UNION OF INDIA & ORS.

v.

R. NARASIMHAN

AUGUST 1, 1988

[E.S. VENKATARAMIAH AND M.M. DUTT, JJ.]

Civil Services: Indian Railway Establishment Code, Rule 2046(h) and (k)/Railway Pension Manual, 1950 Para 620—Railway Servant—Compulsory retirement of under para 620—Validity of.

Constitution of India, Articles 73 & 309: Rule made in exercise of executive power under Art. 73—Not inconsistent with statutory provision or rule framed under proviso to Art. 309—Held—Should be treated as supplementary to.

Sub-para (ii) of para 620 of the Railway Pension Manual empowers the competent authority to remove a railway servant from service any time after he has completed 30 years of qualifying service. Clause (h) of Rule 2046 (F.R. 56) of the Indian Railway Establishment Code empowers the appointing authority to retire in Public interest (i) Class I and Class II railway servant, who had entered Government Service before the age of 35 years, after he has attained the age of fifty years, and (ii) in any other case after he has attained the age of 55 years. Clause (k) of the said rule confers absolute right on the appointing authority to retire a railway servant in Class III service, who is not governed by the Pension Rules, after he has completed thirty years of service.

The respondent, Class III servant, who had joined service in 1950 was compulsorily retired from service by the competent authority in the Railway Administration in exercise of powers under para 620 of the Manual on 14th May, 1982. He was born on 23.9.1929 and was to continue in service till he completed 58 years of service. The writ petition filed by him questioning the validity of the said order and also of para 620 of the Manual was dismissed by the Single Judge.

In appeal before the Division Bench it was contended for him that (i) Rule 2406 of the Rules having been framed under the proviso to Article 309 of the Constitution and being a compendious code with regard to compulsory retirement that provision alone could be invoked and not para 620 of the Manual which is in the nature of an executive

A order, (ii) since rule 2046(h) opens with a non-obstante clause and para 620 of the Manual does not state that the said rule shall prevail notwithsanding any other provision to the contrary, rule 2046(h) of the Rules cannot be made subject to para 620 of the Manual, and (iii) there being two separate provisions with regard to compulsory retirement, namely clause (h) of rule 2046 of the Rules and para 620 of the Manual, in the B absence of any guidance as to when and which rule could be invoked in a given case, both the provisions would be inapplicable and he could not be compulsorily retired. The High Court held that para 620 of the Railway Pension Manual was void and ineffective. It took the view that since rule 2046(h) of the Rules was not applicable, as the respondent had not attained the age of 55 years on the date he was compulsorily C retired, he could not have been compulsorily retired.

Allowing the appeal by special leave and remanding the case to the High Court,

HELD: 1.1 Para 620 of the Railway Pension Manual is valid. The D High Court was not right in taking the view it did. [749A]

1.2 There is no inconsistency between rule 2046 of the Rules and para 620 of the Railway Pension Manual. Clause (h) of rule 2046 of the Rules empowers the competent authority to retire compulsorily a railway servant on his attaining the age specified therein. That clause has E no reference to the length of service put in by a railway servant concerned. Clause (k) of the said rule under which the appointing authority can retire a person in the public interest after a railway servant has completed 30 years of service applies to a railway servant holding a Class III post and who is not governed by pension rules. Para 620 of the Manual applies to all railway servants governed by the pension rules. F Railway servants holding Class I or Class II posts who cannot be retired under clause (k) of rule 2046 of the Rules can be retired on their completing 30 years of qualifying service if they are governed by the pension rules. Similarly, railway servants holding Class III posts and who are governed by the pension rules to whom clause (k) of rule 2046 of the Rules is not applicable can also be retired on their completing 30 years G of qualifying service. Thus, the area of operation of para 620 of the Railway Pension Manual is different from that of clauses (h) and (k) of rule 2046 of the Rules. [748D-G]

1.3 Para 620 of the Railway Pension Manual which has been framed by the Union Government in exercise of its executive power under H Article 73 of the Constitution should, therefore, be treated as supple-

mentary to rule 2046 of the Rules, and given due effect since there is no statutory provision or a rule framed under the proviso to Article 309 of the Constitution which is inconsistent with it. [748G-H] A

2. Since the respondent had raised some other contentions with regard to the validity of the impugned order of retirement in the petition and the High Court has not expressed its opinion on those contentions, the case is remanded to the Division Bench of the High Court to dispose of the appeal afresh in the light of the submissions to be made by the respondent on the other contentions raised by him. [749C] B

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1583 of 1987. C

From the Judgment and Order dated 22.4.1987 of the Madras High Court in W.A. No. 367 of 1983.

