

PETITIONER:
S.N.PALLEGAL

Vs.

RESPONDENT:
STATE OF MYSORE

DATE OF JUDGMENT 22/12/1972

BENCH:
MUKHERJEA, B.K.
BENCH:
MUKHERJEA, B.K.
GROVER, A.N.

CITATION:
1973 AIR 671 1973 SCR (3) 199
1973 SCC (4) 153

ACT:
Mysore Civil Service Regulations Eighth Edition (1953)
of Art 294-Age of superannuation under Article whether 55 or
60.

HEADNOTE:

The appellant was an officer of the old State of Mysore. A the States Reorganisation Act of 1956, he entered service of the new State of Mysore constituted under that Act. The appellant was entitled to the benefits of the service rules which obtained before his transfer to the new State of Mysore, the relevant rules being the Mysore Services Regulations as they stood on 1 November, 1956. According to the State of Mysore the appellant was due to retire at the age of 55 years. He claimed however in a writ petition before the High Court that the age of superannuation under the rules was 60 years. The High Court rejected the petition. In appeal before this Court it was common ground between the parties that it was the Eighth Edition of the Regulations published in 1953 that was applicable to the case.

HELD : Art. 294 of the Eighth Edition does not leave any room for doubt on the point at issue. The discretion to retire an officer whether of the superior service or of the inferior service at 55 years All officers attaining that age 'may be required to retire.' It is clear that the officers themselves have no option in the matter. If Government decides to retire them, they must go out. At the same time, however, the Government has been given the discretion to retain them in service if the Government considers them to be fit and efficient. There is nothing in the language of Art. 294 which makes it incumbent on Government to give this extension after the age of 55 years. [205BC]

There was therefore no merit in the appeal which must accordingly be dismissed.

M.Narasimhachar v. The State of Mysore, [1960] 1 S.C.R. 981 and State of Mysore v. Padmanabhacharya, [1966] 1 S.C.R. 994, applied.

Union of India and Ors. v. R. V. Sadasiva Murthy etc., Civil Appeals Nos. 476 to 478 of 1969; Judgment delivered on 15 July 1969. distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2262 of 1971. Appeal by, special leave from the judgment and 'Order' dated November 25, 1969 of the Mysore High Court in Writ Petition No. 6201 of 1969.

C. K. Daphtary and R. B. Datar for the appellant.

B. Sen and M. Veerappa for the respondent.

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The Judgment (A the Court was delivered by MUKHERJEA, J. This appeal by special leave is directed against a judgment of the High Court of Mysore by which that High Court disposed of several writ petitions in which the principal question at issue was a common question of law. The appellant was an officer of the old State of Mysore. After the States Reorganisation Act of 1956, he entered service of the new State of Mysore constituted under that Act. The question that has arisen is : what is the superannuation age of the appellant? It is admitted that the appellant was entitled to the benefits of the service rules which obtained before his transfer to the new State of Mysore. The relevant rules are the Mysore Services, Regulations as they stood on 1 November 1956. According to the appellant the age of superannuation is 60 years while according to the respondent the age of superannuation is 55 years. Difficulty has arisen for two reasons. First, there are two versions of the pre-1956 Service Regulations, one to be found in the Seventh Edition of the Regulations published in 1945 and the other to be found in the Eighth Edition published in 1953. Secondly, there are three decisions of this Court, two of which namely *Al. Narasimha-char v. The State of Mysore* (1) and *State of Mysore v. Padmanabhacharya* (2) interpreting Art. 294 of the Eighth Edition have held that 55 years is the age of superannuation while the third decision in *Union of India and ors. v. R. V. Sadasiva Murthy etc.* (3) dealing with Art. 305 of the Seventh Edition which incidentally corresponds to Art. 294 of the Eighth Edition has held that the age of superannuation is 60 years. According to the High Court the latest decision of this Court in *Union of India and ors. v. R. V. Sadasiva Murthy etc.* (3) which has supported the petitioners' case of 60 years being the age of superannuation rested on the effect of clause (c) of the old Art. 305. On behalf of the appellant, however, it was urged that the latest decision of this Court in *Sadasiva Murthy's* (3) case in the correct decision to be followed in interpreting Art. 294 of the Eighth Edition as well as Art. 305 of the Seventh Edition. It is necessary at the outset to set out Art. 305 of the Seventh Edition as well as Art. 294 of the Eighth Edition one after the other for making an effective comparison of these two Articles. It is also of some importance in this connection to set out the provisions of Art. 428 of the Seventh Edition.

Art. 305 of the Seventh Edition

"(a) An officer in superior service, who has attained the age of fifty-five years, may be required to retire,

(1) [1960] 1 S.C.R. 981.

