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MEGHRAJ URKUDAJI TEMPLE

v

STATE OF MAHARASHTRA

AUGUST 10, 1988

B

[S.C. AGRAWAL, M. SRINIVASAN AND A.P. MISRA, JJ.]

Service law:

Maharashtra Civil Services (Pension) Rules, 1982 : Rule 10(4)(a)(i).

C

Compulsory Retirement—Procedure of—Employee attaining prescribed age or completing prescribed length of service—Review of—Circular dated 1-9-1983 provided for review on the employee attaining the age of 50/55 years—Employee's case not reviewed on his attaining the age of 50 years—But his case reviewed on his crossing the age of 50 years and was compulsorily retired—Permissibility of—Held, In view of clear instruction in Circular dated 12.5.1986, review was permissible even after employee crossed the age of 50 years—Employee's contention that the review on his crossing the age of 50 years is deemed to be a second review, rejected—Hence, employee's compulsory retirement, upheld.

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E

Compulsory Retirement—Grounds for—Prescribed standard of performance—Employee not attaining—Review of—Employee attained age of 50 years on 11-5-1985—His case was not reviewed according to Circular dated 1-9-1983 in which minimum standard of performance was not below average"—But his case was reviewed on 9.6.1987 according to a subsequent Circular dated 12.5.1986 in which the minimum standard of performance was increased to "not below good"—As the employee did not fulfil this standard he was compulsorily retired validity of—Held: The Circular which is in force at the time an employee's case is considered is applicable and not the Circular which was in force when his case should have been considered—Hence, compulsory retirement of employee, valid—Contention of employee that his case should have been considered according to the 1983 Circular, rejected.

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Compulsory Retirement—Employee promoted before compulsory retirement—Adverse material—Effect of—On compulsory retirement—Held:

H *Question not decided as the employee could not establish that he was*

promoted before compulsory retirement.

The respondent-State issued a Circular dated 1-10-83 under Rule 10(4)(a)(i) of the Maharashtra Civil Services (Pension) Rules, 1982 which provided review of the performance of Government employees at the age of 50-55 years or after completing the prescribed length of service and to order compulsory retirement of those Government employees who did not fulfil the minimum standard of performance "not below average". Subsequently, a Circular dated 12-5-1986 was issued in which the minimum standard of performance was increased to "not below good."

The Appellant who was an Executive Engineer attained the age of 50 years on 11-5-1985. But the appellant's case was not reviewed in accordance with the 1983 Circular. Instead the appellant's case was reviewed on 9-6-1987 in accordance with the Circular dated 12-5-1986. As the appellant did not fulfil the minimum standard "not below good" he was compulsorily retired from service. The appellant's petition before the State Administrative Tribunal Challenging his compulsory retirement was dismissed. Hence this appeal.

On behalf of the appellant it was contended that the circular dated 12-5-1986 was not applicable to the appellant and instead Circular dated 1-10-1983 was applicable; that since the appellant's case was not considered according to the 1983 Circular subsequent review under the 1986 Circular constituted a second review which was barred by the 1983 Circular; that had the appellant's case been considered according to the 1983 Circular he would have been required to fulfil the standard of "not below average" only; and that even that even if the 1986 Circular was applicable to the appellant, he having been promoted to the post of Deputy Superintendent Engineer any adverse material would be deemed to have been wiped off.

Dismissing the appeal, this Court

HELD : 1.1. There is nothing in the circular dated 1-10-1983 to be read as deemed review in case any officer's case is not considered before he crosses the age of 50 years. In the case of the appellant no review was ever made earlier so as to constitute the review made on 9-6-1987 as the second review. In fact the review made on 9-6-1987 in accordance with the Circular dated 12-5-1986 was the first review exercised by the respondent-State in respect of the appellant's case. It is clear from the Circular dated 12-5-1986 that if no review is made in respect of a Government servant on his attaining

A the age of 50/55 years his review is to be done in terms of this Circular. Hence, review is permissible under the 1986 Circular. [1071-F-G; 1072-A]

1.2. Whenever any case is reviewed the circular which is in force at that point of time would be applicable, unless barred by it or any other law in force, which is not the case here. Admittedly, when the appellant's case
 B was examined on 9-6-1987 the Circular dated 12-5-1986 was in existence. Thus the appellant was rightly tested on the standard, 'not below good as per the 1986 Circular which was in force at that relevant time and not on the standard as set out in the 1983 Circular, namely, 'not below average'.
 C Therefore, it is not possible to accept the appellant's contention that the Circular dated 1-9-1983 was applicable to him since that was the Circular in force on the Date of his attaining the age of 50 years. [1072-E-G]

Suryakant Govind Oki v. State of Maharashtra, [1995] Supp. 2 SCC 420, referred to.

D 2. There is no material on record to show that the appellant was promoted to the post of Deputy Superintendent Engineer. It is, therefore, not necessary to consider whether any adverse material stood erased upon the appellant's so-called promotion and its effect, if any, on his compulsory retirement.

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5197 of 1993.

