A

STATE OF TAMIL NADU & ORS.

v.

M. N. SUNDARAJAN

B

August 19, 1980

[R. S. SARKARIA AND R. S. PATHAK, JJ.]

Civil Services—A power to appoint whether includes the power to terminate the appointment by compulsory retirement.

Fundamental Rules, F.R. 56(d)—Compulsory retirement of Section Officer in State Secretariat—G. O. providing that Review Committee be headed by Chief Secretary—Departmental Secretary heading Committee—'Decision' of Committee —Validity of.

C

Before June 27, 1973, a Section Officer in the Tamil Nadu Secretariat used to be a non-Gazetted Officer. The Government by Order G. O. Ms. No. 1616, Public (Services J) dated June 13, 1973 made the post of a Superintendent of the Secretariat a Gazetted post and re-designated it as Section Officer, and by Government Order No. 1782, Public (Services-J.), dated June 27, 1973, provided that *in all matters relating to appointments, transfers, postings punishments and drawal of pay, they continued to be treated as non-gazetted Government servants until further orders.*

D

The respondent was recruited as a Clerk in the Indian Army in the year 1943 and after demobilization was appointed in the Revenue Secretariat of the State Government (Appellant) from March 1948. He was promoted as Section Officer in April 1969 and he continued in the post till March 2, 1976 when he was compulsorily retired from service under Fundamental Rule 56(d).

E

The respondent challenged his compulsory retirement in the High Court contending that the procedure set out in G.O. No. 761 dated March 19, 1973, envisaged that the Review Committee that had to consider the cases of Gazetted Government Officers in the Secretariat should be headed by the Chief Secretary and not by the Departmental Secretary and since the Committee which reviewed his case was headed by a Departmental Secretary, the violation had vitiated the retirement order. The High Court accepted this contention and quashed the retirement order.

F

In the appeal to this Court it was contended on behalf of the appellant that though under G. O. No. 1782 Public (Service-J) dated June 27, 1973, all Superintendents or Section Officers were given the status of Gazetted Officers in matters like appointments, transfer and posting they continued to be treated as non-gazetted officers and that the constitution of the Review Committee headed by a Departmental Secretary was valid. It was also contended that in the aforesaid Order, the word 'appointments' includes compulsory 'retirements', also.

G

On the respondent's behalf it was submitted that the word 'appointments' in the order dated June 27, 1973 cannot be construed to include 'retirements' from or 'terminations' of service, for if that had been the intention there would have been no difficulty in adding the word 'retirements' or 'terminations' along

H

A with the words 'appointments, transfers, postings and punishments' in the Government Order and consequently a restricted interpretation should be placed on this expression.

Allowing the appeal,

HELD : 1. The order of the High Court is set aside and the order of the respondent's compulsory retirement upheld. [475 H]

B 2. Unless a contrary intention appears from the context, a power to appoint should include a power to terminate the appointment including termination by compulsory retirement in accordance with the terms and conditions of service. This fundamental principle underlies Section 16 of the General Clauses Act. [474 H—475 A]

3. The power to terminate the appointment by compulsory retirement or otherwise is a necessary adjunct of the power of appointment and is exercised C as an incident to or consequences of that power. Nothing in the Government Order No. 1782, dated June 27, 1973, militates against this rule of construction. [475 B]

4. The "decision' of the Review Committee had no force *proprio vigore.* The 'decisions' were mere recommendations which did not, and could not, have a peremptory effect. The ultimate power to accept or not to accept the re- D commendations of the Review Committee and to take an effective and definitive decision vests in the Government. Even if there was some irregularity in the constitution of the Review Committee, that could not by itself, have the effect of vitiating the order of the respondent's compulsory retirement. [475 E-F]

In the instant case it was not the respondent alone (from the category of Section Officers) whose case was reviewed by the Review Committee in question. The cases of all the Section Officers of the Secretariat, were reviewed by the E same committee. The respondent had therefore not been singled out for a differential treatment. [475 G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1743 of 1980.

Appeal by Special Leave from the Judgment and Order dated 24-4-1979 of the Madras High Court in W.P. No. 886/77.

F *K. Parasaran,* Solicitor General and *A. V. Rangam* for the Appellant.

V. Srinivasan, Chandrasekaran and *A. T. M. Sampath* for the Respondent.

The Judgment of the Court was delivered by

G SARKARIA, J.—Special leave to appeal granted.

The respondent herein, M. N. Sundarajan was recruited as a Clerk in the Indian Army in the year 1943. Sometime after the regiment was demobilised, he was appointed in the Revenue Secretariat of the State Government from March, 1948 in a vacancy reserved for war service candidates. He was promoted as Section Officer in April, 1969 H and he continued in the post till March 2, 1976, when he was compulsorily retired from service by the appellant-State in exercise of its power under Fundamental Rule 56(d).

The respondent challenged the validity of the order of his compulsory retirement by a writ petition under Article 226 of the Constitution in the High Court of Madras. One of the grounds of challenge was that as per procedure set out in G.O. No. 761, dated March 19, 1973, the Review Committee has to consider the cases of Gazetted Government Officers in the Secretariat headed by the Chief Secretary and not by the Departmental Secretary; and that, therefore, the order passed by the appellant-State based on the review made by a Committee which had no jurisdiction, cannot be sustained in law.

Following a previous decision in W.P. 1547 of 1977 (*The Jawahar Mills'* case), the High Court held that since the Committee which reviewed the respondent's case was not a Committee duly constituted under G.O. No. 761, dated March 19, 1973, and had not been presided over by the Chief Secretary, there was a violation of the procedure laid down by the Government in G.O. No. 761, dated March 19, 1973, and, this violation had vitiated the impugned order passed by the Government. In the result, the writ petition was allowed and the impugned order was quashed. Hence, this appeal by special leave.