G. Ramaswamy, Additional Solicitor General, P. Parmeshwaran, B. Parthasarthy for the Appellants. D

M.N. Krishnamani and S. Balakrishnan for the Respondents.

The Judgment of the Court was delivered by

VENKATARAMIAH, J. The short question involved in this case is whether Para 620 of the Manual of Railway Pension Rules, 1950, (hereinafter referred to as the 'Railway Pension Manual') under which the competent authority is empowered to retire a railway employee before his normal date of retirement is for any reason void, ineffective or unconstitutional. E F

The respondent, R. Narasimhan, joined the Southern Railway as a Ticket Collector in the year 1950 and on being promoted at different stages he was working as a Travelling Ticket Examiner on 14th of May, 1982 when he was compulsorily retired from service by the competent authority in the Railway Administration in exercise of his powers under Para 2(2) of the Railway Ministry's Letter dated 8.7.1950 (incorporated as Para 620 of the Railway Pension Manual). The respondent was born on 23.9.1929 and if the order of retirement had not been passed, as stated above, he would have continued in service till he completed 58 years of age. Aggrieved by the order of retirement, the respondent filed a Writ Petition in the High Court of Madras in Writ Petition No. 4079 of 1982 questioning the validity of the said G H

order and also of Para 620 of the Railway Pension Manual which empowered the Railway Administration to retire its employees on their completing 30 years of service. The Writ Petition was contested by the Railway Administration and ultimately it was dismissed by the learned Single Judge of the High Court of Madras. Aggrieved by the judgment of the learned Single Judge the respondent filed an appeal before the Division Bench of the High Court in Writ Appeal No. 367 of 1983. The Division Bench held that Para 620 of the Railway Pension Manual whose validity had been impugned in the Writ Appeal was void and ineffective and hence the order of retirement passed by the Railway Administration in exercise of the power conferred by the said para was liable to be set aside. Aggrieved by the judgment of the Division Bench, the Union of India and the Railway Administration have filed this appeal by special leave.

In order to appreciate the contentions of the parties, it is necessary to set out the relevant rules governing the retirement of railway employees. Rule 2046 of the Indian Railway Establishment Code (hereinafter referred to as 'the Rules') deals with compulsory retirement of railway servants. The relevant part of the said rule reads thus:

> "2046 (F.R. 56).—(a) Except as otherwise provided in this rule, every railway servant shall retire on the day he attains the age of fifty-eight years.
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> .....
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> (h) Notwithstanding anything contained in this rule, the appointing authority shall, if it is of the opinion that it is in the public interest to do so, have the absolute right to retire any railway servant giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice—
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> (i) if he is in Class I or Class II service or post and had entered Government Service before attaining the age of thirty-five years, after he has attained the age of fifty years.
>
> (ii) in any other case after he has attained the age of fifty-five years.
>
> (i) Any railway servant may by giving notice of not

less than three months in writing to the appointing authority retire from service after he has attained the age of fifty years if he is in Class I or Class II service or post and had entered Government service before attaining the age of thirty-five years, and in all other cases after he has attained the age of fifty-five years.

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(k) Notwithstanding anything contained in clause (h) the appointing authority shall, if it is of the opinion that it is in the public interest to do so, have the absolute right to retire a railway servant in Class III service or post who is not governed by any pension rules after he has completed thirty years' service by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice."

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Para 620 of the Railway Pension Manual reads thus:

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"620(i). A Railway servant may retire from service at any time after completing 30 years' qualifying service, provided that he shall give in this behalf a notice in writing to the appropriate authority, at least three months before the date on which he wishes to retire.

