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RAILWAY BOARD

v.

A. PITCHUMANI

October 29, 1971

[C. A. VAIDIALINGAM, P. JAGANMOHAN REDDY AND
B K. K. MATHEW, JJ.]

Indian Railway Fundamental Rules, r. 2046 (*F.R.* 56) *cl.* (*b*)—*Retirement age of ministerial Railway Servants fixed at* 60—*Note to cl.* (*b*) *defining "Government Service" to include employees of ex-company—New Note dated December* 23, 1967 *redefining "government service" to include employees of ex-company only if the Rules of company had provision similar to cl.* (*b*)—*Classification under new Note if discriminatory.*

C

Constitution of India, 1950, *Art.* 14—*Discrimination—Railway Fundamental Rules, r.* 2046 (*F.R.* 56) *cl.* (*b*)—*Classification under the Note to cl.* (*f*) *if discriminatory.*

Rule 2046 (F.R. 56) of the Indian Railway Fundamental Rules was substituted, on January 11, 1967, by a new Rule. Under cl. (b) of the new Rule 2046 every ministerial railway servant who had entered government service on or before March 31, 1938 and who satisfied the conditions mentioned in sub-cls. (i) and (ii) of cl. (b) had a right to continue in service till he attained the age of 60 years. The Note to the Rule defined the expression 'government service' as including service rendered in ex-company and ex-State Railway, and in a former provincial government. On December 23, 1967 a new Note was substituted which stated that the expression "government service" included "service rendered in a former provincial government and in ex-company and ex-State Railways, if the rules of the company or the State had a provision similar to cl. (b) above".

The respondent joined the service of the Madras and Southern Mahratta Railway company on August 16, 1927. The company was amalgamated with the Indian Railway Administration in 1947 and on such amalgamation the respondent became the employee of the Indian Railway Administration He was a "ministerial servant" within the meaning of that expression in r. 2046. On March 31, 1938, he held a permanent post in the company. After the introduction of r. 2046 on January 11, 1967, the Divisional Accounts Officer passed an order that the respondent was entitled to continue in office till he attained the age of 60 years. But, after the new Note to cl. (b) to r. 2046 was substituted on December 23, 1967, another order was passed to the effect that the respondent was retired from service on April 14, 1968, on attaining the age of 58 years. The order also stated that this action was being taken in view of the new Note substituted on December 12, 1967. The respondent filed a writ petition in the High Court challenging the legality of the order retiring him from service. The High Court struck down the order and gave a declaration that the respondent was entitled to continue in service till he attained the age of 60 years, on the ground that the order was discriminatory and, therefore, violative of Art. 14 of the Constitution.

Dimissing the appeal to this Court,

H HELD: The High Court was justified in striking down the order directing the respondent to retire from service. (1) Rule 2046 as it stood originally and on January 11, 1967 treated the former employees of the ex-company, ex-State Railway and former provincial Government

who were amalgamated with the Indian Administration in 1947 on a par with the other original employees of the Indian Railway Administration. In fact the Note to cl. (b) of r. 2046 incorporated in January 11, 1967 only reinforced this position. Read with the Note, under cl. (b), the respondent is a ministerial servant who had entered government service on or before March 31, 1938 and, therefore, by virtue of cl. (b) he was entitled to be retained in service till he attained the age of 60 years. [175 F, 197 C]

(2) Up to and inclusive of January 11, 1967, no distinction, *inter se*, apart from that made by cls. (a) and (b) between officers of Indian Railway Administration, from whatever source they may have come, was made. The position admittedly has been changed by altering the definition of the expression "government service" by the new Note to cl. (b) Thus on and after December 23, 1967, though all the employees are under the Indian Railway Administration, there will be two sets of rules relating to the age of retirement, depending upon the fact whether they were in the original employment of Indian Railway Administration or on the fact of their coming from one or the other employers mentioned in the new Note. Discrimination, is writ large on the face of the new Note. Once the employees dealt with under the new Note have taken up service under the Indian Railway Administration and have been treated alike up to January 11, 1967, if follows that they cannot again be classified separately from the other employees of the Indian Railway Administration. Therefore, the classification of these officers under the new Note is not a reasonable classification. [197 G, 198 F]

