

TARA SINGH ETC. ETC.

v.

STATE OF RAJASTHAN AND ORS.

March 19, 1975

[A. N. RAY, C.J., K. K. MATHEW AND V. R. KRISHNA IYER, JJ.]

Rajasthan Service Rules, r. 244(2)—Scope of—Compulsory retirement of Government Servants—if violates fundamental rights—Delegation of power to collectors, if excessive.

All the petitioners were compulsorily retired from Government service under r. 244(2) of the Rajasthan Service Rules. In all the cases the orders stated that compulsory retirement was being done in public interest. In petitions under art. 32 of the Constitution the petitioners contended (i) that compulsory retirement under r. 244(2), which does not prescribe the minimum age of compulsory retirement is not only removal within the meaning of art. 311 but is also unguided discretionary and discriminatory power and (ii) that permanence involves right to continue in service till one attains the age of superannuation.

Dismissing the petitions.

HELD : (1) The right to be in public employment is a right to hold it according to rules. The right to hold is defensible according to rules. The rules speak of compulsory retirement. There is guidance in the rules as to when such compulsory retirement is made. When persons complete 25 years of service and the efficiency of such persons is impaired and yet it is desirable not to bring any charges of inefficiency or incompetency the Government passes orders of compulsory retirement. The Government servant in such cases does not lose the benefits which a government servant has already earned. These orders of compulsory retirement are made in public interest. This is a safety valve of making such orders so that no arbitrariness or bad faith creeps in. [1009 E-G]

In appendix 9 to Rajasthan Service Rules, Vol. II the power to retire a Government servant after completion of 25 years of service in the case of ministerial service is conferred on the appointing authorities. In the present case the appointing authority is the Collector. The content of the power is not changed by any amendment of the rule. Therefore, the delegation is valid. There is no stigma in any of the impeached compulsory orders of retirement. [1009 G-H]

(2) (a) Rule 244(2) as it stands now does not specifically mention that an order is to be passed in the public interest. The notes to the rule indicate that the right to pass an order of compulsory retirement is to be exercised only against the Government servant whose efficiency is impaired and against whom it is not desirable to make formal charges of inefficiency or who has ceased to be fully efficient but not to such a degree as to warrant his retirement on compassionate allowance. The notes further say that it is not the intention to use this rule as a financial weapon, that is to say, that the provision should be used only in the case of Government servants who are considered unfit for retention on personal as opposed to financial grounds. [1007 G-1008 A]

(b) The notes are promulgated with the rules in exercise of legislative power. The notes are made contemporaneously with the rules. The function of the notes is to provide procedure and to control discretion. The real purpose of the notes is that when rules are silent the notes will fill up gaps. [1008 A-B]

(c) The notes which are appended to rules are to aid not only in applying the rules but also in interpreting the true import of the rules. [1009 A-B]

Shyam Lal v. The State of U.P. [1955] 1 S.C.R. 26 and *T.C. Shivacharana Singh v. The State of Mysore*, A.I.R. 1965 S.C. 280 referred to.

(d) Although the Government cannot supersede statutory rules by administrative instructions yet if the rules framed under art. 309 of the Constitution are

A silent on any particular point, the Government could fill up gaps and supplement the rules and issue instructions not inconsistent with the rules already framed and these instructions will govern the conditions of service. [1009 C]

B In the present case the notes are part of the rules because they are for the guidance of the parties. They are not inconsistent with the rules but are intended to fill up gaps where the rules are silent. The only question here is that formerly the rules said that compulsory retirement would be made in public interest but the present rule does not contain that part of the old rule. The deletion of that part of the rules did not mean that the orders of compulsory retirement were not made in public interest. The notes to the rules make explicit what is implicit in the rules. [1009 D-E]

Union of India v. K. P. Joseph, [1973] 2 S.C.R. 752, referred to.

C ORIGINAL JURISDICTION : Writ Petitions Nos. 1253, 1353, 1448, 1898 and 270 of 1973.

Petitions under Article 32 of the Constitution of India.

L. K. Garg and S. C. Agrawal, for the Petitioners (in WPs. 1253, 1448 and 1898/73.)

D *S. K. Mehta, K. R. Nagaraja and M. Qamaruddin* for the Petitioners in W.Ps. Nos. 1353 and 270/73.

Maya Rao, for Respondent (in W.P. No. 270/70).

L. M. Singhvi, A. G. Rajasthan, in W.Ps. Nos. 1253 & 1898/73 only) and *S. M. Jain* for the Respondents, (in rest of W.Ps.)

