

PETITIONER:
M.P. PRADHAN

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT 16/02/1990

BENCH:
KULDIP SINGH (J)
BENCH:
KULDIP SINGH (J)
RAMASWAMI, V. (J) II

CITATION:
1990 AIR 891 1990 SCR (1) 410
1990 SCC (2) 539 JT 1990 (1) 335
1990 SCALE (1) 218

ACT:

Civil Services: Fundamental Rule 56(c)(i)--Retirement at the age of 60 years--Applicability of--Joining as paid apprentice on permanent basis--Whether amounts to entering Government service on permanent basis.

HEADNOTE:

Appellant joined State Government service, as paid apprentice on 1.7.1937. He held various posts and was promoted to the permanent post of Copyist on 1.8.1941. In March, 1943 he came to Government of India service on deputation, and retired in 1976 on attaining the age of 58 years. Thereafter he moved the Central Administrative Tribunal claiming that since he entered Government service on permanent basis before 31.3.1938, he was entitled to continue in service till the age of 60 years, as per Fundamental Rule 56(c)(i).

Dismissing the application, the Central Administrative Tribunal held that since the appellant was appointed on permanent basis to the post of Copyist on 1.8.41, he did not come within the purview of Fundamental Rule 56(c)(i). Aggrieved, the appellant has preferred this appeal. Allowing the appeal, this Court,

HELD: It is correct that from 1st of July, 1937 upto 1st of August, 1941 the appellant has been shown in the service book to be appointed in officiating capacity to various posts but the fact remains that his basic appointment as paid apprentice was permanent. The finding of the Tribunal that the appellant was made permanent for the first time as Copyist on 1st August, 1941 cannot be accepted in the face of clear entries in the service book showing that he joined as paid apprentice on permanent basis on 1st of July, 1937. Joining as paid apprentice on permanent basis cannot be anything else but entering Government service on permanent basis and since the entry was before 31st March, 1938, Fundamental Rule 56(c)(i) is attracted and the appellant is entitled to remain in Government service till the age of 60 years. [412D-F]

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[This court observed that since the appellant has already completed 60 years, he be paid two years emoluments with all

consequential benefits including any enhancement in the fixation of pension and other post-retirement benefits.] [413D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1899 of 1989.

From the Judgment and Order dated 20.2.87 of the Central Administrative Tribunal, Principal Bench, New Delhi in T.A. No. T-322/ 85 (CW 293/77).

Shankar Vaidyalingam and Ms. Seita Vaidyalingam for the Appellant.

B. Dutta, Govind Das, Mrs. Sushma Suri and Ms. Indra Sawhney for the Respondents.

The Judgment of the Court was delivered by

KULDIP SINGH, J. The question for our consideration in this appeal is whether the appellant is governed by Fundamental Rule 56(c)(i) and as such entitled to superannuation at the age of 60 years.

Fundamental Rule 56(c)(i) is reproduced as under:

"(c) A ministerial Government servant who entered Government service on or before the 31st March, 1958 and held on that date:

(i) a lien or a suspended lien on a permanent post, or ... shall retire from service on the afternoon of the 1st day of the month in which he attains the age of sixty years."

The appellant joined service as paid apprentice in the Collectorate of Etawah, Government of Uttar Pradesh on 1st July, 1937. On the same day he was asked to officiate in the post of Arranger. He was sent back to the post of paid apprentice on 24th December, 1937 but was again appointed as Arranger in officiating capacity on 3rd of January 1938. While holding the post of paid apprentice he had been appointed in various posts on officiating basis. He was finally promoted and appointed to a permanent post of Copyist in a substantive capacity on 1st of August, 1941. He came to the Government of India on deputa-

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tion in March 1943 and thereafter retired from service on attaining the age of 58 years in February 1976.

The appellant claimed that having entered Government service on permanent basis before 31st March, 1938 he was entitled to continue in service till the age of 60 years under Fundamental Rule 56(c)(i) and his retirement on attaining the age of 58 years was illegal. The Central Administrative Tribunal, Principal Bench, New Delhi dismissed the application of the appellant holding that the appellant was only an apprentice under training prior to 1st of August, 1941 and as such was not holding any employment under the State on permanent basis. According to the Tribunal the appellant was appointed to the Government service on permanent basis to the post of Copyist on 1st of August, 1941 and as such he did not come within the purview of Fundamental Rule 56(c)(i).

We have examined the admitted entries in the service book of the appellant which are on the record. These entries show that the appellant joined service as paid apprentice on substantive permanent basis on 1st of July, 1937. It is correct that from 1st of July, 1937 upto 1st of August, 1941 he has been shown in the service book to be appointed in officiating capacity to various posts but the fact remains that his basic appointment as paid apprentice was permanent.

The finding of the Tribunal that the appellant was made permanent for the first time as Copyist on 1st August, 1941 cannot be accepted in the face of clear entries in the service book showing that he joined as paid apprentice on permanent basis on 1st of July, 1937. Joining as paid apprentice on permanent basis cannot be anything else but entering Government service on permanent basis and since the entry was before 31st March, 1938 Fundamental Rule 56(c)(i) is attracted and the appellant is entitled to remain in Government service till the age of 60 years.

In the reply affidavit on behalf of the respondents in the court below it is stated as under:

"The petitioner joined Government Service under the provincial Government of Uttar Pradesh on 1.7. 1937 against a post of paid apprentice. It appears there were a few permanent posts of paid apprentice under the State Government. Petitioner was appointed against one of them in Collectorate, Etawah."

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The respondents repeated their stand in the counter filed by them in this Court in the following terms:

"It is submitted that the petitioner joined Government service under the Provincial Government of Uttar Pradesh on 1.7.1937 against a post of "Paid Apprentice". It appear that there were a few permanent posts of paid apprentice under the State Government. The petitioner was appointed against one of them in the Collectorate, Etawah."

We are, therefore, of the view that the Tribunal erred in denying the benefit of Fundamental Rule 56 (c)(i) to the appellant. We allow the appeal with costs and set aside the judgment of the Central Administrative Tribunal under appeal and we hold that the appellant was entitled to continue in Government service till he attained the age of 60 years. The appellant has already completed 60 years and as such he be paid two years emoluments with all consequential benefits including any enhancement in the fixation of pension and other post retirement benefits. We quantify the costs as Rs.3,000.

G.N.

Appeal allowed.

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