(3) Assuming there is a reasonable classification, the classification cannot be said to have a nexus or relation to the object sought to be achieved by cl. (b) of r. 2046 which is to provide for the age of retirement of the two types of officers coming under cls. (a) and (b). Where there is no indication that any further distinction *inter se* is sought to be made amongst the officers mentioned in cls. (a) and (b) and when a uniform age of retirement has also been fixed in respect of officers coming under these two clauses, the classification carving out the ex-employees of the three authorities mentioned therein with the added condition that the rules of the company or the State should have a provision similar to cl. (b) has no nexus or relation to the object of the Rule. [199 B]

(4) Though a distinction has been made in the Rule between a railway servant coming under cl. (a) and a ministerial railway servant coming under cl. (b) in regard to age of retirement, those clauses will apply uniformly to all members of the Indian Railway Administration depending upon whether they are railway servants coming under cl. (a) or ministerial railway servants coming under cl. (b). The distinction made in cl. (b) regarding the ministerial railway servants who entered government service on or before March 31, 1938, is again of uniform application. [196 H]

(5) It is only necessary to strike down the offending part in the Note, namely, "if the rules of the company or the State had a provision similar to cl. (b)," and this part of the Note alone is struck down as discriminatory and violative of Art. 14 of the Constitution. [200 B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1768 of 1969.

Appeal by special leave from the judgment and order dated October 8, 1968 of the Mysore High Court in Writ Petition No. 657 of 1968.

A *M. C. Setalvad, Ram Punjwani* and *S. P. Nayar,* for the appellants.

R. B. Datar and *M. S. Narasimhan,* for the respondent.

M. K. Ramamurthi, Shyamala Pappu and *J. Ramamurthi,* for intervener No. 1.

B *S. Ramasubramanian* and *J. Ramamurthi,* for intervener No. 2.

The Judgment of the Court was delivered by

Vaidialingam, J. In this appeal, by special leave, the question that arises for consideration is regarding the validity of C the new Note substituted in place of the old Note on December 23, 1967 to cl. (b) of rule 2046 (F.R. 56) of the Indian Railway Fundamental Rules.

The High Court by its judgment and order, under appeal, dated October 8, 1968, has struck down the new Note as discriminatory and violative of Art. 14 of the Constitution. D

The respondent was originally an employee of the Madras and Southern Mahratta Railway Company (hereinafter to be referred as the Company) having joined the service on August 16, 1927 as Clerk Grade-I. His date of birth, there is controversy, was April 15, 1910. The Company was amalgamated E with the Indian Railway Administration in the year 1947 and on such amalgamation, the respondent became the employee of the Indian Railway Administration. There is also no controversy that he came within the classification of a "ministerial railway servant" within the meaning of that expression, occurring in rule 2046. Rule 2046 deals with retirement of a railway servant. At the time of amalgamation, under cl. (1) of the said rule, the F date of retirement of a railway servant, other than a ministerial railway servant, was the date on which he attained the age of 55 years. It was also provided therein that the said railway servant, after attaining the age of retirement, may be retained in service with the sanction of the competent authority on public ground to be recorded in writing. But there was a prohibition G regarding retention of such a railway servant after the age of 60 years except in very special circumstances. Clause (2) of the said rule, which deals with a ministerial railway servant, under which category the respondent falls, at the time of amalgamation was as follows :

H "2046 (2) (a) A ministerial servant, who is not governed by sub-clause (b), may be required to retire at the age of 55 years, but should ordinarily be retained in service, if he continues efficient up to the age of 60

years. He must not be retained after that age except in very special circumstances, which must be recorded in writing, and with the sanction of the competent authority.

(b) A ministerial servant—

(i) who has entered Government service on or after the 1st April, 1938, or

(ii) who being in Government service on the 31st March, 1938 did not hold a lien or a suspended lien on a permanent post on that date.

shall ordinarily be required to retire at the age of 55 years. He must not be retained after that age except on public grounds which must be recorded in writing, and with the sanction of the competent authority and he must not be retained after the age of 60 years except in very special circumstances."

