

PETITIONER:
ALLAHABAD BANK OFFICERS ASSOCIATION AND ANOTHER

Vs.

RESPONDENT:
ALLAHABAD BANK AND OTHERS

DATE OF JUDGMENT: 01/05/1996

BENCH:
NANAVATI G.T. (J)
BENCH:
NANAVATI G.T. (J)
AGRAWAL, S.C. (J)

CITATION:
1996 AIR 2030 1996 SCC (4) 504
JT 1996 (5) 275 1996 SCALE (4)150

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

NANAVATI, J.

Appellant No.2, Dayal Dass Khanna, joined the Allahabad Bank (Respondent No.1) as a Clerk on 24.7.1946. He was promoted as an Officer on 15.9.1967 and his further promotions from Scale I to Scale II and from Scale II to Scale III in the Officer's Cadre were on 1.1.1976 and 1.10.1977 respectively. On 15.8.1979 was elected as a General Secretary of Allahabad Bank Officers Association (Appellant No.1), a registered trade union duly recognised by the Bank. In November 1982 he was considered for further promotion from Scale III to Scale IV but was denied promotion because he was found lacking in potential. In March 1984 a Special Committee was constituted under Regulation 19 of the Allahabad Bank (Officers) Service Regulations, 1979 to reiveu the cases of 20 Officers, including Appellant No.2, for recommending whether they should be retired earlier or allowed to serve till the age of superannuation. The Committee unanimously recommended compulsory retirement of Appellant No.2 and the Chairman and Managing Director of the Bank agreeing with the said recommendation passed an order on May 18, 1984 for compulsorily retiring Appellant No.2. By an order of the same date passed by the Bank Appellant No.2 was retired with effect from 24.5.1984.

The appellants challenged that order by filing a writ petition in the Madhya Pradesh High Court. It was challenged mainly on the ground that it casts a stigma on the character and dignity of Appellant No.2 and, therefore, in reality it is an order of punishment which could have been passed under the Allahabad Bank Officers Employees (Discipline and Appeal) Regulations, 1976 after holding a regular departmental enquiry and as no such enquiry was held it is illegal and void. The order was also challenged on the ground that it was arbitrary and mala fide. The High Court

rejected all the contentions and dismissed the writ petition.

In view of the findings recorded by the High Court and the reasons given in support thereof the learned counsel for the appellants has rightly not pressed the other contentions which were raised before the High Court and, therefore, the only question which we have to consider in this appeal is whether the order of compulsory retirement casts a stigma on Appellant No.2. The learned counsel submitted that the High Court has committed an error in holding that it does not. It is not in dispute that the letter dated May 18, 1984 is the only order of compulsory retirement served upon appellant no. 2. The material part of it reads as under:

rt. We will refer to those decisions only which are relevant and useful for deciding this appeal.

"In terms of the first proviso of Regulation 19.1 of Allahabad Bank Officers' Service Regulation, 1979 followed by the guidelines of Government of India, Ministry of Finance, Banking Division, on the said Regulation, a Special Committee in terms of Rule 2 of the aforesaid Regulation was constituted for the review of our case for your retirement from the Bank's service or otherwise. The special committee unanimously recommended for your retirement from Bank's service. Accordingly, the Chairman and Managing Director, who is the Competent Authority in this respect has passed the following order:

"I agree, particularly, on the views expressed regarding his want of application to Bank's work and lack of potential. He has also been found not dependable. Hence retire him immediately as recommended".

The Bank, therefore, retires you from its service with effect from 24th May, 1984. Please handover charge to Shri C.L. Malhotra as at the close of business on 23rd May, 1984 on which date you stand relieved from bank's service."

It was submitted by the learned counsel that recitals in the impugned order that there was "want of application to Bank's work and lack of potential" and "He has also been found not dependable" are stigmatic as they cast aspersions on the conduct, character and integrity of Appellant No.2. The High Court rejected this contention by observing that "According to us, this casts no stigma, but only assesses the work of petitioner No.2 for determining his compulsory retirement." It was submitted that this view of the High Court is wrong as it did not apply the right test for finding out whether those statements are stigmatic or not. It was further submitted that whoever reads the order of compulsory retirement would consider that there is something wrong with the conduct of appellant No.2 or his capacity to work. Therefore, the High Court should have held that though

the impugned order purports to be an order of compulsory retirement it is really an order of punishment. In support of his submission the learned counsel relied upon several decisions of this Court. We will refer to those decisions only which are relevant and useful for deciding this appeal.

