

(1968) 01 KAR CK 0005

Karnataka High Court

Case No: Writ Petition No. 2099 of 1966

Abdur Rahim Ahmed

APPELLANT

Vs

The State of Mysore

RESPONDENT

Date of Decision: Jan. 12, 1968

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 235, 309, 311
- Mysore Civil Services Rules, 1958 - Rule 285

Citation: AIR 1969 Kar 248 : (1971) 2 MysLJ 422

Hon'ble Judges: M. Sadasivayya, J; D.M. Chandrashekhar, J

Bench: Division Bench

Judgement

Chandrashekhar, J.

The petitioner was a member of the Mysore Judicial Service holding the rank of Civil Judge. In the normal course he should have retired on 4-5-1967 on his attaining the age of superannuation i.e., 55 years. On 14-10-1966 the Governor of Mysore made the following order retiring him compulsorily under Note 1 to Rule 285 of the Mysore Civil Services Rules:

"Government of Mysore"

No GAD 106 SHC 66.

Mysore Government Secretariat,

Vidhana Soudha"

Bangalore, Dated 14th October, 1966.

ORDER

Whereas the Governor of Mysore is of the opinion that it is necessary in the public interest to retire Shri Abdur Rahim Ahmed, Civil Judge, Shimoga, from service;

Now therefore, under Note 1 to Rule 285 of the Mysore Civil Services Rules, the Governor of Mysore hereby retires from service Shri Abdur Rahim Ahmed, Civil Judge, Shimoga, with effect from the 24th October, 1966.

He shall be paid a sum equivalent to the amount of his salary for a period of three months in lieu of notice under the said Note.

V. V. Giri,

Governor of Mysore,

By order and in the name of the

Governor of Mysore,

Sd/- R. Thippoji Rao,

Deputy Secretary to Government,

General Administration Department

(Services)".

2. In the petition under Art. 226 of the Constitution, the petitioner has challenged the order compulsorily retiring him.

3. The first ground urged by Mr. S. K. Venkataranga Iyengar, learned counsel for the petitioner, was that as the petitioner was a member of the subordinate Judiciary, the controlling authority under Art. 235 of the Constitution was the High Court and not the Government, and that the Governor was not competent to make an order compulsorily retiring a member of the Judicial Service.

4. In the counter-affidavit filed on behalf of the State, it has been explained that the High Court was consulted before the impugned order was made and that the High Court had concurred with the action proposed to be taken by the Government. At the stage of arguments, the learned Special Government Pleader produced before us the Secretariat file containing the correspondence between the Government and the High Court. On a perusal of this correspondence, we are satisfied that before the impugned order was made by the Governor, the High Court was consulted and it had given its concurrence to the proposed order compulsorily retiring the petitioner.

Under Note 1 to Rule 285 the satisfaction that compulsory retirement of an officer is in public interest must be that of the Government. But in view of the consultation with, and concurrence of, the High Court, we do not think that the impugned order made by the Governor would in any way conflict with the control over the subordinate courts vested in the High Court under Art. 235 of the Constitution.

5. Mr. Venkataranga Iyengar next contended that Note 1 to Rule 285 of the Mysore Civil Services Rules, is invalid, as it is repugnant to the main part of that Rule. The relevant part of Rule 285 reads:

"285. A retiring pension is granted to a Government servant who is permitted to retire after completing qualifying service for thirty years or such less time as may, for any special class of Government servants be prescribed.

Note 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 three months before the date on which he wishes to retire. Government may, by order, retire any Government servant after he has completed twenty-five years of qualifying service or after he has attained fifty years of age, if such retirement is in their opinion necessary in the public interest, provided that Government servant concerned is given notice of three months before the date of retirement, or in lieu of such notice, a sum equivalent to the amount of his salary for a period of three months....."

6. Elucidating his contention, Mr. Venkataranga Iyengar argued that the main part of Rule 285 provides that a retiring pension is granted to a Government servant who is permitted to retire after completing qualifying service of 30 years or such less time as may, for any special class of Government servants be prescribed, while the latter part of Note 1 provides that the Government may retire a person even before he has completed 30 years of qualifying service. According to Mr. Venkataranga Iyengar, the latter part of Note 1 is inconsistent with the main part of Rule 285. He argued that a note to a rule can only be by way of explanation or proviso; and cannot make an independent provision inconsistent with the main part of the rule. In support of his contention, he relied on certain passages in Craies on Statute Law under the heading "Construction of Provisos," at page 202 in 5th Edition.