It will be noted that under sub-clause (a), quoted above, a ministerial servant, who is not governed by sub-clause (b) may be required to retire at the age of 55 years; but if he continues to be efficient, he should ordinarily be retained in service upto the date of 60 years. Retention in service after the age of 60 years can only be under very special circumstances, to be recorded in writing and with the sanction of the competent authority. There was a further special provision made under cl. (b) in respect of a ministerial servant who had entered Government service on or after April 1, 1938 or being in Government service on that date, did not hold a lien or a suspended lien on a permanent post on that date.

On December 5, 1962, the Railway Board addressed a communication to the General Managers of All Indian Railways that the Government were considering the question for some time whether the age of compulsory retirement of railway servants should be raised above 55 years. It is further stated that the President is pleased to direct that the age of compulsory retirement of railway servants should be 58 years subject to the three exceptions mentioned in the order. The only relevant exception is Exception No. 1 relating to ministerial railway servants, which was as follows :

"(i) The existing rule 2046 (F.R. 56) (2)(a)-RII, under which ministerial railway servants who held a lien or suspended lien on a permanent post on 31st March, 1938 are to be retained in service upto the age

A of 60 years subject to their continuing to be efficient and physically fit after attaining the age of 55 years, will remain in force.

It will be seen from the decision of the Government, as communicated in the above letter, that the age of retirement of railB way servants was raised from 55 to 58 years. But this was subject to the restriction regarding the continuance of a ministerial servant after 55 years upto the age of 60 years as provided for under sub-clause (b) of cl. (2) of rule 2046.

On January 11, 1967, the old rule 2046 as amended in 1962 C was substituted by the new rule. The new rule consisted of four clauses, but we are not concerned with clauses (c) and (d). The material part of the said rule relevant to be noted are clauses (a) and (b) together with the note to clause (b) which ran as follows :

"2046 (FR. 56)-(a) Except as otherwise provided D in this rule, every railway servant shall retire on the day he attains the age of fifty-eight years.

(b) A ministerial railway servant who entered Government service on or before the 31st March, 1938 and held on that date—

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(i) a lien or a suspended lien on a permanent post, or

(ii) a permanent post in a provisional substantive capacity under Clause (d) of Rule 2008 and continued to hold the same without interruptF tion until he was confirmed in that post,

shall be retained in service till the day he attains the age of sixty years.

NOTE : For the purpose of this Clause, the expression "Government Service" include service rendered in ex-company, and ex-State Railways, and in a former G provincial Government."

Two aspects broadly emerge from the above new rule : (a) every ministerial railway servant who had entered Government service on or before March 31, 1938 and who satisfied the conditions mentioned in sub-clause (i) or (ii) of clause (b) had a H right to continue in service till he attained the age of sixty years; and (b) under the Note, the expression "Government Service" in clause (b) takes in service rendered in ex-company, ex-State Railways and in a former provincial Govern-

ment. There is no controversy that the respondent held a permanent post in the Company on March 31, 1938. Therefore, under this new rule, he would be entitled to continue in service till he attained the age of sixty years, as provided in cl. (b) read with the Note thereto. A

On December 12, 1967, the Note to cl. (b) of rule 2046 defining the expression "Government Service" as per the order dated January 11, 1967 was deleted, and a new Note was substituted in its place. The order dated December 23, 1967 together with the new Note is as follows : B

"For the existing note, substitute the following :

For the purpose of this clause the expression "Government Service" includes service rendered in a former provincial government and in ex. Company and ex. State Railways, if the rules of the Company or the State had a provision similar to Clause (b) above." C

From the new Note, extracted above, it will be seen that the definition of the expression "Government Service" was changed. The effect of the new Note, so far as the respondent is concerned, is that whereas he was entitled to continue in service upto 60 years, as per clause (b) read with the note thereto under rule 2046 as substituted on January 11, 1967, now he can get service upto 60 years only if the Company had a provision similar to cl. (b) of rule 2046. There is no dispute, that under the service conditions applicable to the respondent, when he was an employee of the Company, he had no right to continue in service till he attained the age of sixty years. On the other hand, under the service conditions of the Company he had to retire at the age of 55 years. D E

It appears that after the introduction of the new rule 2046 on January 11, 1967, the Divisional Accounts Officer, Hubli, passed an order on March 31, 1967 that the respondent was entitled to continue in Office till he attained the age of 60 years. But after the new Note to cl. (b) to rule 2046 was substituted on December 23, 1967, the Divisional Accounts Officer, Hubli, passed an order on January 17, 1968 to the effect that the respondent is to retire from service on April 14, 1968 on which date he would be attaining the age of 58 years. The said order also states that this action was being taken in view of the new Note substituted on December 23, 1967 to cl. (b) of rule 2046. F G