The power to compulsorily retire a Government servant is one of the facets of doctrine of pleasure incorporated in Article 310 of the Constitution. The object of compulsory retirement is to weed out the dead wood in order to maintain efficiency and initiative in the service and also to dispense with the services of those whose integrity is doubtful so as to preserve purity in the administration. Generally speaking, Service Rules provide for compulsory retirement of a Government servant on his completing certain number of years of service or attaining the prescribed age. His service record is reviewed at that stage and a decision is taken whether he should be compulsorily retired or continued further in service. There is no levelling of a charge or imputation requiring an explanation from the Government servant. While misconduct and inefficiency are factors that enter into the account where the order is one of the dismissal or removal or of retirement, there is this difference that while in the case of retirement they merely furnish the background and the enquiry, if held - and there is no duty to hold an enquiry - is only for the satisfaction of the authorities who have to take action, in the case of dismissal or removal they form the very basis on which the order is made, as pointed out by this Court in *Shyamlal vs. S.M. Doshi* AIR 1957 SC 892. Thus, by its very nature the power to compulsorily retire a Government servant is distinct and separate from the power to punish him by way of removal, dismissal etc. for misconduct. A Government servant who is compulsorily retired does not lose any part of the benefit that he has earned during service. Thus, compulsory retirement differs both from dismissal and removal as it involves no penal consequences. Though compulsory retirement deprives a Government servant of the chance of serving and getting his pay till he attains the age of superannuation and thereafter to get pension that cannot be regarded in the eye of law as punishment as pointed out in the case of *Shyamlal (supra)* and *Union of India vs. M.E. Reddy* 1980 (2) SCC 15. Thus, compulsory retirement differs from dismissal and removal both in its nature and incidence or effects. Therefore, compulsory retirement is not considered *prima facie* and *per se* a punishment and does not attract the provisions of Article 311. This Court in a series of decisions starting with *Shyamlal's* case (*supra*) has held that compulsory retirement is neither a punishment nor a stigma; and, that can now well be regarded as settled legal position. But, if any stigma is attached to the order of compulsory retirement then it may be treated as an order of punishment in reality. So also, if a formal enquiry is made on an allegation of misconduct and a finding holding him guilty is recorded and thereafter the order of compulsory retirement is passed then such an order even when it does not contain any allegation or a stigmatic statement may be regarded as an order of punishment, attracting provisions of Article 311. The reason is that the court would infer in such cases that the real intention of the Government was not to compulsorily retire its employee but to punish him.

In this case, there was no completion of a formal enquiry against Appellant No.2 before passing the order of compulsory retirement nor he has been deprived of the service benefits already earned by him while in service. Therefore, what is to be considered is whether any stigma is

attached to the order of compulsory retirement. In other words what has to be seen is whether the order contains any charge or imputation against Appellant No.2 with respect to his character suggesting moral turpitude or unsatisfactory conduct.

It will, therefore, be necessary to first consider what is meant by stigma and also the cases wherein the orders have been regarded as stigmatic. Stigma, according to the dictionary meaning, is something that detracts from the character or reputation of a person, a mark, sign etc. indicating that something is not considered normal or standard. It is a blemish, defect, disgrace, disrepute, imputation, mark of disgrace or shame and mark or label indicating deviation from a norm. In the context of an order of termination or compulsory retirement of a Government servant stigma would mean a statement in the order indicating his misconduct or lack of integrity.

In Chandu Lal Management of M/s Pan American World Airways Inc. 1985 (2) SCC 727 services of the workman were terminated on the ground of "loss of confidence in him". It was held that the order attached a stigma on the workman as want of confidence indicated an adverse facet in his character, namely, that he had failed to behave upto the expected standard of conduct. In other words, it amounted to a dereliction on the part of the workman.

In Kamal Kishore Lakshman vs. Management of M/s Pan American World Airways Inc. and others 1987 (1) SCC 146 this Court reiterated the view taken in Chandu Lal's case (supra). In Jagdish Prasad vs. Sachiv, Zila Ganna Committee, Muzaffarnagar and another 1986(2) SCC 338 this Court held that as the order of termination was passed on charges of concealment of the fact that the employee was removed from his earlier service on charge of corruption and was, therefore, not suitable for employment, it did cast a stigma on his service career. In Jagdish Mitter vs. Union of India AIR 1964 SC 449 the order of discharge stated that the employee was found undesirable to be retained in Government service. This Court held that it did cast a stigma on the employee and, therefore, it was not a mere order of discharge but an order of dismissal.

