

PETITIONER:
MEGHRA URKUDAJI TEMPE

Vs.

RESPONDENT:
THE STATE OF MAHARASTRA

DATE OF JUDGMENT: 13/05/1998

BENCH:
S.P. BHARUCHA. M. JAGANNADHA RAO

ACT:

HEADNOTE:

JUDGMENT:

O R D E R.

JAGANNADA RAO.J.

The appellant contends that the notice dated 23.1.89 for compulsory retirement issued under Rule 10(4)(a)(i) of the Maharashtra Civil Service (Pension) Rules, 1982 is bad as much as the procedure indicated in the Circular issued by the State Government on 1.9.1983 has not been followed before the appellant crossed 50 years and his case must be deemed to have reviewed in his favour before crossed 50 years. In such a situation, a second review after he crossed 50 years is, according to the appellant, not permissible. It is also contented that it is not open to the respondent while issuing notice on 23.1.1989 to apply the norms prescribed in a latter Circular dated 12.5.1986. It is contended that while the 23.1.1983 Circular prescribed a standard of not less than average the Circular dated 12.5.1986 prescribed a more stringent standard of 'not less than good'. If review had been undertaken before the appellant crossed 50 years, than it would have been satisfied the standard of 'less than average' - which, in fact, he did - as per the norms prescribed by the circular dated 1.9.1983. The contention of the appellant is that the circular dated 1.9.1983 is binding on the Government and is intended to see that the general power under Rule 10(4)(a)(i) is not used arbitrarily.

After hearing learned senior counsel on both sides, we were prima facie inclined to accept the above contention of the appellant. But we have come to notice a two Judge Bench decision in Suryakant Govind Oke vs. State of Maharashtra [1995 Suppl. (2) SCC 420] wherein it has held that even if an officer's case has not been reviewed before he crossed 50 years, his case can be reviewed under the circular dated 12.5.1986 read with Rule 10(4)(a)(i) of the Rule, and that this could be done even after he has crossed 50 years. We have, therefore, thought it fit that the case is to be decided by a three Judge Bench.

In this context, we are of the view that the decisions in Union of India & others vs. Narsirmiya Ahmadmiya Chauhan [1994 Suppl. (2) SCC 537], K. Chelliah vs. Industrial Finance Corporation of India & Another [1992 Suppl. (3) SCC

82] and in Brij Mohan Singh Chopra vs. State of Punjab [1987 (2) SCC 188] decided by Benches of two Judges and also a decision of a three Judges Bench in State of U.P. vs. Chandra Mohan Nigam [1978 (1) SCR 521] - all concerning the effect of Circulars/guidelines dealing with compulsory retirement - are also relevant.

We direct accordingly that the papers be placed before the Hon'ble the Chief Justice of India, for being listed before a Bench of three learned Judges.

JUDIS