

## **P. Radhakrishna Naidu and Others Vs Government of Andhra Pradesh and Others**

**Court:** Supreme Court of India

**Date of Decision:** Dec. 9, 1976

**Acts Referred:** Constitution of India, 1950 " Article 14, 16, 226, 311, 32

**Citation:** AIR 1977 SC 854 : (1959) CriLJ 1497 : (1977) 1 SCC 561 : (1977) 2 SCR 365 : (1977) 1 SLJ 211 : (1977) 9 UJ 84

**Hon'ble Judges:** A. N. Ray, C.J; M. Hameedullah Beg, J

**Bench:** Division Bench

**Final Decision:** Dismissed

### **Judgement**

A.N. Ray, C.J.

These writ petitions challenge the compulsory retirement of the petitioners. The petitioners were retired compulsorily under

order dated 23 September 1975.

2. The order dated 23 September 1975 in the case of the first petitioner in writ petition No. 97 of 1976 may be referred to as typical of orders in

the case of other petitioners. This order stated first that the said first petitioner completed 25 years of qualifying service on 24 July, 1975. The

order next stated that the Commissioner of Police being the authority to make a substantive appointment to the post of Inspector of Police is of

opinion that it is in public interest to retire the persons mentioned in the order.

3. The order thereafter states that in exercise of the powers conferred by Clause (a) of Sub-rule (2) Sub-rule (2) A read with Clause (a) of Sub-

rule (2) of Rule 3 of the Andhra Pradesh Liberalised Pension Rules, 1961/Sub-rule (1) of Rule 2/Rule 3 read with Sub-rule (1) of Rule 2 of the

Andhra Pradesh Government Servants' Premature Retirement Rules, 1975, the Commissioner of Police directs that the person mentioned in the

order shall retire in public interest from service with effect from the date of service of the order and that he shall be paid a sum equivalent to the

amount of pay and allowances for 3 months in lieu of notice calculated at the same rate at which he was drawing immediately before the date on

which the order is served on him.

4. The Government of Andhra Pradesh passed a general order dated 28 November, 1975. In that Government order it is stated that in several

Government orders recited therein, orders for the premature retirement of the Government servants in public interest had been issued in those

cases after giving 3 months previous notice in writing or after giving 3 months salary in lieu of such notice. The 28 November, 1975 order next

states that an instance came to the notice of the Government that a Government servant after compulsory retirement as per orders mentioned

above was re appointed in a cooperative institution as executive officer. Though the re-appointment of the incumbent was in the Semi-Government

Institution, his re-appointment was stated to be irregular and contrary to the intention of the Government in retiring corrupt and inefficient persons.

The Government order directed that all the Departments of the Secretariat, all Heads of Department and all Collectors etc., should ensure that on

no account persons who are retired prematurely in pursuance of orders issued by the Government should be re-instated or re-appointed in any

Semi-Government or Quasi-Government Institutions.

5. The petitioners challenged the compulsory retirement orders as violation of Article 16. The petitioners also challenged the Government order

forbidding re-appointment of compulsorily retired persons in Semi Government or Quasi-Government Institutions as a stigma within the meaning of

Article 311.

6. At the outset it should be stated that enforcement of violation of Article 311 does not come within the scope of Article 32. The challenge to the

Government order forbidding re-appointment of compulsorily retired persons as a stigma within the meaning of Article 311 is, therefore, not an

infringement of fundamental rights.

7. The petitioners challenged the orders of compulsory retirement as an infraction of Article 16. It is not known how the petitioners have been

discriminated against other persons because no such person is impleaded as a respondent and there are no allegations to that effect.

8. During the subsistence of the Presidential Order issued under Article 359(1) it is not competent to invoke Article 14 for enforcement of any

fundamental rights. Articles 14 and 16 are to a certain extent overlapping in regard to rights of equality.

9. Equality of opportunity for all citizens in matters relating to employment is not violated by provisions for compulsory retirement of Government

servants in public interest after the completion of a certain period of qualifying service or attainment of a certain age. This Court has consistently

taken the view that compulsory retirement does not involve any civil consequences. See *Union of India v. Col. J. N. Sinha and Another* [1971] 1

S.C.R. 791 and Tara Singh etc. v. State of Rajasthan and Ors. [1975] 3 S.C.R. 1002 .

10. A writ petition under Article 32 can lie only for infringement of fundamental rights. See D. Narayana. Murthy and Ors. etc. v. State of Andhra

Pradesh etc. 1971 Su. S.C.R 741. The General order for compulsory retirement is applicable to all employees. The individual application of the

order in a given case cannot offend Article 16. It cannot be suggested that an order for compulsory retirement in the case of one person is denial of

equality of opportunity relating to employment because another person in employment has not been compulsorily retired.

11. Article 16 does not prohibit the prescription of reasonable rules for compulsory retirement. A question arose in T.C. Shivacharana Singh v.

State of Mysore whether a rule providing for compulsory premature retirement from Government service violates Article 16. This Court said that

the law in relation to the validity of rules permitting compulsory premature retirement from Government service is well-settled by prior decision of

this Court which does not require to be reconsidered. The ratio is that the provision for compulsory retirement in public interest applies to all

Government servants and as such it is not open to challenge either under Article 14 or under Article 16.