In State of U.P. vs. Madan Mohan Nagar AIR 1967 SC 1260 this Court quoted the following observations from Jagdish Mitter's case and held that the same test must apply in the case of compulsory retirement also:

"No doubt the order purports to be one of discharge and as such can be referred to the power of the authority to terminate the temporary appointment with one month's notice. But it seems to us that when the order refers to the fact that the appellant was found undesirable to be retained in Government service, it expressly casts a stigma on the appellant and in that sense must be held to be an order of dismissal and not a mere order of discharge."

"It seems that anyone who reads the order in a reasonable way, would naturally conclude that the appellant was found to be undesirable, and that must necessarily import an element of punishment which is the basis of

the order and is its integral part. When an authority wants to terminate the services of a temporary servant, it can pass a simple order of discharge without casting or attaching any stigma to his character. As soon as it is shown that the order purports to cast an aspersion on the temporary servant, it would be idle to suggest that the order is a simple order of discharge. The test in such cases must be: does the order cast aspersion or attach stigma to the officer when it purports to discharge him? If the answer to this question is in the affirmative, then notwithstanding the form of the order, the termination of service must be held, in substance, to amount to dismissal." "

In Madan Mohan's case (supra), in the order it was stated: 'he has outlived his utility'; and these words were considered as stigmatic as they indicated that the employee had incapacitated himself from holding the post and any person who read that order would have immediately considered that there was something wrong with him or his capacity to work. This decision was heavily relied upon by the learned counsel for the appellant and on its basis he submitted that if the order of compulsory retirement contains any statement adversely reflecting upon the capacity to work then such a statement should be regarded as stigmatic.

In The State of Orissa vs. Ram Narayan Das AIR 1961 SC 177 a Probationer was discharged from service "for unsatisfactory work and conduct" in the manner provided by Rule 55-B of the Civil Services (Classification, Control and Appeal), Rules. The High Court held that the order of discharge amounted to imposing punishment, because the respondent had been "visited with evil consequences leaving an indelible stigma on his affecting his future career". This Court did not construe that order as stigmatic and by way of punishment.

In Union of India vs. R.S. Dhaba 1969(3) SCC 603, in the order of reversion it was stated that the officer ".... having been found unsuitable after trial to hold the post of Income Tax Officer, Class II is hereby reverted....". This Court held that there was nothing in the order to show that a stigma was attached to the respondent. It was pointed out that the only reason in the order was that he was found unsuitable to hold the post and there was no imputation on the integrity of the respondent. Construing that order this Court observed that the order did not contain any express words of stigma attributed to the conduct of the employee and, therefore, it could not be held that the order of reversion was made by way of punishment.

In Hari Singh Mann vs. State of Punjab AIR 1974 SC 2263 service of a Probationary Deputy Superintendent of Police was terminated by an order, the relevant part of which read as under:

"The President of India is pleased to dispense with the service of having considered him unfit for appointment to the State Police Service...."

The case was governed by the Punjab Police Service Rules, 1959. This Court referred to Rule 8(b) which states that the services of a member recruited by direct appointment may be dispensed with by the Government on his failing to pass the final examination at the end of his period of training, or on his being reported on during or at the end of his period of probation, as unfit for appointment. It also referred to Rule 9 which requires that the Probationer should be apprised of the grounds on the basis of which termination of his service is proposed and to give him an opportunity to show cause against the proposal. This Court then held as under:

"It is obvious that at the time of confirmation fitness is a matter to be considered. The order terminating the services is unfitness for appointment at the time of confirmation, it is not passed on the ground of any turpitude like misconduct or inefficiency. To hold that the words "unfit to be appointed" are a stigma would rob the authorities of the power to judge fitness for work or suitability to the post at the time of confirmation. Termination of services on account of inadequacy for the job or for any temperamental or other defect not involving moral turpitude is not a stigma which can be called discharge by punishment."

