

Supreme Court of India

The State Of Mysore vs Padmanabhacharya Etc. on 24 September, 1965

Equivalent citations: AIR 1966 SC 602, (1966) IILLJ 147 SC, 1966 1 SCR 994

Author: Wanchoo

Bench: P Gajendragadkar, K Wanchoo, M H Shah, S Sikri

JUDGMENT Wanchoo, J.

1. These appeals by special leave raise common questions and will be dealt with together. We shall take the facts of one appeal (No. C.A. 237) in order to understand the questions in dispute and it will be unnecessary to refer to the facts in other cases for they are admittedly similar.

2. Nanjappa, respondent in C.A. 237 of 1964, was a trained teacher and was headmaster of a Government Boys' Middle School. He completed the age of 55 years on February 3, 1958 and was ordered to be retired from service from that date on the- ground of superannuation. Thereupon he filed a writ petition in the High Court of Mysore, and the main contention raised on his behalf was that Rule 294 (a) of the Mysore Service Regulations (hereinafter referred to as the Regulations), which prescribed the age of retirement of Government servants, had been amended with respect to trained teachers from April 29, 1955, and in the case of such teachers the normal age of superannuation was fixed at 58 years instead of 55 years. Consequently, the respondent could not be retired on completion of the age of 55 years and the order by which he was retired at that age as if he was superannuated was illegal on the ground that it was against the rule applicable to trained teachers.

3. This contention was traversed on behalf of the State, which is the appellant before us. It was admitted that there was some change in the rule relating to superannuation. Even so it was contended that the age of superannuation in the case of trained teachers remained the same, namely 55 years and it was open to the State to retire trained teachers at the age of 55 years, though they could be retained upto the age of 58 years if they were found fit and efficient. Besides reliance was also placed on behalf of the State on a notification of the Governor issued on March 25, 1959 and it was urged that that notification issued under Article 309 of the Constitution validated the action taken in retiring Nanjappa, and others like him, on completion of the age of 55 years. It was not disputed on behalf of the State that the sole reason for retiring Nanjappa and others like him was that they had attained the age of 55 years and that there was nothing against their fitness or efficiency to justify the order of retirement.

4. Two principal points were thus raised before the High Court. The first was with respect to the interpretation of Rule 294 (a) with particular reference to the amendment which was made on April 29, 1955. The second was with respect to the effect of the Governor's notification dated March 25, 1959. On the first point, the High Court held that the change made in Rule 294 on April 29, 1955 clearly provided that in the case of trained teachers the normal age of retirement would be 58 years, though the Government would have the right to retire them earlier if they were neither fit nor efficient. On the second point, the High Court held that the notification of March 25, 1959 could not be a rule within the meaning of Article 309 of the Constitution and could not have the effect of validating what had been done earlier with respect to trained teachers in contravention of the rule as

to retirement. The appellant State then applied for leave to appeal to this Court which was refused. It then came to this Court and was granted special leave; and that is how the matter has come up before us.

5. We are of opinion that the High Court is right on both the points urged before it. Rule 294 (a) of the Regulations which was in force before the change was made on April 29, 1955, was in these terms :--

"294 (a). A Government servant in superior or inferior service, who has attained the age of fifty-five years, may be required to retire, unless 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."

6. There is no doubt that this rule as it was before April 29, 1955 provided that normal age of retirement was 55 years but it gave discretion to Government to extend the service of efficient Government servants beyond the age of 55 years.

7. In August 1954, however, the Government issued a notification which applied to trained teachers in the Education Department. In this notification it was directed that in the Education Department the age of retirement of trained teachers would generally be 58 years. With regard to teachers who were not trained and who were otherwise efficient, the age of retirement would also be 58 years. Teachers trained and untrained who had not got a good record of service and who were not upto the mark would be retired at 55 years. The relaxation regarding the age of retirement would be in force only till such time as sufficient number of trained teachers became available for employment. The order also contained a direction that a suitable note would be added to Rule 294 (a) of the Regulations. In consequence of this order, necessary additions were made to the Regulations by the then Rajpramukh of Mysore and note 4 was added to Rule 294 (a) in these terms :--

"The age of retirement of trained teachers in the Education Department may generally be fifty-eight years, and in the case of teachers who are not trained but who are otherwise efficient the age of retirement may also be fifty-eight years.....

"The Director of Public Instruction in Mysore is empowered to order the retirement of teachers, trained and untrained in the non-gazetted cadre who have not got a good record of service and who are not upto the mark, at the age of fifty-five years, and in the case of gazetted servants, with the concurrence of Government in each case.

"The above provision shall be deemed to have come into force with effect from the 20th August, 1954."

It is the effect of this addition to Rule 294 (a) which falls to be considered before us. We shall in the present appeals confine ourselves to the case of trained teachers for the respondents before us are admittedly all trained teachers. What we say here will not necessarily apply to teachers who are not

trained. So far as trained teachers are concerned there is no doubt that note 4 carved out an exception to Rule 294 (a) which provides that the normal age of retirement is 55 years and it is for the Government to decide whether to grant extensions to persons after they completed 55 years and this grant of extension was on the basis of such persons remaining efficient in the opinion of Government after the age of 55 years. But note 4 made a change in that position so far as trained teachers were concerned. That change was that in the case of trained teachers the normal age of retirement was to be 58 years. The latter part of the note however gave power to the Director of Public Instruction to retire even trained teachers in the non-gazetted cadre provided they had not a good record of service and were not upto the mark. In such a case the Director had the power to retire them at the age of 55 years if he was of the view that they had not a good record of service and were not upto the mark. Thus under Rule 294 (a) as it was before April 29, 1955 the normal age of retirement was 55 years for all including trained teachers and it was for the Government to give extension on the ground of fitness. But after note 4 was added to Rule 294 (a), the position with respect to trained teachers was changed and trained teachers were normally entitled to continue in service till the age of 58 years unless the Director or the Government as the case may be, was of the opinion that they had not a good record of service and were not upto the mark. Therefore after the change made on April 29, 1955, trained teachers could only be retired at the age of 55 years if the Director of Public Instruction or the Government, as the case may be, came to the conclusion that they had not a good record of service and were not upto the mark. Therefore, before the respondents in the present appeals could be retired at the age of 55 years, the Director of public Instruction or the Government, as the case may be, had to come to the conclusion that they had not a good record of service and were not upto the mark. If such a conclusion was not arrived at, they would be entitled under note 4 to continue in service upto the age of 58 years. It is not disputed on behalf of the appellant that no such decision, namely, that the respondents had not a good record of service and were not upto the mark, was taken.

8. Stress is laid on the word "generally" appearing in the first part of note 4. The presence of that word does not mean that the normal age of retirement is still 55 years. The reason why the word "generally" is used in the earlier part of note 4 is to be found in the latter part of the same note where power has been given to the Director of Public Instruction to retire trained teachers at the age of 55 years if they have not a good record of service and are not upto the mark. Because of that power it was necessary to use the word "generally" in the earlier part of the note, as otherwise there would be an indefeasible right in trained teachers to continue in service upto the age of 58 years, even if they did not have a good record of service and were not upto the mark.

9. In the circumstances, the respondents would be entitled to continue in service upto

10. We now come to the notification dated March 25, 1959. That notification reads th

"In exercise of the powers conferred by the proviso to Article 309 of the Constitution

.. "Notwithstanding anything contained in note 4 to Article 294 of the Mysore Service R

11. We are of opinion that such a rule cannot be made under the proviso to Article 309

12. The appeals therefore fail and are hereby dismissed. The respondents will get their