

Hirendra Nath Roy Vs State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: Feb. 11, 1954

Acts Referred: Constitution of India, 1950 " Article 311, 313
Government of India Act, 1915 " Section 36(2), 47, 96B, 96B(2)
Government of India Act, 1935 " Section 240, 241, 276, 52(1)

Citation: 59 CWN 450

Hon'ble Judges: Sinha, J

Bench: Single Bench

Advocate: Praphulla Kumar Roy and Anil Kumar Das Gupta, for the Appellant; S.M. Bose, Advocate-General, Smriti Kumar Roy Choudhury and R.C. Deb, for the Respondent

Judgement

Sinha, J.

The petitioner was employed as the Chief Ministerial Officer of the Small Causes Court at Sealdah. He joined service on the 6th

March, 1922, and attained the age of 55 years on the 31st December, 1954. On the 22nd June, 1954, an order was made by the District Judge of

24-Pargannas to the effect that the petitioner was directed to retire from Government service with effect from the afternoon of the 31st December,

1954. Against this order, the petitioner submitted a representation praying that he should be retained in service upto the 60th year. It appears that

the Small Causes Court Judge at Sealdah recommended the petitioner's retention very strongly, stating that he was fit for continued service. This

was also endorsed by the District Judge, who recommended the petitioner's case to Government. On the 17th September, 1954, the District

Judge received a communication from the Government of West Bengal to the effect that careful consideration was given to the petition praying for

retention of the services of the petitioner, but Government were unable to accede to his prayer. On the 23rd November, 1954, this Rule was

issued calling upon the opposite parties to show cause why a writ in the nature of certiorari should not issue quashing the order dated the 17th

September, 1954, complained of in the petition and/or why a Writ in the nature of Mandamus should not issue directing the opposite parties to

forbear from giving effect to the order of compulsory retirement of the petitioner and to retain the petitioner in service till he attained the age of 60,

or why such further or other order or orders should not be made as to this Court may seem fit and proper.

2. The matter has been exhaustively argued on both sides and it seems to me that in the result the decision depends on a very short point, viz., as to

whether Rule 56(b) (i) of the Fundamental Rules applies to the case, or Rule 75 (a) of the West Bengal Service Rules would apply.

3. Rule 56(b) (i) of the Fundamental Rules runs as follows :

A ministerial servant, who is not governed by clause (ii) may be required to retire at the age of 55 years, but should ordinarily be retained in

service, if he continues efficient, up to the age of 60 years. He must not be retained after that age except in very special circumstances, which must

be recorded in writing, and with the sanction of the Local Government.

4. Rule 75(a) of the West Bengal Service Rules, Part I, Chapter X, runs as follows:-

Except as otherwise provided in this rule, the date of compulsory retirement of a Government servant, other than a member of a clerical staff or a

servant in inferior service is the date on which he attains the age of 55 years. He may, however, be retained in service beyond that date with the

sanction of Government on public grounds which should be recorded in writing; but he shall not be retained after attaining the age of 60 years

except in very special circumstances.

5. The remaining portions of rule 75 are not relevant. A controversy arose as to whether rule 75 applies to the facts of this case or rule 76. Rule 76

applies to members of the clerical staff, who may be required to retire at any time after attaining the age of 55 years. It was pointed out that

"clerical staff" has been defined in the rules [Rule 5(8)]. as meaning those Government servants of a subordinate service whose duties are entirely

clerical. It was argued that the duties of a Chief Ministerial Officer of the Small Causes Court are not entirely clerical, but part of it is supervisory.

The learned Advocate-General conceded that it is a mistake to say that rule 76 applied, and in any event it was doubtful. According to him, rule

75(a) was applicable. It is apparent that there is a vital difference between the wording of rule 56(b) (i) of the Fundamental Rules and rule 75(a) of

the West Bengal Service Rules. According to the first-named rule, an option is given to require the employee to retire at the age of 55. years, but

he should be ordinarily retained in service if he continues efficient, up to the age of 60 years; whereas, the age of compulsory retirement of a

Government servant has been laid down in rule 75(a) of the West Bengal Service Rules, as 55, although he may be retained in service beyond that

date with the sanction of Government, on public grounds recorded in writing.

