

trips to Chandigarh the wife had only spent Rs. 100. The learned Judge ignored other expenses which one has to incur while being out of town and these have not to be confined to the rail fare alone as the learned Judge did. It was too much to expect that the wife should have produced a number of witnesses to depose that she had in fact incurred a loan of Rs. 2,500 and had paid it back. The learned Judge treated the matter as if the claim of the wife was that of a criminal complainant and she had to prove it beyond any reasonable doubt. The matter had to be viewed on broad probabilities. The explanation rendered by the wife was probable on the face of it. It may not have been absolutely true but was plausibly true when tested on probabilities, more so when she had been allowed to sue as an indigent person in the court of first instance. If at the initiation she had no property to pay the court-fee, it would be proper to accept that when she came by any money as maintenance that had gone to meet her recurring liabilities incurred while the litigation was pending. After all litigation is not a luxury which everyone can indulge in. It besides being time consuming is fairly expensive even if one has not to pay the court-fee. Thus, from all these angles I am of the view that the matter was not examined by the Additional District Judge Judiciously and in the right perspective.

(5) For the foregoing reasons, this petition is allowed, the impugned order of the learned Additional District Judge is set aside and the petitioner is allowed to appeal as an indigent person. No costs.

N.K.S.

Before D. S. Tewatia and S. S. Kang, JJ.

H. L. DHAWAN,—Petitioner

versus

THE PUNJAB STATE WAREHOUSING CORPORATION,—Respondent.

Civil Writ Petition No. 1930 of 1984.

September 11, 1985.

Punjab State Warehousing Corporation Staff Regulations 1960—Regulation 12 proviso—Proviso enabling the appointing authority to extend the period of service of an employee beyond the age of superannuation—Authority higher than the appointing authority—Whether could decide the matter—General order of the Corporation extending the age of all the employees—Such an order—Whether envisaged by the proviso.

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Held, that it cannot be said that where power has been given only to the appointing authority, it cannot be exercised by any one else on the ground that he is superior to the appointing authority. Such a view is warranted only when a prescribed or specified authority is required to pass a judicial or a quasi-judicial order. In such a case, no other authority even though superior to the specified authority would be competent to pass the given order. In case the requisite order, that a given statutory provision required to be passed, is of purely administrative character, then the authority superior to the specified authority would be equally competent to pass such an order. Basically it is for the employer to see whether giving of extension to a given individual employee or all the employees would advance the interest of the employer. Such a decision is administrative in character, and therefore, the employer is competent to make it, even though the relevant rules may have envisaged the passing of such an order by an authority which may be functioning as the appointing authority on behalf of the given employer whether such an employer is the Government or a statutory Corporation.

(Para 6)

Held, that even though the extension contemplated by the proviso to Regulation 12 of the Punjab State Warehousing Corporation Staff Regulations 1960 is generally for individuals and an individual order is passed in such a case, yet there is nothing illegal if the Corporation came to the conclusion generally that services of all its employees should be retained till the age of 58 years in public interest. In such a case, a general order would be enough and no individual order need be passed.

(Para 8)

Nanak Saran Srivastava vs. State of U.P. and others, 1971(1) S.L.R. 168.

DISSENTED FROM.

Petition under Article 226 of the Constitution of India, praying that a Writ of Certiorari, Mandamus or any other suitable Writ, Direction or Order be issued, directing the respondent—

- (i) to produce the complete records of the case;
- (ii) directing the respondents to decide the petitioner's representations;
- (iii) the order at Annexure 'P-3' be quashed to the extent that it lays down that the retiring age of the petitioner as 30th April, 1984;
- (iv) this Hon'ble Court may also pass any other order which it may deem just and fit in the circumstances of the case;

- (v) *this Hon'ble Court may also grant all the consequential reliefs in the nature of arrears of salary, seniority etc.;*
- (vi) *this Hon'ble Court may also dispense with the filing of the original annexures;*
- (vii) *this Hon'ble Court may also dispense with the service of the writ petition on the respondent;*
- (viii) *it is further prayed that pending the decision of this Hon'ble Court, the respondent be restrained from retiring the petitioner before he attains the age of 58 years;*
- (ix) *the costs of this writ petition may also be awarded to the petitioner.*

J. L. Gupta, Senior Advocate and Rakesh Khanna, Advocate, with him).

Kuldip Singh, Senior Advocate, (S. S. Nijjar & Shri M. M. Sharma, Advocates, with him).

