

A

## MAYENGHUAN RAHAMOHAN SINGH

v.

## THE CHIEF COMMISSIONER (ADMN.) MANIPUR AND OTHERS

November 1, 1976

B

[A. N. RAY, C. J., M. H. BEG AND P. N. SHINGHAL, JJ.]

*Compulsory retirement—Compulsory retirement made in public interest under the Government of India Decision No. 23 dated 30th November, 1962 below Fundamental Rule 56 (later substituted as a new rule FR 56(j))—Mere reference to a non-subsisting rule does not invalidate the order when the retirement is in public interest and bona fide.*

C

The appellant, a Sub-ordinate Judge was compulsorily retired under the Government of India Decision No. 23 below Fundamental Rule No. 56 though the said rule was later substituted as FR 56(j). A writ petition assailing the order of compulsory retirement as in violation of Article 311 was dismissed by the Judicial Commissioner for Manipur. On appeal by certificate the appellant contended that the impugned order of compulsory retirement was null and void *ab initio* because: (1) Fundamental Rule 56 at the material time contained no reservation of any power in the appointing authority to retire him without any reason on three month's notice after the age of 55 years; (2) the impugned order was made expressly under a non-subsisting authority *viz.*, Government of India Decision No. 23 below Fundamental Rule 56, at the time of impugned notice and (3) the Government of India Decision not having been incorporated in Fundamental Rule 56, it amounted to a mere executive instruction and not a rule within the meaning of Article 309.

D

Dismissing the appeal, the Court

E

HELD : (1) Compulsory retirement is not a punishment, there being no stigma in it. [1024 D]

*Tara Singh etc. etc. v. State of Rajasthan and Ors.* [1975] (3) SCR 1002 reiterated.

F

(2) If power can be traced to a valid power the fact that the power is purported to have been exercised under non-existing power does not invalidate the exercise of the power. In the present case, the affidavit evidence establishes that the Commissioner exercised his powers and was of the opinion that it was in public interest to make the order of compulsory retirement. [1024 E-1025 A]

*L. Hazari Mal Kuthiala v. Income-tax Officer, special circle Ambala Cantt. and Anr.* [1961] 1 SCR 892=41 I.T.R. 12 and *Hukumchand Mills Ltd. v. State of Madhya Bharati and Anr.* [1964] 6 S.C.R. 857=52 I.T.R. 583 followed.

G

(3) The absence of recital in the order of compulsory retirement that it was made "in public interest" is not fatal as long as power to make compulsory retirement in public interest is there and the power, in fact, is shown in the facts and circumstances of the case, to have been exercised in public interest. Whether the order is correct or not is not to be gone into by the Court. In the instant case, the Government affidavit is that the Chief Commissioner made the order because he was of the opinion that it was in public interest to do so. The order is made *bona fide* and nothing is on the record to show that the affidavit is unbelievable. [1025 A-B, E-G]

H

*Union of India v. J. N. Sinha* [1971] 1 SCR 791 applied.

*Butail v. Union of India & Ors.* [1971] 2 SCR 55 referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2022 of 1969. A

Appeal from the Judgment and Order dated 26.10.1968 of the Judicial Commissioner for Manipur in Civil Appln. Case No. 23/67) R. K. Garg, S. C. Agarwal & V. J. Francis, for the Appellant.

V. C. Mahajan & R. N. Sachthey, for Respondent Nos. 1-3 B

The Judgment of the Court was delivered by

RAY, C.J.—This appeal is by certificate from the judgment dated 26 October 1968 of the Judicial Commissioner for Manipur.

The appellant by a writ petition challenged the order of respondent No. 1 by which the appellant was compulsorily retired. C

The Judicial Commissioner dismissed the writ petition of the appellant.

The appellant was born on 1 January 1911. He joined the erstwhile State of Manipur as a junior clerk in 1935. Though he was not a Law Graduate, he rose to become a permanent Puisne Judge in Manipur State Chief Court with effect from 5 October 1949. After the Government of India took over the administration of Manipur the appellant was appointed as a Subordinate Judge with effect from 25 January 1950 on a temporary basis. On the enactment of Manipur Courts Act 1955 the Court of Subordinate Judge was established on 1 March 1956. The appellant was appointed as the Judge of that Subordinate Court from that date. D E

The appellant did not earn good reports from superior officers. He was reverted to the post of subordinate Judge.

The appellant was served with a notice dated 30 June 1966 that he was required to retire from Government service with effect from 1 October 1966 in pursuance of the directions of the President in Paragraph 6 of the Government of India Decision No. 23 noted below Fundamental Rule 56. F

The above Decision No. 23 was contained in the Memorandum of the Government of India, Ministry of Home Affairs dated 30 November 1962. The Decision came into force on 1 December 1962. Under Paragraph 6 of the Decision the appointing authority was empowered to require a Government servant to retire after he had attained the age of 55 years on three months notice without assigning any reason. This provision was really intended to retire an officer who had completed 30 years' qualifying service. The purpose of the provision was to weed out unsuitable employees after they attained the age of 55 years. G

The Government Decision No. 23 below Fundamental Rule No. 56 which came into force on 1 December 1962 as aforesaid was substituted by new Rule on 21 July 1965. The new rule provided that H

A if the appropriate authority is of opinion that it is in public interest to do so, he has the absolute right to retire any Government servant after he attained the age of 55 years with notice of not less than three months.

