get the property till the death of the adoptive father If a formal gift of non-ancestral property could not be challenged by the present plaintiffs, it may be argued that insofar as the adoption in question affected the non-ancestral property of the adoptive father, the plaintiffs had no *locus standi* to assail the adoption in dispute; or at least they are not entitled to claim the equitable and discretionary relief of declaration. However, in view of my decision on the first point, it is not necessary to further pursue this aspect of the case and to express any considered opinion on it.

For the reasons given above, the appeal is allowed and setting aside the judgment and decree of the learned Additional District Judge dated 8th of October, 1956, I would hold that Ram Narain was a validly adopted son of Nanta and dismiss the plaintiffs' suit. In the peculiar circumstances of this case, however, I would leave the parties to bear their own costs througout.

K.S.K.

CIVIL WRIT.

Before G. D. Khosla, and Bishan Narain, JJ.

GIAN SINGH,—*Petitioner.*

versus

THE DISTRICT AND SESSIONS JUDGE, DELHI AND ANOTHER,—*Respondents.*

Civil Writ No. 523-D of 1958.

1959

Feb., 19th

Fundamental Rule 56(b)(i)—Meaning of—Age of retirement—Whether 55 or 60—Retirement at 55—Whether requires compliance with Article 311 of the Constitution.

Held, that Fundamental Rule 56(b)(i) fixes the age of compulsory retirment at 55 years. It is, however, laid

down that the services of a ministerial servant may be continued till the employee reaches the age of 60 provided that two conditions are fulfilled. These conditions are (1) that the services are to be continued ordinarily up to the age of 60 and (2) that the employee continues to remain efficient throughout this period. These conditions exclude the employee's right to remain in service till he attains the age of 60 years. A retirement on attaining the age of 55 is in accordance with the conditions of his service and does not amount to punishment so as to attract Article 311(2) of the Constitution. The mere mention of certain grounds on which the authority decides not to continue the ministerial servant in service after he had reached the age of superannuation does not affect the matter in any way. Refusal to extend employment of a ministerial servant beyond 55 does not amount to any punishment nor deprivation of any right vested in him.

Petition under Article 226 and 227 of the Constitution of India, praying that this Hon'ble Court be pleased to issue an immediate writ of mandamus to Respondent No. 1 that he should retain the Petitioner in service for the time being for one year with effect from the 23rd October, 1958 if the Petitioner is able to satisfy him that he is physically and mentally efficient to discharge the duties of the office in which his services will be retained and that as prescribed by Fundamental Rule 56(b)(i) he may be retained in service if he continues to be efficient up to the age of 60 years or issue any other writ or writs or Directions or Orders that to this Hon'ble Court might appear just on the facts and merits of the case and also allow the Petitioner the costs of the proceedings.

I. M. LAL, for Petitioner.

C. K. DAPHTARY and JINDRA LAL, for Respondents.

ORDER

Bishan Narain, J.

BISHAN NARAIN, J.—The question that requires to be determined in this writ petition is as to whether Gian Singh under his conditions of service was liable to be retired on his attaining the age of 55 without compliance with the provisions of Article 311 of the Constitution.

Gian Singh
v.
The District and Sessions Judge, Delhi and another

Bishan Narain, J.

This case has come before us in the Division Bench in view of the conflict in the decision of Khosla, J. in *Krishan Dayal and others* v. *General Manager, Nothern Railway, Baroda House, New Delhi* (1), and that of Mehar Singh, J. in *Mangal Dass* v. *The Union of India* (2).

The facts relevant for the decision of this question are not in dispute. Gian Singh entered governent service in 1926 as a ministerial servant. He attained the age of 55 on 23rd October, 1958. At that time he was working as translator in the court of District and Sessions Judge, Delhi. He applied for extension of his service for one year but his application was dismissed by the District and Sessions Judge on the ground "he is not a willing worker and always tries to find excuses and indulges in intrigues". Gian Singh appealed to the High Court on the administrative side against the decision of the District and Sessions Judge Delhi refusing to extend his period of service. This appeal, however, was dismissed. Aggrieved with his retirement at the age of 55, Gian Singh has filed the present petition in this Court under Article 226 of the Constitution.

