

1963

Shankarlal Aggarwal

v.

Shankarlal Poddar

Ayyengar, J.

should, when they allowed the appeal, have confirmed the sale to them for Rs. 3,35,000/-. We consider there is no substance in this submission.

The result is the appeal fails and is dismissed with the costs of the 1st respondent.

Appeal dismissed.

1963

January, 24.

STATE OF RAJASTHAN AND ANR.

v.

SRIPAL JAIN

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR,
K. N. WANCHOO, M. HIDAYATULLAH and
J. C. SHAH, JJ.)

State Service—Order of compulsory retirement—Power of Inspector-General of Police—Order if amounts to punishment—If must be submitted to Governor—Constitution of India, Arts. 166, 311—Rajasthan Service Rules, rr. 56, 244(2)—Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958, rr. 14, 34—Rules of Businesses, rr. 21, 31(vii)—Rajasthan General Clauses Act, 1955 (VIII of 1955), ss. 32(33), 32(75).

The respondent in the present appeal was a Circle Inspector in the Rajasthan State Service. He was compulsorily retired from service and the order was communicated to him by the Inspector-General of Police. Thereafter he filed a writ petition in the Rajasthan High Court challenging the order. The High Court allowed the writ petition on the ground that r. 31 (vii) (a) of the Rules of Business applied to a case of compulsory retirement under r. 244(2) of the Rajasthan Service Rules and as the papers had not been submitted to the Governor the order of compulsory retirement in the present case was bad. The State of Rajasthan appealed to this Court by way of special leave.

The main question before this Court was whether a case of compulsory retirement under r. 244(2) of the Service Rules has to be submitted to the Governor under r. 31(vii)(a) of the Rules of Business. It was further contended on behalf of the respondent that r. 244(2) of the Service Rules contemplated an order of compulsory retirement by the Government and not by the Inspector-General of Police as was done in the present case. The respondent also contended that since the order was not in the form prescribed by Art. 166 of the Constitution it was bad. His last contention was that by reason of s. 32(75) of the Rajasthan General Clauses Act, 1955, an order under r. 244(2) of the Service Rules means an order by the Governor.

1963

State of Rajasthan
v.
Sripal Jain

Held, that compulsory retirement provided in r. 31(vii)(a) is a compulsory retirement as a penalty and not compulsory retirement of the other two kinds namely (1) compulsory retirement on attaining the age of superannuation and (2) compulsory retirement under r. 244(2), neither of which is a punishment. It was not therefore necessary to submit the papers with respect to compulsory retirement of the respondent under r. 244(2) to the Governor.

It is well settled that any defect of form in the order would not necessarily make it illegal and the only consequence of the order not being in proper form as required by Art. 166 is that the burden is thrown on the Government to show that the order was in fact passed by it. The recommendation made by a high power committee for the compulsory retirement of the respondent having been approved by the Home Minister and by the Chief Minister, by virtue of r. 21 the impugned order is one made by the Government.

The definition of 'Government' and 'State Government' in the Rajasthan General Clauses Act does not support the contention of the respondent in the light of the above interpretation of r. 31(vii)(a) of the Business Rules.

CIVIL APPELLATE JURISDICTION : Civil Appeal
No. 299/62.

Appeal by special leave from the judgment and order dated February 23, 1961, of the Rajasthan High Court in D. B. Civil Writ No. 416 of 1960.

G. C. Kasliwal, Advocate-General for the State of Rajasthan, *S. K. Kapur* and *P. D. Menon*, for the appellants.

1963

State of Rajasthan

v.
Sripal Jain

Veda Vyasa and K. K. Jain, for the respondent.

1963. January 24. The Judgment of the Court was delivered by

Wanchoo, J.