E The Judgment of the Court was delivered by

RAY, C.J.—These writ petitions challenge the validity of orders of compulsory retirement. In writ petition No. 1253 of 1973 the petitioner was served with an order dated 30 March, 1973. The order was as follows:—

F “Whereas Shri Tara Singh Patwari has completed 25 years of qualifying service and whereas the State Government is satisfied that it is in public interest to dispense with further service of the said Government servant.

G Now, therefore, in pursuance of the delegation made under Rule 244(2) of the Rajasthan Service Rules vide Finance Department Order No. F. 1(34)FD-A (Rules/62) dated 13.12.63 the undersigned hereby gives notice to the said Shri Tara Singh requiring him to retire with effect from the date of the expiry of 3 calendar months from the service of this notice on him and further orders the compulsory retirement of Shri Tara Singh with effect from the said date.

H Sd/- Collector,
Ganganagar.”

In writ petition No. 1353 of 1973, the petitioner was served with an identical order dated 30 March, 1973.

In writ petition No. 1448 of 1973 the petitioner was served with an order dated 28 April, 1973. The order was in terms similar to that in writ petition No. 1253 of 1973 except that the order did not state that "the State Government is satisfied that it is in public interest to dispense with the service of the petitioner".

A

In writ petition No. 1898 of 1973 the petitioner was served with an order dated 4 November, 1973 where also the order did not state that the compulsory retirement was made by the Government on being satisfied that it was in public interest.

B

In writ petition No. 270 of 1973 the petitioner was served with an order dated 30 March, 1970. The order was similar to writ petition No. 1253 viz., that the petitioner completed 25 years of qualifying service and the retirement was in public interest.

C

Counsel on behalf of the petitioners contends that the orders are bad because they violate Articles 14, 19(1)(f), 31 and 311.

It is said that Article 14 is violated because there is no guidance as to who will be selected and on what basis the selection will be made for compulsory retirement. The impeached orders are said to violate Article 19(1)(f) because it is an unreasonable restriction on the right to continue until the age of superannuation which is 55 years. It is emphasized that there is a right to continue as long as one is physically fit. The orders of compulsory retirement are challenged to violate Article 31 because it is deprivation of property without authority of law. Lack of authority of law is said to be infraction of Articles 14 and 19. The orders are also said to infringe Article 311 because these are made to remove persons from Government service.

D

E

Counsel for the petitioners also contended that the Government delegated power under the old rules and, therefore, the orders were bad. It was said in writ petition No. 1253 of 1973 that the order was made by the Collector pursuant to delegation under Rule 244(2) of the Rajasthan Service Rules under order dated 13 December, 1963. The rules were amended in 1963 and again in 1972 and there was no delegation under the amended rules which governed the parties.

F

Rule 244(2) of the Rajasthan Service Rules as it stood prior to the 1963 and 1972 amendments is set out in the decision in *Ganga Ram v. State of Rajasthan*⁽¹⁾. Rule 244 and the notes thereto are set out hereunder :—

"(1) A Government servant may retire from service any time after completing 30 years qualifying service provided that he shall give in this behalf, a notice in writing to the appropriate authority, at least 3 months before the date on which he wishes to retire.

G

(2) Government retains an absolute right to retire any Government servant after he has completed 25 years qualifying service without giving any reasons and no claim to special compensation on this account will be entertained.

H

(1) I.L.R. 1961 Raj. 371.

- A This right will not be exercised except when it is in public interest to dispense with further service of a Government servant.

Notes

- B 1. The right conferred by r. 244(2) is intended to be exercised only against a Government servant whose efficiency is impaired, but against whom it is not desirable to make formal charges inefficiency or who has ceased to be fully efficient but not to such a degree as to warrant his retirement on compassionate allowance. It is not the intention to use this rule as a financial weapon, that is to say, the provision would be used only in the case of Government servants who are considered unfit for retention on personal as opposed to financial grounds.

- C 2. Compulsory retirement under this rule does not attract the provisions of cl.(2) of Article 311 of the Constitution because such retirement is not conceived as a penalty but as the exercise of a right reserved to Government of retiring a Government servant after he has served for a certain length of time. Accordingly, the procedure laid down in the Rajasthan Civil Services (Classification, Control and Appeal) Rules, for formal proceeding against Government servants before removing them from service is not meant to apply to such cases."

- E Rule 244 was amended by notification dated 31 August, 1963 as will appear from Rajasthan Code Vol. I-Part B corrected up to 31 December, 1967 Fourth Edition. The amended rule is as follows :—

- F "244(1) A Government servant may, after giving at least three months' previous notice in writing to the Government, retire from the service on the date on which he completes 30 years of qualifying service or attains the age of 55 years or on any date thereafter to be specified in the notice.

Provided that a Government servant of Class IV can seek retirement only if he has completed 30 years of qualifying service.

