

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

SHAM LAL SOOD,—*Petitioner.*

versus

UNION OF INDIA, ETC.,—*Respondents.*

Civil Writ No. 1660 of 1970

February 22, 1971

Fundamental Rules (1922 as amended in 1965)—Rule 56—Central Civil Services (Part B States Transferred Employees) Rules (1953)—Rule 9—Postal employee of Pepsu State employed in 1931 and confirmed in 1935, transferred to Union of India in 1950—Such employee opting for Central scales of pay and other conditions of service—Age of superannuation of the employee—Whether 60 under Fundamental Rule 56(c) or 58 years under Fundamental Rule 56(a).

Held, that rule 9(4) of Central Services (Part B States Transferred Employees) Rules, 1953, read along with Fundamental Rule 56(b)(i) as in force in 1953 shows that the ministerial servants of Pepsu State transferred to the Union of India were to be treated as having entered Government service on or after April 1, 1938, or who being in Government service on March 31, 1938, did not hold a lien or a suspended lien on a permanent post on that date and were, therefore, ordinarily to be required to retire at the age of 55 years. Rule 9(2) of these Rules also shows that a transferred employee, who elected the Central Rules, was to be subjected to the Revised Pension Rules as applicable to post-1938 entrants as amended from time to time and all the permanent or temporary service rendered by him under the State Government prior to absorption was to be treated as permanent and temporary service rendered under the Central Government. Since the position of the transferred ministerial Government servants as post-1938 entrants in service was crystallised under these Rules, they were to be treated as post-1938 entrants for the purposes of Fundamental Rule 56 as amended in 1965. The amended provision in that Rule with regard to post-1938 entrants is clause (a) and not clause (c). Clause (c) would have applied if rule 9 of the Central Civil Services (Part B States Transferred Employees), Rules, 1953, had not been there. It is true that these Rules were enacted in 1953 but they were given retrospective effect from April 13, 1950, in the case of the transferred employees from Pepsu State. Hence the superannuation age of a Pepsu postal employee opting for Central conditions of service will be 58 years under Fundamental Rules 56(a) and not 60 years under Fundamental Rule 56(c). (Para 7)

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Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of Certiorari Mandamus or any other appropriate writ, order or direction be issued quashing the impugned order dated 8th May, 1970, and the respondent No. 2 be directed to allow the petitioner to continue in his service and not retire the petitioner with effect from 8th June, 1970, and further praying that during the pendency of the writ petition operation of the impugned order be stayed ad-interim.

C. L. GHAI, ADVOCATE, for the petitioner.

C. D. DEWAN, ADDITIONAL ADVOCATE-GENERAL, HARYANA, for the respondents.

JUDGMENT

TULI, J.—(1) This judgment will dispose of C.W. No. 1660 of 1970, *Sham Lal Sood v. Union of India and another*, and C.W. No. 8 of 1971, *Roshan Lal Sharma v. Union of India and others*, as common questions of law and fact arise in both these petitions.

(2) Sham Lal Sood petitioner in C.W. No. 1660 of 1970, joined service as a Clerk in the Postal Department of the erstwhile Patiala State on April 25, 1931 and was confirmed in that post with effect from November 26, 1935. With effect from August 20, 1948, the Patiala and East Punjab States' Union (hereinafter called the Pepsu State) was formed by the merger of eight East Punjab States, including Patiala, and all the employees of those convenanting States became the employees of the Postal Administration of that Union. The Constitution of India was brought into force with effect from January 26, 1950, as a result of which the Postal Department of the Pepsu State was amalgamated with the Postal Department of the Union of India with effect from April 13, 1950, and the permanent staff working on that date was given option either to elect the Central scales of pay and allowances and other conditions of service or elect to be governed by the pre-absorption conditions of service,—vide Government of India, Ministry of Finance Communication No. F. 5(14)-E/III/51, dated June 13, 1951. In terms of that communication, the petitioner gave his option on October 25, 1951 electing the Central scales of pay and allowances and other conditions of service. Thereafter a clarification was issued by the Government of India on December 10, 1951, according to which the words "as for post-1938 entrants" were to be added to the second sub-para of page 5 of the original communication dated June 13, 1951. The case of the respondents is that under the option exercised by the petitioner he had to retire at

the age of 58 years, which is the age of superannuation of post-1938 entrants. The case of the petitioner, on the other hand, is that he is governed by clause (c) of Fundamental Rule 56, under which his age of superannuation is 60 years as he is a pre-1938 entrant into service.

(3) Roshan Lal Sharma, petitioner in C.W. No. 8 of 1971, was appointed as a Clerk in the Postal Department of the erstwhile State of Patiala on March 8, 1934, and was confirmed in that post with effect from that very date. He also became an employee of the Pepsu State after its formation and exercised his option in favour of Central Scales of pay and allowances and other conditions of service like Sham Lal Sood. He also claims to be a pre-1938 entrant and, therefore, entitled to continue in service till attaining the age of 60 years, which is the age of superannuation under clause (c) of Fundamental Rule 56.