WANCHOO, J.—This is an appeal by special leave against the judgment of the Rajasthan High Court. The respondent was in the service of the State of Rajasthan and at the material time was a circle inspector. He was compulsorily retired from service on September 3, 1960 under r. 244 (2) of the Rajasthan Service Rules, (hereinafter referred to as the Service Rules). The order for his retirement was communicated to him by the Inspector General of Police, Rajasthan, on April 11, 1960. The respondent however made representations to the Government and the order was kept in abeyance and was finally put into effect from September 3, 1960, after the Government had rejected the representation. The Government ordered on September 2, 1960 that the order of April 11, 1960 regarding compulsory retirement should be put into immediate effect. The respondent thereupon filed a writ petition in the High Court and contended *inter alia* that the Inspector General of Police had no authority to order his compulsory retirement under r. 244 (2) of the Service Rules. He also contended that the order amounted to punishment within the meaning of r. 14 of the Rajasthan Civil Services (Classification, control and appeal) Rules, 1958, (hereinafter referred to as the Classification Rules), and therefore as it was passed without giving him an opportunity to show cause as required under Art. 311 of the Constitution, it was bad.

The petition was opposed on behalf of the State of Rajasthan and it was contended that an order of compulsory retirement under r. 244 (2) of the Service Rules was not a punishment within the meaning of the Classification Rules, and therefore Art. 311

had no application to it. It was also urged that the order had been passed by the Government and not by the Inspector General of Police, who had merely acted in issuing the order under the direction of the Government. The case of the appellants was that under r. 244 (2) of the Service Rules, the Government had an unqualified discretion to retire any officer compulsorily if it was in the public interest so to do, and provisions of Art. 311 of the Constitution would not apply to such an order of compulsory retirement. The appellant's case further was that a high-powered Committee had been set up under the chairmanship of the Chairman of the Public Service Commission to consider the cases of all such officers whose retention in public service after twenty-five years of service was not in the public interest and that Committee recommended the compulsory retirement of the respondent. That recommendation was put up before the Home Minister of the Government of Rajasthan, who accepted the findings and recommendations of the Committee. The matter was then put up before the Chief Minister who agreed with the Home Minister and thereafter the Inspector General of Police was directed to order the retirement of the respondent.

When the matter came to be heard in the High Court it was submitted on behalf of the respondent that under r. 31 (vii) (a) of the Rules of Business (hereinafter referred to as the Business Rules), all cases of compulsory retirement where the appointing authority is the Government have to be submitted to the Governor and the Chief Minister. As in the present case the matter was admittedly not submitted to the Governor, the order of compulsory retirement even if it was made by the Government was not legal as it was against the Business Rules. The reply of the appellants to this contention was that r. 31 (vii) (a) of the Business Rules only applied to that kind of compulsory retirement which was inflicted as a

1963

State of Rajasthan

v.

*Sripal Jain**Wanchoo, J.*

1963

*State of Rajasthan**v.*
*Sripal Jain**Wanchoo, J.*

punishment under r. 14 of the Classification Rules and not to other cases of compulsory retirement. The High Court however accepted the contention of the respondent that r. 31 (vii) (a) of the Business Rules applied to a case of compulsory retirement under r. 244 (2) of the Service Rules, and as the papers had not been submitted to the Governor the order of compulsory retirement in the present case was bad. It therefore allowed the writ petition and set aside the order.

The main question that falls for consideration therefore is whether a case of compulsory retirement under r. 244 (2) of the Service Rules has to be submitted to the Governor under r. 31(vii)(a) of the Business Rules. There are three kinds of compulsory retirement provided in the various rules relating to services in Rajasthan. Firstly, compulsory retirement on proportionate pension is provided as a penalty under r. 14 of the Classification Rules and this can be ordered whatever may be the length of service of a civil servant. Secondly, compulsory retirement is provided by r. 56 of the Service Rules as a matter of course on a civil servant reaching the age of superannuation, namely, 55 years. And thirdly, compulsory retirement may be ordered under r. 244(2) of the Service Rules which provides that the Government retains an absolute right to retire any government servant after he has completed 25 years of qualifying service without giving any reason and no claim to special compensation on this account will be entertained. This right however will not be exercised except when it is in public interest to dispense with the further service of a government servant.

The contention on behalf of the respondent in the High Court was that all kinds of compulsory retirement have to be referred to Governor under r. 31 (vii) (a) of the Business Rules and reliance in this connection was placed on the language of the

rule. It is therefore necessary to set out r. 31 (vii) in full.

1963

State of Rajasthan

v.