The main contention of the learned Solicitor-General who has appeared on behalf of the appellant-State, is that the High Court has not correctly appreciated the import of the relevant Government Orders. It is submitted that under Government Order No. 1782, Public (Services—J), dated June 27, 1973, all Superintendents or Section Officers were given the status of Gazetted Officers with effect from June 13, 1973, "but, in all matters relating to *appointments*, transfers, postings, punishments and drawal of pay," they continued to be treated as non-Gazetted Government servants "until further orders." That was why, the case of the respondent pursuant to the aforesaid Government Order of June 27, 1973, for compulsory retirement under Fundamental Rule 56(d), was considered by the appropriate Committee constituted for non-Gazetted Government servants in the Secretariat. In the aforesaid Government Order, dated June 27, 1973, the word 'appointments', according to the learned Solicitor-General includes compulsory 'retirements', also. In support of his contention, he has referred to the decisions of this Court in *Manager Govt. Branch Press & Anr.* v. *D. B. Belliappa*(1); *and State of Uttar Pradesh* v. *Chandra Mohan Nigam & Ors.*(2).

On the other hand, Shri Srinivasan, appearing for the respondent, submits that the word 'appointments' in the G.O. No. 1782, dated June

(1) [1979] 2 S.C.R. 458.

(2) [1978] 1 S.C.R. 521.

27, 1973, cannot be construed to include 'retirements' from or 'terminations' of service. If that had been the intention, it is argued, there was no difficulty in adding the word 'retirements' or 'terminations' along with the words "appointments, transfers, postings and punishments" in that Government Order. It is urged that a restricted interpretation should be placed on this expression.

Thus, the short question that falls to be considered is : Was the High Court right in quashing the order of the respondent's compulsory retirement, who was a Gazetted Officer at the material time, merely on the ground that it was considered by a Review Committee other than the one constituted for Gazetted Officers ?

For the sake of perspective, it is necessary to recall that before June 27, 1973, a Section Officer in the Tamil Nadu Secretariat used to be a non-Gazetted Officer. In 1972 and earlier, several representations were made by the Tamil Nadu Secretariat Associations and others that the Superintendents of the Secretariat should be accorded Gazetted status. Ultimately, the Government by Order, G.O. Ms. No. 1616, Public (Services—J), dated June 13, 1973, made the post of a Superintendent of the Secretariat a Gazetted post with effect from the date of that Order. Such Superintendents were re-designated as Section Officers. In the aforesaid G.O., it was stated that the amendment to the said Rule should be issued shortly. Since the framing of the Rules involved lot of administrative complications and unavoidable delay, the Government took a policy decision that in regard to various procedures concerning such newly designated Section Officers, the Rules under which they were functioning earlier, namely, Rules applicable to non-Gazetted Government servants should continue to apply till such time as Service Rules are made with a view to avoid administrative dislocation. This decision was the subject of Government Order No. 1782, Public (Services—J), dated June 27, 1973. The net effect of this Order was that although the Superintendents were given a Gazetted status and their designations were changed into Section Officers with effect from June 13, 1973 ; *but in all matters relating to appointments, transfers, postings, punishments and drawal of pay, they continued to be treated as non-Gazetted Government servants until further orders.*

The question is, whether the expression "appointments" used in this Government Order, dated June 13, 1973, will include 'termination' of service or 'compulsory retirement' from service, also. It is a fundamental principle of interpretation that unless a contrary intention appears from the context, a power to appoint should include a power to terminate the appointment, including termination of the person

appointed by his compulsorily retirement in accordance with the terms and conditions of his service. This fundamental principle underlies Section 16 of the General Clauses Act. In other words, the power to terminate the appointment by compulsory retirement or otherwise is a necessary adjunct of the power of appointment and is exercised as an incident to or consequences of the power. There is nothing in the Government Order No. 1782, dated June 27, 1973, which militates against this rule of construction.

The above being the true construction of the word 'appointments' in the aforesaid Government Order of June 27, 1973, notwithstanding the conferment of Gazetted status, the respondent continued to be governed, *inter alia,* in the matter of 'appointment', which would include compulsory retirement or termination of service also, by the Rules and Government Orders applicable to non-Gazetted Officers of the Secretariat, and therefore, the Review Committee presided over by a Departmental Secretary, set up for reviewing the cases of non-Gazetted Officers of the Secretariat, was fully competent to consider the case of the respondent and recommend his retirement.

Assuming that there was some irregularity in the constitution of the Review Committee, which dealt with the case of the respondent, that could not affect the validity of the impunged Orders. The "decisions" of the Review Committee had no force *proprio vigore.* At best, the 'decisions' were mere recommendations which did not, and could not, have a peremptory effect. The ultimate power to accept or not to accept the recommendations of the Review Committee and to take an effective and definitive decision in the matter, vested in the Government. Thus, even if there was some irregularity in the constitution of the Review Committee, the functions of which were purely advisory, that could not by itself have the effect of vitiating the order of the respondent's compulsory retirement, passed by the Government in the exercise of the power vested in it.

Furthermore, it was not the respondent alone (from the category of Section Officers) whose case was reviewed by the Review Committee in question. The cases of all the Section Officers of the Secretariat, were reviewed by the same Committee. It could not, therefore, be contended that the respondent had been singled out for a differential treatment. Article 14 of the Constitution was not attracted and the respondent could not have any grievance on that score.

For the foregoing reasons, we allow this appeal, set aside the order of the High Court, and uphold the order of the respondent's compulsory retirement. The parties shall pay and bear their own costs.

N.V.K. *Appeal allowed.*