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March 16.

KAILASH CHANDRA

v.

UNION OF INDIA

(P. B. GAJENDRAGADKAR, A. K. SARKAR, K. N. WANCHOO, K. C. DAS GUPTA and N. RAJAGOPALA AYYANGAR, JJ.)

Railway Servant—Compulsory retirement, Age of—Retention in service after 55 years of age, if compulsory or optional—Ministerial servants, classification of, if unreasonable—Railway Establishment Code, Rule 2046(2)(a), Fundamental Rule 56(b)(1), Constitution of India, Art. 14.

The appellant who was a clerk under the East Indian Railways was compulsorily retired from service on attaining the age of 55 years. His prayer for further retention in service having been rejected he filed a suit alleging that he was entitled to be retained in service up to the age of 60 years under Rule 2046 (2)(a) of the Railway Establishment Code, which runs as follows:—

"Clause (a)—A ministerial servant who is not governed by sub-cl. (b) may be required to retire at the age of 55 years but should ordinarily be retained in service if he continues to be efficient up to the age of 60 years. He must not be retained after that age except in very special circumstances which must be recorded in writing and with the sanction of the competent authority."

His suit was decreed by the Trial Court but the High Court reversed it holding that the plaintiff-appellant had no right to continue in service beyond the age of 55 years. On appeal with the certificate of the High Court.

Held, that the correct interpretation of Rule 2046(2)(a) is that a railway ministerial servant falling within this clause may be compulsorily retired on attaining the age of 55 but when the servant is between the age of 55 and 60 years the appropriate authority has the option to continue him in service, subject to the condition that the servant continues to be efficient but the authority is not bound to retain him even if he continues to be efficient. This rule does not give the servant a right to be retained in service beyond the age of 55 years even if he continues to be efficient.

Jai Ram v. *Union of India,* A.I.R. 1954 S.C. 584, explained.

Basant Kumar Pal v. *The Chief Electrical Engineer,* A.I.R. 1956 Cal. 93, *Kishan Dayal* v. *General Manager, Northern Railway,* A.I.R. 1954 Punj. 245 and *Raghunath Narain Mathur* v. *Union of India,* A.I.R. 1953 All. 352, approved.

The formation by the Railway Board of two classes of ministerial servants, namely, one of those who retired after September 8, 1948, and the other of those who had already retired before that date was a reasonable classification and did not offend Art. 14 of the Constitution.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 283 of 1960.

Appeal from the judgment and decree dated November 20, 1958, of the Allahabad High Court (Lucknow Bench) in First Civil Appeal No. 3 of 1956.

C. B. Agarwala and *C. P. Lal*, for the appellant.

R. Ganapathy Iyer and *T. M. Sen*, for the respondent.

1961. March 16. The Judgment of the Court was delivered by

Das Gupta J.

DAS GUPTA, J.—The appellant, a clerk in the service of the East Indian Railways was compulsorily retired from service with effect from June 30, 1948, on attaining the age of 55 years. His prayer for further retention in service on the ground that he was entitled to be retained under Rule 2046/2 of the Railway Establishment Code having been rejected he brought the suit which has given rise to this appeal in the court of the Civil Judge, Lucknow, alleging that he was entitled to be retained under the above rule and the order for compulsory retirement on attaining the age of 55 years was void and inoperative in law. He accordingly prayed for a declaratory decree that the order of his compulsory retirement was illegal and void and for a money decree for arrears of pay on the basis that he had continued in service.

The main defence was a denial of his right to be retained in service under the rules. The Trial Court accepted the plaintiff's contention as regards the effect of the rule, gave him a declaration as prayed for and also decreed the claim for money in part.

On appeal the High Court took a different view of Rule 2046 and held that that rule gave the plaintiff no right to continue in service beyond the age of 55 years. The High Court therefore allowed the appeal and dismissed the plaintiff's suit. Against this decision the

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plaintiff has preferred the present appeal on a certificate granted by the High Court under Art. 133(1)(c) of the Constitution.

The main question therefore is whether on a proper interpretation of Rule 2046/2 (a) of the Railway Establishment Code, which is identical with the fundamental rule 56(b)(i), the plaintiff had the right to be retained in service till the age of 60 years. It is necessary to mention that the plaintiff's case that he continued to be efficient even after attaining the age of 55 years has not been disputed by the respondent, the Union of India. Consequently the question is: Assuming the plaintiff so continued to be efficient whether he had the right to be retained in service till he attained the age of 60 years. Rule 2046(1) of the Code deals with the question of retirement of railway servants other than ministerial and provides that such railway servant, that is, one who is not a ministerial servant, will be compulsorily retired on attaining the age of 55 years; but may be retained in service after that date "with the sanction of the competent authority on public grounds" which must be recorded in writing. A further provision is made that he must not be retained after the age of 60 years except in very special circumstances. Rule 2046/2 deals with cases of ministerial servants. It has two clauses of which cl. (b) deals with (i) ministerial servants who entered Government service on or after April 1, 1938, or (ii) who though in Government service on March 31, 1938, did not hold a lien or a suspended lien on a permanent post on that date. These also, like the railway servants, who are not ministerial servants have to retire ordinarily at the age of 55 years and cannot be retained after that age except on public grounds to be recorded in writing and with the sanction of the competent authority; and must not be retained after attaining the age of 60 years except in very special circumstances.