*Sripal Jain**Wanchoo, J.*

“31. The following classes of cases shall be submitted to the Governor and the Chief Minister before the issue of orders :—

- | | | | |
|-------|---|---|---|
| (i) | * | * | * |
| (ii) | * | * | * |
| (iii) | * | * | * |
| (iv) | * | * | * |
| (v) | * | * | * |
| (vi) | * | * | * |
- (vii) (a) Proposals for dismissing, removing or “compulsory retiring of any officer where the appointing authority is the Government.
- (b) Where a review petition is proposed to be rejected and it is against an order issued after submission to the Governor under item (vii)(a) of Rule 31.
- (c) In a case where, on review, the Governor decides to enhance the penalty already imposed and the enhanced penalty is one of dismissal, removal or compulsory retirement of an officer whose appointing authority or appellate authority is Government.”

There is no doubt that the words “proposals for..... compulsory retiring of any officer where the appointing authority is the Government” appearing in item (vii) (a) are general and are not qualified by the words “as penalty” and may be open to the interpretation that all the three kinds of compulsory retirement mentioned above must be referred to the

1963

*State of Rajasthan**Sripal Jain**Wanchao, J.*

Governor. But reading these words in item (vii)(a) in the collocation in which they appear it seems to us that when that item talks of "compulsory retiring of any officer" it is referring to compulsory retirement as a penalty. The words "compulsory retiring of any officer" follow the words "dismissing" and "removing". Now dismissing and removing are penalties provided by r. 14 of the Classification Rules and it seems to us therefore that in the collocation in which the words "compulsory retiring" appear in item (vii)(a) they must be read as a penalty like dismissing and removing. Besides reference to cls. (b) and (c) of item (vii) to which the High Court did not refer at all would enforce this conclusion. Clause (b) says that "where a review petition is proposed to be rejected and it is against an order issued after submission to the Governor under item (vii)(a) of Rule 31", the matter must be referred to the Governor, Clause (b) therefore refers to a review petition relating to orders passed under item (vii)(a) for dismissal, removal or compulsory retirement. Now there can hardly be any reason for a review petition in the case of compulsory retirement on reaching the age of superannuation i.e. 55 years under r. 56 of the Service Rules. We further find that review petitions are provided under the Classification Rules in Part VII and r. 34 of the Classification Rules in particular provides for Governor's powers to review. It is obvious that when cl. (b) speaks of a review petition, it must be referring to the review under Part VII of the Classification Rules. Clause (b) therefore which is confined to cases under cl. (a) which speaks of dismissal, removal or compulsory retirement, shows that all these are penalties as provided in r. 14 of the Classification Rules. Further cl. (c) provides that "where, on review the Governor decides to enhance the penalty already imposed and the enhanced penalty is one of dismissal, removal or compulsory retirement of an officer" the matter must be referred to the Governor. This

clause makes it perfectly clear that the compulsory retirement referred to therein is a case of penalty and there can in our opinion be no doubt when we read this clause with cl. (a) that compulsory retirement mentioned therein must also be of the nature of a penalty. Taking all the three clauses of item (vii) as a whole, it appears that item (vii) provides for a complete scheme with reference to three kinds of penalties, namely, dismissal, removal and compulsory retirement and makes it incumbent that cases of this kind must be referred to the Governor. We cannot therefore agree with the High Court that compulsory retirement provided in item (vii) (a) includes all the three kinds of compulsory retirement. It must therefore be held that the contention of the appellants that compulsory retirement provided in item (vii) (a) is compulsory retirement as a penalty and not compulsory retirement of the other two kinds, namely, (1) compulsory retirement on attaining the age of superannuation and (2) compulsory retirement under r. 244 (2), neither of which is a punishment, is correct. In particular Note 2 of r. 244 (2) makes it perfectly clear that action thereunder is not a penalty. This is further made clear by *Explanation* (vi) to r. 14 of the Classification Rules, which provides that "compulsory retirement of a Government servant in accordance with the provisions relating to his superannuation or retirement" is not a penalty. Rule 56 of the Service Rules is a rule relating to superannuation and r. 244 (2) of the Service Rules is a rule relating to retirement and both of them do not amount to penalties in view of this *Explanation*. We are therefore of opinion that r. 31 (vii) (a) when it speaks of compulsory retiring of an officer speaks of compulsory retirement as a penalty and not compulsory retirement on reaching the age of superannuation or under r. 244 (2). It is therefore not necessary to submit the papers with respect to compulsory retirement of the respondent under

1963

State of Rajasthan
v.