6. Mr. Roy appearing on behalf of the petitioner conceded that if the latter rule applied, he had very little to say.

7. It is, therefore, necessary to consider as to which of the rules applied, and for this purpose it is necessary to delve into the history of legislation

controlling the conditions of service of employees in the cadre of the petitioner. It appears that the earliest rules that can be traced were framed by

the Government of India in 1914. It is not clear under what authority the rules were framed. In all probability, civil servants of the Crown were

taken as holding their services at the pleasure of the Crown and rules were promulgated by the Government of India as representing the Sovereign.

These rules were embodied in a publication known as the "Civil Service Regulations relating to salary, leave, pension and travelling allowance." I

must mention that the year 1914 was given by the learned Advocate-General, but I have not been able to check it up, as no copies of the Civil

Service Regulations are available earlier than the reprint of the 5th Edition of the Civil Service Regulations corrected up to 15th January, 1915. A

copy of this was fortunately in the learned Advocate-General's office, but is not available in any of the libraries of this Court. The relevant rule in

this publication is rule 159 and it runs as follows:-

459. (a) An officer who has attained the age of 55 may be required to retire by the Local Government under which he is employed The Local

Government may delegate this power in respect of non-gazetted officers, to the head of the latter's office or department, not being under the rank

of a Collector or District Judge.

(b) The rule should be worked with discretion in order to avoid depriving the State of the valuable experience of really efficient officers and adding

unnecessarily to the non-effective charges. In the case of officers holding superior appointments, the standard of efficiency by which retention is to

be decided is above the standard required in lower appointments. In every case in which the rule is enforced the reasons for enforcing it should be

recorded. But no claim from an officer to compensation on account of the enforcement of the rule will be entertained.

(c) Each such officer's case should be taken up when he is 55 years old and before the expiry of each extension of service. In every case the

extension should be given for not more than one year at a time.

(d) An officer who has attained the age of 60 cannot be retained in the service of Government save in very exceptional circumstance, and with the

sanction of the local Government.

8. The second reprint of the Civil Service Regulations was made on the 15th November, 1917, and I was fortunate to find a copy in the Judges'

Library. I find that there has been no alteration in the rule. In the meanwhile, the Government of India Act, 1915, was passed, but it contained no

provision affecting the rule as to compulsory retirement. Then came the Government of India Act, 1919, which by section 36 introduced provisions

enabling the Secretary of State in Council to make rules. The exact provision is as follows:-

36(2) The Secretary of State in Council may make rules for regulating the classification of the civil services in India, the methods of their

recruitment, their conditions of service, pay and allowances, and discipline and conduct. Such rules may, to such extent and in respect of such

matters as may be prescribed, delegate the power of making rules to the Governor-General in Council or to Local Governments, or authorise the

Indian Legislature or Local Legislatures to make laws regulating the public services :

Provided that every person appointed before the commencement of this Act by the Secretary of State in Council to the civil service of the Crown

in India shall retain all his existing or accruing rights, or shall receive such compensation for the loss of any of them as the Secretary of State in

Council may consider just and equitable.

9. By sub-rule (3), it was laid down that the right to pensions and the scale and conditions of pensions of all persons in the Civil Service of the

Crown in India appointed by the Secretary of State in Council, shall be regulated in accordance with the rules in force at the time of the passing of

this Act.

10. This section was incorporated in the principal Act as section 96B.

11. The petitioner was appointed on the 6th March, 1922.

12. In pursuance of section 96B of the Government of India Act, rules were framed by the Secretary of State in Council and are contained in a

compilation known as the "Fundamental Rules". The first set of Fundamental Rules came into force from the 1st January, 1922, and will be found

in section II of the Fundamental Rules, 3rd Edition The second set of Fundamental Rules also came into operation on the 1st January, 1922 and

are to be found in section (iii). Rule 56(b) (i) appearing in Chapter IX of the Fundamental Rules in section (iii), which has already been quoted

above, is the rule which is alleged by the petitioner to be applicable to him. Under sub-section (2) of section 96B of the Government of India Act,

1915. [Section 36(2) of the Government of India Act, 1919, set out above] the Secretary of State in Council was given the power to delegate the

power of making rules to the Governor-General in Council or to Local Government. By virtue of this power rules were framed by the Secretary of

State for India in Council, published in the ""Calcutta Gazette"", on the 6th May. 1926, vide Notification No. F. 178-9-11-24, the relevant part

where of is set out below:-

In exercise of the powers conferred by sub-section (2) of section 96B of the Government of India Act, the Secretary of State in Council, with the

concurrence of a majority of votes at a meeting of the Council of India held this 9th day of March, 1926, hereby makes the following rules:-

1. These rules may be called the Civil Services (Governors' Provinces) Delegation Rules, 1926.

2. In these rules the expressions "'provincial services'", "'subordinate services'" and "'special posts'" shall have the meanings respectively assigned to

them in the Civil Services (Governors' Provinces) Classification Rules.