12. In Shyam Lal v. State of U.P. [1955] 1 S.C.R. 26 the appellant had been compulsorily retired. The order was challenged as violating Article

311. This Court held that there is no stigma involved in compulsory retirement. Compulsory retirement does not amount to a dismissal or removal

and, therefore, it is not within the vice of Article 311.

13. One of the petitioners, namely, the first in writ petition No. 97 of 1976, challenged the order of compulsory retirement on the ground that he

did not complete 25 years of service. He alleged that he was appointed on 10 September, 1952 and, therefore, the order of compulsory

retirement dated 23rd September, 1975 is bad. The State on the other hand contends that the correct date of appointment of the first petitioner is

25 July, 1950. In writ petitions the Court does not go into discussed questions of fact, like age as in the present case. In Tata Engi- neering and

Locomotive Company Ltd. v. Assistant Commission- er of Commercial Taxes & Anr. (1967) 2 SCR 751 this Court said that the exercise of

jurisdiction in writ matters is not desirable if facts have to be found on evidence. This Court has also said that there may be exceptions. On such

exception is when action is taken under an invalid law or arbitrarily without the sanction of law. In the present case there is no aspect of either kind.

14. Further it has to be observed that in the present writ petitions several petitioners have combined as petitioners. Their causes of action are

separate and independent. Each is alleged to be an instance of individual assertion of constitutional right in regard to facts and circumstances of

each case. Where several petitioners combine for alleged violation of their rights, it is difficult for court to go into each and every individual case. In

the present case the affidavit evidence on behalf of the State is preferred and, therefore, the first petitioner cannot agitate the question of disputed

age.

15. In Krishna Chandra Nayar v. Chairman, Central Tractor Organization and Others [1962] 3 S.C.R. 187. this Court considered the imposition

of a ban against one man, namely, the petitioner in that case from being ever taken into Government service. He was a temporary servant and his

services were terminated by giving him pay and allowances in lieu of notice for one month. This Court found that case to be one of arbitrary

imposition of ban against the employment or appointment of the individual to an office.

16. Krishna Chander's (7) case (supra) is of no aid to the petitioners in the present case. The ban is not challenged here. In Krishna Chander's (7)

case (supra) the ban was challenged as an arbitrary act against one individual. In the present case the ban is not against anyone individually but it is

not to employ in Quasi-Government service or Semi-Government service, persons who are compulsorily retired from Government service. The

ban has a reasonable basis and has some relation to the suitability for employment or appointment to an office. When compulsory retirement is

made in public service it will be an exercise in futility if Government servants who are compulsorily retired are again employed in Government

service or Semi Government service or Quasi-Government service.

17. The petitioners challenged the orders for compulsory retirement also on the ground that reference to so many rules was made and, therefore, it

was not possible for the petitioners to know under what provision the orders for compulsory retirement had been made. It is not open to the

petitioners to challenge the orders on the ground. The orders specifically mention that compulsory retirement is made in public interest. The State

affidavit evidence is that petitioners No. 4 and 5 in writ petition No. 97 of 1976 are governed by Hyderabad Civil Service Regulations and the rest

of the petitioners are governed by Andhra Pradesh Liberalised Pension Rule, 1961. Rule 292 of the Hyderabad Civil Service Regulations Rules

and Sub-rule (2)(a) of Rule 3 of the Andhra Pradesh Liberalised Pension Rules, 1961 are similar. Both the rules confer power on the authority to

require Government servant to retire in the public interest from service on the date on which he completes 25 years of qualifying service or attains

50 years of age. Rule 2(1) of the Andhra Pradesh Government Servant's Premature Retirement Rules, 1975 is also worded in similar language.

The wording of the rules relating to retirement in public interest is identical in all the three sets of rules mentioned above.

18. The mere fact that three different rules were mentioned in the impugned orders without scoring out the rules which are not applicable to a

petitioner in one case cannot be any grievance for the reason that in each case the relevant rule is identically worded. The omission on the part of

the officers competent to retire the petitioners is not scoring out the rules which are inapplicable to a particular individual does not render the order

bad. The reason is that one of the rules is applicable to him and the omission to strike out the rules which are not applicable will not in any manner

affect the applicability of the rule mentioned. Further this Court has taken the view that a wrong reference to power will not vitiate any action if it

can be justified under some other powers under which the Government can lawfully do the act. See *Hukumchand Mills Ltd. v. The State of*

*Madhya Bharat and Another* [1964] 6 S.C.R. 857. . In the present case the valid rule is mentioned in each case.

19. The Government of Andhra Pradesh has by an administrative order constituted a review committee for each department to review orders of

retirement in public interest and to revoke and modify the same, if necessary. The petitioners made representations to the review committee. The

petitioners yet choose to come to this Court. The petitioners are not justified in applying to this Court.

20. The petitioners obtained rules in these two cases during the vacation. A similar matter came before this Court on April 29, 1976 and this Court

did not issue any rule. If the attention of this Court had been drawn to that order, perhaps no rule would have been issued in these matters.

21. The Andhra Pradesh Administrative Tribunal Order 1975 confers power on the Tribunal to exercise jurisdiction with respect to appointment,

allotment or promotion and other conditions of service of such persons. It is open to a person who complains about an order of compulsory

retirement to approach the Tribunal in a given case.

22. For the foregoing reasons, the writ petitions are dismissed. There will be no order as to costs.