A

BISHUN NARAIN MISHRA

v.

STATE OF UTTAR PRADESH AND OTHERS

October 7, 1964

B (P. B. GAJENDRAGADKAR, C. J., K. N. WANCHOO, M. HIDAYATULLAH, RAGHUBAR DAYAL AND J. R. MUDHOLKAR JJ.)

Constitution of India Arts. 311, 14—*Civil Service—Age of superannuation—Raised from* 55 *to* 58 *years and again reduced to* 55 *years—Termination of service as a result of reduction of age of superannuation whether* C *attracts Art.* 311—*Notification whether retrospective, discriminatory.*

By a notification dated November 27, 1957 the Government of Uttar Pradesh raised the age of superannuation for members of its service from 55 to 58 years. On May 25, 1961 by a notification under Art. 309 the Government again reduced the age to 55 years. By a proviso to the later notification it was laid down that those who owing to the earlier notification had continued in employment beyond the age of 55 years will be deemed to have been retained in service beyond the date of compulsory retire- D ment. Another order was issued by the Government the same day directing that all those who were between the age of 55 years and 58 years and had been retained in service in the above manner would be retired on December 31, 1961. The appellant who attained the age of 55 years on December 11, 1960 and was continued in service when the age of retirement was raised to 58 years was one of those who were retired on December 31, 1961. Aggrieved, he filed a writ petition before the High Court E which was dismissed and an appeal to the Division Bench also failed. Appeal was filed before the Supreme Court by special leave.

It was pointed out on behalf of the appellant that :

(1) the change in the rule of retirement made by the notification of May 25, 1961, was hit by Art. 311 as it amounted to removal of public servants from service without complying with the requirements of Art. 311(2).

F (2) the rule in question being retrospective was bad as no notification could be made retrospectively; and

(3) the rule was hit by Art. 14 inasmuch as it resulted in inequality between public servants in the matter of retirement.

HELD : (i) There is no provision which takes away the power of Government to increase or reduce the age of superannuation and therefore as the rule in question only dealt with the age of superannuation and the G appellant had to retire because of the reduction in the age of superannuation it cannot be said that the termination of his service which thus came about was removal within the meaning of Art. 311. [697 B-E].

Moti Ram Deka v. General Manager, North Frontier Rly., A.I.R. 1964 S.C. 600 referred to.

(ii) There was no retrospectivity in the rule. All that it provided was that from the date it came into force the age of retirement would be 55 H years. The rule would operate only for the period after it came into force. Nor did the proviso make it retrospective. It only provided as to how the period of service beyond 55 years should be treated in view of the earlier rule of 1957 which was being changed by the rule of 1961. The

second order issued on the same day clearly showed that there was no retrospective operation of the rule for in actual fact no Government servant below 58 years was retired before the date of the new rule *i.e.* May 25, 1961. Thus the new rule reducing the age of retirement from 58 years to 55 years could not be held to be retrospective. [698 A-C]. A

(iii) There was no force in the contention that the new rule was discriminatory inasmuch as different Government servants were retired on December 31, 1961 at different ages. The rule treated alike all those who were between the age of 55 and 58 years. Those who were retired on December 31, 1961 certainly retired at different ages but that was so because their services were retained for different periods beyond the age of 55. Government was not obliged to retain the services of every public servant for the same length of time. The retention of public servants after the period of retirement depended upon their efficiency and the exigencies of public service, and in the present case the difference in the period of retention had arisen on account of the exigencies of public service. [698 F-H]. B C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1053 of 1963.

Appeal from the judgment and order dated March 29, 1962 of the Allahabad High Court in Special Appeal No. 249 of 1962. D

M. P. Bajpai and *K. K. Sinha*, for the appellant.

C. B. Agarwala and *O. P. Rana*, for the respondents.

The Judgment of the Court was delivered by

Wanchoo J. This is an appeal on a certificate granted by the High Court of Allahabad and arises in the following circumstances. The appellant was in the service of the State of Uttar Pradesh as Sub-Registrar. He was born on December 11, 1905 and was recruited in service in July 1933. At the time of his recruitment the age of retirement (or superannuation) for government servants of his class was 55 years. Therefore, normally he should have retired on December 11, 1960. But by a notification dated November 27, 1957, the Government of Uttar Pradesh (hereinafter referred to as the Government) raised the age of retirement (or superannuation) to 58 years. This meant that the appellant would have retired on December 11, 1963. On May 25, 1961, the Government again reduced the age of retirement (or superannuation) to 55 years by a notification of that date issued under Art. 309 of the Constitution. Further a proviso was added in the rules relating to retirement in these terms :— E F G

> "Provided that a Government servant who had not retired on or before June 17, 1957 but has subsequently attained the age of 55 years and has on May 25, 1961 not attained the age of 58 years shall, for the period he has continued to serve after attaining the age of 55 H

A years be deemed to have been retained in service beyond the date of compulsory retirement, *i.e.*, the age of 55 years within the meaning of the Rule aforesaid."