3 (1) Subject to the provisions of the Civil Services (Governors' Provinces) Classification Rules, and to the provisions hereinafter contained, the

power to make rules regulating the method of recruitment to provincial services, subordinate services and special posts is hereby delegated to the

Local Governments of Governors' Provinces.

4. (i) Notwithstanding anything contained in any rule made under, or confirmed by the Government of India Act the power to make rules regulating

the conditions of service, pay and allowances, and pensions of provincial and subordinate services and of officers holding special posts is hereby

delegated to the Local Governments of Governors' Provinces :.....

13. On the 27th May, 1930, the Secretary of State for India in Council, acting u/s 96B(2) of the Government of India Act, promulgated the Civil

Services (Classification, Control and Appeal) Rules, which were published in the Gazette of India on the 21st June, 1930. Under Rule 1 (2), the

Civil Services (Governors' Provinces) Classification Rules and the Civil Services (Governors' Provinces) Delegation Rules, 1926, were cancelled.

Under rule 7, rules which had already been made under power of delegation and were in operation on the date of these rules, were to remain in

operation, except in so far as they were inconsistent with these rules Rules 41 and 44 are important. By rule 41 the power to make rules regulating

the conditions of service, pay and allowances, and the pensions of a Provincial Service in any Governor's Province was delegated to the Local

Government.

14. Rule 44 runs as follows :-

Part IX--Subordinate Services.

C S. (CCA.) R. 44. The power to make rules providing for the following matters in respect of subordinate services under the administrative

control of a Government is hereby delegated to such Government, namely;

(a) the making of first appointments,

(b) the methods of recruitment,

(c) the number and character of posts, and

(d) conditions of service, pay and allowances and pensions.

15. It is not denied that the petitioner belongs to a subordinate Service under the administrative control of the Province of Bengal, now the State of

West Bengal. In other words, the power of delegation that was previously contained in the Delegation Rules were cancelled and then embodied

again in the C.S. (C C.A.) Rules, making it clear that subordinate services under the administrative control of a Local Government would be

thereafter subject to the rule making powers by the Local Governments.

16. Next in point of time comes the Government of India Act, 1935, (which came into operation on the 1st April, 1937), which repealed the

Government of India Act, 1919, except the preamble and sub-section (1) of section 47 thereof. The relevant section in this Act is section 241(2)

which runs as follows :-

(2) Except as expressly provided by this Act, the conditions of service of persons serving His Majesty in a civil capacity in India shall, subject to

the provisions of this section, be such as may be prescribed-

(a) in the case of persons serving in connection with the affairs of the Federation, by rules made by the Governor-General or by some person or

persons authorised by the Governor-General to make rules for the purpose;

(b) in the case of persons serving in connection with the affairs of a Province, by rules made by the Governor of the Province or by some person or

persons authorised by the Governor to make rules for the purpose;

Provided that it shall not be necessary to make rules regulating the conditions of service of persons employed temporarily on the terms that their

employment may be terminated on one month's notice or less, and nothing in this sub-section, shall be construed as requiring the rules regulating

the conditions of service of any class of persons to extend to any matter which appears to the rule-making authority to be a matter not suitable for

regulation by rule in the case of that class.

17. Under sub-section (3) (a) of section 241, it was enacted that, in the case of a person who before the commencement of Part III of this Act

was serving His Majesty in a civil capacity in India, no order which alters or interprets to his disadvantage any rule by which his conditions of

service are regulated shall be made except by an authority which would have been competent to make such an order on the eighth day of March,

nineteen hundred and twenty-six, or by some person empowered by the Secretary of State to give directions in that respect.

18. It appears in a foot-note at p. 134 of the Bengal Legislative Manual, Volume I-1942, that the Secretary of State, in exercise of the powers

conferred by paragraph (a) of sub-section (3) of section 241 of the Government of India Act, 1935, authorised the Governor-General in the case

of persons serving in connection with the affairs of the Federation, and the Governor, in the case of persons serving in connection with the affairs of

a Province, to give the directions referred to in the said paragraph. (Vide--Government of India, Finance Department, Notification No. F. 1 (12)-

Ex. 1|37, dated the 17th February, 1938). This is important inasmuch as it is contended that the provisions made in the West Bengal Service Rules

have worked prejudicially to the petitioner, who was serving His Majesty in his civil capacity before the prescribed date.