The respondent filed on March 6, 1968 in the Mysore High Court. Writ Petition No. 657 of 1968 challenging the legality and validity of the order dated January 17, 1968 retiring him from service with effect from April 4, 1968. In the writ petition H

A he had referred to his previous service in the Company and to the latter being amalgamated with the Indian Railway Administration in 1947. According to him, after such amalgmation he has become a ministerial railway servant under the Indian Railway Administration and all the rules applicable to the employees of the latter became applicable to him. In particular, he pleaded
B that he was entitled to continue in service, until he attained the age of sixty years, as per the new rule 2046 introduced on January 11, 1967, as he satisfies all the conditions prescribed under cl. (b) thereof. He particulraly attacked the new Note to cl. (b) substituted on December 23, 1967 as discriminatory and violative of Art. 14 of the Constitution. According to him,
C the members of the Indian Railway Service, similarly situated like him, will be entitled to continue in service till 60 years, whereas that right has been denied, to persons like him, under the new Note. He also referred to the order passed on March 31, 1967 by the Divisional Accounts Officer, Hubli in and by which it was directed that he was entitled to continue in service till 60 years. According to the respondent, the Railway Admi-
D nistration was not entitled to go back on this order. On these grounds, the respondent challenged the validity of the order directing him to retire on the basis of the new Note.

The appellant contested the writ petition on the ground that the order dated March 31, 1967 was passed on the basis of the
E rule 2046, read with the Note, as it existed on January 11, 1967. But the position was changed by the deletion of the original Note to cl. (b) and its substitution by the new Note on December 23, 1967. The appellant claimed that the service conditions of persons, like the respondent, have always been different from those serving under the Railway Administration and that by the introduction of the new Note, no discrimination has been practised
F on any officer. On the other hand, according to the appellant, the new Note only gave effect to the conditions of service, which obtained in the Company, where the respondent originally joined service. The appellant further pleaded that the new Note does not violate Art. 14 of the Constitution.

The High Court, by its judgment and order dated October 8,
G 1968 has accepted the contentions of the respondent and held that the new Note substituted to cl. (b) of rule 2046 on December 23, 1967 is discriminatory and violative of Art. 14 of the Constitution. In this view, the said Note was struck down. In consequence, the High Court set aside the order dated January 17, 1968 and gave a declaration that the respondent was entitled
H to continue in service till he attained the age of sixty years.

Mr. M. C. Setalvad, learned counsel for the appellant, Railway Board, has strenuously attacked the finding of the High

Court that the new Note, substituted on December 23, 1967 to cl. (b) is discriminatory and violative of Art. 14 of the Constitution. On the other hand, he urged that a distinction has always been made in the case of ministerial railway servant who is governed by cl. (b) and those who are not so governed by that clause of rule 2046. Different provisions regarding the age of retirement have been provided in respect of those two classes of ministerial railway servants. The new Note, Mr. Setalvad pointed out only gives recognition to the practice that has been obtaining in respect of the ministerial railway servants under their previous employers. He further pointed out that the Note to cl. (b) of rule 2046, incorporated on January 11, 1967 gave the benefit of the expression "Government Service' 'to persons, like the respondent, who have previously been working in ex-Company, provincial Government or ex-State Railways. The new Note keeps the same categories of employees within the expression "Government Service", but adds a qualification that in order to have the benefit of a longer period of service, they should have had such benefit under their previous employers.

Mr. Setalvad further pointed out that a government servant has no right to continue in service till the age of 60 years and that the option to so continue him upto that age, vests exclusively within the discretion of the authority concerned. For this proposition the counsel relied on the decision of this Court in *Kailash Chandra* v. *Union of India*(1) interpreting clause (2) of rule 2046 as it existed prior to the amendment in 1962. In any event, Mr. Setalvad pointed out, that the officers who had worked under a former provincial Government, Ex-Company or Ex-State Railways and who have been dealt with under the new Note substituted on December 23, 1967 form a class by themselves and therefore there is a reasonable classification of such officers, and that satisfies the requirement of Art. 14 of the Constitution. On all these grounds, Mr. Setalvad urged that the new Note is not discriminatory and it does not violate Art. 14 of the Constitution.