B The appellant on receiving the notice for retirement prayed for his being retained in service after the age of 55 years in public interest. The representation of the appellant was rejected. It is in this background that the appellant filed the writ petition.

C The principal contention of the appellant was that the impugned order of compulsory retirement was null and void *ab initio* because the Fundamental Rule 56 at the material time contained no reservation, of any powers in the appointing authority to retire him without any reason on three months notice after the age of 55 years. Emphasis was placed by counsel on the fact that the impugned order was made expressly under the authority of Government of India Decision No. 23 below Fundamental Rule 56 and this Decision was not subsisting at the time of the impugned notice. It was also contended that the Government Decision was not incorporated in Fundamental Rule 56 and therefore it amounted to a mere executive instruction and not a rule within the meaning of Article 309. The appellant also contended that in substance the compulsory retirement was removal under Article 311.

D Compulsory retirement is not a punishment. There is no stigma in compulsory retirement. See *Tara Singh etc. etc. v. State of Rajasthan and ors.*(<sup>1</sup>)

E It is also the view of this Court that if power can be traced to a valid power the fact that the power is purported to have been exercised under non-existing power does not invalidate the exercise of the power. See *L. Hazari Mal Kuthiala v. Income-tax Officer, Special Circle Ambala Court and Anr.*(<sup>2</sup>) and *Hukumchand Mills Ltd. v. State of Madhya Bharath & anr.*(<sup>3</sup>)

F The Government case is that the Chief Commissioner by reason of the order of the President contained in Government of India, Ministry of Home Affairs Memorandum No. 33/18/62-ESTS(A) dated 30 November 1962, followed by Fundamental (Sixth Amendment) Rules, 1965, had the power to retire the Government servant without assigning any reason if he was of opinion that it was in the public interest to do so.

G The relevant Fundamental Rule 56(J) is as follows :—

“Notwithstanding anything contained in this Rule, the appropriate authority shall, if it is of the opinion that it is in the public interest to do so, have the absolute right to retire any Government servant after he has attained the age

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(1) [1975] S.C.R. 1002.

(2) [1961] 1 S.C.R. 892.=41. I.T.R. 12.

(3) [1964] 6 S.C.R. 857=52 I.T.R. 583.

of 55 years by giving him notice of not less than three months in writing".

The affidavit evidence is that the order of compulsory retirement was made in public interest. The absence of recital in the order of compulsory retirement that it is made in public interest is not fatal as long as power to make compulsory retirement in public interest is there and the power in fact is shown in the facts and circumstances of the case to have been exercised in public interest.

In *R. L. Butail v. Union of India & Ors.*<sup>(1)</sup> this Court considered Fundamental Rule 56(j) and the circumstances under which compulsory retirement can be made in public interest. It is true that in *Butail's* case (supra), the notice in terms of Fundamental Rule 56(j) was served, namely that the order of compulsory retirement was made in public interest.

A comparison between Paragraph 6 of Decision No. 23 below Fundamental Rule 56 and Fundamental Rule 56(j) of amended F. R. 56 shows that the two deal with the identical matter of compulsory retirement. The common features are that the Government servant may be asked to retire after the age of 55 years. Second, such retirement is ordered to be made by giving the Government servant a notice of three months. Third, the power to retire is an absolute right without assigning any reason. Fourth, under the amended Fundamental Rule 56(j) the power is exercised only if the appropriate authority is of opinion that it is in public interest to do so.

The Government affidavit is that the Chief Commissioner made the order because he was of opinion that it was in public interest to do so. Whether the order is correct or not is not to be gone into by the court. See *Union of India v. J. N. Sinha.*<sup>(2)</sup>

In the present case, Counsel for the appellant contended that it did not appear in the order that there was any application of mind that the order was being made in public interest. In *Butail's* case (supra) it was said that the plea that the appropriate authority had not applied its mind failed there in view of the clear averments made in that regard in the affidavit and no reason was adequately shown to discord those statements as untrue or otherwise unbelievable. In the present case, the affidavit evidence establishes that the Commissioner exercised his powers because he was of the opinion that it was in public interest to make the order of compulsory retirement. The order in the present case is made *bona fide* and nothing is on the record to show that the affidavit is unbelievable.

For the foregoing reasons the appeal fails and is dismissed with no order as to costs.

S.R.

*Appeal dismissed.*

(1) [1971] 2 S.C.R. 55.

(2) [1971] 1 S.C.R. 791.