Supreme Court of India
M. Narasimhachar vs State Of Mysore on 12 October, 1959
Bench: B.P. Sinha Cj, S.J. Imam, J.L. Kapur, K.N. Wanchoo, K.C. Dasgupta

CASE NO.:
Appeal (civil) 438 of 1958

PETITIONER:
M. NARASIMHACHAR

RESPONDENT:
STATE OF MYSORE

DATE OF JUDGMENT: 12/10/1959

BENCH:
B.P. SINHA CJ & S.J. IMAM & J.L. KAPUR & K.N. WANCHOO & K.C. DASGUPTA

JUDGMENT:

JUDGMENT 1960(1) SCR 981 The Judgment was delivered by WANCHOO, J Per Wanchoo, JThis is an appeal by special leave against an order of the Mysore High Court in a service matter. The appellant was in the service of the, Mysore State. In 1951 he was the manager of the Government Reserve Foodgrains Depot at Pandavapura. He was transferred from Pandavapura on 15 May, 1951, and handed over charge of the depot to one Sri Srinivasachar. A report was then made by Sri Srinivasachar that there was shortage of 27 pallas of ragi in the stock handed over to him. Thereupon and enquiry was held by the sub-division officer. The appellant was dissatisfied with the enquiry as according to him it had not been properly conducted. He therefore complained against the sub-division officer and also brought it to the notice of the higher authorities that certain rooms containing stock of gunny bags had been sealed and the seals were not allowed to be broken till 24 March, 1952, with the result that a large number of gunny bags which were stocked there had deteriorated and had been eaten by whiteants. It appears that these preliminary enquiries went on till August 1952 when the appellant was appointed Special Revenue Inspector under the Assistant Director of Food Supplies. He went to taken over charge of the new post in September 1952 but was not allowed to do so by an order of 12 September, 1952. He then approached the higher authorities but was suspended on 29 December, 1952. On 4 April 1953, the following charges were framed against him :

(1) that he had taken II months to hand over charge of the reserve depot to his successor with a view to concealing the irregularities in the management of the depot;

(2) that he had failed to hand over detailed charge by counting the gunny bags;

(3) that he had failed to obtain specific orders of the amildar to stock the new gunny bags in the mill and his object was to effect surreptitious sale of the gunny bags;(4) that he had not maintained a regular account in regard to the bags and that he had failed to get them checked by superior officers to escape his accountability for the loss of about 11, 000 bags;

(5) that he had deliberately mixed husk with regi and thereby cheated Government to the extent of 27 pallas of ragi;

(6) that he had manipulated the account and;

(7) that he had failed to get the stock checked every month by the amildar and other superior officers.

The appellant submitted a reply to the charges and made several representations to various officers in that behalf. Eventually he received a notice on 23 November, 1953, from the Director of Food Supplies directing him to appear in connexion with the enquiry relating to the shortage in the reserve depot. Subsequently, an enquiry was held by the Personal Assistant to the Director who made a report thereafter. Finally, a notice was issued to the appellant by the Government on 30 December, 1951, that six of the seven charges framed against him (except the charge relating to 27 pallas of ragi) had been proved on enquiry and he was asked to show cause within one week from the date of the receipt of the notice why he should not be compulsorily retired from service, why the period of suspension should not be treated as such leave to which he might be entitled and why the leave allowances due to him, his insurance amount and 50 per cent of his pension should not be adjusted towards the amount due from him on account of the shortage of gunny bags valued at Rs. 5, 215. The appellant submitted a long explanation in reply to this notice. In the meantime the appellant had attained the age of 55 years. Therefore, the Government passed an order on 18 March 1955, in the following terms :-

"(1) That Sri M. Narasimhachar be retired from service from the date on which he attained superannuation and granted under Art. 302(b) of the Mysore Services Regulations (hereinafter referred to as regulations), a reduced pension of two-thirds the amount to which he would ordinarily be entitled to view of the irregularities committed by him.(2) That the period of suspension be treated as leave to which he is entitled.

(3) That the cost of 10, 430 gunny bags found short be recovered from him at the rate of eight annas per bag.

(4) That the leave allowances due to him, his insurance amount and death- cum-gratuity amount and death cum-gratuity amount, if any, be adjusted towards the amount due to him.