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(ii) The authority competent to remove the Railway servant from service may also require him to retire any time after he has completed 30 years' qualifying service provided that the authority shall give in this behalf, a notice in writing to the Railway servant, at least three months before the date on which he is required to retire or three months' pay and allowances in lieu of such notice."

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There is no dispute that the respondent is governed by the pension rules as he has exercised his option to be governed by them. His contentions before the Division Bench were: (i) Rule 2046 of the Rules having been framed under the proviso to Article 309 of the Constitution and being a compendious code relating to a retired railway servant that provision alone could be invoked for the purpose of compulsory retirement and not para 620 of the Railway Pension Manual which is in

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A the nature of an executive order; (ii) Since rule 2046(h) of the Rules opens with a *non obstante* clause and para 620 of the Railway Pension Manual does not state that the said rule shall prevail notwithstanding any other provision to the contrary, rule 2046(h) of the Rules cannot be made subject to para 620 of the Railway Pension Manual; and (iii) there being two separate provisions with regard to compulsory retire-
B ment, namely clause (h) of rule 2046 of the Rules and para 620 of the Railway Pension Manual, in the absence of any guidance as to when and which rule could be invoked in a given case, both the provisions would be inapplicable and the respondent could not be compulsorily retired. A reading of the relevant part of rule 2046 of the Rules and para 620 of the Railway Pension Manual shows that ordinarily every
C railway servant has to retire on the date he attains the age of 58 years. Notwithstanding the said rule the appointing authority, if it is of the opinion that it is in the public interest to do so, has the power to retire any railway servant giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice, if he is in Class I or Class II service or post and had entered Government
D service before attaining the age of 35 years, after he has attained the age of 50 years and in any other case after he has attained the age of 55 years. Similarly a railway servant may by giving notice of not less than three months in writing to the appointing authority retire from service if he is in Class I or Class II service or post and had entered Government service before attaining the age of 35 years, after he has attained
E the age of fifty years, and in all other cases after he has attained the age of 55 years. These two kinds of retirement are dealt with in clauses (h) and (i) of rule 2046 of the Rules. The governing factor in clauses (h) and (i) of rule 2046 is the age of the employee concerned at the time when it is proposed to retire him from service or when he wishes to retire from service voluntarily as the case may be. This rule applies
F no doubt to all employees irrespective of the fact whether they are governed by the pension rules or not. Clause (k) of rule 2046 provides that notwithstanding anything contained in clause (h) the appointing authority shall, if it is of the opinion that it is in the public interest to do so, have the absolute right to retire a railway servant in Class III service or post *who is not governed by any pension rules* after he has
G completed thirty years' service by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice. Clause (l) of rule 2046 of the Rules provides that a railway servant in Class III service or post *who is not governed by any pension rules,* may by giving notice of not less than three months in writing to the appointing authority, retire from service after he has
H completed thirty years' service. It may be noted that in clauses (k) and

(1) of rule 2046 of the Rules the governing factor is not the age of the railway servant concerned but the length of the qualifying service rendered by him. They are applicable only to a railway servant in Class III service who has completed 30 years of service in railway administration. If a railway servant in Class III service has entered the service during his 21st year he can be retired by the Government on his completing 30 years of service in his 51st year or he may elect to retire from service in his 51st year after completing 30 years of service by following the prescribed formalities. Clauses (k) and (I) of rule 2046, as already stated above, do not apply to railway servants who are governed by pension rules. Para 620 of the Railway Pension Manual, which is extracted above, contains provisions corresponding to clauses (k) and (I) of rule 2046 of the Rules. Under sub-para (i) of para 620 a railway servant governed by the pension rules may retire from service at any time after completing 30 years of qualifying service provided that he has given a notice in writing to the appointing authority three months before the date on which he wishes to retire. Sub-para (ii) of para 620 of the Railway Pension Manual, which corresponds to clause (k) of rule 2046 of the Rules, empowers the competent authority to remove a railway servant from service any time after he has completed 30 years of qualifying service provided that the authority has given in this behalf a notice in writing to the railway servant at least three months before the date on which he is required to retire or three months' pay and allowances in lieu of such notice. It may also be noted that while clauses (k) and (l) of rule 2046 of the Rules apply only to a railway servant in Class III service or post not governed by any pension rules para 620 of the Railway Pension Manual applies to all railway servants governed by the pension rules.

