

Supreme Court of India

Accountant General Andhra ... vs Mohd. Abdul Rahman Khan on 6 February, 1997

Bench: K. Ramaswamy, S. Saghir Ahmad

CASE NO. :

Appeal (civil) 698 of 1981

PETITIONER:

ACCOUNTANT GENERAL ANDHRA PRADESH AND ANR.

RESPONDENT:

MOHD. ABDUL RAHMAN KHAN

DATE OF JUDGMENT: 06/02/1997

BENCH:

K. RAMASWAMY & S. SAGHIR AHMAD

JUDGMENT:

JUDGMENT 1997 (1) SCR 1019 ORDER The following Order of the Court was delivered :

This appeal by special leave arises from the judgment of the Division bench of the Andhra Pradesh High Court in Writ Appeal No. 397/78, made on November 15, 1978. The respondent was appointed as a Lower Division Clerk in the erstwhile Nizam State (Part B State) on March 10, 1938. His date of birth is 6.3.1919. After the formation of the Part B State, he was confirmed in the Accountant General Office as Upper Division Clerk. He was absorbed permanently on April 1, 1950, since, by then, he was working in the Office of Accountant General of Hyderabad from March 7, 1939. The question arises: whether he requires to be superannuated on his completion of 58 years? The respondent contended that being an erstwhile employee of Part B State absorbed in the Government of India service, he is governed by Fundamental Rules 56(c) and clause (a) of Fundamental Rules 56 does not apply to him and, therefore, he is entitled to remain in service until he reaches the age of superannuation of 60 years. That contention was found favour with the learned single Judge was and upheld by the Division Bench. Thus, this appeal by special leave.

Fundamental Rules 56, as amended in July 1965 reads as under:

"F.R. 56 was amended in July, 1965. After amendment the relevant part of it reads as follows :

(a) except as otherwise provided in this Rule every Government servant shall retire on the day he attains the age of 58 years.

(b).....

(c) A ministerial Government servant who entered Government service on or before 31.3.1938 and held on that date (i) a lien or suspended lien on a permanent post or, (ii) a permanent post in a provisional substantive capacity under clause (d) of Rule 14 and continued to hold the same without interruption until he was confirmed in that post, shall be retained in service till the day he attains

the age of 60 years.

Note: For the purpose of this clause, the expression, 'Government Service' includes service rendered in a former provincial Govern-ment.

(cc)....."

The appellants have taken the stand that by virtue of rule 1(ii) which came into force on April 1, 1950 of the C.C.S. (part B State Transferred Employees) Rules, 1953 by operation of Rule 9(4) of the Rules, on deter- mination of the age, a ministerial servant was to superannuate under Fundamental Rules 56(b)(ii) as it stood prior to amendment in July 1965 would apply and as a consequence, the respondent was required to be superannuated on his completion of 58 years of age. Accordingly, he was informed of the same in letter dated November 27, 1976 that he was to retire on March 31, 1977 on his attaining the 58 years. The stand taken by the appellants is not correct in the light of the clause (c) of Fundamental Rules 56. It is a special provision in relation to an erstwhile government servant in Part B State, who was made permanent, after the Part B State merged with the Union of India. Nizam State was Part B State and merged in Union of India and became integral part of Andhra Pradesh State under State Reorganisation Act, 1956. The note to Fundamental Rules 56 clearly mentions that for the purpose of this clause, the expression, 'Government Service' includes service rendered in a former provincial Government. In view of the admitted position that the respondent was appointed on per-manent basis as an L.D.C. on March 10, 1938 and ever since he continued in service till he was absorbed as U.D.C. on permanent basis on April 1, 1950 with the Central Government, he hold his post on permanent basis with a lien in provincial service, prior to the amendment Rules, 1965 has come into force, namely, prior to March 31, 1938. As a consequence he is governed by clause (c) of Fundamental Rules 56. Accordingly, be is re-quired to be superannuated only on his completion of 60 yeas of age. The High Court, therefore, was right in directing that the respondent should be retained in service till he attains the age of 60 yeas. Even by now he had completed superannuation. It needs no interference.

The appeal is accordingly dismissed. No costs.