(5) That the balance after adjusting the leave allowances insurance amount and death-cum-gratuity amount, if any, be recovered in monthly instalments by deducting 50 per cent of the pension as ordered in (1) above."

Thereafter the appellant filed a petition under Art. 226 of the Constitution in the High Court on 5 September, 1955. His main contention was that the order of Government retiring him was not in accordance with Arts 294 to 197 of the regulations and the Revised Pension Rules of the same regulations. He also contended that the order of the Government reducing his pension to two-thirds of that to which he would be ordinarily entitled was invalid as it was not mentioned in the notice

given to him on 30 December, 1954, and that this reduction of pension was violative of Art. 311(2) of the Constitution. Finally he contended that the order of Government treating his period of suspension as period of such leave as might be due to him and recovery of Rs. 5, 215 from the amounts due to him from the Government and his pension was illegal and arbitrary. The petition was opposed by the State of Mysore and its contention was that the order passed was strictly in accordance with the regulations and that in no case Art. 311(2) of the Constitution had any application and as such the reliefs sought by the appellant could not be granted on a writ petition. The High Court held that Art. 311(2) had not application and that the order passed by the Government was in accordance with the regulations and that it was not possible to give any relief to the appellant. Consequently, the petition was dismissed. The appellant then applied for a certificate to enable him to appeal to this Court, which was refused. He followed it by asking for special leave from this Court which was granted; and that is how the mater has come up before us.There is no doubt that proceedings in this case began in April 1953 with the intention of taking disciplinary action against the appellant and he was served with a chargesheet which was followed by an enquiry. But the period taken by the enquiry which followed was so long that the appellant attained the age of 55 years sometime in December 1954. Consequently the Government seems to have decided when it gave notice to the appellant on 30 December, 1954, to retire him instead of taking any other action against him. That is how Arts. 294 to 297 to the regulations which deal with retirement became relevant in this case. The contention of the appellant before the High Court was that under the articles he was entitled to continue in service even after attaining the age of 55 years and the Government had no right to order his retirement on attaining that age and that the option whether a public servant will retire at the age 55 years or not rested with him. The relevant article in this connexion is Art. 294, which is in these terms -

"294(a) - A Government servant in superior or inferior service, who has attained the age fifty-five years, may be required to retire unless the Government considers him efficient, and permits him to remain in the service. But as the premature retirement of an efficient Government servant imposes a needless charge on the State, this rule should be worked with discretion. And in cases in which the rule is enforced, a statement of the reasons for enforcing it shall be placed on record.

Note 1. - It is trusted that the heads of departments will always be disposed to extend to this rule a very liberal interpretation, so that the State may, in no case, be deprived of the valuable experience of really efficient Government servants by the untimely exercise of the powers of compulsory retirement on pension.Note 2. - (b) These rules apply to all Government servants without reference to their nationality.

(c) Heads of departments are authorized to retire all non-gazetted Government servants under them when they attain the age of fifty-five, and to grant extension of service for a period not exceeding six months only in very exceptional cases if the Government servant is considered to be efficient and such extension is considered absolutely necessary in the interest of public service. In no case, extension be given beyond six months without orders of Government."

It is clear from this article that the age of retirement fixed in the regulations is 55 years and it is the option of Government to allow a public servant to continue in service thereafter if it considers him

