, one for gazetted officers and the other for non-gazetted subordinates and the following particulars should be stated in separate columns

(a) name of Government servant;

(b) designation,

(c) date of completion of 25 years' qualifying service,

(d) date of attaining the age of 50 years, and

(e) recommendations of the Head of Department or 'Office about the officials' further retention in service.

Reasons for recommending non-retention of a Government-servant should be succinctly stated. In the case of officials of gazetted rank, their confidential rolls should also accompany the list. In the list of non-gazetted officials the names and other particulars of only those non-gazetted officials and inferior servants should be shown Who are recommended for retirement. The scrutiny of the list of inferior servants should be done at the district or corresponding level.

In order that the Government may have a full picture of the position in regard to non-gazetted personnel, the list for them should also give the following information at the top:

(a) Number of those eligible for compulsory retirement;

(b) Number of those eligible only for voluntary retirement, and

(c) Number of those who have opted to retire during the half year.

Recommendations for retirement should be unhesitatingly made in the case of officials whose integrity has been the subject of doubt. Further, in the case of Government servants who have completed 25 years of qualifying service chronic inefficiency and dull mediocrity would also be valid ground against further continuance in service.

These lists will be scrutinized in the Administrative Department of Government and orders about the retirement or retention of the officials concerned will issue thereafter,"

> Subsequently, by order No. O-3251/II-B-58-52, dated December 30, 1962, it was provided that it was not necessary to give an opportunity to show cause against the proposed action to be taken in, regard to a Government servant who was to be compulsorily retired after completing 25 years' of qualifying service, but that the other procedure laid down in the previous order of 1949 was still to be followed.

6. The relevant constitutional provisions are these:

> Under Article 310 of the Constitution of India every person who is a member of a civil service of a State or holds any civil post under a State, holds office during the pleasure of the Governor or, as the case may be, tne Rajpramukh of the State.
>
> Under Article 311(1) "No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed;" and (2) "no such-person as aforesaid shall be dismissed or removed, or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him."

7. It may be noted that the Government did nob give any reasons for the compulsory retirement of the applicant beyond saying that it was the policy of tne Government to retire Government servanis after 25 years of qualifying service. It was not indicated to the petitioner that he was considered to have outlived his usefulness or to be inefficient or mediocre. As the facts narrated in the affidavit of the petitioner have not been controverted, we have to assume them to be correct and therefore it must be held that the applicant was retired although perfectly efficient and fit for service. On behalf of the Government it has not been stated that the procedure prescribed in Notification No. O-1238-II-B-25-1948, dated May 3, 1949, had been followed in the case of the applicant. The ordinary presumption in favour of the Government that the order of compulsory retirement made by it under Rule 465 was made because the applicant was found to have outlived his usefulness cannot be drawn in the present case because of what has been stated in the applicant's uncontroverted affidavit.

8. The petitioner's case is that:

(1) the compulsory retirement under Rule 465 quoted above amounts to 'removal' within the meaning of Article 311 of the Constitution and as the applicant was not given any opportunity of showing cause against his 'removal' as required by the Article his removal was 'ultra vires' and unconstitutional.

(2) that the compulsory retirement of the petitioner was contrary to Rule 465 of the Civil Service Regulations read with the later part of the note thereunder as also read with various Notifications of the Government in that behalf, because it was not stated ana it was not a fact that it was "in the public interest to dispense with the services of" the applicant who has outlived his usefulness,"

(3) that the petitioner having entered service in 1923 is governed with the service rules of those days and not by the new Rule 485 as amended in the year 1948, and (4) that Rule 485 is invalid in so far as it authorises the Government to retire a person without assigning any reasons, and is, therefore, contrary to Articles 14 and 16 of the Constitution.

9. On behalf of the opposite parties, all these contentions are controverted,

10. First, as to whether the compulsory retirement of the applicant under Rule 465 of the Civil Service Regulations as adapted by the State of Uttar Pradesh amounts to removal of the applicant within the meaning of that word in Article 311.