Mr. R. B. Datar, learned counsel for the respondent and M/s M. K. Ramamurthi and J. Ramamurthi, who appeared for the two interveners have supported the reasoning of the High Court for holding that Art. 14 is violated by the new Note to cl. (b) of rule 2046.

We are of the opinion that the contentions of Mr. Setalvad cannot be accepted. No doubt, the counsel is justified in his contention only to this limited extent, namely, that under cl. (2) of rule 2046, as it existed prior to its amendment on January 11, 1967 that ministerial railway servant falling under that clause, has no right to continue in service beyond the age of 55 and that

(1) [1962] 1 S.C.R. 374.

A the appropriate authority has the option to continue him in service after his attaining the age of 55 years, subject to the condition that the servant continues to be efficient. This Court in *Kailash Chandra's* case(1) had an occasion to consider rule 2046 (2)(a) as it originally stood. It was held that the ministerial railway servants falling under the said clause may be compulsorily retired B on attaining the age of 55 years. But when the servant is between the age of 55 and 60 years, the option to continue him in service, subject to the servant continuing to be efficient, exclusively vests with the appropriate authority. It was further laid down that the authority is not bound to retain a railway servant after the age of 55 years, even if the continues to be efficient. It was further emphasised that the rule gave no right to a ministerial C railway servant to continue in service beyond the age of 55 years.

It is in view of the above principles laid down by this Court, we have observed, earlier, that Mr. Setalvad's contention in respect of the rule 2046, as it originally stood, is well founded. But this Court, in the above decision, had no occasion to consider the problem that now arises, by virtue of the new Note added to D cl. (b) of rule 2046. There is no controversy that after the amalgamation of the Company with the Indian Railway Administration, the respondent has become an employee of the latter. If so, in our opinion, the respondent is entitled to be given the same rights and privileges that are available to the other employees employed by the Indian Railway Administration. That E exactly was the position under the rule 2046, as it originally stood; after its amendment on December 5, 1962 increasing the age of retirement to 58 years; as also under the new rule 2046, incorporated on January 11, 1967. All these rules upto and inclusive of January 11, 1967 treated the former employees of the Ex-Company, Ex-State Railways and former provincial Governments, who were amalgamated with the Indian Railway F Administration in 1947, on a par the other original employees of the Indian Railway Administration. In fact, the Note to cl. (b) of rule 2046 incorporated on January 11, 1967, re-inforced this position, by making it clear that the expression "Government Service' 'in cl. (b) will include service under the various employers referred to therein.

G Mr. Setalvad placed reliance on the fact that rule 2046, as it existed upto and inclusive of January 11, 1967, dealt differently with the age of retirement in respect of : (i) a railway servant coming under cl. (a) and (ii) a ministerial railway servant coming under cl. (b). He further pointed out that even in respect of a ministerial railway servant coming under cl. (b), the H latter in order to be eligible to have a longer age of retirement should be one who complies with the conditions mentioned there-

1. (1962) 1. S.C.R. 374.