efficient. It is true that note 1 to this article enjoins on heads of departments to be liberal in this matter. But it is clear that whatever may be the liberality exercised, the age of retirement is fifty-five years and continuation in service beyond that age is at the option of Government. Article 295(c) would also make this clear so far as non-gazetted servants are concerned. Further, Art. 296 requires the heads of departments to send to Government on or before the first of September in each year a list of non-gazatted servants who will attain the age of 55 years during the coming year and also of those who have been given extensions of service by them. This further enforces what is clear in Art. 294(a) that the age of retirement is 55 years. Then comes art. 297 on which the appellant mainly relies. It lays down that a Government servant in superior service who has attained the age of 55 years, may at his option retire from the service on a superannuation pension. It is urged that this means that the option is with the public servant whether he retires at that age or not. We are of opinion that this is not the right interpretation of Art. 297. Article 297 is complementary to Art. 294(a), which given Government the power of keeping government servants is service beyond the age of 55 years. Article 297 allows the Government servant, if the Government wants to keep him in service after 55, to opt for retirement. It does not mean that it is entirely at the option of the Government servant to continue beyond the age of 55 years and the Government cannot retire him at that age if he does not exercise the option. Therefore, it was open to Government to retire a Government servant at the age of 55 years if it thought that the person was not efficient to be kept in further service. In that view of the matter, the order of Government dated 18 March, 1955, by which the appellant was retired from the date on which he completed fifty-five years of age was in accordance with Arts. 294 and 297 of the regulations.The appellant then drew our attention to appendix A (relating to the Revised Pension Rules under Art. 215) of the regulations. Rule 2(ii) of these rules provides that a Government servant may retire from service any time after completing 30 years qualifying service : Provided that he shall give in this behalf a notice in writing to the appropriate authority, at least three months before the date on which he wishes to retire. It further provides 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 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 appellant contends that this rule required three months' notice to be given to him before he was retired at the age of 55 years and as the required notice was not given by the Government the order relating to his retirement was not valid, being against the rule. We are of opinion that this again is a complete misinterpretation of this rule. This rule must be read as supplementary to Arts. 294 and 297 of the regulations relating to retirement of public servants. What it contemplates is that if a public servant has completed 30 years service though he may not have attained the age of 55 years he can ask the Government to retire him after giving three month's notice. The rule further contemplates that Government may retire an officer after he has completed 25 years service or attained 50 years of age, i.e., before he is normally due for retirement at the age of 55 years. It does not mean that when once the officer is past the age of 50 years or has completed 25 years of service he must always be given a notice of three months before he can be retired at 55 years or afterwards. This is a special provision relating to those cases where the Government wishes to retire an officer before the ordinary age of retirement, namely, 55 years. The appellant therefore cannot claim that the order of 18 March, 1955 is illegal because it did not give three months' notice. So far therefore as the retirement rules are concerned, the Government order retiring the appellant

is in no way against these rules.Next the appellant contends that as his pension has been reduced to two-thirds, he was entitled to notice in view of the provisions of Art. 311(2) of Constitution, before the Government decided to inflict that punishment on him and that this was not done in the notice dated 30 December, 1954. It is enough to say that this contention is also baseless. Article 311(2) does not deal with the question of pension at all; it deals with three situations, namely :-

(1) dismissal,

(ii) removal, and

(iii) reduction in rank.

The appellant says that the reduction in pension is equivalent to reduction in rank. All that we need say is that reduction in rank applies to a case of a public servant who is expected to serve after the reduction. It has nothing to do with reduction of pension, which is specifically provided for in Art. 302 of the regulations. That article says that if the service has not been thoroughly satisfactory the authority sanctioning the pension should make such reduction in the amount as it thinks proper. There is a note under this article, which says that the full pension admissible under the regulations is not to be given as a matter of course but rather to be treated as a matter of distinction. It was under this article that the Government acted when it reduced the pension to two-thirds. Reduction in pension being a matter of discretion with the Government, it cannot therefore be said that it committed any breach of the regulations in reducing the pension of the appellant.

Lastly, the appellant challenged that part of the order of the Government which provided that a sum of Rs. 5, 215 be deducted from the amount due to him and from his pension in monthly instalments. It is enough to say that there is a provision in the regulations providing for this, which is Art. 216A. Under that article the Government reserved to itself the right to order the recovery from the pension and compassionate allowances of a Government servant of any amount on account of losses found in judicial or departmental proceedings to have been caused to Government by the negligence or fraud of such officer during his service. There is a proviso to this article which says that departmental proceedings, if not instituted while the officer was on duty, shall not be instituted except under certain circumstances, which we need not detail here. The appellant says that the departmental proceedings that look place against him should have been instituted in the manner provided in this proviso. There is no force in this contention because the proviso only comes into force when the departmental proceedings take place after the officer has given up service. It does not apply to a case like the present where the departmental proceedings took place while the appellant was still in service.Before we leave this case, we may point out that the appellant contended that the Fundamental Rules of the Government of India applied to him. This again in wrong for what apply to him are the regulations and not the Fundamental Rules of the Government of India.

We are therefore of opinion that there is no force in this appeal. It is hereby dismissed. In the circumstances of the case we pass no order as to costs and court-fee.