11. A precisely similar question has recently been, decided by a Bench Of this Court, the judgment of which was delivered by me, in -- 'Shyam Lal v. State of U. P.', AIR 1954 All 235 (A). It was held that the word 'removal' in Article 311 is not used in its wider sense of termination of service but is used in its restricted sense of removal by way of punishment. The reasons for this view may be succinctly stated as follows:

12. Under the Government of India Act of 1915, the services of a Government servant could be terminated at the pleasure of the Crown, unless the appointment was made under some Statute which provided otherwise. The Government of India Act was amended in 1919. whereby Section 96-B was introduced in that Act. Under Section 96-B the power of the Crown to dismiss Government servants at pleasure was made "subject to the provisions of the Act and rules made thereunder". The Rules made by the Secretary of State for India in Council under the Government of India Act were the Civil Service (Classification, Control and Appeal) Rules. Rule 49 of this Rule provided several kinds of punishments which could be inflicted for good and sufficient reasons on a civil servant. Three of these punishments were 'dismissal' 'removal from service' and 'reduction in rank'. There was a distinction between "dismissal" and 'removal". "Dismissal" involved loss of pension and other emoluments and a disability for further employment in Government service.

"Removal" involved loss of pension to some extent but not necessarily wholly and it did not involve a disability for future employment in Government service. Under Rule 55 when the three punishments, namely removal, reduction in rank or dismissal were

> to be inflicted upon a Government servant, he was to be given an opportunity of meeting the charges framed against him. It was held by the Privy Council that Rule 55 did not impose a legally enforcible remedy against the Crown in favour of a Government servant and that the Government servant could be dismissed even though Rule 55 were not complied with because the phrase in Section 96-B "subject to the provisions of the rules made under the Act" did not, limit in any way the power of the Crown to dismiss a Government servant at pleasure, since the rules were merely administrative rules and the remedy of a Government servant dismissed contrary to the provisions of the rules was political and not legal -- 'Rangachari v. Secy. of State', AIR 1937 PC 27 (B) and -- 'Venkata Rao v. Secy. of State', AIR 1937 PC 31 (C).

13. This involved a great hardship on civil servants and so when the new Government of India Act was passed in 1935, Section 240(3) made it obligatory upon the Crown to give an opportunity o'f showing cause to a Civil servant against the action proposed to be taken against him when the servant was to be "dismissed, or reduced in rank". The word "removal" was not used and one would have thought that Sub-section (3) of Section 240 of the Government of India Act, 1935 covered the case of two punishments only, namely dismissal and 'reduction in rank' and not that at 'removal', because the word 'removal' was not used. But the Privy Council in -- 'High Commr. for India v. I. M. Lall', AIR 1948 PC 121 (D), held that removal was comprised within the word 'dismissal'. Thus the position, when the present Constitution was framed, was that there was a statutory protection to a Government servant that when any of the punishments of 'dismissal', 'removal' or 'reduction in rank' were proposed to be inflicted on him, the Crown was bound to give him an opportunity of Showing cause why such action should not be taken against him. The same position was retained when the present Constitution was framed, but opportunity was taken to introduce the word "removal" also along with the words 'dismissal' and "reduction in rank" in Article 311.

The words "dismissal" and "reduction in rank"

> could not but refer to punishments and from the place of the word "removal" sandwitched as it is between the words "dismissal" and "reduction in rank" the conclusion is inevitable that the word "removal" is also of the same nature as the words "dismissal" and "reduction in rank". .In other words, "removal" here means removal by way of punishment as contemplated in Rules 49 and 55. The fact that Article 311(2) made it obligatory on the State to give an opportunity of showing cause to a civil servant when he was to be dismissed, removed or reduced in rank also showed that dismissal, removal and reduction in rank must be connected with some misconduct or misbehaviour of a Government servant, so that he might explain his conduct and show cause against the action proposed to be taken against him.
>
> The Courts in India with the exception of one Court have all taken the above view. These authorities are: -- 'Jayanti Prasad v. State of Uttar Pradesh', AIR 1951 All 793 (E), -- 'Kewalmal Singh v. Heta Ram', AIR 1952 Raj 17 (F), --'State of Saurashtra v. Bholanath Jstashanker', AIR 1952 Sau 49 (FB) (G), -- 'Choottor Varadaraja Iyer

Narayana Iyer v. The State of Travancore Cochin', AIR 1953 Trav-Co. 140 (H). The latest decision is of the Supreme Court in --'Satish Chandra Anand v. Union of India', AIR 1953 SC 250 (I) which also tends to support the above view though the facts in that case were different." The only Court which has taken a contrary view is the Pepsu Court. We have four decisions of that Court, viz., -- 'K.R. Rama Iyer v. The State', AIR 1952 Pepsu 69 (J), -- 'Ishar Das v. State of Pepsu', AIR 1952 Pepsu 148 (K), -- 'Shambhu Dayal v. Fatiala and East Punjab States Union', AIR 1952 Pepsu 152 (L), -- 'Anup Singh v. The State', AIR 1953 Fepsu 24 (M), These were all cases decided before the decision of the Supreme Court in 'Satish Chandra's case, (I)', and the Bench deciding 'Shyam Lal's case, (A)', did not accept them as correct.