in. These conditions are as per cl. (b) existing on January 11, 1967, that the officer should have entered government service on or before March 31, 1938. The said officer should also have the one or the other of the qualifications mentioned in sub-clauses (i) and (ii). That is, according to the learned counsel, if a ministerial railway servant has not entered government service before March 31, 1938, he will not be eligible for the longer age of retirement. These circumstances will clearly show, according to Mr. Setalvad, that the rule has been through out maintaining a distinction even amongst the ministerial railway servants working under the Indian Railway Administration. This argument, may on the face of it appear to be attractive; but in our opinion, it cannot be accepted. The point to be noted is that though a distinction has been made in the rule between a railway servant coming under cl. (a) and a ministerial railway servant coming under cl. (b), those clauses will apply uniformly to all members of the Indian Railway Administration depending upon whether they are railway servants coming under cl. (a) or a ministerial railway servant coming under cl. (b), as the case may be. To all railway servants coming under cl. (a) the age of retirement is the same. Similarly to all ministerial railway servants coming under cl. (b), the age of retirement is again the same. Further if a ministerial railway servant does not satisfy the requirements of cl. (b) he will not be eligible to get the extended period of retirement. That again will apply to all ministerial railway servants, who do not satisfy the requirements of cl. (b). We are emphasising this aspect to show that no distinction has been made either in cl. (a) or cl. (b) regarding the uniform application in respect of the age of retirement to the officers mentioned therein and who are governed by those clauses. That is, there is no *inter se* distinction made. The distinction made in cl. (b) regarding the ministerial railway servants who entered government service on or before March 31, 1938 is again of uniform application. That rule only makes a broad distinction between the ministerial railway servants who entered government service on or before March 31, 1938 and who entered government service after that date. As per the Note to cl. (b) to rule 2046. incorporated on January 11, 1967, the respondent is a person who has entered government service on or before March 31, 1938 and satisfies also the requirements under sub-cl. (ii) or cl. (b) Similarly, another railway servant may have entered government service under the Indian Railway Administration on or before March 31, 1938. He also, under cl. (b) will be a ministerial railway servant who has entered government service on or before March 31, 1938 and if he satisfies one or other of the conditions mentioned in sub-clauses (i) and (ii) of cl. (b), he will be entitled to continue in service till 60 years. That means both persons, like the respondent, and the officers who have straight

A joined the service under the Indian Railway Administration, prior to March 31, 1938 and who satisfy the requirements under sub-clause (i) or sub-clause (ii) of clause (b) will be equally entitled to continue in service till they attain the age of 60 years. These facts clearly show that cls. (a) and (b) of rule 2046 had uniform application to all the employees of the Indian Railway Administration.

Coming to the new rule 2046, incorporated on January 11, 1967, the conditions of service of persons, like the respondent, have been better crystalised. Read with the Note, under cl. (b), the respondent is a ministerial railway servant, who had entered government service on or before March 31, 1938. By virtue of cl. (b), he was entitled to be retained in service till he attains the age of 60 years. It is to be noted that there is no option left with the employer, but to retain such a ministerial railway servant upto 60 years. In other words, if the ministerial railway servant satisfies the requirements of cl. (b), he is, as of right, entitled to be in service, till he attains the age of 60 years. Similarly, cl. (a) introduced on January 11, 1967, gives a right to a railway servant to continue in office, till he attains the age of 58 years. Here again, there is no option vested with the authorities except to continue him till that age. The option to extend the period of service of the officers mentioned in cls. (a) and (b) is dealt with under sub-clauses (d) and (c) respectively, which we have not quoted. Sub-clauses (c) and (d) deal with the granting of extension of service beyond the period mentioned in sub-clauses (b) and (a). The option to extend the service beyond the period mentioned in sub-causes (a) and (b) may be with the authorities; but they have no voice in a railway servant coming under cl. (b), continuing upto 60 years.

That the authorities also understood the position in the manner mentioned above, is clear from the order dated March 31, 1967, of the Divisional Accounts Officer, Hubli declaring the right of the respondent to continue in service upto 60 years. In fact, this order was passed in consequence of the new rule 2046 substituted on January 11 1967. Therefore, from what is stated above, it is clear that upto and inclusive of January 11, 1967, no distinction *inter se* apart from that made by clauses (a) and (b), between the officers of the Indian Railway Administration, from whatever source they may have come, was made. Even at the risk repetition, we may state that under cl. (b) of rule 2046, as introduced on January 11, 1967, the original employees of the Indian Railway Administration, as well as persons, like the respondent, who came into the Indian Railway Administration in 1947, were both entitled, as of right, to continue in service till they attained the age of 60 years. This position admittedly has been changed, by altering the definition of the

expression "Government Service" by the new Note to cl. (b) introduced on December 23, 1967. Under that Note, it cannot be gain said, that a distinction has been made between the original employees of the Indian Railway Administration, and the new employees, who were amalgamated with the Indian Railway Administration in 1947, but who had their previous service, with either a former provincial Government, or an Ex-Company or Ex-State Railways. In the case of such employees, the benefit of the extended age of retirement, that has been given to the other employees of the Indian Railway Administration, was made available, only if the new employees had the same benefit under their previous employers. Therefore, the position is that on and after December 23, 1967, though all the employees are under the Indian Railway Administration, there will be two sets of rules relating to the age of retirement, depending upon the fact whether they were in the original employment of the Indian Railway Administration or on the fact of their coming from one or the other of the employers mentioned in the new Note. It is in consequence of the new Note, that the order dated January 17, 1968 was issued by the Divisional Accounts Officer, Hubli, that the respondent has to retire at the age of 58 years, on April 14, 1968.