The petitioner's case is that he is not liable to retirement till he reaches the age of 60 and that his retirement at the age of 55 on the grounds given by the District and Sessions Judge Delhi without complying with the provisions of Article 311 is illegal and void. It is not disputed in the present case that the provisions of Article 311(2) have not been in fact complied with.

Now it is well established that when the conditions of service fix an age of compulsory retirement

(1) A.I.R. 1954 Punjab 245
(2) 1958 P.L.R. 277

Gian Singh
v.
The District and Sessions Judge, Delhi and another

Bishan Narain, J.

then the retirement of the employee on attaining that age is in accordance with the terms of service. In such a case it is not necessary to comply with the provisions of Article 311(2) of the Constitution. The reason is that such a termination of service is in accordance with the condition of service and no employee has a right to continue in service after attaining the age of compulsory retirement. (*vide* *The State of Bombay* v. *Saubhagchand M. Doshi* (1); and *P. L. Dhingra* v. *Union of India* (2).

It is common ground between the parties that the petitioner's age of compulsory retirement is fixed in F. R. 56(b) (1)and this rule has to be construed to determine the age of retirement. Now F. R. 56 Reads:—

> "(a) Except as otherwise provided in the other Clauses of this Rule the date of Compulsory retirement of a Government servant other than a ministerial servant, is the date on which he attains the age of 55 years. He may be retained in service after the date of compulsory retirement with the sanction of the Local Government on public grounds which must be recorded in writing, but he must not be retained after the age of 60 years except in very special circumstances.
>
> (b) (i) A ministerial servant who is not governed by sub-clause (ii) may be required to retire at the age of 55 years, but should ordinarily be retained in service, if he continues efficient, up to the age of 60 years. He must not be retained after

(1) 1957 S.C. 892
(2) 1958 S.C. 36

that age except in very special circumstances which must be recorded in writing, and with the sanction of the local Government.

(ii) A ministerial servant:—

(1) who enters Government service on or after the Ist April, 1938, or

(2) who being in Government service on the 31st March, 1938 did not hold a lien or a suspended lien on a permanent post on that date, shall ordinarily be required to retire at the age of 55 years. He must not be retained after that age except on public grounds which must be recorded in writing, and with the sanction of the Local Government he must not be retained after the age of 60 years except in very special circumstances.

* * * * *

A rule similar to this rule with necessary adaptations is contained in Rule 2026 (2) (a) and (b) of the Indian Railway Establishment Code, Volume II. The decision on construction of the fundamental rule or of the railway rule is a relevant decision on the construction of the other rule.

There can be no doubt that the rule now under consideration is not happily worded. It could have more explicitly fixed the age of compulsory retirement. However as I read it the meaning of the rule is fairly clear. In my view F.R. 56(b) (1) fixes the age of compulsory retirement at 55 years.. It is however laid down that the services of a ministerial servant may be continued till the

Gian Singh
v.
The District and Sessions Judge, Delhi and another

Bishan Narain, J.

employee reaches the age of 60 provided that two conditions are fulfilled. These conditions are (1) that the services are to be continued ordinarily up to the age of 60 and (2) that the employee continues to remain efficient throughout this period. These conditions to my mind exclude the employee's right to remain in service till he attains the age of 60 years. The use of the word "ordinarily" indicates that the authorities are under no obligation to continue a ministerial servant in service after the age of 55 though normally his services may be so continued. This continuation of service however depends on the exercise of discretion or option by the employer and the employee has no right to claim it. The word "ordinarily" cannot be equated with "necessarily" or "invariably" or "inevitably" and the servant cannot demand an order of continuation of his service after the age of 55 years. The mention of the second condition relating to efficiency leads to the same conclusion. Services of an employee are liable to termination if at any time he ceases to be efficient but this cannot be done without complying with the provisions of Article 311(2) of the Constitution. There was no necessity of making specific mention of efficiency in this rule if the age of retirement was intended to be fixed at 60 years because otherwise also he could be so retired after he had been given an opportunity to put his case before the authorities. In my view the rule fixes the age of retirement of a ministerial servant at the age of 55 years and after attaining that age he has no right to be retained in service. A retirement on attaining that age is in accordance with conditions of his service and does not amount to punishment so as to attract Article 311(2) of the Constitution.