JUDGMENT

D. S. Tewatia, J. (oral)

(1) These three writ petitions, namely No. 3279 of 1984, 5125 of 1984 and 1930 of 1984 raise common questions of law and substantially similar of facts and therefore, a common judgment is proposed. Reference to the facts, wherever necessary, would be made from Civil Writ Petition No. 1930 of 1984.

(2) The petitioners are employees of the Punjab State Warehousing Corporation (briefly the Corporation). In the seniority list Annexure P2, the date of retirement of the petitioner had been shown as 30th April, 1987. Later on, in the subsequent seniority list published in the year 1983, Annexure P3, the date of retirement had been shown as 30th April, 1984. The petitioners have impugned their revised date of retirement alleging that the age of retirement of the employees of the Corporation is 58 years and therefore, Annexure P3 is not in consonance with the superannuation age of 58 years. In the petition, a reference is made to Draft Regulation 12 of the Punjab State Warehousing Corporation Staff Regulations, 1974. A reference has also been made to a decision of the Corporation

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Annexure P1/A, fixing the age of superannuation of the employees to be the same as that of the employees of the Punjab State.

(3) In the reply filed by the Managing Director of the Corporation, the Corporation has taken the stand that the draft Regulations of 1974 never became regulations and therefore, they were not applicable. It is maintained that, in fact, it is the 1960 Regulations which govern the conditions of service of the staff of the Corporation and Regulation 12 thereof, envisages superannuation of its employees at the age of 55 years.

(4) The learned counsel for the petitioner, proceeding on the assumption that it is the 1960 Regulations which were still operative, canvassed that first proviso to Regulation 12, envisages extension in the age of retirement; that the general decision of the Board dated 9th July, 1973, be taken to have been made in terms of Regulation 12 of 1960 Regulations.

Regulation 12 of 1960 Regulations is in the following terms:

"Superannuation on attaining the age of 55 years.—Every employee shall retire on attaining the age of 55 years:

Provided that the appointing authority may, in the interest of the Corporation, extend the period of service of an employee beyond the age of superannuation for such period as may be considered necessary:

Providing further that nothing in this regulation shall be deemed to affect the powers of the Corporation to employ any person above the age of 55 years on contract."

(5) Shri Kuldip Singh, appearing for the respondent-Corporation, has, however, contended that the said proviso to Regulation 12 envisages an order being passed, firstly, by the appointing authority, and secondly only for an individual employee, i.e. the given proviso does not envisage the passing of a general order of the kind incorporated in Annexure P1/A bringing the age of superannuation of all the employees of the Corporation at par with that of the Punjab Government employees in whose case, the age of retirement was then 58 years and continues to be so even now. Shri Kuldip Singh, the learned counsel sought to sustain the first limb of this contention

from the judgment of the Allahabad High Court in *Nanak Saran Srivastava v. State of UP & others*, (1). On the other hand, Shri J. L. Gupta, learned counsel for the petitioners, sought to sustain his submission from a judgment of the Supreme Court in *I. N. Saksena v. The State of M.P.*, (2).

