

PETITIONER:
STATE OF U.P.

Vs.

RESPONDENT:
SHYAM LAL SHARMA

DATE OF JUDGMENT 12/08/1971

BENCH:
RAY, A.N.
BENCH:
RAY, A.N.
SIKRI, S.M. (CJ)
PALEKAR, D.G.

CITATION:
1971 AIR 2151 1972 SCR (1) 184
1972 SCC (2) 514

ACT:
Civil service-Compulsory Retirement-Order when can be said to be by way of Punishment

HEADNOTE:
The Order compulsorily retiring the respondent, a head constable, made reference to a letter,, dated March 16, 1962 of the Police Head Quarters approving a proposal by the Superintendent of Police, dated February 14, 1962, for the compulsory retirement of the respondent. The proposal had mentioned that the respondent was "considered to be a bad lot incorrigible and no longer useful". The respondent filed a suit for a declaration that the Order was illegal since the procedure under Art. 311 of the Constitution and r. 55 of the Civil Service Regulations was not followed. The trial court dismissed the suit. In appeal the Civil and Sessions Judge came to the conclusion that the proposal dated February 14, 1962, formed the necessary adjunct to the order leading to compulsory retirement and passed a decree in favour of the respondent. The High Court confirmed the decree.

Allowing the appeal,

HELD: In ascertaining whether an order of compulsory retirement is one of punishment it has to be seen whether in the order there is any element of charge or stigma or imputation or any implication of misbehaviour or incapacity against the officer concerned. Where the authorities can make an order of compulsory retirement for any reason and no reason is mentioned in the order it cannot be predicated that the order of compulsory retirement has an inherent stigma in it. Unless it is established from the order itself that a charge or imputation against the officer is made the condition of the exercise of the power or that by the order the officer is losing benefits already earned, the order cannot be said to be one for dismissal or removal or in the nature of penalty or punishment. [189 B; 192 D, E]

In the present case the order of compulsory retirement does not suffer from any such vice nor can it be, on the facts found, said to have been passed on account of malice. The High Court fell into the error of holding that the order contained stigma by going behind the order of retirement and

also by misreading the proposal dated February 14, 1962 in the manner not warranted by the letter itself containing a mere proposal for compulsory retirement. Only the proposal was sent for approval. The order cannot be stated to sustain the plea of punishment by extracting opinions-expressed by the authorities in regard to the officer in the past. [192 F; 190 C-D]

I. N. Saksena v. State of Madhya Pradesh, [1967] 2 S.C.R. 496, followed.

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Shyam Lal v. State of U.P..[1966] 1 S.C.R. 26, State of Bombay v. Saubhagchand M. Doshi, [1958] S.C.R. 571, Dalip Singh v. State of Punjab, [1961] 1 S.C.R. 88 and State of Uttar Pradesh v. Madan Mohan Nagar, [1967] 2 S.C.R. 333, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1203 of 1969 Appeal by special leave from the judgment and order dated September 20, 1968 of the Allahabad High Court in Second Appeal No 1791 of 1967

L. M. Singhvi and O. P. Rana, for the appellant.

R. N. Sharma, N. N. Sharma and C. P. Lal for the respondent

The Judgment of the Court was delivered by

RAY, J.-This appeal is by special leave against the judgment dated 20 September 1968 of the High Court of Judicature at Allahabad dismissing the appeal preferred by the State of Uttar Pradesh against the decree passed by the Court of Civil and Sessions Judge in favour of the plaintiff-respondent declaring that the order of removal of the plaintiff-respondent from service is void and is illegal and the plaintiff-respondent should be deemed to be still in service.

The only question for consideration in this appeal is whether the order of compulsory retirement of the plaintiff-respondent was one of punishment.

The High Court came to the conclusion that the order of compulsory retirement dated 28 March, 1962 and the letter dated 16 March, 1962 referred to in the order of compulsory retirement and the memorandum dated 14 February, 1962 referred to in the, letter dated 16 March, 1962 when read together established that the order of compulsory retirement was to punish the plaintiff-res-pondent.

The order dated 28 March, 1962 was as follows:-

"As per orders contained in the P.H.Q. letter No. IV-780-60 dated 16-3-62 the compulsory retirement of H.C./22 C.P. Shyam Lal is sanctioned. He is retired compulsorily w.e.f.. 1-4-62

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The letter dated 16 March, 1962 was as follows:-

"U.P. POLICE HEAD QUARTERS, ALLAHABAD-1 No. IV-780-60, dated 16 March, 1962.

To,

The Supdt. of Police,
Mathura.

Subject : Compulsory retirement of Head Constable Sri Shyam Lal Sharma of the Mathura District Police.

Reference: Your No. P-99 dated Feb. 14, 1962.
Your proposal for the compulsory retirement of Head Constable Sri Shyam Lal Sharma is

approved. He should be retired compulsorily forthwith and granted four months leave preparatory to compulsory retirement, if he so applied for.

Sd/- M.L. Capoor,
Deputy Supdt. of Police, HDQRS. for Inspector General of Police.

The letter P. 99 dated 14 February, 1962 was as follows:-

"To

The Dy. Inspector Genl. of Police;
Agra Range, U.P. Camp., Agra.