19. Pausing here for a moment, it will be apparent that the previous history of the source of power in the State Government to promulgate rules

which will govern the conditions of service of persons within its administrative control is wholly academical, in view of the fact that section 241 of

the Government of India Act, 1935, is by itself sufficient to confer power upon the State Government to prescribe rules in respect of subordinate

services within its administrative control. Strictly speaking, it is not necessary to travel beyond that source to justify the promulgation of such rules

by the State Government. Reference to the earlier rules would be relevant where no such rules had been promulgated, as the earlier rules will

continue to operate u/s 276 of the Government of India Act, 1935.

20. The West Bengal Service Rules came into force with effect from the 1st January, 1941. They were made and amended from time to time by

the Governor of West Bengal, in exercise of the powers conferred by section 241 of the Government of India Act, 1935. It is mentioned in the

preface to the rules as published in 1948, that, the rules, though formally made u/s 241 of the Government of India Act, 1935, were not intended

to introduce any changes in the substance or effect of relevant existing rules. They were intended merely to reproduce, with adaptations where

necessary, the existing rules applying to officers under the rule-making power of the Provincial Government, as they stood at the date of the

compilation. Thus the rules are stated to be derived from:-

(a) Fundamental and Subsidiary Rules which continued in force after 1st April, 1937, in virtue of section 276 of the Government of India Act :

(b) New rules (including amendments) made u/s 241 of the Act between 1st April, 1937, and 1st November, 1948, and incorporated in the said

compilation.

21. Mr. Roy on behalf of the petitioners argued as follows: He says that the preface to the compilation makes it clear that the rules were not all

new rules promulgated in 1941. He says that there is nothing to show that rule 75 was promulgated after the notification dated 17th February,

1938. He points out that according to Appendix 9 to the West Bengal Service Rules; Part. I (page 122), rule 75 is the provincial adaptation of

F.R. 56(a) together with all that is needed of F.R. 56 (c). It appears that this provincial adaptation of F.R. 56(a) was effected by the Government

of Bengal, by Notification No. 8522F, dated the 3rd October, 1936 Mr. Roy argues that rule 75 is nothing but F.R. 56(a) with the provincial

adaptation made in 1936, and as it prejudicially affects his client's term of service, the Local Government could not promulgate it without being

empowered by the Secretary of State, which it was not, at any period prior to February, 1938. This argument appears to me to proceed upon a

mistaken view of the rules known as the "West Bengal Service Rules" which came into operation from 1st January, 1941. The rules commence in

the following manner :

The West Bengal Service Rules, Part I, made and amended from time to time by the Governor in exercise of the powers conferred by section 241

of the Government of India Act. 1935.

Chapter 1--Extent of Application:

1. The rules may be called the West Bengal Service Rules. Except where it is otherwise stated they shall be deemed to have come into force with

effect from the 1st January, 1941.

2. Subject to the provisions of the Government of India Act, 1935, and except where it is otherwise expressed or implied these rules apply to all

members of services and holders of posts whose conditions of service the Government of West Bengal are competent to prescribe.....

22. It will thus be seen that these rules are comprehensive and self-contained, and apply to all Government Servants within the administrative

control of the State of West Bengal. The cases which will not be so governed are set out in rule 2 and the petitioner does not fall in that category.

In this respect, the preface is somewhat misleading, in so far as it states that the rules are mere reproduction of the existing rules with the existing

adaptations, thereby conveying the mistaken impression that the rules are not a body of rules promulgated in 1941, but are a mere compilation of

existing rules, promulgated at various times. It is nothing of the sort. Historically speaking, it may be and probably to a great extent is, based on

existing rules made at various times. But it is in fact a body of rules promulgated in 1941, under the rule-making powers which the Government of

Bengal undoubtedly possessed in 1941. Thus, while F.R. 56(a) with its local adaptation made in 1936, may be inapplicable to the petitioner, Rule

75 (a) as promulgated in 1941, as part of the ""West Bengal Service Rules"", is clearly applicable, and it is irrelevant to consider its earlier history

and how it came to find a place in the 1941 rules. In 1941, the Government of West Bengal had clear jurisdiction to frame such a rule, and having

framed it, have ample power to apply it to the petitioner, who is clearly governed by it. Being confronted with it, Mr. Roy argues that in any event,

the records show that the Governor in promulgating these rules did not exercise his ""individual judgment"". In this connection, Mr. Roy refers to

section 52(1) of the Government of India Act, 1935, which runs as follows:-

52(1). In the exercise of his functions the Governor shall have the following special responsibilities, that is to say :

(c) the securing to and to the dependants of, persons who are or have been members of the public services of any rights provided as preserved for

them by or under this Act and the safeguarding of their legitimate interests.