(4) In both the cases, therefore, the question for determination is whether the age of superannuation of the petitioners is 60 years under clause (c) of Fundamental Rule 56, or 58 years under clause (a) of that Rule. That Rule, in so far as relevant, prior to its amendment in 1965, read as under :—

“F.R. 56(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 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 1st 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.”.

(5) According to this Rule, ministerial servants, who had entered Service before April, 1938, or held a lien or a suspended lien on a permanent post on March 31, 1938, were ordinarily to be retained in service, if they continued efficient, up to the age of 60 years. This Rule was amended in 1965 and the relevant provisions of the amended Rule are as under :—

“F.R. 56(a) Except as otherwise provided in this rule, every Government servant shall retire on the day he attains the age of fifty-eight years.

(b) A workman who is governed by these rules shall be retained in service till the day he attains the age of sixty years.

(c) A ministerial Government servant who entered Government service on or before the 31st March, 1938, and held on that date—

(i) a lien or a suspended lien on a permanent post, or

(ii) a permanent post in a provisional substantive capacity under Clause (d) of Rule 14 and continued to hold the same without interruption until he was confirmed in that post, shall be retained in service till the day he attains the age of sixty years.

Note.—For the purpose of this clause, the expression “government service” includes service rendered in a former Provincial Government.”

(6) Under this Rule, a ministerial servant, who entered Government service on or before March 31, 1938, or held a lien or a suspended lien on that date was entitled to be retained in service till the date he attained the age of 60 years. Every ministerial Government servant, who entered Government service after March 31, 1938, was to retire on attaining the age of 58 years.

(7) The President of India also framed the "Central Civil Services (Part B States Transferred Employees) Rules, 1953," which were deemed to have come into force in the case of transferred employees from the Patiala and East Punjab States' Union on April 13, 1950. The relevant rule is rule 9(4), which reads—

"For the purpose of determining the age of retirement for ministerial Government servants, the provisions of Fundamental Rule 56(b) (ii) shall apply."

This rule read along with Fundamental Rule 56(b) (ii) as in force in 1953 shows that the ministerial servants of Pepsu State transferred to the Union of India were to be treated as having entered Government service on or after April 1, 1938, or who being in Government service on March 31, 1938, did not hold a lien or a suspended lien on a permanent post on that date and were, therefore, ordinarily to be required to retire at the age of 55 years. Rule 9(2) of these Rules also shows that a transferred employee, who elected the Central Rules, was to be subjected to the Revised Pension Rules as applicable to post—1938 entrants as amended from time to time and all the permanent or temporary service rendered by him under the State Government prior to absorption was to be treated as permanent and temporary service rendered under Government. Since the position of the transferred ministerial Government servants as post—1938 entrants in service was crystallised under these Rules, they were to be treated as post—1938 entrants for the purposes of Fundamental Rule 56 as amended in 1965. The amended provision in that Rule with regard to post—1938 entrants is clause (a) and not clause (c) which is being invoked by the petitioners. Clause (c) would have applied to the petitioners if rule 9 of the Central Civil Services (Part B States Transferred Employees), Rules, 1953, had not been there. It is true that these Rules were enacted in 1953 but they were given retrospective effect from April 13, 1950, in the case of the transferred employees from Pepsu State and it is

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well known that a Legislature can make restrospective legislation. The power of the President of India to make rules under Article 309 of the Constitution is a legislative power. It has also been held by their Lordships of the Supreme Court in *Roshan Lal Tandon v. Union of India and another* (1) that—

“.....once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government.”

Paragraph 5 in the communication dated June 13, 1951, read as under :—

“(5) The permanent staff in service on the date of Federal Financial Integration will be given the option either to elect the Central scales of pay and allowances and other conditions of Service or retain the pre-absorption scales of pay and allowances and other conditions of service. Those who elect the former will be governed by the Government of India rules and conditions of service in all matters while those who elect the latter will continue to be governed by their pre-absorption rules and conditions of service. The option, which should be exercised in a clear and unambiguous manner before 31st March, 1952, once exercised, will be final. Failure to exercise any option or any ambiguous exercise of option by this date in any case will be construed as an exercise of option for the Central rules and conditions of service.

For the purpose of these orders, the term ‘Central scales of pay and allowances and other conditions of service’ will mean such scales of pay and allowances and conditions of service as are applicable to post—1931, entrants to Central Government Services. In regard to pension the Revised Pension Rules promulgated in the Ministry of Finance office memorandum No. F. 3(1)-Est(Spl)/47, dated the 17th April, 1951, as amended from time to time will be applicable.

(1) A.I.R. 1967 S.C. 1889.

Orders will be issued separately as to the manner in which past service will be reckoned for purposes of leave and pension under the new conditions of service."