14. Rule 465 as amended by the Government of United Provinces in 1948 is not a rule of punishment. It is a rule providing for full pension on voluntary or compulsory retirement on the attainment of a particular period of service. It is similar in nature to the rule of compulsory retirement on attainment of a particular age called the superannuation age which, in the State of Uttar pradesh, under Rule 56 of the Financial Handbook, Volume II, is 55 years. The only difference between the two rules is that whereas on attaining the age of 55 years, all Civil servants are liable to retirement unless the period of their service for reasons to be recorded in writing, is extended, under Rule 465, all Civil servants are liable to be compulsorily retired after they have completed 25 years of meritorious service, if the Government thinks fit to retire them. Rule 465 applies only when the Government makes an order under it in respect of a particular Government servant.

15. For all these reasons, in my judgment, the compulsory retirement of a Government servant under 465 A (sic) is not a "removal" within the m eaning of Article 311 Consequently, the applicant was not entitled to an opportunity of snowing cause as contemplated in that Article,

16. The second point to be decided is whether the applicant nas been removed in disregard of the provisions of Rule 455. Sub-rule (2) of Rule 465 provides that Government may retire any Government servant who has completed 25 years or more of qualifying service. The note appended to that rule clarifies that the Government is not bound to give any reasons for the compulsory retirement under the rule and that no claim to special compensation on this account shall be entertained. The latter part of the note that "this right shall only be exercised by Government in the Administrative Department, where it is in the public interest to dispense with the services of a Government servant who has outlived his usefulness" is a rule intended for the guidance of the Government in the Administrative Dept. and is not a rule which can be enforced against the Government in a court of law. If this portion of the rule were legally enforcible against the Government, there would be no meaning in laying down in the earlier part of the note that the Government is not bound to give any reasons for the compulsory retirement. The two parts of the note can be consistently read with each other only when the second part of the note is treated as a mere Administrative Rule and not a Statutory Rule. Though in the present case there is no proof that the applicant had outlived his usefulness or that it was in the public interest to dispense with his services, it cannot be said that the statutory part of the rule had been violated by the Government in the applicant's case. The Administrative part of the rule has been violated no doubt, more so because the instructions contained in the Government notifications of 1949 and 1952 have not been

followed at all. But these instructions, again, are merely Administrative and are not legally binding on the Government. A Government servant who has been compulsorily retired under Rule 465 without giving any reasons and without following the procedure as laid down in the Government notifications of 1949 and 1952 and contrary to the latter part of the note appended to Rule 465 has no legal right to get his compulsory retirement set aside by a Court of law. His remedy is merely political.

17. Indeed it was argued by the learned counsel for the State that Rule 465 itself is an Administrative rule and is not a statutory rule and does not affect the undoubted right of the State to terminate the services of a Government servant at pleasure, unless his case falls within the purview of Article 311. Support for this contention was sought from the two Privy Council decisions already referred to, viz., -- 'AIR 1937 PC 27 (B)', and -- 'AIR 1937 PC 31 (C)'. It is not necessary for me to decide this point in the present case because I find that the compulsory retirement of the applicant in this case was under Rule 465 and the portion of it which was not followed by the Government in the applicant's case was merely an administrative direction.

18. The third point urged by the applicant is that he was not governed by the new Rule 465 as amended in the year 1943 because he entered service in 1923. This contention has no force. Under the Government of India Act of 1919, the Secretary of State had the power to make rules for the recruitment and conditions of service etc., of the servants of the Crown. Both the parties in the present case proceeded on the assumption that Rule 435, as it existed in 1923, was validly made. The authority which could make this rule had also the power to alter or modify it from time to time. This authority is embodied in Section 32(3) of the Interpretation Act, 1889 in relation to English Statutes just as in relation, to Indian Statutes it is embodied in Section 21 of the General Clauses Act, 10 of 1897, and in relation to Acts of the State of Uttar Pradesh it is embodied in Section 27 of the U. P. General Clauses Act. Therefore the authority which made Rule 485 had also the authority to amend it. It has not been argued before us that the authority which amended Rule 485 was not the authority which was authorised by law to amend it. It follows, therefore, that every Government servant is bound by any subsequent alterations, amendments or additions made in the rules in existence when he was recruited to the service.