7. We think the main part of Rule 285 and Note 1 should be read together and construed harmoniously and if they are so construed, we do not see any conflict or repugnancy between them. Construing Rule 285 together with Note 1, this is what the Supreme Court said in [T.G. Shivacharana Singh and Others Vs. The State of Mysore](#) :

"Rule 285 deals with retiring pension and it provides that a retiring pension is granted to a Government servant who is permitted to retire after completing qualifying, service for 30 years or such less time as may, for any special class of Government servants, be prescribed. Note 1 to this Rule provides inter alia, that Government may, in special cases, require any Government servant to retire any time after he has completed 25 years qualifying service or on attaining 50 years of age, if such retirement is considered necessary in the public interest, provided that the appropriate authority shall give in this behalf a notice in writing to the Government servant at least three months before the date on which he is required to retire. The note further provides that a Government servant who retires or is retired, only in the manner indicated above, shall be granted a retiring pension not exceeding such proportion of average emoluments and subject to such maximum limits as are specified in Chapter XIX.

It would thus be clear that though the normal age of retirement under R. 95(a) is 55 years under R. 285 it is competent to the Government to retire compulsorily a Government servant prematurely if it is thought that such premature retirement is necessary in the public interest. This power can, however, be exercised only in cases where the Government servant has completed 25 years qualifying service or has attained 50 years of age. In other words, ordinary retirement by superannuation occurs after attaining 55 years of completing 30 years' service, while premature retirement can be forced on the Government servant if he has either completed 25 years of service, or has attained 50 years of age. In the case of premature compulsory retirement, the Government servant is entitled to pension as indicated in Note 1 to Rule 285."

8. It was next contended by Mr. Venkataranga Iyengar that the petitioner should have been heard before the impugned order was made and that as he has not been so heard, the impugned order was void as being violative of principle of natural justice.

9. Note 1 to Rule 285 does not expressly provide that an official who is sought to be retired compulsorily, should be heard before the Government orders such retirement. Nor can an obligation to hear such official be reasonably implied. As explained by the Supreme Court in [Shyam Lal Vs. The State of Uttar Pradesh and The Union of India \(UOI\)](#), there is no element of charge or imputation in the case of compulsory retirement. The two requirements for compulsory retirement are that the officer has completed 25 years of service or attained 50 years of age, and that it is in public interest to dispense with his further service. As a matter of fact, in [Shyam Lal Vs. The State of Uttar Pradesh and The Union of India \(UOI\)](#), before the Government ordered his compulsory retirement, he was given an opportunity to show cause why that action should not be taken. But the Supreme Court has explained that such enquiry was merely to help the Government to make up its mind as to whether it was in public interest to dispense with his services. However, Mr. Venkataranga Iyengar argued that whenever a civil right of a person is affected, principles of natural justice come into play. In support of his contention Mr. Venkataranga Iyengar placed strong reliance on the following observations of the Supreme Court in [State of Orissa Vs. Dr. \(Miss\) Binapani Dei and Others](#), .

"It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence.

10. There, the date of birth of the first respondent, which had been accepted by the Government of Orissa, was sought to be altered on the basis of some information which the Government had received. Before so altering the date of birth, she had

not been heard. It was in that context that the Supreme Court held that she should have been given an opportunity of being heard. The action of altering the date of birth was founded on some ground personal to the officer, namely, that the date of birth furnished by her earlier was not correct, which she might conceivably have controverted or explained. We think the above observations of the Supreme Court have no application to the exercise of the power of the Government under Note 1 to Rule 285 to retire an official compulsorily when such retirement is considered necessary in public interest because the imputation or the element of charge is not in terms made a condition for exercise of that power, and such retirement is not by way of punishment and does not cast any stigma on the official who is compulsorily retired.

11. Hence we think that there was no obligation on the Government to have heard the petitioner before it came to the conclusion that the compulsory retirement of the petitioner was necessary in the public interest.

12. Mr. Venkataranga Iyengar complained that the decision of the Government to retire the petitioner compulsorily was influenced by a Police report and that that report should have been disclosed to the petitioner so that he might have had an opportunity to show that that report was not true or was incorrect and should not be acted upon. We think there is no obligation on the Government to disclose to an official who is proposed to be retired compulsorily, the materials on the basis of which it comes to the conclusion that his retirement is in public interest. Hence the petitioner was not entitled to ask for the materials on the basis of which the Government reached the conclusion that his retirement was in public interest. Moreover, Mr. Venkataranga Iyengar did not urge any ground of mala fides.