(8) The petitioners gave their option in terms of this paragraph and, therefore, the conditions of service applicable to them were those as were applicable to post—1931 entrants to Central Government services. On December 10, 1951, the words 'as for post-1938 entrants' were added at the end of second sub-para of paragraph 5, which only related to the calculation of pension. According to these communications, the petitioners were to be governed by the conditions of service as applicable to post—1931 entrants in Government service. If the matter had rested only with these communications, the petitioners would have been governed by clause (c) of Fundamental Rule 56 as amended in 1965, but the difference has been made by rule 9(4) of the Central Civil Services (Part B States Transferred Employees) Rules, 1953, which determined the status of the transferred ministerial servants from Pepsu as that of entrants in Government service after March 31, 1938, and for this reason clause (a) of Fundamental Rule 56 applies to them and not clause (c). A similar view has been taken by a Division Bench of the Andhra Pradesh High Court in *Postmaster-General, Andhra Pradesh Circle, Hyderabad and another v. Mohd. Abdul Hamid Khan*, (2). A contrary view has, however, been taken by a learned Judge of the Himachal Bench of the Delhi High Court in *Shri Jagan Nath, v. Union of India and others* (3) holding that Fundamental Rule 56(c) applied to a ministerial Government servant who entered service of the erstwhile Pepsu State on or before March 31, 1938 and this view was upheld by a Division Bench of that Court in *Union of India and others, v. Jagan Nath* (4). What was considered in that case was the meaning of the words "Provincial Government" in the note to Fundamental Rule 56(c) and it was held that the service in the erstwhile Patiala State as well as in the Patiala and East Punjab States Union amounted to service under a Provincial Government. That case is clearly

(2) Writ Appeal No. 316 of 1969 decided by Andhra Pradesh High Court on 4th December, 1970.

(3) 1969 S.L.R. 551.

(4) L.P.A. No. 15 of 1969 decided by Delhi High Court on 19th September, 1969.

distinguishable. In that case the petitioner Jagan Nath was an employee of the Patiala State and on the formation of the Pepsu he became an employee of that State. On the merger of Pepsu with the State of Punjab with effect from November 1, 1956, he became an employee of the Punjab Government. At the time of re-organisation of the State of Punjab, he was allocated to the Union Territory of Himachal Pradesh, the employees of which Territory were governed by Fundamental Rules and the question, therefore, arose whether Jagan Nath had to retire on attaining the age of 58 years under clause (a) of Fundamental Rule 56, or on attaining the age of 60 years under clause (c) of that Rule. The decision of that question depended on whether the service in the erstwhile Patiala State and Pepsu was to be considered as service rendered in a former Provincial Government and it was decided that that service was to be considered as having been rendered under the Provincial Government. With very great respect, I am in complete agreement with that conclusion on the facts of that case but there was no question in that case of the status of Jagan Nath being determined under the provisions of the Central Civil Services (Part B States Transferred Employees) Rules, 1953, as he did not become the employee of the Union of India on April 13, 1950, like the petitioners in these cases. He became an employee of the Union Territory of Himachal Pradesh on or after November 1, 1966, and to him the Central Civil Services (Part B States Transferred Employees) Rules, 1953, did not apply. With reference to those Rules, I have already held that the petitioners in the two petitions before me were to be treated as post-1938 entrants in Government service and not as pre-1938 entrants. In their cases the service rendered in a former 'Provincial Government' as per the note to clause (c) of Fundamental Rule 56, is neither relevant nor of any significance. The learned counsel for the petitioners cannot, therefore, derive any assistance from the judgments of the Delhi High Court. The judgment that directly covers the point is the one rendered by the Andhra Pradesh High Court (Supra) as it takes into consideration the provisions of the Central Civil Services (Part B States Transferred Employees) Rules, 1953, and with respect I express my complete agreement with it.

(9) In C.W. No. 8 of 1971, an additional point has been taken in the replication to the following effect :—

“.....despite the judgment of the Andhra Pradesh High Court, many officials who were formerly serving in the

Princely States have been allowed to continue up to 60 years in view of the judgment of Simla Bench of Delhi High Court and their cases are exactly similar to that of the petitioner. Their names, *inter alia*, are as under :—

- (1) Shri Nand Lal Sharma, Superintendent, Accountant General's Office, Chandigarh ;
- (2) Shri Jagdish Sahai Dubey, Assistant, Accountant General's Office, Chandigarh.
- (3) Shri Ram Murti Sharma, Assistant, Treasury Office, Simla."

(10) It is not stated whether the employees mentioned above became the employees of the Union of India on April 13, 1950, or as a result of any other allocation thereafter. This allegation is, therefore, not sufficient to bring out discrimination. Moreover, it is open to the Union of India to retain any employee in its service even after attaining the age of superannuation which is by way of concession and not by way of right. Their Lordships of the Supreme Court have ruled that no person has a right to claim a concession and, therefore, assuming that the three persons named in the replication have been retained in service after attaining the age of 58 years, it does not to retain him also in service up to the age of 60 years. If the age of superannuation in his case is 58 years, as I have held above, he cannot claim to remain in service till he attains the age of 60 years merely because some other officials have been retained in view of the decision of the Delhi High Court. In the absence of full facts, it is not easy to determine whether the cases of those three officials are akin to the cases before the Delhi High Court or are akin to the cases of the petitioners before me or before the Andhra Pradesh High Court. This additional fact mentioned in the replication is also of no help to the petitioner.

(11) For the reasons given above, there is no merit in these writ petitions, which are dismissed but without any order as to costs as the question of law involved was by no means an easy one.