From the Judgment and Order dated 29.6.92 of the Maharashtra Administrative Tribunal, Bombay in T.A. No. 328 of 1991 in W.P. No. 1081 of 1989.

F Ramesh P. Bhatt, Ms. Suvira Lal and M.M Shroff for the Appellant.

S.M. Nargolkar and D.M. Nargolkar for the Respondent.

The Judgment of the Court was delivered by

G MISRA, J. The appellant has challenged the impugned Government Notice dated 23rd January, 1989 under Rule 10(4) (a) (i) of the Maharashtra Civil Services (Pension) Rules 1982 (hereinafter referred to as 'Pension Rules') for his premature retirement from Government service. The present appeal is
 H filed against the judgement dated 29th June, 1992 passed by the Maharashtra Administrative Tribunal at Bombay by which the appellant's petition for

quashing the aforesaid notice was dismissed.

Rule 10 of the Pension Rules empowers the Government to prematurely retire a Government servant to prematurely retire a Government servant in public interest. Criteria or guidelines for such retirement are not spelt out under the Rule but are expressed under the Circulars dated 2nd September, 1977, 1st September, 1983 and 12th May, 1986. Prior to the aforesaid Notice dated 23rd January, 1989, Special Review Committee considered the appellant's case along with his confidential record for the period of seven years ending 1986-87 in the light of the criteria laid down in the Circular dated 12th May, 1986. In terms of the said Rule the appellant has challenged the impugned notice mainly on the ground that Circular dated 12th May, 1986 is not applicable to his case instead Circular dated 1st September, 1983 is applicable, under which there is no provision for a second review and review is only permissible before one reaches the age of 50 years. In this case this having not been done, it would be deemed to have been approved. Hence, subsequent review after crossing the age of 50 years would constitute to be the second review which is barred by the Circular dated 1st September, 1983. He further submits even if the aforesaid 1986 circular is applicable, he having been promoted as Deputy Superintendent Engineer from the post of Executive Engineer after 1986, which is a promotional post any adverse document would be deemed to have been wiped off. For all these reasons, the impugned Notice is liable to be quashed.

In order to appreciate the point it is necessary to refer to some essential facts.

The appellant was born on 11th May, 1935 thus completed the age of 49 years on 11th May, 1984 and attained the age of 50 years on 11th May, 1985. It is not in dispute appellant joined his services in the Public Works Department prior to his age of 35 years. He was promoted to the post of Deputy Engineer in 1973 and further promoted as Executive Engineer in 1981. The appellant's case is he continued in service beyond the age of 50 years. It is on these facts submission is as per requirement of the aforesaid circular of 1983 which requires review of a case prior to one attaining the age of 50 years and that not having been done, and he continued even after this, it would be deemed to have been reviewed for approval. With reference to 1983 Circular, it is submitted there is no provision for a second review, on the contrary it specifically records only one single review should be undertaken in respect of Class I and II Gazetted Officers, who have entered into services

- A before the age of 35 years and about to reach the age of 50 years or completed 30 years qualified service whichever is earlier to which class appellant belongs. It further records a second review at the age of 55 years should not be taken as a matter of course. However, Government reserves its right to review the case of any such Officer at any time after the initial review based on his subsequent work and conduct or physical or mental health which may make
- B premature retirement clearly desirable. In the present case the contention rightly is that we are not concerned about this part of the circular. In the nut shell submission is when he continued in service even after attaining the age of 50 years there would not arise any premature retirement under 1983 circular it can only be by a later review on a limited ground which is referred in the
- C latter part of this circular, which is not applicable to the appellant's case.

- It is also submitted even if it could be said second review was permissible the criteria for retention in service ought to have been that which prevailed at the time appellant reached his 50th year that would be admittedly 'not below average' as set out in Government Circular dated 1st September, 1983.
- D Hence, the Review Committee fell into error in applying the standard as set in the Circular dated 12th May, 1986, to be 'not below good'. Thus if standard as set in the circular dated 1st September, 1983 is applied, the appellant was qualified for promotion. As per the Tribunal's order the review of appellant's case was taken on 9th June, 1987.

- E On the other hand case of the Respondent-State is that prior to the impugned notice dated 30th January, 1989, the Special Review Committee considered the case of the appellant along with the confidential record for the period of seven years ending 1986-87 in the light of the criteria as laid down as per the Government circular dated 12th May, 1986. The said Committee
- F came to the conclusion that his record is on the whole less than good, hence, recommended for compulsory retirement of the appellant. The said recommendation has also been accepted by the Government and he has been ordered to be retired prematurely. However, the Government decision to retire the appellant prematurely is based on the overall performance for the relevant
- G years in question.