- G "(2) The Government may, after giving him at least three months' previous notice in writing require a Government servant to retire from the service on the date on which he completes 25 years of qualifying service or attains the age of 55 years or on any date thereafter to be specified in the notice :

- H Provided that a Government servant of Class IV can only be required to retire on the date on which he completes 25 years of qualifying service or on any date thereafter."

Rule 244 was again amended by notification dated 19 August, 1972. A
Rule 244 as amended is set out hereunder :—

“244(1) Government servant may, after giving at least three months previous notice in writing to the Government, retire from the service on the date on which he completes 30 years of qualifying service or attains the age of 55 years or on any date thereafter to be specified in the notice : B

Provided that a Government servant of Class IV can seek retirement only if he has completed 30 years of qualifying service.

(2) The Government may, after giving at least three months, previous notice in writing or by payment of three months pay and allowances in lieu of such notice require a Government servant to retire from the service on the date on which he completes 25 years of qualifying service or on any date thereafter”. C

The notes which were appended to Rule 244 before the amendment dated 31 August, 1963 remained as notes to Rule 244 after both the amendments dated 31 August, 1963 and 19 August, 1972. The notes were promulgated along with the Rules by the Rajpramukh under Article 309. D

Counsel for the petitioners contended as follows. The job of the permanent employee is not only property but perhaps the only property. Permanence involves the right to continue in service until one attains the age when one renders oneself not physically fit to discharge one's duty. The proper age of superannuation must be fixed on the scientific basis of the normal expectation of life. Rule 244(2) does not prescribe a minimum age for compulsory retirement and thus permits compulsory retirement of a permanent government servant long before the permissible age of superannuation. This is not only removal within the meaning of Article 311 but is also an unguided discretionary and discriminatory power. E
F

With regard to writ petition No. 1898 of 1973 it was said that the order was passed though the petitioner had not completed 25 years of government service and the order cast stigma on the conduct and integrity of the petitioner. G

In *T. C. Shivacharana Singh v. The State of Mysore*⁽¹⁾ rule 285 of the Mysore Civil Service Rules 1958 which conferred power on the Government to retire compulsorily a Government servant in public H

(1) A. I. R. 1965 S.C. 280.

A interest on his completing twenty five years of qualifying service or attaining fifty years of age, though the age of normal superannuation under rule 95(a) was fixed at fiftyfive years was upheld on the ground that the rule laid down a reasonably long period of qualifying service.

B This Court in *R. L. Butail v. Union of India*⁽¹⁾ held that there are two exceptions to the protection afforded by Article 311(2). First, where a permanent public servant is asked to retire on the ground that he has reached the age of superannuation which is reasonably fixed. Second, where he is compulsorily retired under rules which prescribe the normal age of superannuation and provide a reasonably long period of qualifying service after which alone compulsory retirement can be ordered. Article 311 deals with termination of service by way of punishment.

C In *Butail's*⁽¹⁾ case Fundamental Rule 56(j) confers power on the Government to pass an order to retire a Government servant after he has attained the age of 55 years if the Government is of the opinion that it is in the public interest to do so.

D This Court in *Union of India v. Col. J. N. Sinha*⁽²⁾ said that if the authority *bona fide* formed the opinion to pass an order of retirement the correctness of the opinion could not be challenged though the aggrieved party could contend that the opinion was formed on collateral grounds or was an arbitrary decision.

E In *Sinha's*⁽²⁾ case this Court said that compulsory retirement is not taking any penal action. An order of compulsory retirement is really passed after taking into consideration the rights of the Government servant on the one hand and the interest of the public which ordinarily coincides with the interest of Government on the other. It is also established that an order of compulsory retirement does not deprive the Government servant of benefits earned till the age of his retirement. An order of retirement is really passed on the basis of interest of administrative efficiency.

G Rule 244(2) as it stands now does not specifically mention that an order is to be passed in the public interest. The notes to the rule indicate that the right to pass an order of compulsory retirement is to be exercised only against the Government servant whose efficiency is impaired and against whom it is not desirable to make formal charges of inefficiency or who has ceased to be fully efficient but not to such a degree as to warrant his retirement on compassionate allowance. The notes further say that it is not the intention to use this rule as a financial

weapon, that is to say, that the provision should be used only in the case of Government servants who are considered unfit for retention on personal as opposed to financial grounds. The notes are promulgated with the rules in exercise of legislative power. The notes are made contemporaneously with the rules. The function of the notes is to provide procedure and to control discretion. The real purpose of the notes is that when rules are silent the notes will fill up gaps.