The Division Bench of the High Court has held that para 620 of the Railway Pension Manual was ineffective and invalid on the ground that it was 'unable to see any logic or reason or any guidance for the purpose of invoking either one or other of the provisions' and also has further observed thus:

> "In the circumstances therefore, particularly in view of the fact that the Railway Establishment Code is intended to govern the service conditions of all the individual railway servants and the Pension Rules are intended only to govern the determination of pension, and Rule 2046 itself is in a way of compendious rule relating to retirement at the age of 58 years and compulsory retirement earlier we are of the view that the case is governed by Rule 2046(h) only and not

by Rule 620 of the Pension Rules. This is also for the reason as rightly contended by Mr. N.C. Raghavachari, learned counsel for the appellant, that while Rule 2046(k) starts with saying that notwithstanding anything contained in Clause (h) there is no such non obstante clause in Rule 620, nor clause (h) of Rule 2046 is made subject to Rule 620. In the circumstances, therefore, it is open to the railway servant to contend that he is governed by Rule 2046(h) and not Rule 620. In the absence of any guiding principle specifically, it is not open to the Department to exercise an option either to invoke Rule 620 or clause (h) of Rule 2046."

Having observed thus, the Division Bench was of the view that since Rule 2046(h) of the Rules was not applicable, as the respondent had not attained the age of 55 years on the date when he was compulsorily retired, he could not have been compulsorily retired. We do not find any inconsistency between rule 2046 of the Rules and para 620 of the Railway Pension Manual. As already stated by us clause (h) of rule 2046 of the Rules empowers the competent authority to retire compulsorily a railway servant on his attaining the age specified therein. That clause has no reference to the length of service put in by a railway servant concerned. Clause (k) of rule 2046 of the Rules under which the appointing authority can retire a person in the public interest after a railway servant has completed 30 years of service applies to a railway servant holding a Class III post and who is not governed by pension rules. Para 620 of the Railway Pension Manual applies to all railway servants governed by the pension rules. Railway servants holding Class I or Class II posts who cannot be retired under clause (k) of rule 2046 of the Rules can be retired on their completing 30 years of qualifying service if they are governed by the pension rules. Similarly railway servants holding Class III posts and who are governed by the pension rules to whom clause (k) of rule 2046 of the Rules is not applicable can also be retired on their completing 30 years of qualifying service. Thus the area of operation of para 620 of the Railway Pension Manual is different from that of clause (h) and (k) of rule 2046 of the Rules. Para 620 of the Railway Pension Manual should be treated as supplementary to rule 2046 of the Rules. The said para which has been framed by the Union Government in exercise of its executive power under Article 73 of the Constitution should be given due effect since there is no statutory provisions or a rule framed under the proviso to Article 309 of the Constitution which is inconsistent with it.

We, therefore, overrule the view expressed by the Division Bench of the High Court on the above question and uphold the validity of para 620 of the Railway Pension Manual. A

Unfortunately, the case does not end here. It appears that the respondent had raised some other contentions with regard to the validity of the impugned order of retirement in the petition. But the Division Bench of the High Court has not expressed its opinion on those contentions since it agreed with the first contention urged on behalf of the respondent, namely, para 620 of the Railway Pension Manual was invalid. We are, therefore, constrained to send the case back to the Division Bench of the High Court to decide the other questions raised by the respondent. We, therefore, set aside the judgment passed by the Division Bench of the High Court and remand the case to the Division Bench of the High Court to dispose of the appeal afresh in the light of the submissions to be made by the respondent on the other contentions raised by him. B C

The appeal is accordingly disposed of. There is no order as to costs. D

P.S.S. Appeal allowed.