This rule has been the subject matter of construction by the Government as well as by the

Various High Courts and with the exception of the view expressed by Mehar Singh, J., in *Mangal Dass's case* (1), the decision has unanimously been that the rule fixes the age of compulsory retirement at 55 years.

Under rule 2002 of the Railway Establishment Code, Volume II, the power of interpretting the rule is given to the President. In 1932 the word "ordinarily" in this rule was construed by the President. This rule is reproduced in *Basanta Kumar Pal* v. *The Chief Electrical Engineer and others* (2). It reads :—

> "Ordinarily"—In view of the occurrence of the word 'ordinarily' in F.R. 56(b) (2046 (2)), a ministerial Government servant can be retired from Government service between the age of 55 and 60 years on grounds other than those of efficiency and that in such a case he has no claim to be retained in service upto the age of 60 years. The purpose of F.R. 56 (2046) is not to confer upon Government servants any right to be retained in service upto a particular age but to prescribe the age beyond which they may not be retained in service."

This construction to my mind indicates that the age of compulsory retirement has been fixed by the rule under consideration to be 55 years. Again on 17th July, 1954 the Government of India, Ministry of Home Affairs, issued a Memorandum which laid down that the case of ministerial Government servants who are governed by F.R. 56(b)(1) should be reviewed periodically between

(1) 1958 P.L.R. 277
(2) A.I.R. 1956 Cal. 93

Gian Singh
v.
The District and Sessions Judge, Delhi and another

Bishan Naran, J.

the ages of 55 and 60 years to ensure that they are retained in service beyond the age of 55 years only if they continued to be efficient, This Memorandum is reproduced in *P. Kesva Rao Naidu* v. *Director of Posts and Telegraphs* (1), and is operative only if the age of compulsory retirement is fixed at 55 years. It is not necessary to reproduce the Memorandum in this judgment. It appears to me that the Government view is in favour of the view that under this rule the age of retirement has been fixed at 55 years.

The railway rule 2046(2) (a) contained in the Railway Establishment Code came up for consideration before a Division Bench of the Allahabad High Court in *Raghunath Narain Mathur* v. *Union of India*, (2). In that case their Lordships held:—

> "The Railway authorities have an unfettered option to retire a person at the age of 55 though, normally speaking, they are expected to continue persons in employment, unless they are inefficient, until they reach the age of 60. But it is solely for them to decide whether a man shall be retained or not after the age of 55. The word 'ordinarily' does not take away their "right to retire him and it cannot be ignored."

The next case in point of time is *Krishan Dayal and others* v. *General Manager, Northern Railway, Baroda House, New Delhi*, (3). My learned brother, Khosla J., dealt with this very rule 2046 and after examining its language and taking other matters into consideration agreed with the conclusions of the Division Bench in *Raghunath Narain Mathur's case*, (2).

(1) A.I.R. 1958 Andhra Pradesh 697
(2) 1953 All. 352
(3) A.I.R. 1954 Punjab 245

The Calcutta High Court had to deal with the F.R. No. 56(b) (1) in *Hirendra Nath Roy* v. *State of West Bengal and others,* (1), and Sinha; J. came to the conclusion that under this rule a ministerial servant was liable to compulsory retirement at the age of 55 years. This decision is not printed in full but I have found it in A.I.R. 1955 NUC Calcutta No. 2343. This rule then came up for decision by the Supreme Court in *Jai Ram* v. *Union of India,* (4). In the Supreme Court case the ministerial servant relying on F.R. 56(b)(1) had urged that the was not liable to retirement before the age of 60. Their Lordships after reproducing the relevant portion of the rule observed:—

> "We think that it is a possible view to take upon the language of rule 56(b)(i) that a ministerial servant coming within its 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 herefore 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."