(6) Dealing with the first limb of the contention advanced by Shri Kuldip Singh, it may be observed that no doubt it is true that a Bench of the Allahabad High Court had taken the view, while considering Rule 56 of the Fundamental Rules, that an authority superior to the appointing authority could not exercise powers of the appointing authority. In that case, the notice of retirement to the Government servant concerned had been issued by an authority superior to the appointing authority. Jagdish Shahai, J., who delivered the judgment for the Bench, observed that "since the power has been given only to the appointing authority, it cannot be exercised by any one else, on the ground that he is superior to the appointing authority." With respect we are unable to concur in this view. Such a view, in our opinion, is warranted only when a prescribed or specified authority is required to pass a judicial or a *quasi-judicial* order. In such a case no other authority, even though superior to the specified authority would be competent to pass the given order. In case the requisite order, that a given statutory provision required to be passed, is of purely administrative character, then an authority superior to the specified authority would be equally competent to pass such an order. Basically it is for the employer to see, whether giving of extension to a given individual employee or all the employees would advance the interest of the employer. Such a decision, in our view, is administrative in character and therefore, the employer is competent to make it, even though the relevant rules may have envisaged the passing of such an order by an authority which may be functioning as the appointing authority on behalf of the given employer, whether such an employer is the Government or a statutory Corporation.

(7) The second contention advanced on behalf of Shri Kuldip Singh is that proviso to Regulation 12 envisages the passing of the given order only for an individual employee and not a general order for all the employees.

(1) 1971(1) S.L.R. 168.

(2) 1967 S.L.R. 204.

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(8) This aspect stands concluded against the respondent by the judgment of the apex Court. In this regard, the following observations in *I. N. Saksena's case* (supra) of their Lordships can be quoted with advantage:

"Then it is urged that if the memorandum of February 28, 1963, does not amount to rules under Art. 309, the appellant would have to retire in August, 1963 and therefore, could not take advantage of the rule published on December 6, 1963 fixing the age of retirement at 58. We are of the opinion that there is no force in this contention. Fundamental Rule 56, as it existed before March 1, 1963, provided 55 years as the age of retirement. It further provided that a Government servant might be retained in service after that date 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. It is clear, therefore, that it was open to Government to extend the date of retirement of a Government servant under F. R. 56(a), or 56(aa) if it is desired. It is true that the extension contemplated by this rule was generally for individuals and an individual order is passed in such a case. But we see nothing illegal if the Government came to the conclusion generally that services of all Government servants should be retained till the age of 58 in public interest. In such a case a general order would be enough and no individual orders need be passed. We are of opinion that the memorandum of February 28, 1963 is merely in the nature of such a general order of extension of service by Government under F. R. 56 as it existed on that date. It seems that the Government thought it proper in the public interest to retain all Government servants up to the age of 58 under F. R. 56 and these executive instructions must be taken to provide such retention till a proper rule, as envisaged in the memorandum came to be made. As we have indicated already, we see nothing in F. R. 56 as it was which would in any way bar the Government from passing such a general order retaining the services of all Government servants up to the age of 58, though ordinarily one would expect an individual order in each individual case under that rule. Even so, if the Government come to the conclusion

generally that services of all Government servants should be retained up to the age of 58 years, we cannot see why the Government cannot pass a general order in anticipation of the relevant rule being amended raising the age of retirement in the public interest. We, therefore, read the executive instructions contained in the memorandum as amounting to an order of Government retaining the services of all Government servants up to the age of 58 years."

In view of this authoritative judgment of their Lordships, we hold that the decision of the Board recorded in Annexure P1/A would meet the requirement of Regulation 12, with the result that the age of superannuation of the employees of the Corporation, including the petitioners, continued to be 58 years and therefore, seniority list Annexure P3, indicating the age of retirement on the basis of superannuation age being assumed to be 55 years is quashed and we also quash the orders retiring them with effect from the date mentioned in Annexure P3, and consequently allow all the three petitions. The petitioners shall be entitled to the consequential benefits resulting from this judgment. The emoluments shall be paid to the petitioners with interest at the Bank rate, as undertaken on behalf of the respondent-Corporation on 8th May, 1984 in CWP 1930 of 1984.

(9) In view of what we have said above, the other grounds raised in the petition are not required to be determined and gone into.

N.K.S.

Before Pritpal Singh, J.

SATWINDER SINGH AND OTHERS,—*Petitioners*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 624 of 1985.

September 19, 1985.

Punjab Revenue Patwaris Class III Service Rules, 1956—Rules 4, 8, 10 and 11—Petitioners selected for admission to the State Patwar Schools successfully passing the Patwar School examination—