Further as this change in the age of retirement would have resulted in immediate retirement of all government servants above the age of 55 years with consequent dislocation of public service, another order was issued by the Governor on the same day directing that any government servant who had on or before the date of the order already been directed in pursuance of the proviso set out above to be retained beyond the age of compulsory retirement (or superannuation) shall be so retained in accordance with the Schedule attached to the order. This Schedule provided that—

(1) Government servants who had on May 25, 1961 crossed the age of 57 years were to be retained up to the date on which they attained the age of 58 years or up to December 31, 1961 whichever was earlier;

(2) Government servants who had on May 25, 1961 crossed the age of 55 years but had not crossed the age of 57 years were to be retained up to December 31, 1961; and

(3) Government servants, who would cross the age of 55 years between May 25, 1961 and December 30, 1961 were to be retained up to December 31, 1961.

The effect of this order was that all government servants who would have retired because of the change in the age of retirement after May 25, 1961 and before December 30, 1961 were retained in service up to December 31, 1961 except those who reached the age of 58 years before December 31, 1961 in which case they were to retire at the age of 58 years. In consequence of this order, the appellant who had crossed the age of 55 years before May 25, 1961 but had not crossed the age of 57 years was retired on December 31, 1961, though if the earlier rule of November 27, 1957 had continued he would have retired on December 11, 1963.

This reduction in the age of retirement led to a writ petition by one Ram Autar Pandey in the High Court challenging the power of Government to reduce the age of retirement. That petition was heard by a Full Bench of the Allahabad High Court and was dismissed on December 21, 1961 : (see *Ram Autar Pandey* v. *State of U.P.*)(1). The petition out of which the present appeal has arisen was filed on December 4, 1961 and was

(1) I.L.R. [1962] 1 All. 793.

dismissed on March 29, 1962 following the decision in *Ram Autar Pandey's* case(1). Thereupon there was an appeal to the Division Bench which was also dismissed on the same basis. Then followed an application for leave to appeal to this Court which was granted; and that is how the matter has come up before us.

Three points have been urged on behalf of the appellant in support of the appeal. It is urged that—

(1) The change in the rule of retirement made by notification of May 25, 1961 was hit by Art. 311 of the Constitution as amounted to removal of public servants from service without complying with the requirements of Art. 311(2);

(2) The rule in question being retrospective was bad as no notification could be made retrospectively; and

(3) The rule was hit by Art. 14 inasmuch as it resulted in inequality between public servants in the matter of retirement.

The first question that arises is whether the rule of retirement by which the age of retirement was reduced to 55 years resulting in the retirement of public servants earlier than what was provided by the previously existing rule can be said to amount to removal within the meaning of Art. 311. Reliance in this connection has been placed on *Moti Ram Deka* v. *General Manager, North Frontier Railway*(2). That case dealt with a rule in the Railway Code giving power to the Railway Administration to terminate the services of all permanent servants to whom the rule applied merely on giving notice for a specified period or on payment of salary in lieu thereof at any time during the service long before the age of retirement. It was held therein that the termination of a permanent public servant's tenure which was authorised by the rule in question was nothing more nor less than removal from service within Art. 311 and therefore they were entitled to the protection of Art. 311(2). That case in our opinion has no application to the facts of the present case, for that case did not deal with any rule relating to age of retirement. Further it was made clear in that very case that a rule as to superannuation (retirement) or as to compulsory retirement shortly before the age of superannuation resulting in the termination of service of a public servant did not amount to removal. In the present case what has happened is that the Government first raised the age of retirement from 55 years to 58 years in the year 1957 and the appellant got the advantage of

1) I.L.R. [1962] All. 793. (2) A.I.R. 1964 S.C. 600.