13. Mr. Venkataranga Iyengar assailed the constitutionality of Note 1 to Rule 285 of the Mysore Civil Services Rules. He argued that Art. 309 of the Constitution under which Rule 285 (including Note 1) was made, is subject to other provisions of the Constitution as is clear from the opening words of that Article and that any rule made under Article 309, cannot prevail as against Article 311. He urged that a civil servant permanently appointed has a right to continue in service until he attains the age of superannuation; that his retirement before he reaches the age of superannuation must be regarded as "removal" from service under Art. 311; and that such removal without holding an enquiry as provided in that Article would be violative of that Article.

14. In [T.G. Shivacharana Singh and Others Vs. The State of Mysore](#), Gajendragadkar, C. J., who spoke for the Court, said that so far as the question of compulsory retirement is concerned, it must be taken to be concluded by several decisions of the Supreme Court and that the only exception made by the majority judgment in [Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.](#), was that it may be necessary to consider whether such a rule of compulsory retirement would be valid if having fixed proper age of superannuation, it permits a

permanent servant to be retired at a very early stage of his career. His Lordship also pointed out that such consideration did not arise in the case of Note 1 to Rule of the Mysore Civil Services Rules, because the Government servant against whom an order of compulsory retirement is proposed to be passed, must have completed either 25 years of active service or attained 50 years of age.

15. However, Mr. Venkataranga Iyengar argued that the question of constitutionality of Note 1 to Rule 285 is not concluded by the decision of the Supreme Court in [T.G. Shivacharana Singh and Others Vs. The State of Mysore](#), as the Supreme Court considered in that case the constitutionality of that Rule, with reference to Arts. 14 and 16 only, and not with reference to Art. 311 of the Constitution.

16. But in [Gurdev Singh Sidhu Vs. State of Punjab and Another](#), Gajendragadkar. C. J., who spoke for the Court, reviewed the earlier decisions of the Supreme Court in regard to compulsory retirement. His Lordship pointed out that the majority judgment in [Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.](#), accepted the view that the rule of compulsory retirement can be treated as valid and constitutes an exception to the general rule that termination of services of a permanent public servant Art. 311(2), and added a rider that if the minimum period of service which was prescribed by relevant rules upheld by the earlier decision was 25 years, it could not be unreasonably reduced in that behalf. His Lordship summed up the position thus:

"If a permanent public servant is compulsorily retired under the rules which prescribe the normal age of superannuation and provide for a reasonably low period of qualified service after which alone compulsory retirement can be ordered, that again may not amount to dismissal or removal under Art. 311(2), mainly because that is the effect of a long series of decisions of this Court. But where while reserving the power to the State to compulsorily retire a permanent public servant, a rule is framed prescribing a proper age of superannuation, and another rule is added giving the power to the State to compulsorily retire a permanent public servant at the end of 10 years of his service, that cannot, we think, be treated as falling outside Art. 311(2). The termination of the service of a permanent public servant under such a rule though called compulsory retirement, is in substance, removal under Art. 311(2)".

17. As pointed out by Gajendragadkar, C. J. in [T.G. Shivacharana Singh and Others Vs. The State of Mysore](#), Note 1 to Rule 285 requires that the Government servant against whom an order of compulsory retirement is proposed to be passed, must have completed 25 years of active service or attained the age of 50 years. In the light of the above observations of the Supreme Court in [Gurdev Singh Sidhu Vs. State of Punjab and Another](#), and in [T.G. Shivacharana Singh and Others Vs. The State of Mysore](#), we think it is no longer open to Mr. Venkataranga Iyengar to contend that Note 1 to Rule 285 of the Mysore Civil Services Rules, is repugnant to Article 311 of the Constitution.

18. Mr. Venkataranga Iyengar sought to derive support from the recent decision of the Supreme Court, [The State of Uttar Pradesh Vs. Madan Mohan Nagar](#), . In that case, the order of compulsory retirement under Note (1) to Rule 465 of the Civil Service Regulations, was held to be bad, because the statement contained in that order that the official had outlived his utility, was held to cast a stigma on the official. But we are unable to see how that decision has any application to the present case in which the impugned order does not contain any such disparaging epithet about the petitioner.

19. Thus all the contentions of the petitioner fail and we dismiss this petition. But there will be no order as to costs.

20. Petition dismissed.