Mr. Roy argues that the records show that the rules were promulgated at the instance, and with the approval of, the Minister, Mr. Suhrawardy and

not the Governor, and thus the Governor failed to discharge his special responsibility and the rules are therefore not promulgated in a way which,

would be binding upon his client. These records were produced in Court at the instance of Mr. Roy and since I have looked at them, I have

directed that a copy of the relevant portion thereof be made an exhibit.

The record shows that it was proposed to gather together in the form of a self-contained body of rules, dealing with conditions of service other

than compensatory allowance, medical attendance and conduct rules, to be called the ""Bengal Service Rules"". These rules which are based on the

existing rules, were laboriously compiled by Mr. Pinnell in a manual form and then placed before the Minister. The Minister approved of them and

afterwards they were placed before the Governor, who endorsed his signature thereon. Thereafter, they were published as ""The Bengal Service

Rules"" purporting to be made by the Governor in exercise of the powers conferred by section 241 of the Government of India Act, 1935. They

are now known as ""The West Bengal Service Rules.

23. As will appear from Appendix VIII, (IX) of the Government of India Act, 1935, the Governor must, in all matters within the scope of the

executive authority of the province, (save in relation to functions which he is required by the said Act to exercise in his discretion), act upon the

advice of his Ministers. In case, where he has special responsibilities he can decline to act upon such advice, if in his ""individual judgment"", it would

be inconsistent with the fulfilment of such special responsibility. In the present case, the rules were laboriously compiled and approved by the

Minister. The Governor in endorsing his signature must be presumed to have approved of the same. Mr. Roy would like to see specific words

used by the Governor signifying his approval. But the law does not require the use of any specific words. The entire evidence establishes beyond

doubt that the rules were approved by the Governor. They bear his imprimatur and purport to be promulgated by him. I find no substance in this

argument. Mr. Roy concedes that publication in the Gazette is not necessary in law to make the rules valid.

24. In my opinion it is quite plain that Rule 75(a) of the West Bengal Service Rules Part I, is applicable to the case of the petitioner. These rules,

made u/s 241 of the Government of India Act, 1935, or by virtue thereof, or under the powers conferred thereby, are good under the present

Constitution, by virtue of Article 313.

25. The learned Advocate-General argued that even assuming that the Civil Service Regulations continued to govern the matter, a breach thereof

was not justiciable. He quotes in support of this proposition two decisions of the Judicial Committee. The first is R. Venkata Rao v. Secretary of

State for India in Council (1) (L.R. 64 I A 55) The appellant there held office in the Civil Service of the Crown in India as a reader in the

Government Press, Madras. He fell under suspicion of being concerned in a leakage of information in respect of certain examination papers and

was dismissed from service without complying with the procedure prescribed by the Civil Services Classification Rules, 1920-24, made u/s 96B,

sub-section 2. of the Government of India Act, 1915. The contention of the appellant was that the statute gave him right, enforceable by action, to

hold his office in accordance with those rules and that he could only be dismissed as provided by the rules and in accordance with the procedure

prescribed thereby The respondent's contention was that the right was not actionable. Two English cases were cited--(1) Shenton v. Smith (2)

[(1895) A.C. 229], where it was held that Civil Servants of the Crown hold their offices during the pleasure of the Crown; not by virtue of any

special prerogative of the Crown, but because such are the terms of their engagement. If any civil servant considered that he had been dismissed

unjustly his remedy was not by a law-suit but by an appeal of an official or political kind. The second case was Gould v. Stuart (3) [(1896) A.C.

575], where the respondent Stuart held office in New South Wales under certain conditions expressly enacted in the body of the New South

Wales Civil Service Act, 1884. It was held that the provisions of the statute were ""inconsistent with importing into the conduct of service the term

that the Crown may put an end to it at its pleasure.

26. Speaking about the first case Lord Roche said as follows:-

As for the regulations, their Lordships again agree with Stone, J., that they are merely directions given by the Crown to the Governments of Crown

Colonies for general guidance, and that they do not constitute a contract between the Crown and its servants.

