

PETITIONER:
MEGHRAJ URKUDAJI TEMPLE

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT: 10/08/1998

BENCH:
S.C. AGARWAL, M. SRINIVASAN, A.P. MISRA

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

MISRA, J.

The appellant has challenged the impugned Government Notice dated 23rd January, 1989 under Rule 10(4) (a) (i) of the Maharashtra Civil Services (Pension) Rules 1982 (hereinafter referred to as 'Pension Rules') for his premature retirement from Government service. The present appeal is filed against the judgement dated 29th June, 1992 passed by the Maharashtra Administrative Tribunal at Bombay by which the appellant's petition for quashing the aforesaid notice was dismissed.

Rule 10 of the Pension Rules empowers the Government to prematurely retire a Government servant in public interest. Criteria or guidelines for such retirement are not spelt out under the Rule but are expressed under the Circulars dated 2nd September, 1977, 1st September, 1983 and 12th May, 1986. Prior to the aforesaid Notice dated 23rd January, 1989, Special Review Committee considered the appellant's case along with his confidential record for the period of seven years ending 1986-87 in the light of the criteria laid down in the criteria laid down in the Circular dated 12th May, 1986. In terms of the said Rule the appellant has challenged the impugned notice mainly on the ground that Circular dated 12th May, 1986 is not applicable to his case instead Circular dated 1st September, 1983 is applicable, under which there is no provision for a second review and review is only permissible before one reaches the age of 50 years. In this case this having not been done, it would be deemed to have been approved. Hence, subsequent review after crossing the age of 50 years would constitute to be the second review which is barred by the Circular dated 1st September, 1983. He further submits even if the aforesaid 1986 circular is applicable, he having been promoted as Depute Superintendent Engineer from the post of Executive Engineer after 1986, which is a promotional post any adverse document would be deemed to have been wiped off. For all these reasons, the impugned Notice is liable to be quashed.

In order to appreciate the point it is necessary to refer to some essential facts.

The appellant was born on 11th May, 1935 thus completed the age of 49 years on 11th May, 1984 and attained the age of 50 years on 11th May, 1985. It is not in dispute appellant joined his services in the Public Works Department prior to his age of 35 years. He was promoted to the post of Deputy Engineer in 1973 and further promoted as Executive Engineer in 1981. The appellant's case is the continued in service beyond the age of 50 years. It is on these facts submission is as per requirement of the aforesaid circular of 1983 which requires review of a case prior to one attaining the age of 50 years and that not having been done, and he continued even after this, it would be deemed to have been reviewed for approval. With reference to 1983 circular, it is submitted there is no provision for a second review, on the contrary it specifically records only one single review should be undertaken in respect of Class I and II Gazetted Officers, who have entered into services before the age of 35 years and about to reach the age of 50 years or completed 30 years qualified service whichever is earlier to which class appellant belongs. It further records a second review at the age of 55 years should not be taken as a matter of course. However, Government reserves its right to review the case of any such officer at any time after the initial review based on his subsequent work and conduct or physical or mental health which may make premature retirement clearly desirable. In the present case the contention rightly is that we are not concerned about this part of the circular. In the present submission in when he continued in service even after attaining the age of 50 years there would not arise any premature retirement under 1983 circular it can only be by a later review on a limited ground which is referred in the latter part of this circular, which is not applicable to the appellant's case.

It is also submitted even if it could be said second review was permissible the criteria for retention in service ought to have been that which prevailed at the time appellant reached his 50th year that would be admittedly 'not below average' as set out in Government Circular dated 1st September, 1983. Hence, the Review Committee fell into error in applying the standard as set in the Circular dated 12th May, 1986, to be 'not below good'. Thus if standard as set in the circular dated 1st September, 1983 is applied, the appellant was qualified for promotion. As per the Tribunal's order the review of appellant's case was taken on 9th June, 1987.

On the other hand case of the Respondent-State is that prior to the impugned notice dated 30th January, 1989, the Special Review Committee considered the case of the appellant along with the confidential record for the period of seven years ending 1986-87 in the light of the criteria as laid down as per the Government circular dated 12th May, 1986. The said Committee came to the conclusion that his record is on the whole less than good, hence, recommended for compulsory retirement of the appellant. The said recommendation has also been accepted by the Government and he has been ordered to be retired prematurely. However, the Government decision to retire the appellant prematurely is based on the overall performance for the relevant years in question.

The Bench hearing this petition earlier was prima facie inclined to accept the contention for the appellant but in view of the decision in case *Suryakant Govind Oke vs. State of Maharashtra* (1995 Suppl. (2) SCC 420) in which it was held that even if an Officer's case has not been reviewed before he crossed the age of 50 years, his case can be

reviewed under Circular dated 12th May, 1986 read with Rule 10 (4) (a) (i) of the aforesaid Rule. This led for this case being referred to a larger Bench by means of an order dated 13th May, 1998. This is how this case is placed before us.