(2) [1966] 1 S.C.R.

994.

(3) Civil Appeals Nos. 476 to 478 of 1969.: Judgment delivered on 15 July, 1969

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unless Government considers him efficient, and permits him to remain in the service. But as

the premature retirement of an efficient officer imposes a needless charge on the State, this rule should be worked with discretion. And in cases in which the rule is enforced, a statement of the reasons for enforcing it shall be placed on record.

Note (b) x x x x

"(c) The following ruling should be kept carefully in view in applying the rules regarding compulsory retirement-

'As some misapprehension appears to exist on the subject of the rule regarding the compulsory retirement of officers after the age of fifty five years, it is desirable to state that not only do Article 305 and Article 428 of these Regulations read together, not require the compulsory retirement of any efficient officer of whatever age, but that though the Articles authorise the Heads of Departments, at their discretion, to presume that an officer is inefficient at fifty five years of age conditionally, at sixty years of age absolutely, yet the whole tenor of the rules is that such presumption shall be exercised with careful consideration both for the individual who would suffer by being deprived of his appointment while capable of discharging its duties. and for the finances of the country, which would suffer we're officers, still efficient prematurely thrown upon the pension list.,

Art. 428 of the Seventh Edition

"If an officer in superior service, whose age is less than sixty years, is required to retire under Article 305 (a), the Head of his office must certify in the column for any other remarks on the third page of the application for his pension, the cause of the applicant's inefficiency, and quote the order of Government or of any officer to whom power under Article 308 (a) (2) may have been delegated. sanctioning the applicant's retirement as superannuated. If the officer wishes to retire of his own accord under Article 310, the fact should be stated."

Art. 294 of the Eighth Edition

"294(a)-A Government servant in superior or inferior service, who has attained the age of fifty-five years, may be required to retire, unless the Government

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considers him efficient, and permits him to remain in the service. But as the premature retirement of an efficient Government servant imposes a needless charge on the State, this rule should be worked with discretion And in cases in which the rule is enforced, a statement of the reasons for enforcing it shall be placed on record.

NOTE 1.-It is trusted that the Heads of Departments will always be disposed to extend to this rule a very liberal interpretation, so that the State may, in no case, be deprived of the valuable experience of really efficient

Government servants by the untimely exercise of the powers of compulsory retirement on pension.

NOTE

(b)-These rules apply to all Government servants without reference to their nationality.

(c)-Heads of Departments are authorised to retire all non-gazetted Government servants under them when they attain the age of fifty-five, and to grant extension of service for a period not exceeding six months only in very exceptional cases if the Government servant is considered to be efficient and such extension is considered absolutely necessary in the interest of public service. In no case, extension be given beyond six months without orders of Government."

The first case that came up to this Court for interpretation of these Regulations was the case of M. Narasimhachar v. The State of Mysore(1). In that case this Court was called upon to construe the effect Art.294(a) of the Eight Edition of Mysore Services Regulations. The petitioner, who was retired from service from a particular date on the ground that he had attained superannuation on that date, challenged the order of compulsory retirement on various grounds. One of the grounds was that the order was contrary to Art. 294(a) of the Regulations. The petitioner, in particular, relied on Art. 297 of the Mysore Services Regulations which laid down that a government servant in superior services who has attained the age of 55 years, may at his option retire from the service on his superannuation pension. The petitioner urged that Art. 297 indicated clearly that the option is with the public servant whether he retires at the age of 55 years or not. This court rejected that contention and held : first, that under Art. 294(a) the age of retirement is 55 years and, secondly, Art. 297 which is complementary to Art. 294(a) allows the government servant, if the Government wants to keep him in service after 55. to opt for retirement. Wanchoo J.

(1) [1960]1 S.C.R. 981

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observed that Art. 297 did not mean that Government cannot retire him at the age of 55 years if he does not exercise the option..

The next case that came up before this Court was the case of State of Mysore v. Padmanabhacharya(1). In that case, Padmanabhacharya who was a trained teacher completed the age of 55 years on 3 February 1958 and was ordered to be retired from service from that date on the ground of superannuation. Padmanabhacharya challenged the validity of the order in a writ petition before the High Court of Mysore and contended that Rule 294(a) of the Mysore Services Regulations which prescribed the age, of retirement fixed the normal age of superannuation at 58 years instead of 55 years as the result of an amendment made in April 1955. The State of Mysore raised two contentions : First, that even after the amendment of 1955 the age of superannuation in, the case of trained teachers continued to be 55 years though it was open to the State to allow them upto the age of 58 years if they were fit and efficient and, secondly that a notification issued by the Governor on 25 March 1959 under Art. 309 of the Constitution validated the action of retiring Padmanabhacharya and certain other officers on their, attaining the age of 55 years. The High Court rejected both these two contentions and allowed the petition. On appeal,