Clause (a) deals with railway ministerial servants other than those who entered Government service on or after April 1, 1938, or those in Government service on March 31, 1938, who did not hold a lien or a

suspended lien on a permanent post on that date. The exact words of the rule are:

> "A ministerial servant who is not governed by sub-cl. (b) may be required to retire at the age of 55 years but should ordinarily be retained in service if he continues to be efficient up to the age of 60 years. He must not be retained after that age except in very special circumstances which must be recorded in writing and with the sanction of the competent authority."

It is obvious that the rule as regards compulsory retirement is more favourable to ministerial servants who fall within cl. (a) of rule 2046/2 than those who fall under cl. (b) of the same rule or railway servants who are not ministerial servants. For whereas in the case of these, *viz.*, railway servants—who are not ministerial servants, and ministerial servants under cl. (b) retention after the age of 55 itself is intended to be exceptional—to be made on public grounds which must be recorded in writing and with the sanction of the competent authority, in the case of ministerial servants who fall under cl. (a) of Rule 2046/2 their retention after the age of 60 is treated as exceptional and to be made in a similar manner as retention in the case of the other railway servants mentioned above after the age of 55. It is clear therefore that whereas the authority appropriate to make the order of compulsory retirement or of retention is given no discretion by itself to retain a ministerial railway servant under cl. (b) if he attains the age of 55 years, that is not the position as regards the ministerial servants who fall under cl. (a). The appellant's contention however goes very much further. He contends that in the case of ministerial servants who come within cl. (a) and after attaining the age of 55 years continue to be efficient it is not even a case of discretion of the appropriate authority to retain him or not, but that such ministerial servants have got a right to be retained and the appropriate authority is bound to retain him, if efficient.

The first clause of the first sentence of the relevant

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rule taken by itself certainly gives the appropriate authority the right to require a ministerial servant to retire as soon as he attains the age of 55 years. The question is: Whether this right is cut down by the second clause, *viz.*, "but should ordinarily be retained in service if he continues to be efficient up to the age of 60 years". On behalf of the appellant it is urged that the very use of the conjunction "but" is for the definite purpose of the cutting down of the right conferred by the first clause; and that the effect of the second clause is that the right to require the Government servant to retire at 55 is limited only to cases where he does not retain his efficiency; but where he does retain his efficiency the right to retire him is only when he attains the age of 60 years. We are constrained to say that the language used in this rule is unnecessarily involved; but at the same time it is reasonably clear that the defect in the language creates no doubt as regards the intention of the rule-making authority. That intention, in our opinion, is that the right conferred by the first part is not in any way limited or cut down by the second part of the sentence; but the draftsman has thought fit by inserting the second clause to give to the appropriate authority an option to retain the servant for five years more, subject to the condition that he continues to be efficient. If this condition is not satisfied the appropriate authority has no option to retain the servant; where however the condition is satisfied the appropriate authority has the option to do so but is not bound to exercise the option. If the intention had been to cut down the right conferred on the authority to retire a servant at the age of 55 years the proper language to express such intention would have been; ".....may be required to retire at the age of 55 years provided however that he shall be retained in service if he continues to be efficient up to the age of 60 years" or some such similar words. The use of "should ordinarily be retained in service" is sufficient index to the mind of the rule-making authority that the right conferred by the first clause of the sentence remained. Leaving out for the present the word "ordinarily" the rule would read thus:

"A ministerial servant who is not governed by sub-clause (b) may be required to retire at the age of 55 years but should be retained in service if he continues to be efficient up to the age of 60 years."

Reading these words without the word "ordinarily" we find it unreasonable to think that it indicates any intention to cut down at all the right to require the servant to retire at the age of 55 years or to create in the servant any right to continue beyond the age of 55 years if he continues to be efficient. They are much more appropriate to express the intention that as soon as the age of 55 years is reached the appropriate authority has the right to require the servant to retire but that between the age of 55 and 60 the appropriate authority is given the option to retain the servant but is not bound to do so.

This intention is made even more clear and beyond doubt by the use of the word "ordinarily". "Ordinarily" means "in the large majority of cases but not invariably". This itself emphasises the fact that the appropriate authority is not bound to retain the servant after he attains the age of 55 even if he continues to be efficient. The intention of the second clause therefore clearly is that while under the first clause the appropriate authority has the right to retire the servant who falls within clause (a) as soon as he attains the age of 55, it will, at that stage, consider whether or not to retain him further. This option to retain for the further period of five years can only be exercised if the servant continues to be efficient; but in deciding whether or not to exercise this option the authority has to consider circumstances other than the question of efficiency also; in the absence of special circumstances he "should" retain the servant; but what are special circumstances is left entirely to the authority's decision. Thus, after the age of 55 is reached by the servant the authority has to exercise its discretion whether or not to retain the servant; and there is no right in the servant to be retained, even if he continues to be efficient.