The case of SuryaKant Govind Oke (Supra) while considering the case with reference to the Circular dated 12th May, 1986 recorded that the said Circular took into account the earlier Circular dated 2nd September, 1977, 1st September, 1983 and 30th November, 1984, held:

Para 8: " A conjoint reading of the above two paras of the circular show that the cases of government servants, Class I gazetted, may be reviewed once and the review may take place at the age of '50-55' years. Undoubtedly in this Case, review has taken place at the age of 55 in so far as the appellant is concerned. We are not persuaded to accept the argument that when there was to first review before the employee reached the age of 50 years there could be no review at the age of 55, to determine whether the employee deserved to be continued in service. The Rules and the Circular do not prohibit the review at the age of 55."

However, the case later was decided on the basis of the facts of that case based on the relevant service records. In fact learned counsel for the appellant submitted, in case his submission on the applicability of Circular dated 1st September, 1983 is not accepted then Court may examine the appellant's service records as was done in the case of SuryaKant Govind Oke (Supra).

We have heard learned counsel for the parties at length. We have scrutinised the Circular dated 1st September, 1983. Firstly, there is nothing in it to be read as deemed review in case any officer's case is not considered before he crosses the age of 50 years. It is true the said Circulars refers to a review of any officer of Class I and II only once, but this would not lend any support to the appellant as nothing is brought before us to show that any review was ever made earlier to debar the review in question to construe it to be second review. In fact the aforesaid review by the Special Review Committee on 9th June, 1987 was the first review exercised by the respondent in respect of the appellant's case. This apart, even if we accept appellant's interpretation the same stands dissolved in view of para 3 of the Circular dated 12th May, 1986 which is quoted thereunder:

3. "Those Govt. Servants whose review s have not been done on their attaining the age of 50/55 years and those whose procedure as stated in a, b and c hereinabove will be followed."

This makes it absolutely clear in respect of such Government servant whose case has not been reviewed on their attaining the age of 50/55, is to be done in terms of this para. As we have already recorded there was no review done by the Respondent-State, no review done by the Respondent-State, admittedly, even according to the appellant, before he reached the age of 50 years. Hence, review is permissible under this para which totally discards the interpretation of

learned counsel for the appellant based on the circular of 1983.

We further do not find any merit in the submission for the appellant that the special Review Committee at the point of Consideration of case of appellant should have only considered the standard as set out in the circular dated 23rd January, 1983 as that was the Circular when the appellant attained the age of 50 years. Admittedly, when the Special Review Committee examined the case of the appellant, as aforesaid, on 9th June, 1987, the Circular dated 12th May, 1986 was in existence. In fact para 3 of this Circular has empowered the authority to review all such cases, to which the appellant falls, whose review was not undertaken earlier. These circulars are in fact procedural in nature. Whenever any case is reviewed all or any such circulars in force, at that point of time whenever that case is considered, such circulars would be applicable, unless barred by it or any other law in force, which is not the case here. IN fact even the 1983 Circular's latter part as aforesaid empowers Government to prematurely retire on any materials coming under it scrutiny subsequently. Thus the special Review Committee rightly tested the appellants's case on the standard, 'not below good' as per 1986 Circular which was in force at that relevant time and not on the standard as set out in the 1983 Circular, namely, 'not below average' so we have no hesitation to hold that appellant's case is covered by the Circular dated 12th May, 1986 and the authority rightly tested his case on the standard of 'not below good'. It is not in dispute in this case, on the test of this standards, for the relevant years in question, the appellant would not qualify.

Lastly, learned counsel for the appellant submitted in any case the consideration based on the standard on 1986 Circular in case any material adverse existed would stand erased so far the appellant is concerned, since the appellant was promoted from the pst of Executive Engineer to the post of Deputy Superintendent Engineer. reliance is placed on the letter of the impugned Notice dated 23rd January, 1989 itself describing him as Deputy Superintendent Engineer. When we asked the learned counsel to place any material of his taking this ground before any Authority or before the High Court, he was unable to point the same. We do not find even such a ground in the Special Leave Petition. Even otherwise we find mere description, as aforesaid, as such, firstly in the absence of any details, whether Deputy Superintendent Engineers a promotional post or an equivalent post, it is not possible to hold he was promoted as such. No inference could possibly be drawn on the basis of describing him to be as such in the said letter. This apart we find in an affidavit filed before the High Court by Vital Baburao Brahmakeshatriay, an officer of the Public Works Department sworn on 17th April, 1989 that is to say, subsequent to the said Notice dated 23rd January, 1989, where he was described as Deputy Superintendent Engineer, in para 1 of this affidavit he is described to be working only as Executive Engineer in the Public Works Department. This affidavit clearly negatives the contention of the appellant that as on 23rd January, 1989 he was promoted to the higher post of Deputy Superintendent Engineer.

In view of the aforesaid findings we do not find any merit in the appeal and it is accordingly dismissed as such. However, on the facts and circumstances of the case, cost on the parties.

JUDIS