This Court in *Shyam Lal v. The State of U.P.*⁽¹⁾ considered Article 465-A and Note-1 appended thereto in the Civil Service Regulations relating to the retiring pensions of officers. Article 465A *inter alia* stated "A retiring pension is also granted to an officer who is required by Government to retire after completing twentyfive years of service or more". In *Shyam Lal's*⁽¹⁾ case Note 1 which was appended to Article 465-A was not only referred to but relied upon. Note 1 stated "Government retains an absolute right to retire any officer after he has completed 25 years without giving any reason and no claim to special compensation on this account will be entertained. The note further added by amendment later on "The right will not be exercised except when it is in public interest to dispense with the further service of an officer". One of the contentions in *Shyam Lal's*⁽¹⁾ case was that Note 1 was repugnant to Article 311 of the Constitution. This Court did not accept that contention. This Court said the purpose of Note 1 is not to confer on the Government any new right to retire compulsorily an officer on completion of twenty five years of service but that it is intended to serve as a reminder that the Government has such a right which it means to retain. The reason is that one retains only what one already possesses. The word "retain" shows that it is not a fresh right. The right to retire compulsorily is derived from Rule 4 which conferred on the Government the absolute right to retire an officer who completed twentyfive years service. Article 465-A was based on Rule 4.

In *Shivacharana Singh's*⁽²⁾ case the order of compulsory retirement was challenged on the ground that note 1 to Rule 285 in the Mysore Civil Service Rules was not valid. This Court held that the note applied to all government servants and was not open to challenge either under Article 14 or Article 16. The note was given effect to because the note required that the government servant against whom an order of compulsory retirement was proposed to be passed must have completed either 25 years of active service or attained 50 years of age.

(1) [1955] 1 S.C.R. 26.

(2) A.I.R. 1965 S.C. 280.

A The reason why we refer to these two decisions in *Shyam Lal's*⁽¹⁾ and *Shivacharana Singh's*⁽²⁾ cases is that notes which are appended to rules are of aid not only in applying the rules but also in interpreting the true import of the rules.

B In *Union of India v. K. P. Joseph*⁽³⁾ this Court considered the effect of a Government order. Under that order certain benefits would become applicable to certain persons who completed a number of years of qualifying service. Brother Mathew, speaking for the Court said that although the Government cannot supersede statutory rules by administrative instructions yet if the rules framed under Article 309 of the Constitution are silent on any particular point, the Government can fill up gaps and supplement the rules and issue instructions not inconsistent with the rules already framed and these instructions will govern the conditions of service.

C In the present case, the notes are part of the rules because they are for the guidance of the authorities. They are not inconsistent with the rules but are intended to fill up gaps where the rules are silent. The only question here is that formerly the rules said that compulsory retirement would be made in public interest but the present rule does not contain that part of the old rule. The deletion of that part of the rule does not mean that the orders of compulsory retirement are not made in public interest. The notes to the rule make explicit what is implicit in the rules.

D The right to be in public employment is a right to hold it according to rules. The right to hold is defeasible according to rules. The rules speak of compulsory retirement. There is guidance in the rules as to when such compulsory retirement is made. When persons complete 25 years of service and the efficiency of such persons is impaired and yet it is desirable not to bring any charge of inefficiency or incompetency, the Government passes orders of such compulsory retirement. The Government servant in such a case does not lose the benefits which a Government servant has already earned. These orders of compulsory retirement are made in public interest. This is the safety valve of making such orders so that no arbitrariness or bad faith creeps in.

E In Appendix 9 to the Rajasthan Service Rules Vol. II the power to retire government servant after completion of 25 years of service is in the case of ministerial service (gazetted and non-gazetted post) conferred on the appointing authorities. In the present case, the appointing authority is the Collector. The content of the power is not changed by any amendment of the rule. Therefore, the delegation is valid.

(1) [1955] 1 S.C.R. 26.

(2) A.I.R. 1965 S.C. 280.

(3) [1973] 2 S.C.R. 752.

There is no stigma in any of the impeached orders of compulsory retirement. Counsel for the petitioners said that the order in writ petition No. 1898 of the 1973 was passed in the background that the petitioner outlived his utility to Government. The order does not say so. The order does not contain any stigma. It was also said that he was not in continuous employment for 25 years. The petitioner alleged his stage of service should be counted from 1 April, 1961. The facts alleged by the State are that the petitioner was appointed as Assistant Cashier with effect from 5 December, 1942. He was a minor at that time. He attained 18 years of age on 4 December, 1946. He completed his qualifying service of 25 years on 4 December, 1971. He has been in continuous service for 25 years.

For these reasons we are of opinion that the order of compulsory retirement which are challenged do not violate Articles 14, 19, 31 and 311. The writ petitions are dismissed. Parties will pay and bear their own costs.

P.B.R.

Petitions dismissed.