

(1968) 09 MAD CK 0037

Madras High Court

Case No: None

Savarinathan (G.)

APPELLANT

Vs

Director of Postal
Services and Others

RESPONDENT

Date of Decision: Sept. 6, 1968

Acts Referred:

- Constitution of India, 1950 - Article 226, 311

Citation: (1970) 1 LLJ 293

Hon'ble Judges: M. Anantanarayanan, C.J; M. Natesan, J

Bench: Division Bench

Judgement

M. Anantanarayanan, C.J.

Though this writ appeal relates to a considerable area of facts traversed in Writ Petition No. 3060 of 1967, which was dealt with by Kailasam, J., the point now before us is a very short one. The writ petitioner was an Assistant Superintendent of the Postal Department at Madras, and he was compulsorily retired from service under certain rules. Admittedly, he was originally in the clerical cadre for some years, and later he became a gazettes officer of the department.

2. It is common ground between the department and the writ appellant, represented by Sri V. Rajagopalachari, that the department now seeks to rely on the notification No. 2350, dated 21 July 1965, constituting the Sixth Amendment to the Fundamental Rules. These relate to the age at which such Government servants are due to retire, and the circumstance under which they might be permitted to serve beyond that age. The relevant part of the rules is the amendment to Fundamental Rule 56(c), under which a Government servant, who entered the service prior to 31 March 1938, "shall be retained in service till the day he attains the age of 60 years." If this rule is to apply, the writ petitioner will certainly be entitled to continue in service till his sixtieth year, and, any order, prematurely retiring him before that date, may not be in accordance with the rules.

3. But the rules have to be read as a whole, and an exception has been statutorily framed with regard to this very rule. That is not disputed by Sri Rajagopalachari for the writ appellant. The exception is in the following terms:

...(j) Notwithstanding anything contained in this rule, the appropriate 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 Government servant after he has attained the age of 55 years by giving him notice of not less than three months in writing.

4. It appears to us to be indisputable that, since the implied covenant or the conditions of services, under which this appellant entered the department and served till he was 55 years of age, can only be taken to mean that a Government servant should retire at 55 and this extension of service up to 60 was very recent, the concerned writ appellant cannot say that if he is retired under Sub-clause (j) which we have referred to, that constitutes a punishment which is within the rigour of Article 311 of the Constitution of India. So the only point before us is, whether there was a valid retirement of this Government servant by the concerned authority, acting under Rule 66(j), or otherwise.

5. On this aspect, the learned Counsel states that there were proceedings against the Government servant with regard to a claim for house-rent made by him, but that these proceedings did not end in disciplinary action, there was certain amount held in challenge or doubt by the authority and the Government servant thought it expedient to pay this amount without further protest. There were no departmental proceedings, as such, with regard to this matter and no punishment was imposed. Hence, It is con-tended that if the only material, on which the authority came to the conclusion that it was not in the public interest to continue this officer in service, consisted of the material relating to payment of house-rents improperly made, or payment of such rents not made, then Rule 58(j) itself would not have been duly complied with, and there would be room for the exercise of our jurisdiction, as this is an error vitiating the order of retirement.

6. Naturally enough, the same arguments were addressed before the learned Judge, and it was stressed that, in the counter-affidavit, the authority expressly disclaimed material relating to irregular claims regarding house rent or non-payment of such rent, as the basis for the retirement. Learned counsel for the appellant (Sri V. Rajagopalachari) sought to contend before us, that there could not have been any other basis. The learned Judge applied his mind to the matter, and looked into the relevant files. He was satisfied that the concerned authority came to the bona fide conclusion that the officer should be retired in the public interest, and that there was relevant material in the files to support the conclusion. As is well-known, in the exercise of jurisdiction under Article 226, it will not be the function of the Court to canvass the adequacy of that material, or the extent to which it is credible, particularly where the right to retire is not being imposed in the form of a punishment, but in the form of an option given to the authority under the statutory

rules. So long as there is a conclusion arrived at by an authority bona fide, and it is supported by some material, the character of that material, and the degree of its adequacy, cannot be canvassed in writ jurisdiction.

7. We have also looked into the files, and we are satisfied that there was some other material, apparently of a far more serious character than mere irregular claims relating to rents or non-payments of rent, which would constitute only an audit objection, which formed the basis of that order. There is definite reference to investigation by the Vigilance authority, and we may certainly take notice of the fact that such investigation would relate to averments or complaints whether ill-founded or well-founded, of corruption, and not merely any procedural irregularity. It seems to be true that this material did not eventuate into any specific proceedings against the concerned officer. Probably, it was never disclosed to him, but that does not mean that, on such material before it, the authority cannot bona fide arrive at the conclusion that the public interest did require the retirement of the concerned Government servant, under Sub-rule (j).

8. Under the circumstances, we see no grounds for interference and the writ appeal is dismissed.