- The Bench hearing this petition earlier was *prima facie* inclined to accept the contention for the appellant but in view of the decision in case *Suryakant Govind Oke v. State of Maharashtra*, [1995] Suppl. 2 SCC 420 in which it was held that even if an Officer's case has not been reviewed before
- H he crossed the age of 50 years, his case can be reviewed under Circular dated

12th May, 1986 read with Rule 10(4)(a)(i) of the aforesaid Rule. This led for this case being referred to a larger Bench by means of an order dated 13th May, 1998. This is how this case is placed before us. A

The case of *Suryakant Govind Oke* (Supra) while considering the case with reference to the Circular dated 12th May, 1986 recorded that the said Circular took into account the earlier Circular dated 2nd September, 1977, 1st September, 1983 and 30th November, 1984, held : B

Para 8: "A conjoint reading of the above two paras of the circular show that the cases of government servants, Class I gazetted, may be reviewed once and the review may take place at the age of '50-55' years. Undoubtedly in this Case, review has taken place at he age of 55 in so far as the appellant is concerned. We are not persuaded to accept the argument that when there was no first review before the employee reached the age of 50 years there could be no review at the age of 55, to determine whether the employee deserved to be continued in service. The Rules and the Circular do not prohibit the review at the age of 55." C D

However, the case later was decided on the basis of the facts of that case based on the relevant service records. In fact learned counsel for the appellant submitted, in case his submission on the applicability of Circular dated 1st September, 1983 is not accepted then Court may examine the appellant's service records as was done in the case of *Suryakant Govind Oke* (Supra). E

We have heard learned counsel for the parties at length. We have scrutinised the Circular dated 1st September, 1983. Firstly, there is nothing in it to be read as deemed review in case any officer's case is not considered before he crosses the age of 50 years. It is true the said Circular refers to a review of any Officer of Class I and II only once, but this would not lend any support to the appellant as nothing is brought before us to show that any review was ever made earlier to debar the review in question to construe it to be second review. In fact the aforesaid review by the Special Review Committee on 9th June, 1987 was the first review exercised by the respondent in respect of the appellant's case. This apart, even if we accept appellant's interpretation the same stands dissolved in view of para 3 of the Circular dated 12th May, 1986 which is quoted thereunder : F G

3. "Those Govt. Servants whose reviews have not been done on their H

A attaining the age of 50/55 years and those whose review are to be done, the procedure as stated in a, b and c hereinabove will be followed.”

B This makes it absolutely clear in respect of such Government servant whose case has not been reviewed on their attaining the age of 50/55, is to be done in terms of this para. As we have already recorded there was no review done by the Respondent-State, admittedly, even according to the appellant, before he reached the age of 50 years. Hence, review is permissible under this para which totally discards the interpretation of learned counsel for the appellant based on the circular of 1983.

C We further do not find any merit in the submission for the appellant that the Special Review Committee at the point of consideration of case of appellant should have only considered the standard as set out in the Circular dated 23rd January, 1983 as that was the Circular when the appellant attained the age of 50 years. Admittedly, when the Special Review Committee D examined the case of the appellant, as aforesaid, on 9th June, 1987, the Circular dated 12th May, 1986 was in existence. In fact para 3 of this Circular has empowered the authority to review all such cases, to which the appellant falls, whose review was not undertaken earlier. These circulars are in fact E procedural in nature. Whenever any case is reviewed all or any such circulars in force, at that point of time whenever that case is considered, such circulars would be applicable, unless barred by it or any other law in force, which is not the case here. In fact even the 1983 Circular's latter part as aforesaid empowers Government to prematurely retire on any materials coming under it scrutiny subsequently. Thus the special Review Committee rightly tested F the appellants's case on the standard, 'not below good' as per 1986 Circular which was in force at that relevant time and not on the standard as set out in the 1983 Circular, namely, 'not below average. So we have no hesitation to hold that appellant's case is covered by the Circular dated 12th May, 1986 and the authority rightly tested his case on the standard of 'not below good' G . It is not in dispute in this case, on the test of these standards, for the relevant years in question, the appellant would not qualify.

Lastly, learned counsel for the appellant submitted in any case the consideration based on the standard of 1986 Circular in case any material adverse existed would stand erased so far the appellant is concerned, since H the appellant was promoted from the post of Executive Engineer to the post

of Deputy Superintendent Engineer. Reliance is placed on the letter of the impugned Notice dated 23rd January, 1989 itself describing him as Deputy Superintendent Engineer. When we asked the learned counsel to place any material of his taking this ground before any Authority or before the High Court, he was unable to point the same. We do not find even such a ground in the Special Leave Petition. Even otherwise we find mere description, as aforesaid, as such, firstly in the absence of any details, whether Deputy Superintendent Engineer is a promotional post or an equivalent post, it is not possible to hold he was promoted as such. No inference could possibly be drawn on the basis of describing him to be as such in the said letter. This apart we find in an affidavit filed before the High Court by Vithal Baburao Brahmakeshatriya, an officer of the Public Works Department sworn on 17th April, 1989 that is to say, subsequent to the said Notice dated 23rd January, 1989, where he was described as Deputy Superintendent Engineer, in para 1 of this affidavit he is described to be working only as Executive Engineer in the Public Works Department. This affidavit clearly negatives the contention of the appellant that as on 23rd January, 1989 he was promoted to the higher post of Deputy Superintendent Engineer.

In view of the aforesaid findings we do not find any merit in the appeal and it is accordingly dismissed as such. However, on the facts and circumstances of the case, cost on the parties.

V.S.S.

Appeal dismissed.