19. The fourth point urged is that Rule 465 is 'ultra vires' of the Constitution, because it authorises the Government to dispense with the services of a Civil servant without assigning any reason. It is urged that the provisions of the rule vest an arbitrary power in Government to select a particular servant for unequal treatment and are, therefore, contrary to the provisions of Article 16 of the Constitution, Clause (1) of Article 16 lays down that "there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State", and Clause (2) lays down that "no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence, or any of them, be ineligible for, or discriminated against in respect of any employment or office under the State." Clause (2) has no application to the present case because the applicant has not been discriminated on account of religion, race, caste or residence. Clause (1) also has no application. It applies to employment or appointment to any office under the State. There is no question of employment or appointment to any office in the present case. The question is of retirement.

20. Rule 465 undoubtedly vests an unrestricted and arbitrary power in the hands of the Government to dismiss at its pleasure any Government servant who has put in 25 years service without assigning any reason. There is much to be said for the view that this vesting of arbitrary power in the hands of the Government to compulsorily retire a particular public servant without assigning any reason is not to afford him the equal protection of the laws which is afforded to other Government servants who have also put in 25 years of service but who are not so retired. True, the Government has power to make a classification between Government servants who have put in 25 years oi service and those who have not. But the rule does not work evenly on all members of the class of Government servants who have put in 25 years of service. The rule is not automatic. It is not that every Government servant who has put in 25 years of service is automatically retired. The Government may retire one and may not retire another. The Government may choose one particular individual for unequal treatment and retire him compulsorily at its sweet will without any reason. The object of Article 14 is to prevent any person or class of persons from being singled out as a special subject for discrimination and hostile legislation. -- 'Ram Prasad Narayan Sahi v. The State', AIR 1953 SC 215 (N). In my judgment, that portion of Rule 405 which vests arbitrary power in the hands of the Government to single out from the class of Government servants who have completed 25 years of service for special treatment by compulsorily retiring him without, assigning any reason, while not applying the same rule to another Government servant belonging to the same class is violative of the spirit underlying Article 14 of the Constitution. But the question is whether the rule is 'ultra vires' on that account. I have reluctantly come to the conclusion that it is not 'ultra vires' on that account because the rule is consonant with the principle embodied in Article 310 and it is Article 310 which governs the matter and not Article 14.

21. In the matter of termination of the services of a Government servant, the provisions to be considered are Articles 310 and 311. The combined effect of these two provisions is that except as laid down in clauses (1) and (2) of Article 311 and except as laid down in Clause (2) of Article 310, there is no restraint on the power of the State to terminate the services of a Government servant at pleasure. Clause (2) of Article 310 and Clause (1) of Article 311 are admittedly inapplicable to the present case. I have already held that Clause (2) of Article 311 also does not apply to the facts of the present case. Therefore, it follows that the services of the applicant could be terminated at the pleasure of the State which means without assigning any reason. Article 14, in my judgment, does ndt control Article 310, The reason is that Article 14 is a general provision relating to all kinds of laws and all kinds of persons, while Article 310 deals with a special or particular matter, namely, Government servants and termination of their services. The maxim 'generalia specialibus non derogant', that is, "Special provisions will control general provisions" applies. As the Judicial Committee observed in -- 'Barker v. Edgar', (1898) AC 748 at p 754 (Q) that-

> "When the Legislature has given its attention to a separate subject and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject-matter and its own terms".

There is all the more reason why the above rule should apply when the special provision is contained in the very same enactment in which the general provision finds place. Then, again, Article 14 speaks of "law" and "laws". Article 310 is a constitutional provision and is not included within the term 'law' or 'laws' as mentioned in Article 14. The entire constitution must be read as one whole and every part of it must be given full effect, if Article 310 were to be limited or controlled by Article 14, it can hardly be said that the Government can terminate the services of its servants 'at pleasure'. In my opinion, Rule 465 is not rendered void by reason of Article 14.

22. The result, therefore, is that the application must fail and I would dismiss it.

23. I cannot leave this case, however, without pointing out that arbitrary exercise of even administrative powers vested in the Government is bound to lead to resentment and dissatisfaction against the Government. Action such as was taken against the applicant in the present case is bound to bring the party in power holding the reins of Government into disrepute. It will be in its own self-interest and the interests of the State as a whole that the administrative directions contained in the Government's own Notifications and Rules are strictly followed.

Randhir Singh, J.

24. I agree.