T. Rama Rao Vs The Divisional Superintendent, Divisional Office, Personnel Branch, Southern Railway and Another

None

Court: Madras High Court

Date of Decision: Jan. 8, 1968

Citation: (1968) 1 MLJ 394

Hon'ble Judges: P. S. Kailasam, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

P. S. Kailasam, J.
This petition is filed by a Chief Clerk in the Southern Railway for the issue of a writ of certiorari calling for the records

connected with the order of the Divisional Superintendent, Personnel Branch, Southern Railway, dated 3rd November, 1967, retiring the petitioner

from service on three months notice, and quashing the said order. The impugned order of retirement dated 3rd November, 1967, may be

extracted.

You have attained the age of 55 years on 12th July, 1966 (A.N.) It has been decided by Dy. C.C.S./Gen./Mas to retire you from Railway Service

on three months notice.

You are allowed to avail 21 days L.A.P. and 404 days L.H.A.P. for which you are eligible from 7th November, 1967. This leave and the period

of notice will run concurrently. You will be treated as having retired from Railway with effect from 4th January, 1959 (A.N.)

Rule 2046 of the Indian Railway Establishment Code regulates the age of retirement of railway servants. Rule 2046 (F.R. 56) provides that except

as otherwise provided in the said rules, every railway servant shall retire on the day he attains the age of fifty-eight years. In the case of a ministerial

railway servant, who entered service on or before the 31st March, 1938, and held on that date a permanent post in a provisional substantive

capacity under Clause (d) of Rule 2008 and continued to hold the same without interruption until he was confirmed in that post shall be retained in

service till the day he attains the age of sixty years. The petitioner having entered service on 8th March, 1937, is entitled to the benefit of this rule as

Well and he is entitled to be retained in service till he attains the age of sixty years. But Clause (A) of the rule provides that notwithstanding

anything contained in the rule the appointing authority shall, if it is of the opinion that it is in the public interest" to do so, have the absolute right to

retire any railway servant on attainment of the age of fifty-five years or thereafter by giving him notice of not less than three months in writing.

2. The petitioner attained the age of fifty-five years on 12th July, 1966, and after he attained the age of fifty-five years and when he was running

then fifty sixth year this notice was given. According to Clause (h) a railway servant can be retired, if, in the opinion of the authority, it is in the

public interest to do so, by giving him not less than three months notice. In this case the three months notice has been given. It was contended on

behalf of the petitioner that the leave period to which the petitioner was entitled was made to run concurrently with the period of notice and that this

is not legal. I aim unable to accept this contention, for all that is required under Clause (h) is three months notice and this has been provided for in

the notice.

3. It was next contended that the notice was discriminatory in that the petitioner, who had two censures, was retired, while persons with equally

bad records were continued in service after fifty-five years. This question cannot be gone into as the satisfaction of the authority, as to whether a

person should be retired in public interest or not, is subjective, and the decision of the authority cannot be questioned.

4. Mr. Damodara Rao, the learned Counsel for the petitioner submitted that the order ex Jade did not shows that the petitioner was retired in

public interest and therefore, the order is not valid. When the order Ex Facie does not recite that the petitioner was retired in public interest, the

Court is entitled to look into the records to satisfy itself whether the retirement was made in public interest. On the records it cannot be said that

the authorities were not justified in retiring the petitioner in public interest.

5. It was next contended that a public servant was not likely to have been retired unless his service was not satisfactory and that the authorities

were of the opinion that it was not desirable to continue him in service which in effect would mean that the officer was not being continued in

service due to a stigma. If a railway Servant is retired due to a stigma it Was submitted that the provisions of Article 311 will be attracted, and the

procedure prescribed by that Article should be followed.

6. The plea that the very fact that a public servant was compulsorily retired before he reached the age of superannuation would itself amount to a

stigma was negatived by the Supreme Court in I.N. Saksena Vs. State of Madhya Pradesh, . The test laid down by the Supreme Court there is:

Where an order requiring a Government servant to retire compulsorily contains express words from which a stigma can be inferred, that order will

amount to a removal within the meaning of Article 311. But where there are; no express words in the order itself which would throw any stigma oh

the Government servant, we cannot delve into Secretariat files to discover whether some kind of stigma can be inferred on such research.

7. In The State of Uttar Pradesh Vs. Madan Mohan Nagar, , the Supreme Court reiterated its decision in Shyam Lal Vs. The State of Uttar

Pradesh and The Union of India (UOI), , where it was held:

When an authority wants to terminate, the services of a temporary servant it can pass a simple order of discharge without casting any aspersion

against the temporary servant or attaching any stigma to his character. As soon as it is shown that that order purports to cast an aspersion on the

temporary servant, it would be idle to suggest that the order is a simple order of discharge. The test in such cases must be: does the order cast

aspersion or attach stigma to the officer when it purports to discharge him? If the answer to this question is in the affirmative, then notwithstanding

the form of the order, the termination of service must be held, in substance, to amount to dismissal.

8. The result of the two decisions is that the order of retirement of the petitioner can be sustained, if prima facie the order does not contain express

words from which a stigma can be inferred. If there are words which throw any stigma, then the order of retirement would amount to removal

within the meaning of Article 311. In this case, as already stated, the order does not disclose any reason at all, and applying the test laid down by

the Supreme Court in the two decisions cited above the validity of the order cannot be questioned.

9. Mr. Damodara Rao, the learned Counsel submitted, that, if so construed it would lead to anomalous results in that an order in which valid

reasons are given for retiring a railway servant in public interest would be held to come under Article 311 while an order in which no reasons are

given whether there are grounds to retire in public interest or not, the retirement will be valid. It cannot be said that the argument thus put is without

substance. But the two decisions of the Supreme Court cited are very explicit to allow of any further controversy. The writ petition is therefore

dismissed. No order as to costs.