Subject: Compulsory retirement of Head Constable Shyam Lal Sharma No. 22 C.P. of the Mathura District.

Reference: P.H.Q. endorsement No. IV-56959 dated 17-1-61.

2. The above named Head Constable has put in 26 years of service and has lost his utility to the Department. He is considered to be a bad lot incorrigible and no longer useful. I recommend his compulsory retirement on proportionate pension w.e.f. 1-4-1962.

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3. The Proposal for the compulsory retirement of this Head Constable on Police Form No. 61 in duplicate together with his Ch. Roll and the following documents is herewith sent.

P.H.Q. (IV)

For n.a.

May be sanctioned four months leave preparatory to compulsory retirement.

1. A note containing the charge preferred against the Head Constable.
2. Memo of leave (in duplicate).
3. History of service (in duplicate).

4. It is therefore requested that necessary remarks may kindly be recorded on the proposal and his case be forwarded to P.B.Q. for issuing orders for his compulsory retirement w.e.f. 1-4-1962".

The High Court held that reading the three documents together "there cannot be any escape from holding that the order of compulsory retirement was to punish the plaintiff and nothing else". The High Court read the proposal dated 14 February, 1962 in this language "recommended for compulsory retirement on proportionate pension w.e.f. 1-4-1962 due to the bad record of service as he is considered to be a bad lot incorrigible and no longer useful".

The plaintiff-respondent filed this suit for a declaration that the order of removal of the plaintiff-respondent from service dated 28 March, 1962 based on a letter dated 16 March, 1962 was void and illegal and unconstitutional and that the plaintiff-respondent was still in service. The defence of the State was that the plaintiff-respondent was not retired on the ground of misconduct, inefficiency or incapacity and, therefore, the procedure under Article 311 and rule 55 of the Civil Service Regulations was not required to be followed.

The court of the Munsif trying the suit dealt with issue No. 3, namely, whether the "retirement of plaintiff respondent was due to malice and by way of punishment"

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and answered the issue in the negative. The court of the Munsif also held that the order was not illegal and

dismissed the suit.

The Civil and Sessions Judge in hearing the appeal held that though the order dated 28 March, 1962 was 'to the effect that the plaintiff-respondent was to be retired compulsorily with effect from 1-4-1962 it did not expressly mention any stigma against the plaintiff-respondent. The order of compulsory retirement according to the Civil and Sessions Judge was based on the letter of the Police Headquarters dated 16 March, 1962 which was an approval of the proposal made by the Superintendent of Police by letter dated 14 February, 1962 and the proposal of the Superintendent of Police clearly gave out that the sole basis for compulsory retirement of the plaintiff respondent was 'his being incorrigible and having outlived his utility to the Department'.

The Court of Civil and Sessions Judge on that ground came to the conclusion that the order of compulsory retirement was based on the proposal of the Superintendent of Police accepted 'in toto' by the Police Head Quarters and therefore the proposal formed 'necessary adjunct to the order leading to compulsory retirement. The court of Civil and Sessions Judge passed a decree in favour of the plaintiff-respondent. An appeal was preferred to the High Court by the State against the judgment of the Court of Civil and Sessions Judge. The High Court agreed with the reasoning and conclusion of the court of Civil and Sessions Judge and dismissed the appeal.

The implication and effect of orders of compulsory retirement came up for consideration before this Court from time to time and reference may be made to five of these decisions. These are Shyam Lal v. State of U.P. & Anr. [1955] 1 S.C.R. 26, State of Bombay v. Saubhagehand M. Doshi, [1958] S.C.R. 571, Dalip Singh v. The State of B Punjab, [1961] 1 S.C.R. 88, The State of Uttar Pradesh v. Madan Mohan Nagar, [1967] 2 S.C.R. 333, and I. Ar. Saksena v. State of Madha Pradesh, [1967] 2 S.C.R. 496.

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The following propositions can be extracted from these decisions. First, in ascertaining whether the order of compulsory retirement is, one of punishment it has to be ascertained whether in the order of compulsory retirement there was any element of charge or stigma or imputation or any implication of misbehaviour or incapacity against the officer, concerned. Secondly, the order for compulsory retirement will be indicative of punishment or Penalty if the order will involve loss of benefits already earned. Thirdly, an order for compulsory retirement on the completion of 25 years of service or an order of compulsory retirement made in the public interest to dispense with further service will not amount to an order for dismissal or removal as there is no element of punishment. Fourthly, an order of compulsory retirement will not be held to be an order in the nature of punishment or penalty on the ground that there is possibility of loss of future prospects, namely that the officer will not get his pay till he attains the age of superannuation, or will not get an enhanced pension for not being allowed to remain a few years in service and being compulsorily retired.