Their Lordships of the Supreme Court then proceeded to say that by itself this construction of the rule did not afford any solution of the question involved in that case. Their Lordships held that the plaintiff had voluntarily retired at the age of 55 and therefore he had no grievance in the matter. In view of his voluntarily retirement they dismissed the appeal of Jai Ram. Relying on these observations of the Supreme Court, Mehar Singh, J. in

(1) A.I.R. 1955 N.U.C. Cal. No. 2343
(2) A.I.R. 1954 S.C. 584

Gian Singh
v.
The District and Sessions Judge, Delhi and another

Bishan Narain, J.

Mangal Dass's case (1), has come to the conclusion that the age of compulsory retirement under this rule is 60 years. With respect to the learned Judge I find myself unable to hold that the Supreme Court has, in the case of Jai Ram, come to the conclusion that F.R. No. 56(b)(i) fixes the age of retirement at 60 years. In my view the Supreme Court has not construed the rule at all but has proceeded to assume the interpretation of the rule as suggested by the appellants to be correct and then the appeal has been decided on that basis. The Supreme Court has neither interpreted the rule nor has laid down any principle of construction which would lead me to come to the conclusion that under this rule the age of retirement is 60 years. The use of the words "possible" and "assume" in the passage reproduced above makes it clear that the Supreme Court did not purport to give any decision on the construction of this rule. This conclusion is in consonance with the decisions of other High Courts which had to deal with the matter.

In *Basanta Kumar Pal* v. *The Chief Electrical Engineer and others,* (2), Sinha; J. while construing Rule 2046 relied on Allahbad and Punjab Judgments and distinguished the Supreme Court decision. He came to the conclusion that the age of retirement under this rule is 55 years. A Division Bench of Andhra Pradesh High Court in *P. Kesva Rao Naidu* v. *Director of Posts and Telegraphs, Andhra Circle, Kurnool and another*; (3); also came to the same conclusion.

It, therefore, follows that the weight of authority is overwhelmingly in favour of the view that

(1) 1958 P.L.R. 277
(2) A.I.R. 1956 Cal. 93
(3) A.I.R. 1958 Andhra Pradesh 697

Gian Singh
v.
The District and Sessions Judge, Delhi and another

under F.R. No. 56(b)(i) the age of compulsory retirement is 55 years.

There is another way of looking at the matter. The fundamental rule 56(b)(i) and the railway rule No. 2046 contained in the Railway Establishment Code relate to All India Services. In this context it would not be proper and reasonable that we should take a view which is in conflict with the views expressed on the subject by all other High Courts. A dissenting view of this type must result in confusion and such a confusion should be avoided in matters relating to All-India services if at all possible. For all these reasons I hold that under F.R. No. 56(b)(i) the age of compulsory retirement is 55 years and in this view of the mater it must be held, with great respect, that the decision of Mehar Singh, J., in *Mangal Dass's case* (1); is not in accordance with law.

Bishan Naran, J.

There is no doubt that if the age of retirement is 55 years then the petitioners has no valid grievance against his retirement at the age of 55 years. I may state here that the mere mention of certain grounds on which the District and Sessions Judge decided not to continue Gian Singh in service after he had reached the age of superannuation does not affect the matter in any way. Refusal to extend employment of Gian Singh beyond 55 does not amount to any punishment nor deprivation of anyright vested in him."

For these reasons, I would dismiss this petition with costs. Counsel's fee Rs. 50.

G.D. Khosla, J.—I agree.

G. D. Khosla.

(1) 1958 P.L.R. 277

B.R.T.