Union Of India (Uoi) vs Col. J.N. Sinha And Anr. on 12 August, 1970

Equivalent citations: AIR1971SC40, (1970)IILLJ284SC, (1970)2SCC458, [1971]1SCR791

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Bench: J.C. Shah, K.S. Hegde

JUDGMENT

K.S. Hegde, J.

1. In this appeal by certificate the only question that was canvassed before us was as regards the validity of the order contained in memorandum No. F. 16-42/68-S.1, dated August 13, 1969 issued by the Government of India. Ministry of Education and Youth Services, retiring the 1st respondent compulsorily from government service in exercise of the powers conferred under Clause (j) of Fundamental Rule 56 with effect from August 14, 1969. That order was attacked before the High Court on various grounds. The High Court rejected some of those grounds. It did not find it necessary to. decide a few others but accepting the contention of the respondent that in making the order, the appellant had violated the principles of natural justice, it held that the impugned order is invalid. The High Court accordingly issued a writ of certiorari quashing that order.

2. Before us the only contention presented for our decision was whether the High Court was right in holding that in making the impugned order the appellant had violated the principles of natural justice. No other contention was taken before us. Hence we shall address ourselves only to that question.

3. Before proceeding to examine the contention above-formulated, it. is necessary to set out the material facts. The 1st respondent herein Col. J.N. Sinha successfully competed in the examination held by the Federal Service Commission in 1938 for the post of Extra-Assistant Superintendent in the Survey of India Service. After selection, he was appointed as an Extra-Assistant Superintendent. He worked as probationer for a period of three years and thereafter he was confirmed in that post in 1941. During the second world war, he volunteered for active service in the army and was granted an emergency Commission in the army. He . was granted a regular commission in the army with effect from October 23. 1942.

4. In exercise of the powers conferred by the proviso to Article 309 of the Constitution, the President of India made on August 17. 1950 rules called the Survey of India (Recruitment from Corps of

Engineering Officers) Rules, 1950 for regulating the recruitment and conditions of service of persons appointed from the Corps of Engineering Officers of the Defence Ministry to the Survey of India Class I Service. Rule 2 of the said Rules provides for the recruitment of Military Officers to the Survey of India Class I Service and Rule 3 provides that the recruited officers will be on probation for two years which may be extended by the Government on the advice of the Surveyor General. The 1st respondent was taken into the Survey of India Class I Service under Rule 2 of the aforesaid 1950 Rules as Deputy Superintendent Surveyor with effect from June 1951. Thereafter the President of India in exercise of the powers under the proviso to Article 309, made on July 1. 1960 the Survey of India Class I (Recruitment) Rules. 1960 for regulating the recruitment of Survey of India Class I Service. The 1st respondent was subsequently promoted firstly as Superintending Surveyor and then as Deputy Director. After sometime he was promoted as Director and lastly as Director (Selection Grade"). The last mentioned promotion was made with effect from October 27, 1966. On May 17. 1969, Fundamental Rule 56 (j) was amended. Thereafter on August 13. 1969, the Ministry of Education and Youth Services issued the impugned order. The 1st respondent was given three months pay and allowances in lieu of three months notice prescribed in Fundamental Rule 56(j). The 1st respondent being aggrieved by that order, challenged the validity of the same. As mentioned earlier. the High Court accepted his plea. The Union of India has appealed against that order.

5. Fundamental Rule 56(j) reads :

> Notwithstanding anything contained in this Rule the appropriate authority shall, if it is of the opinion that it is in the public interest so to do have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice
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> (i) if he is in Class I or Class II Service or post the age limit for the purpose of direct recruitment to which is below 35 years, after he has attained the age of 50 years.
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> (ii) In any other case after he has attained the age of 55 years.

Provided that nothing in this clause shall apply to a Government servant referred to in Clause (e) who entered Government service on or before 23rd July, 1966 and to a Government servant referred to in Clause (f).

6. The order impugned merely says that in pursuance of Clause 56(j), the President was pleased to decide that in public interest the 1st respondent should retire from government service with effect from August 13, 1969 and that he would be given three months pay and allowances in lieu of three months notice provided in the said rule. No reasons are given for compulsorily retiring the 1st respondent. Admittedly no opportunity was given to him to show cause against his compulsory retirement. The failure on the part of the concerned authority to give an opportunity to the 1st respondent to show cause against his compulsory retirement was held by the High Court to have amounted to a contravention of the principles of natural justice.