Sripal Jain

Wanchoo, J.

1963

State of Rajasthan
v.
Sripal Jain

Wanchao, J.

r. 244 (2) to the Governor. This was the only ground on which the High Court allowed the writ petition and therefore the appeal must succeed.

It is however urged on behalf of the respondent that r 244 (2) of the Service Rules contemplates an order of compulsory retirement by Government and the order in the present case was not passed by the Government but by the Inspector General of Police. It is further urged that if it is an order of the Government it should be in the form required by Art. 166 of the Constitution, and as it is not in that form there is in law no order of the Government ordering the compulsory retirement of the respondent. The order is in these terms :—

“The following Inspectors of Police are compulsorily retired from the Government service under Rule 244 (2) of P.S.R. :—

.....

(2) Shri Sripal Jain s/o Shri Sohanlal,
C.I. Sanganer, Distt. Jaipur.

.....”

There is no doubt that this order is not in the form required under Art. 166 of the Constitution. But it is well settled that any defect of form in the order would not necessarily make it illegal and the only consequence of the order not being in proper form as required by Art. 166 is that the burden is thrown on the Government to show that the order was in fact passed by it. It has been stated on behalf of the appellants that the order in question was communicated by the Inspector General of Police on the direction of the Government. It will be noticed that the order is in the passive voice. It does not say in the active voice that the Inspector General of Police

ordered the retirement of the officers mentioned therein, though the impression that a person will get from it certainly is that the order of retirement was being passed by the Inspector General of Police. Therefore, the burden was thrown because of this defect in the form of the order on the appellants to show that in fact the order was passed by the Government. That has in our opinion been shown by the production of papers from the relevant file by the appellants. That shows that the recommendation of the high-powered Committee was approved by the Home Minister and the Chief Minister and the order of compulsory retirement was thus passed by the Government of Rajasthan. In this connection we may refer to r. 21 of the Business Rules. It says that cases shall ordinarily be disposed of by or under the authority of the Minister-in-charge except as otherwise provided by any other rule. The only exception is r. 31 (vii) (a) and that we have held does not apply to a case of compulsory retirement under r. 244 (2). In these circumstances the order was of Government, though it was communicated by the Inspector General of Police and its form was defective. In the circumstances the order of retirement having been passed by a proper authority cannot be said to be invalid in law.

It is further urged that under the Rajasthan General Clauses Act, No. VIII of 1955, "Government" or "the Government" includes both the Central Government and any State Government under s. 32 (33) and "the State Government" means under s. 32 (75) as from November 1, 1956, the Governor, and therefore when r. 244 (2) requires an order by the Government, there should be an order of the Governor. Definitions under s. 32 are however to be read subject to anything repugnant in the subject or context or to any contrary intention, and that makes us back to the Business Rules framed under Art. 166 of the Constitution, where the power to deal with a

1963

State of Rajasthan

v.

*Sripal Jain**Wanchoo, J.*

1963

State of Rajasthan

v.

Sripal Jain

Wanchoo, J.

case of this kind is given to the Minister-in-charge under r. 21. The definitions therefore of "Government" and "the State Government" in the Rajasthan General Clauses Act are of no help to the respondent once it is held that r. 31 (vii) (a) of the Business Rules when it speaks of "compulsory retiring of any officer" refers only to compulsory retirement as a penalty under r. 14 of the Classification Rules and not to the two other kinds of retirement (namely, superannuation under r. 56 or retirement under r. 244 (2) of the service Rules).

The appeal is therefore allowed and the order of the High Court set aside. In the circumstances we pass no order as to costs.

Appeal allowed.

1963

January, 25.

FIRM AND ILLURI SUBBAYYA CHETTY AND SONS

v.

THE STATE OF ANDHRA PRADESH

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR,
K. N. WANCHOO, M. HIDAYATULLAH and
J. C. SHAH, JJ.)

Civil Court—Jurisdiction—Exclusion of—"Any assessment made under this Act" meaning of—Scope of—Madras General Sales Tax Act, 1939 (Mad. 9 of 1939), s. 18-A.

The appellant filed a suit against the respondent for a decree for Rs. 8339/- on the ground that the said amount had been illegally recovered from it under the Madras General Sales Tax Act, 1939, for the years 1952-54. The respondent