A that inasmuch as he remained in service after December 11, 1960 on which date he would have otherwise retired on completing the age of 55 years. Thereafter in 1961, the Government seems to have changed its mind as to the age of superannuation and reduced it back again to 55 years. Even so the rule dealt with the age of superannuation and the termination of service on reaching the
B age of superannuation was held by the majority in *Moti Ram Deka's* case(1) as out of the application of Art. 311. We have not been shown any provision which takes away the power of government to increase or reduce the age of superannuation and therefore as the rule in question only dealt with the age of super-
C annuation and the appellant had to retire because of the reduction in the age of superannuation it cannot be said that the termination of his service which thus came about was removal within the meaning of Art. 311. The alteration in the circumstances of this case at least cannot be regarded as unreasonable. The argument that the termination of service resulting from change in the age of
D superannuation amounts to removal within the meaning of Art. 311 and therefore the necessary procedure for removal should have been followed is negatived by the very case on which the appellant relies. We therefore hold that Art. 311 has no application to the termination of service of the appellant in the present case.

E The next contention on behalf of the appellant is that the rule is retrospective and that no retrospective rule can be made. As we read the rule we do not find any retrospectivity in it. All that the rule provides is that from the date it comes into force the age of retirement would be 55 years. It would therefore apply from that date to all government servants, even though they may have
F been recruited before May 25, 1961 in the same way as the rule of 1957 which increased the age from 55 years to 58 years applied to all government servants even though they were recruited before 1957. But it is urged that the proviso shows that the rule was applied retrospectively. We have already referred to the proviso which lays down that government servants who had attained the
G age of 55 years on or before June 17, 1957 and had not attained the age of 58 years on May 25, 1961 would be deemed to have been retained in service after the date of superannuation, namely 55 years. This proviso in our opinion does not make the rule retrospective; it only provides as to how the period of service beyond 55 years should be treated in view of the earlier rule of 1957
H which was being changed by the rule of 1961. Further the second order issued on the same day also clearly shows that there was

(1) A.I.R. 1954 S.C. 600

no retrospective operation of the rule for in actual effect no government servant was retired before the date of the new rule *i.e.*, May 25, 1961 and all of them were continued in service up to December 31, 1961 except those who completed the age of 58 years between May 25, 1961 and December 31, 1961 and were therefore to retire on reaching the age of superannuation according to the old rule. We are, therefore, of opinion that the new rule reducing the age of retirement from 58 years to 55 years cannot be said to be retrospective. The proviso to the new rule and the second notification are only methods to tide over the difficult situation which would arise in the public service if the new rule was applied at once and also to meet any financial objection arising out of the enforcement of the new rule. The new rule therefore, cannot be struck down on the ground that it is retrospective in operation.

The last argument that has been urged is that the new rule is discriminatory as different public servants have in effect been retired at different ages. We see no force in this contention either, retirement namely December 31, 1961 in the case of all public servants and fixes the age of retirement at 55 years. There is no discrimination in the rule itself. It is however urged that the second notification by which all public servants above the age of 55 years were required to retire on December 31, 1961 except those few who completed the age of 58 years between May 25, 1961 and December 31, 1961 shows that various public servants were retired at various ages ranging from 55 years and one day to up to 58 years. That certainly is the effect of the second order. But it is remarkable that the order also fixed the same date of retirement namely December 31, 1961 in the case of all public servants who had completed the age of 55 years but not the age of 58 years before December 31, 1961. In this respect also, therefore, there was no discrimination and all public servants who had completed the age of 55 years which was being introduced as the age of superannuation by the new rule by way of reduction were ordered to retire on the same date, namely December 31, 1961. The result of this seems to be that the affected public servants retired at different ages. But this was not because they retired at different ages but because their services were retained for different periods after the age of fifty-five. Now it cannot be urged that if Government decides to retain the services of some public servants after the age of retirement it must retain every public servant for the same length of time. The retention of public servants after the period of retirement depends upon their efficiency and the

A exigencies of public service, and in the present case the difference in the period of retention has arisen on account of exigencies of public service. We are, therefore, of opinion that the second notification of May 25, 1961 on which reliance is placed to prove discrimination is really not discriminatory, for it has treated all public servants alike and fixed December 31, 1961 as the date
B of retirement for those who had completed 55 years but not 58 years up to December 31, 1961. The challenge therefore, to the two notifications on the basis of Art. 14 must fail.

We therefore, dismiss the appeal but in the circumstances pass no order as to costs.

C

Appeal dismissed.