In *State of Gujarat vs. Akhilesh C. Bhargav* AIR 1987 SC 2135 a Probationary I.P.S. Officer was discharged from service under clause (bb) of Rule 12 of the Indian Police Service (Probation) Rules, 1954. It was contended that the reference to Rule 12(bb) brought into the otherwise innocuous order stigma in sufficient measure warranting a proceeding of the nature contemplated under Article 311(2) of the Constitution. This Court referred to the Constitution Bench decision in *Ram Narayan Das's case* (supra) wherein this Court has held that in the case of a probationer observation like 'unsatisfactory work and conduct' would not amount to attaching stigma to the order, and following the same rejected the contention that reference to Rule 12(bb) in the order made it stigmatic.

The above discussion of case law makes it clear that if the order of compulsory retirement casts a stigma on the Government servant in the sense that it contains a statement casting aspersion on his conduct or character, then the court will treat that order as an order of punishment, attracting provisions of Article 311(2) of the Constitution. The reason is that as a charge or imputation is made the condition for passing the order the court would infer therefrom that the real intention of the Government was to punish the Government servant on the basis of that charge or imputation and not to exercise the power of compulsory retirement. But mere reference to the rule, even if it mentions grounds for compulsory retirement, cannot be regarded as sufficient for treating the order of compulsory retirement as an order of punishment. In such a case, the order can be said to have been passed in terms of the rule and, therefore, a different intention cannot be inferred. So also, if the statement in the order refers only to the assessment of his work and does not at the same time cast an

aspersion on the conduct or character of the Government servant, then it will not be proper to hold that the order of compulsory retirement is in reality an order of punishment. Whether the statement in the order is stigmatic or not will have to be judged by adopting the test of how a reasonable person would read or understand it.

In this case the order was passed by the Chairman and Managing Director of the Bank. It is contained in the Bank's letter dated May 18, 1984 addressed to Appellant No.2. The letter first refers to constitution of a Special Committee as required by the Service Regulations and consideration of the case of Appellant No.2 by it. Then it mentions that the Special Committee unanimously recommended compulsory retirement of Appellant No.2. Thereafter it quotes the order passed by the Chairman and Managing Director. Lastly, it is stated that pursuant to the said order of the Chairman and Managing Director the Bank has retired Appellant No.2 from service with effect from 24.5.1984. What the Chairman and the Managing Director has stated in his order is that he was agreeing with the views expressed by the Special Committee regarding his want of application to Bank's work and lack of potential and his dependability. He has further stated that he was retiring Appellant No.2 as per the recommendation of the Special Committee.

According to Regulation 19, the Bank can, on review by the Special Committee retire an officer employee on or at any time after the completion of 55 years of age or on or at any time after the completion of 30 years of total service as an officer employee or otherwise, whichever is earlier. Under the said Regulation the Bank is required to constitute a Special Committee consisting of not less than three members, to review, whether an officer-employee should be retired. Moreover, no order of retirement can be made unless the Special Committee recommends in writing to competent authority the retirement of the officer-employee. In the said letter the Bank has tried to convey to Appellant No.2 that the order of compulsory retirement has been passed in terms of Regulation 19. The order passed by the Chairman and Managing Director merely states that he has agreed with the view of the Special Committee and has, therefore, thought it fit to accept its recommendation also. The Special Committee was not examining any allegation against Appellant No.2 in the nature of misconduct but had considered his service record and expressed its opinion with respect to the assessment of his work. Therefore, it can be said without any doubt that the remarks want of application to Bank's work, "lack of potential" and "found not dependable" have been made in relation to his work and not for any other purpose. Even the dependability which is referred to is also in connection with the Bank's work. Any person reading the letter or the order of compulsory retirement would not be led to believe that there was something wrong with Appellant No.2 as regards his conduct or character. They would only indicate that he had ceased to be useful to the Bank in his capacity as a Manager. Therefore, no inference can be drawn from the said statements that they cast a stigma on Appellant No.2 and that the real intention of the Bank was to punish him for some act of misconduct or lack of integrity. Whether the order of compulsory retirement attaches a stigma to the employee or not would depend upon the facts and circumstances of each case. In the context of the facts and circumstances of this case it cannot be said that by including the aforesaid statements in the order of compulsory retirement any stigma has been attached to it. The view taken by the High Court in this behalf appears to

be correct.

The appeal is, therefore, dismissed. No. order as to costs.

JUDIS