27. His Lordship then proceeds to say as follows:-

The question is : Does the present case fall into the general category defined and illustrated by Shenton's case (2) (supra), or the more exceptional

category defined and illustrated by Gould's case (3) (supra)? On the facts it stands somewhere between the two cases inasmuch as here the rules

are expressly and closely related to the employment by the statute itself. In these circumstances difference of judicial view in India has manifested

itself. There are decisions favourable to the present appellant in *Satish Chandra Das v. Secretary of State for India* (I.L.R. 54 Cal. 44); in *J.R.*

Baroni v. Secretary of State for India in Council (I.L.R. 8 Rang. 215), and to some extent also in *Bimalacharan Batabyal v. Trustees for the Indian*

Museum, (I.L.R. 57 Cal. 231). On the other hand, both Courts in the present case have adopted the contrary view. In their Lordships' opinion the

judgments in the Courts below express the correct view. The reasons which have led their Lordships to this conclusion may be shortly stated.

Section 96B in express terms states that office is held during pleasure. There is therefore no need for the implication of this term and no room for

its exclusion. The argument for a limited and special kind of employment during pleasure but with an added contractual term that the rules are to be

observed is at once too artificial and too far-reaching to commend itself for acceptance. The rules are manifold in number and most minute in

particularity, and are all capable of change. Counsel for the appellant nevertheless contended with most logical consistency that on the appellant's

contention an action would lie for any breach of any of these rules, as for example of the rules as to leave and pensions and very many other

matters. Inconvenience is not a final consideration in a matter of construction but it is at least worthy of consideration, and it can hardly be doubted

that the suggested procedure of control by the Courts over Government in the most detailed work of managing its services would cause not merely

inconvenience but confusion.

28. It was further pointed out that the rules carefully provided for redress of grievances by administrative process. This view was reiterated in a

case *R.T. Rangachari v Secretary of State for India in Council* 4) ((L.R. 64 IndAp 40). In *High Commissioner for India, etc. v. I.M. Lal* (5) (L.R.

75 IndAp 225), the Judicial Committee was called upon to interpret section 240 of the Government of India Act, 1935. It was held that the

provision as to reasonable opportunity of showing cause against the action proposed was now put on a mandatory basis and no longer rested on,

rules alterable from time to time. In *Shyamlal v. State of Uttar Pradesh* (6) [(1954) S.C.A. 476], it was held that compulsory retirement did not

amount to dismissal or removal and therefore did not attract the provisions of Article 311 of the Constitution or rule 55 of the C.S. (C.C.A.) Rules.

It was further held that rule 465(a) of the Civil Service Regulations applied to Civil Servants appointed by the Secretary of State in 1925. Although

reference was made before me to rule 465(a), I do not see how that has any relevancy because I am not considering the grant of pension and, in

any event, this rule does not apply to Ministerial Officers.

29. Mr. Roy also referred me to rule 159 (a) of the Civil Service Regulations. The wordings of this rule is identical with the provisions of rule 56(b)

(i) of the Fundamental Rules, the only difference is that instead of the word "officer" as appearing in the Civil Service Regulations, the word

servant" appears in the Fundamental Rules. For reasons mentioned above, it is clear that neither of these rules is applicable to the petitioner.

30. As regards the contention of the learned Advocate-General that the rules are administrative and as such are not justiciable, the argument

obviously requires very careful consideration. I do not see, however, any reason to decide this point on the facts of the present case. It is only if I

held in favour of the petitioner that such a question would have to be considered. Inasmuch as I hold that the rule that is applicable does not give

the petitioner any redress, it would be purely academic to decide as to whether the rules are administrative or statutory or whether they are

justiciable.

31. The result is as follows. The foundation of the petitioner's case is that Rule 56(b) (i) of the Fundamental Rules applies to him, and that he

should be retained in service as his efficiency is beyond question Mr. Roy had however conceded that if Rule 75(a) of the West Bengal Service

Rules applied, he had very little to say. According to that rule, 55 is the age of superannuation and it is entirely discretionary for Government to

retain him in service after the age of superannuation. It is obvious that this Court cannot compel the use of that discretion in a particular manner by

the issue of a high prerogative writ.

32. In the premises, this application fails and must be dismissed.

33. The Rule is discharged. All interim orders are vacated. There will, however, be no order as to costs, as a difficult interpretation upon a point of

law is involved in this case