Judged by the principles enunciated by this Court it is apparent that the order of compulsory retirement in the present case does not on the face of it contain any stigma or imputation or penalty. It is not the case of the plaintiff-respondent that the order of compulsory retirement involved any loss of benefits already earned or that there was any penalty in the nature of loss of emoluments or

pension. It was contended on behalf of the plaintiff respondent that the reasoning adopted by the court of Civil and Sessions Judge and upheld by the High Court was correct that the letters dated 16 March 1962 and 14 February, 1962 established in the present case that there was stigma in these letters and the order of compulsory retirement was based on these letters and therefore the order was one of punishment. The letter dated 16 March, 1962 stated that "proposal for compulsory retirement..... is approved". This letter cannot be said to have any stigma or imputation. It was submitted that inasmuch as the proposal for retirement was approved, therefore, there was approval of the letter dated

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14 February, 1962 and that letter was the basis of the order of compulsory retirement.

The letter dated 14 February, 1962 was in four paragraphs. The concluding paragraph contained a proposal for compulsory retirement of the plaintiff-respondent. The concluding paragraph did not contain any stigma or imputation against the plaintiff-respondent. In the preceding paragraph 2 the author of the letter wrote that "He is considered to be a bad lot incorrigible and no longer useful". It was said on behalf of the plaintiff-respondernt that there was stigma in the words "incorrigible and no longer useful" and the order of compulsory retirement was based on that stigma. Only the proposal for compulsory retirement was sent for approval. The order of compulsory retirement cannot be stated to sustain the plea of punishment by extracting opinions expressed by the authorities in regard to the officer in the past.

This Court in Saksena's case (supra) said "where an order requiring a Government servant to retire compulsorily contains express words from which a stigma can be inferred, that order will amount to removal within the meaning of Art. 31 1. But where there are no express words in the order we cannot delve into Secretariat files to discover whether some kind of stigma can be inferred on such research". In Saksena's case (supra) the order was as follows

"In pursuance of the orders contained in General Administration Department memorandum No. 433-258-1 (iii)/63 dated the 28th February 1963, the State Government have decided to retire you with effect from the afternoon of the 31st December, 1963".

The relevant rule in Saksena's case (supra) conferred power on the Government to retire an officer after he attains the age of 55 years on three months' notice without assigning any reason. The rule stated that the power would normally be exercised to weed out unsuitable employees after they have attained the age of 55 years.

It was contended on behalf of Saksena that the order of retirement cast a stigma. This Court in Saksena's

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case referred to two earlier decisions of this Court to illustrate as to whether the order of retirement itself cast a stigma. One was Jagdish Mitter v. Union of India, A.I.R. 1964 S.C. 449 where the order was in these terms

"Shri Jagdish Mitter, a temporary 2nd Division Clerk of this office having been found undesirable to be retained in Government service is hereby served with a month's notice of discharge with effect from November 1, 1949".

The other was the decision in State of Uttar Pradesh v. M.

M. Nagar (supra) where the order of retirement was as follows :-

"I am directed to say that the Governor has been pleased to order in the public interest under Article 465A and Note (1) thereof of the Civil Service Regulations, the compulsory retirement with effect from September 1, 1960 of Sri Madan Mohan Nagar, Director State Museum, Lucknow who completed 52 years of age on July 1, 1960 and 28 years and 3 months of qualifying service on 31-5-1960 as he has outlived his utility".

In Nagar's case (supra) this Court held that the words respondent had outlived his utility" occurring in the order attached stigma to the officer. In Saksena's case (supra) the order was that the Government decided to retire the officer with effect from 31 December 1963 and as the order did not contain any words from which stigma could be inferred it could not be said that the order of compulsory retirement amounted to an order of removal in Saksena's case (supra). This Court in Shyam Lal's case (supra) held that the mere fact that the Government servant was compulsorily retired before he reached the age of superannuation could not in itself be a stigma.

The ruling in Saksena's case (supra) is also that where there are no words in the order of compulsory retirement which throw any stigma there should not be any inquiry into Government files to discover whether any remark amounting to stigma could be found in the files. The reason is that it the order of compulsory retirement which alone is for examination. If the order

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itself does not contain any imputation or charge against the officer the fact that, considerations of misconduct or misbehaviour weighed with the Government in coming to its conclusion whether any action could be taken under rule 278 does not amount to any imputation or charge against the officer". This was the view expressed by this Court in Dalip Singh's case (supra). In that case the relevant rule was as follows

"The State reserves to itself the right to retire any of its employees on pension on political or on other reasons."

Where the authorities can make an order of compulsory retirement for any reason and no reason is mentioned in the order it cannot be predicated that the order of compulsory retirement has an inherent stigma in the order. In the present case, the fact found is that the order of compulsory retirement could not be said to be on account of malice.

Unless it is established from the order of compulsory retirement itself that a charge or imputation against the officer is made the condition of the exercise of that power or that by the order the officer is losing benefits already earned, the order of retirement cannot be said to be one for dismissal or removal in the nature of penalty or punishment. In the present case, the order of compulsory retirement does not suffer from any such vice.

The High Court fell into the error of holding that the order of compulsory retirement in the present case contained stigma by going behind the order of retirement and also by misreading the letter dated 14 February, 1962 in the manner not warranted by the letter itself containing a mere proposal for compulsory retirement.

For these reasons, the appeal is allowed. There will be no order as to costs. The parties will pay and bear

their own costs.

K. B.N.

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Appeal allowed.

JUDIS