

## THE STATE OF MYSORE

v.

C. N. VIJENDRA RAO

October 24, 1975

[Y. V. CHANDRACHUD, R. S. SARKARIA AND A. C. GUPTA, JJ.]

*Civil Servant—Suspension and continuance in service beyond date of superannuation—No misconduct proved—Order of Government deeming him to have retired on attaining superannuation—Validity.*

Under r. 95(b) of the Mysore Civil Service Rules, a Government servant under suspension on a charge of misconduct shall not be required or permitted to retire on reaching the age of superannuation but shall be retained in service till the enquiry into the charge is conducted and a final order is passed. Rule 95(b) was repealed on March 2, 1965.

The respondent was placed under suspension in February, 1961, and though he was due to retire on January 24, 1962, he was continued in service by reason of r. 95(b) to facilitate a departmental enquiry. No departmental action was, however, taken against him, but he was prosecuted. He was acquitted in June, 1966. On January 24, 1967, the State Government passed an order that he should be deemed to have retired from service on January 24, 1962. The High Court allowed his writ petition holding that he was entitled to draw his salary till March 2, 1965.

Dismissing the appeal to this Court,

**HELD :** (1) There is no finding of misconduct nor is there a verdict of guilt against the respondent. Since the order of suspension was a bar to his compulsory retirement, he continued in service till January 24, 1967. The Government cannot go back on that position and retire him retrospectively with effect from the date on which he attained the age of 55. [322 H-323 B]

(2) The repeal of the rule has no retrospective effect. Whatever action was taken by the Government under r. 95(b) while that rule was on the statute book, would continue to be valid. The physical fact of the respondent's lawful continuance in service cannot be wiped out by imagining a putative state of affairs. [323 C-E]

(3) But, the respondent's contention that he was entitled to draw salary, not till the date of the repeal of the rule, but till January, 1967, cannot be upheld, because, he had not filed a cross-appeal against the judgment repelling his claim. [323 F]

**CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 167 of 1969.

Appeal by Special Leave from the Judgment and Order dated the 24th June, 1968 of the Karnataka High Court at Bangalore in Writ Petition No. 1096/67.

*Narayan Nettar* for the Appellant.

*B. R. G. K. Achar* for the Respondent.

The Judgment of the Court was delivered by

**CHANDRACHUD, J.** On January 27, 1961 the Chief Conservator of Forests, Mysore, sent a letter to the Government of Mysore stating that large-scale illicit cutting of sandalwood trees in the Forests of Sandur

A Range had caused a huge loss to the Government and that such devastation of forests could not have been possible without the connivance of the respondent, C. N. Vijendra Rao, who was working as the Divisional Forest Officer. By an order dated February 16, 1961 the Government of Mysore placed the respondent under suspension 'pending inquiry', in order that he may not interfere with the conduct of the inquiry or tamper with the documentary evidence.

B The respondent was later prosecuted under section 120-B of the Penal Code on the charge that he, along with others, had conspired to smuggle sandalwood. On June 17, 1966 the First Class Magistrate, Bellary, acquitted the respondent.

C On January 24, 1967 the Government of Mysore passed an order that the respondent should be deemed to have been retired from service on January 24, 1962 being the date on which, on his completion of the 55th year, he had attained the age of superannuation. On May 23, 1967 the respondent filed a writ petition in the High Court of Mysore challenging the validity of the aforesaid order. The writ petition was substantially allowed by the High Court on June 24, 1968. This appeal by special leave is filed by the State of Mysore against the judgment of the High Court.

D Rule 95(b) of the Mysore Civil Services, which was in operation at the relevant time, provided that "a Government servant under suspension on a charge of misconduct shall not be required or permitted to retire on reaching the date of compulsory retirement, but shall be retained in service till the enquiry into the charge is concluded and a final order is passed thereon by a competent authority." The period of such retention in service after the date of compulsory retirement was not to count for pension. The respondent was placed under suspension on February 16, 1961 and though he was due to retire on January 24, 1962 he was continued in service by reason of Rule 95(b). That rule was repealed on March 2, 1965 and it would appear that the Government of Mysore came to pass the impugned order on the supposition that the repeal of the Rule was enough to lend validity to the order.

E We are unable to appreciate how the deletion of Rule 95(b) could confer upon the Government any right or authority to direct that the respondent should be deemed to have retired on the date when he attained the age of superannuation. The respondent, perhaps, would have been too willing to retire on completing his 55th year because that was some means, though dubious, of avoiding the proposed inquiry into his conduct. Relying on Rule 95(b), the Government retained him in service even after the date of superannuation and directed that he would be entitled to draw subsistence allowance until the expiry of a certain period or till the completion of the proposed inquiry, whichever was earlier. The prosecution ended in favour of the respondent and we might mention that the judgment of the learned Magistrate, was confirmed by the Mysore High Court on July 22, 1968. Never did the Government initiate a departmental inquiry against the respondent with the result that there is neither a finding of misconduct nor a verdict of guilt against him. Under Rule 95(a) it was competent to the

Government to continue the respondent in service after the date of superannuation, though for special reasons, and Rule 95(b) forbade the respondent from retiring from service during the period of suspension, even on reaching the date of superannuation. The order of suspension which was passed against the respondent in order to facilitate the departmental inquiry (which, however, was never held) was, in a manner of speaking, a bar to his compulsory retirement. Thus, the respondent under the order passed by the State Government, continued to be in its services until January 24, 1967. The Government cannot go back on that position and retire the respondent retrospectively with effect from the date on which he attained the age of 55.

It was contended by the learned counsel for the appellant, the State of Mysore, that the repeal of Rule 95(b) must be deemed to have retrospective effect and we must proceed on the basis that the particular rule did not ever exist. In the first place, such an argument was not made in the High Court. But assuming that it raises a pure question of law and may therefore be permitted to be taken for the first time now, we find it impossible to read even the semblance of retrospectivity in the repeal of the Rule. It does not behove the appellant to say that though the respondent was continued in its service under its specific orders, the court should hold that, fictionally, he ceased to be in service. Besides, whatever action was taken by the Government under Rule 95(b) while that rule was on the statute book, would continue to be valid. The physical fact of the respondent's continuance in service, and lawful continuance at that, cannot be wiped out by imagining a putative state of affairs.

The High Court was therefore right in allowing the writ petition and granting the necessary relief to the respondent. The High Court did not allow the respondent to draw his salary till the date of the impugned order but limited his right in that behalf to the date that Rule 95(b) was repealed. Respondent's counsel attempted to argue for the enlargement of the relief awarded by the High Court but in the absence of a cross-appeal, no further relief can be awarded to the respondent. A respondent may certainly support the decree or order in his favour on grounds other than those on which the decree or order is founded but he cannot ask for a larger relief in the absence of an appeal against the partial rejection of his claim.

The appeal accordingly fails and is dismissed with costs.

V.P.S.

*Appeal dismissed.*