Reliance was placed by learned counsel on an observation of Mukherjea, J. (as he then was), in *Jai*

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Ram v. *Union of India* (1) when speaking for the Court as regards this rule his Lordship said:—

"We think it is a possible view to take upon the language of this rule that a ministerial servant coming within the purview has normally the right to be retained in service till he reaches the age of 60. This is conditional undoubtedly upon his continuing to be efficient. We may assume therefore for purposes of this case that the plaintiff had the right to continue in service till 60 and could not be retired before that except on the ground of inefficiency."

It would be wholly unreasonable however to consider this as a decision on the question of what this rule means. Dealing with an argument that as the plaintiff under this rule has the right to continue in service till 60 and could not be retired before that except on the ground of inefficiency certain results follow, the Court assumed for the sake of argument that this interpretation was possible and proceeded to deal with the learned counsel's argument on that basis. It was not intended to say that this was the correct interpretation that should be put on the words of the rule.

The correct interpretation of Rule 2046 (2)(a) of the Code, in our opinion, is that a railway ministerial servant falling within this clause may be compulsorily retired on attaining the age of 55 but when the servant is between the age of 55 and 60 the appropriate authority has the option to continue him in service, subject to the condition that the servant continues to be efficient but the authority is not bound to retain him even if a servant continues to be efficient.

It may be mentioned that this interpretation of the rule has been adopted by several High Courts in India [*Basant Kumar Pal* v. *The Chief Electrical Engineer* (2); *Kishan Dayal* v. *General Manager, Northern Railway* (3) and *Raghunath Narain Mathur* v. *Union of India* (4)].

We therefore hold that the High Court was right in holding that this rule gave the plaintiff no right to continue in service beyond the age of 55.

(1) A.I.R. 1954 S.C. 584.
(2) A.I.R. 1956 Cal. 93.
(3) A.I.R. 1954 Punj. 245.
(4) A.I.R. 1953 All. 352.

It was next urged by Mr. Aggarwal, though faintly, that the notification of the Railway Board dated October 19, 1948, and the further notification dated April 15, 1952, as a result of which ministerial servants who were retired under rule 2046(2)(a) before attaining the age of 60 after September 8, 1948, have been given special treatment are discriminatory. It appears that on September 8, 1948, the Government of India came to a decision that no ministerial Government servant to whom the fundamental rule 56(b)(i) applied and who has attained the age of 55 years but has not attained the age of 60 years could be required to retire from service unless he has been given a reasonable opportunity to show cause against the proposed retirement and unless any representation that he may desire to make in this connection has been duly considered. This decision was communicated to different departments of the Government of India and it was directed that this should be noted "for future guidance". On October 19, 1948, the Ministry of Railways issued a notification for dealing with cases of retirement of ministerial servants governed by Rule 2046(2)(a) (which corresponded to fundamental rule 56(b)(i)) in the manner as directed by the Government of India's notification dated September 8, 1948. This notification of October 19, 1948, again made it clear that it had been decided not to take any action in respect of ministerial servants who had already been retired. Again, in a notification dated April 15, 1952, the Railway Board communicated a decision that "such of the ministerial servants who had been retired after 8th September, 1948, but before attaining the age of 60 years without complying with Art. 311 (2) of the Constitution should be taken back to duty" under certain conditions.

The appellant's contention is that the denial of this advantage given to other ministerial servants falling within rule 2046(2)(a) who had been retired after September 8, 1948, is unconstitutional. We do not think that this contention has any substance. What happened was that on September 8, 1948, the Government took a decision that ministerial servants should

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not be retired under the rule in question on attainment of 55 years of age if they were efficient without giving them an opportunity of showing cause against the action and accordingly from that date it changed its procedure as regards the exercise of the option to retire servants between the age of 55 and 60. The decision that nothing should be done as regards those who had already retired on that date cannot be said to have been arbitrarily made. The formation of a different class of those who retired after September 8, 1948, from those who had retired before that date on which the decision was taken is a reasonable classification and does not offend Art. 14 of the Constitution. This contention is therefore also rejected.

The High Court was therefore right, in our opinion, in holding that there was a reasonable classification of the ministerial servants who had been retired under Rule 2046 (2) (a) on attaining the age of 55 into two classes: one class consisting of those who had been retired after September 8, 1948, and the other consisting of those who retired up to September 8, 1948. There is, therefore, no denial of equal protection of laws guaranteed by Art. 14 of the Constitution.

In the result, the appeal fails and is dismissed. There will be no order as to costs, as the appellant is a pauper. We make no order under Order XIV, rule 9 of the Supreme Court Rules.

Appeal dismissed.