

MEGHRAJ URKUDAJI TEMPLE
v
THE STATE OF MAHARASHTRA

MAY 13, 1998

[S.P. BHARUCHA AND M. JAGANNADHA RAO, JJ.]

Maharashtra Civil Services (Pension) Rules, 1982 : Rule 10(4)(a)(1).

Service Law—Compulsory retirement—Review procedure for—Circulars dated 23.1.1983 and 12.5.1986 issued by Government of Maharashtra—Applicability of—Review of employee's case not done before he attained the age of fifty years—Whether second review can be done after he crossed the age of fifty years—Question referred to a Bench of three Judges.

Suryakant Govind Oke v. State of Maharashtra, [1995] Suppl. 2 SCC 420; Union of India & Ors. v. Narsirmiya Ahamadmiya Chauhan, [1994] Suppl. 2 SCC 537; K. Chelliah v. Industrial Finance Corporation of India & Anr., [1992] Suppl. 3 SCC 82; Brij Mohan Singh Chopra v. State of Punjab, [1987] 2 SCC 188 and State of U.P. v. Chandra Mohan Nigam, [1978] 1 SCR 521, referred to.

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

From the Judgment and Order dated 26.6.92 of the Maharashtra Administrative Tribunal, Bombay, in T.A.No. 328/91 in W.P No. 1081 of 1989.

R.P. Bhatt, M.N. Shroff and Ms. Suvira Lal for the Appellant.

I.G. Shah, and D.M. Narogolkar for the respondent.

The following Order of the Court was delivered :

M. JAGANNADHA RAO, J. The appellant contends that the notice dated 23.1.89 for compulsory retirement issued under Rule 10(4)(a)(i) of the Maharashtra Civil Services (Pension) Rules, 1982 is bad inasmuch as the procedure indicated in the Circular issued by the State Government on 1.9.1983 has not been followed before the appellant crossed 50 years and his case must be deemed to have been reviewed in his favour before he crossed 50

- A years. In such a situation, a second review after he crossed 50 years is, according to the appellant, not permissible. It is also contended that it is not open to the respondent while issuing notice on 23.1.1989 to apply the norms prescribed in a latter Circular dated 12.5.1986. It is contended that while the 23.1.1983 Circular prescribes a standard of 'not less than average', the Circular dated 12.5.1986 prescribes a more stringent standard of 'not less than good'.
- B If review had been undertaken before the appellant crossed 50 years, then it would have been sufficient if the appellant satisfied the standard of 'less than average' - which, in fact, he did - as per the norms prescribed by the circular dated 1.9.1983. The contention of the appellant is that the circular dated 1.9.1983 is binding on the Government and is intended to see that the general
- C power under Rule 10(4)(a)(i) is not used arbitrarily.

After hearing learned senior counsel on both sides, we were *prima facie* inclined to accept the above contention of the appellant. But we have come to notice a two Judge Bench decision in *Suryakant Govind Oke v. State of Maharashtra*, [1995] Suppl. 2 SCC 420 wherein it has held that even if an

D officer's case has not been reviewed before he crossed 50 years, his case can be reviewed under the circular dated 12.5.1986 read with Rule 10(4)(a)(i) of the Rules, and that this could be done even after he has crossed 50 years. We have, therefore, thought it fit that the case is to be decided by a three Judge Bench.

- E In this context, we are of the view that the decisions in *Union of India & Others v. Narsirmiya Ahamadmiya Chauhan*, [1994] Suppl. 2 SCC 537, *K. Chelliah v. Industrial Finance Corporation of India & Another*, [1992] Suppl. 3 SCC 82 and in *Brij Mohan Singh Chopra v. State of Punjab*, [1987] 2 SCC 188 decided by Benches of two Judges and also a decision of three Judges
- F Bench in *State of U.P. v. Chandra Mohan Nigam*, [1978] 1 SCR 521 all concerning the effect of Circulars/guidelines dealing with compulsory retirement are also relevant.

We direct accordingly that the papers be placed before the Hon'ble the Chief Justice of India, for being listed before a Bench of three learned Judges.

- G T.N.A.

Appeal Pending.