this Court held with regard to the first contention that under Rule 294(a) as it was before 29 April 1955, the normal age of retirement was 55 years for all including trained teachers but it gave discretion to the Government to extend the service of efficient government servants beyond the age of 55 years.. The position, however, was changed in regard to trained, teachers as a result of the addition of Note 4 to Rule 294(a) which entitled them to continue in service till the age of 58 years. unless the Government came to the conclusion that they did not have a good record of service and were not upto the mark. The net effect of this decision was that apart from trained teachers, the, normal age of superannuation was 55 years unless Government decided to extend it upto 58 years on the ground of fitness.

This Court was called upon to construe the effect of Art. 305' of the Seventh Edition of the Mysore Services Regulations in Union of India v. R. V. Sadasiva Murthy(3). In that case Sada-siva Murthy was a "superior service" employee of the Mysore, State Railways. After the merger of the State of Mysore with the Indian Union he became an employee of the Indian Railway Administration. On 5 January 1969 he received an order compulsorily retiring him from service. Sadasiva Murthy moved a writ petition in the High Court of Mysore in which he asked for a, declaration that the Indian Railway Administration was bound to continue him in service till he attained the age of 60 years. His, (1) [1966] 1 S.C.R. 994.

(2) C. As. Nos. 476-478 of 1969 decided on 15-7-1969.

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contention was upheld by the High Court and the order of compulsory retirement was quashed. Upon an appeal from that decision this Court confirmed the decision of the High Court. The appellant before us strongly relied on this latest decision of this 'Court.

Before the High Court an attempt was made on behalf of the .State to explain the difference between the latest decision of this 'Court and the two earlier decisions by pointing out that Art. 305 of the Seventh Edition contained a ruling of the Government which indicated that Art. 305 and Art. 428 should be, read together. It was contended that Art. 428 suggests that an officer in the superior service could be, retired before reaching 60 years only on the ground of inefficiency. The argument was that this clause (c) which attracts the operation of Art. 428 was omitted in the Eighth 'Edition and Art. 294 of that Edition standing by itself indicated 5.5 years to be the age of superannuation.

In our opinion, it is not necessary for us, to examine the question whether Art. 428 of the Seventh Edition which is essentially a rule regarding pension supports the contention that the normal age of superannuation is 60 years.

So far as the instant case is concerned, we consider the two .-earlier decisions to be more apposite for two reasons. First, it appears from the judgment of the High Court of Mysore that it was a common ground of the parties to the instant case that the conditions of service governing the services of the appellant are those contained in the Eighth Edition. Since in the two earlier decisions it was the rule of the Eighth Edition which was construed those are the decisions with which we are concerned directly in the instant case. Secondly, the decision in the latest case may be supported on an entirely different ground. Rule 2046 of the Indian Railway Fundamental Rules as amended on 11 January 1967 provided, inter-alia, that if a ministerial railway servant, who entered Government service on or before

31 March 1938 and held on that date (i) a lien or a suspended lien on a permanent post, or (ii) a permanent posit in a provisional substantive capacity and continued to hold the same without interruption until he was confirmed in that post, he was to be retained in service till he attains the age of 60 years. This rule was modified on 23 December 1967 so that the expression "Government service" in that rule included service rendered in a former provincial Government and in ex-Company and ex-State Railway, if the rules of the Company or of the State had a similar provision. In the facts of the case of Sadasiva Murthy, he, it appears, completely answered the description of a ministerial railway servant given in Rule 2047. Therefore he could claim 60 years to be his age of retirement. From that point of view the judgment in Sadasiva Murthy's case is un-

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exceptionable. On facts, however, that case is entirely distinguishable from the facts of the present case in which the petitioner appellant is not a Railway officer and does not, therefore, claim the benefit of Rule 2046 of the Indian Railway Fundamental Rules.

Apart from the considerations we have just mentioned, in our opinion Art. 294 does not leave any room for doubt on this point. The discretion to retire an officer whether of the superior service or of the inferior service at 55 years has been given in clear unmistakable language to Government. All officers attaining that age "may be required to retire". It is clear that the officers themselves have no option in the matter. If Government decides to retire them, they must go out. At the same time, however, the Government has been given the discretion to retain them in service if the Government considers them to be fit and efficient. There is nothing in the language of Art. 294 which makes it incumbent on Government to give this extension after the age of 55 years.

In these circumstances we do not think there is any merit in the appeal which is accordingly dismissed. We do not, however, make any order as to costs.

G.C.

Appeal dismissed.

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