7. The validity of Fundamental Rule 56(j) was not questioned before the High Court nor before us. Its validity is not open to question in view of the decision of this Court in T.G. Shivacharana Singh and Ors. v. State of Mysore .

8. Fundamental Rule 56(j) in terms does not require that any opportunity should be given to the concerned government servant to show cause against his compulsory retirement. A government servant serving under the Union of India holds his office at the pleasure of the President as provided in Article 310 of the Constitution. But this "pleasure" doctrine is subject to the rules or law made under Article 309 as well as to the conditions prescribed under Article 311. Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in Kraipak and Ors. v. Union of India "the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law but supplement it." It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power.

9. Now coming to the express words of Fundamental Rule 56(j), it says that the appropriate authority has the absolute right to retire a government servant if it is of the opinion that it is in the public interest to do so. The right conferred on the appropriate authority is an absolute one. That power can be exercised subject to the conditions mentioned in the rule, one of which is that the concerned authority must be of the opinion that it is in public interest to do so. If that authority bona fide forms that opinion, the correctness of that opinion cannot be challenged before courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision. The 1st respondent challenged the opinion formed by the government on the ground if mala fide. But that ground has failed. The High Court did not accept that plea. The same was not pressed before us.. The impugned order was not attacked on the ground that the required opinion was not formed or that the opinion formed was an arbitrary one. One of the conditions of the 1st respondent's service is that the government can choose to retire him any time after he completes fifty years if it thinks that it is in public interest to do so. Because of his compulsory retirement he does not lose any of the rights acquired by him before retirement. Compulsory retirement involves no civil consequencies. The aforementioned rule 56(j) is not intended for taking any penal action against the government servants. That rule merely embodies one of the facets of the pleasure doctrine embodied in Article 310 of the Constitution. Various considerations may weigh with the appropriate authority while exercising the power conferred under the rule. In some cases, the government may feel that a particular post may be more usefully held in public interest by an officer more competent than the

one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organizations and more so in government organizations, there is good deal of dead wood, it is in public interest to chop off the same. Fundamental Rule 56(j) holds the balance between the rights of the individual government servant and the interests of the public. While a minimum service is guaranteed to the government servant, the government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest.

10. It is true that a compulsory retirement is bound to have some adverse effect on the government servant who is compulsorily retired but then as the rule provides that such retirements can be made only after the officer attains the prescribed age. Further a compulsorily retired government servant does not lose any of the benefits earned by him till the date of his retirement. Three months', notice is provided so as to enable him to find out other suitable employment.

11. In our opinion the High Court erred in thinking that the compulsory retirement involves civil consequences. Such a retirement does not take away any of the rights that have accrued to the government servant because of his past service. It cannot be said that if the retiring age of all or a section of the government servants is fixed at 50 years, the same would involve civil consequences. Under the existing system there is no uniform retirement age for all government servants. The retirement age is fixed not merely on the basis of the interest of the government servant but also depending on the requirements of the society.

12. The High Court was not justified in seeking support for its conclusion from the decision of this Court in State of Orissa v. Dr. (Miss) Binapani Dei and Ors. and A.K. Kraipak v. Union of India .

13. In Binapani Dei's case Dr. Binapani Dei's Hate of birth was refixed by the government without giving her proper opportunity to show that the enquiry officer's report was not correct. It is under those circumstances this Court, held that the order refixing the date of birth was vitiated for failure to comply with the principles of natural justice. Therein the impugned order took away some of the existing rights of the petitioner.

14. In Krapak's case , a committee consisting of Chief Conservator of Forest, Kashmir and others was appointed to recommend names of the officers from Kashmir Forest Service for being selected for the Indian Forest Service. The Chief Conservator of Forests, Kashmir was one of the candidates for selection. Further it was established therein that some of the officers who competed with him had earlier challenged his seniority and consequently his right to be the Chief Conservator and that dispute was pending. Under those circumstances this Court held that there was contravention of the principles of natural justice.

15. For the reasons mentioned above, we are unable to agree with the conclusion reached by the High Court that the impugned order is invalid. We accordingly allow this appeal, set aside the judgment and decree of the High Court and dismiss the writ petition. In the circumstances of the

case we make no order as to costs.

16. [The Court by order dated November 18, 1970 and January 19, 1971 on an application for review filed by the respondent vacated its order dismissing the writ petition. Instead, the proceedings were remanded to the High Court for decision on such points as were not dealt with and decided in the judgment of that court. Ed.]