The question is whether the distinction made under the new Note to cl. (b) substituted on December 23, 1967 valid? In our opinion, such a rule, which makes a distinction between the employees working under the same Indian Railway Administration is not valid. The position, after the new Note was added, is that the employee who had through out been under the Indian Railway Administration is entitled to continue in service till he attains the age of 60 years; whereas the persons, like the respondent, who are also the employees of the Indian Railway Administration, but whose previous services were with the Company, will have to retire at the age of 58 years, because a provision similar to cl. (b) did not exist in the service conditions of the Company. Discrimination, on the face of it, is writ large in the new Note, which is under challenge.

Mr. Setalvad, no doubt, urged that the ministerial railway servant, who was originally employee of a Company, Ex-State Railway or a former Provincial Government dealt with under the new Note are a class by themselves, and, therefore, there is a reasonable classification. Once the employees dealt with under the new Note, have taken up service under the Indian Railway Administration and have been treated alike upto January 11, 1967, it follows, in our opinion, that they cannot again be classified separately from the other employees of the Indian Railway Administration. Therefore, we are not inclined to accept the

A contention that the classification of these officers, under the new Note, is a reasonable classification and satisfies one of the essential requisites of Art. 14 of the Constitution, as interpreted by this Court.

We will assume, that in dealing with the types of employees B under the new Note, there is a reasonable classification. Nevertheless, the further question arises whether the reasonable classification, with the added condition in the Note incorporated on December 23, 1967, can be said to have a nexus or a relation to the object sought to be achieved by cl. (b) of rule 2046 ? The object of rule 2046 itself is to provide for the age of retirement of the two types of officers coming under cls. (a) and (b). C Where there is no indication that any further distinction *inter se* is sought to be made amongst the officers mentioned in cls. (a) and (b) and when an uniform age of retirement has also been fixed in respect of the officers coming under these two clauses, the classification, carving out the ex-employees of the three authorities mentioned therein, with the added condition that the D rules of the Company or the State should have a provision similar to clause (b), has, in our opinion, no nexus or relation to the object of the rule.

For the reasons given above, we are of the view that the High Court was justified in striking down the order of the ' Divisional Accounts Officer, Hubli, dated January 17, 1968 directing the E respondent to retire from service on April 14, 1968, on which date he will attain the age of 58 years. However, it is not clear from the judgment of the High Court whether the entire new Note substituted under cl. (b) of rule 2046 on December 23, 1967 has been struck down or whether it has struck down only the new condition incorporated in the said Note. Even as per F the Note under cl. (b), incorporated along with the new rule 2046 on January 11, 1967, the expression "Government Service" included service rendered in Ex-Company, Ex-State Railways and in a former provincial Government, and such a provision is beneficial to the employees like the respondent.

In the new substituted Note dated December 23, 1967, the G first part of the Note including in "government service" any service rendered in a former provincial Government, Ex-Company and Ex-State Railways is more or less identical with the original Note of January 11, 1967, though in the new Note the order of the former employees has been slightly changed. In our opinion, that part of the new rule providing that for the purpose of cl. (b) H the expression "Government Service" includes service rendered in a former provincial Government and in a Ex-Company and Ex-State Railways can be allowed to stand to this extent. Therefore, the offending part in the new Note are the further words "if the

rules of the Company or the State had a provision similar to Clause (b) above". This offending part can be deleted without doing violence to the definition of the expression "Government Service" even under the new Note. Therefore, it is only necessary to strike down the offending part in the Note, namely, "if the rules of the Company or the State had a provision similar to Clause (b) above" and this part of the Note alone is struck down as discriminatory and violative of Art. 14 of the Constitution.

Subject to the above directions, the judgment and order of the High Court are confirmed and this appeal dismissed. Special leave to appeal has been granted on August 7, 1969 subject to the conditions that the appellant is to pay the costs of the respondent in any event. The respondent, accordingly, will be entitled to his costs in the appeal.

K.B.N. *Appeal dismissed.*