Supreme Court of India
Navnit Lal Manilal Bhat vs Union Of India (Uoi) And Ors. on 7 March, 1973
Equivalent citations: AIR 1973 SC 1167, 1973 (26) FLR 421, 1973 LablC 780, (1973) ILLJ 425 SC, (1973) 4 SCC 151
Author: A Alagiriswami
Bench: A Alagiriswami, C Vaidialingam, I Dua
JUDGMENT A. Alagiriswami, J.

1. This appeal by Certificate against the judgment of the High Court of Gujarat dismissing the plaintiff's writ petition questioning the order of the Divisional Superintendent of Western Railway directing him to retire on his attaining the age of 55 could be disposed of on the basis of the judgment of this Court in Railway Board v. A. Pitchumani . The facts necessary for disposing of this appeal may be shortly stated,

2. The appellant entered the service of the B.B. & C.I. Railway on 30-11-1929 as a probationary Assistant Booking Clerk. On 1-1-1942 this Railway was taken over by the Central Government. At that time the appellant executed a service agreement which, among other things, pre served for him the leave privileges he was entitled to while serving under the Company. The age of retirement under the Company was 55 years as indeed it was for Government servants also. This age of retirement was made a specific clause of the agreement. On 5-12-62 the age of retirement of all Railway servants, without any distinction, was raised to 58. On 26-4- 1963 the Railway Board issued a circular on the question of application of age of retirement under Rule 2046 of the Railway Establishment Code. On the basis of this circular the appellant was asked to retire on attaining the age of 55 as mentioned earlier. Before the High Court this circular of 26-4-1963 was urged as being a Rule made by the President and accepting this contention the High Court dismissed the appellant's writ petition.

3. The facts of the case in the decision of this Court, earlier referred to, are exactly the same. There also the Railway servant concerned had originally entered the service with the Madras and Southern Mahratta Rail way Company. The subsequent history was also the same. The Rule which fell to be considered was also the same rule as amended on 5-12-1962. A sub sequent amendment of that Rule which took away the benefit conferred on ex-company employees, as in the present case, was held to be violative of Article 14 of the Constitution, and was struck down. It is unnecessary to quote at length from that judgment.

4. The circular of the Rail way Board dated 26-4-1963 picked out one section of the Railway employees which were governed by Rule 2046 of the Railway Establishment Code, as amended on 5-12-1962 and subjected them to hostile treatment. As observed in the decision referred to above, while there might be a reasonable classification of Railway servants as ex-company employees and others, there is no nexus or relation between the classification and the object sought to be achieved. It was sought to be argued in this case that the leave privileges of ex-company employees which were protected when those railway companies were taken over by the Government gave them an advantage of availing themselves of their leave after retirement, which privilege was not available to regular Government employees of Railways and this was a basis for the distinction. But then

between 1-1-1942, when persons like the appellant became Government servants, till 5-12-1962 when the Rule 2046 of the Railway Establishment Code was amended, the ex-company employees had the same advantage over the other employees of the Railways. That situation did not change on 5-12-62. It did not, therefore, mean that if the benefit of the extended age of superannuation were given to ex-company employees they would get an advantage which other employees did not get. We have no doubt that if the decision of this Court had been rendered when the Gujarat High Court disposed of this writ petition the petitioner would have succeeded before that Court. We do not want to add to what has been discussed elaborately in that decision. This appeal is allowed and the judgment of the Gujarat High Court is set aside. The appellant will get his relief as prayed for. The respondent will pay his costs in both the Courts.