THE MADHYA PRADESH SHASKIYA SEVAK (ADHIVARSHIKI-AYU) ADHINIYAM, 1967

[*No.* 29 *of* 1967]

Received the assent of the Governor, on the 22nd December, 1967; assent first published in the Madhya Pradesh Gazette Extraordinary on the 23rd December, 1967

An Act to provide for the age of Superannuation of Government servants in the State of Madhya Pradesh and for certain matters connected therewith.

Be it enacted by the Madhya Pradesh Legislature in the Eighteeth Year of the Republic of India as follows :—

1. **Short title.**—This Act may be called the Madhya Pradesh Shaskiya Sevak (Adhivarshiyi-Ayu) Adhiniyam, 1967.

2. **Amendment of Fundamental Rules.**—For rule 56 of the Fundamental Rule applicable to the State of Madhya Pradesh as substituted by section 3 of the Madhya Pradesh Shaskiya Sewak Anivarya Sevanivritti Ka Vidhimanya-takaran Adhiniyam, 1967 (5 of 1967) (hereafter referred to as the said Act), the following shall be substituted, namely :—

"56. (1) Subject to the provisions of Madhya Pradesh Anivarya Seva Nivritti-Ayu) Niyam, 1967 as specified in the Schedule to the Madhya Pradesh Shaskiya Sevak (Adhivarshiki-Ayu) Adhiniyam, 1967, the date of compulsory retirement of a Government servant other than class IV Government servant, shall be the date on which he attains the age of [1]58 years.

(2) The date of compulsory retirement of Class IV Government servant shall be the date on which he attains the age of 60 years.

[2][**2. Amendment of Fundamental Rule 56 as substituted by Section 2 of the Principal Act.**—In section 2 of the Madhya Pradesh Shaskiya Sevak (Adhivarshiki-Ayu) Adhiniyam, 1967 (No. 29 of 1967) (hereinafter referred to as the principal Act) after sub-rule (1) of Rule 56, the following sub-rule shall be inserted; namely—

(1-a) Subject to the provisions of sub-rule (3), every Government teacher shall retire from service on the after noon of the last day of the month in which he attains the age of sixty years:

Provided that a Government teacher whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years.

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1. The age has been raised to 58 years vide M.P. Act No. 9 of 1976.
2. Inserted by Act No. 35 of 1984. Published in M.P. Rajpatra (Asadharan) dated 15-11-1984 Page 3065. This amendment shall be deemed to have come into effect from 5th September, 1984.

Exaplanation.—For the purpose of this sub-rule "Teacher" means a Government servant by whatever designation called, engaged in teaching in an educational institution including technical or medical institutions, run by Government].

3. Amendment of the Madhya Pradesh District and Session Judgee Death-Cum-Retirement Benefits) Rules, 1964.—For sub-rule (1) of rule 2 of the Madhya Pradesh District and Sessions Judges (Death-Cum-Retirement Benefits) Rules, 1964 as substituted by section 4 of the said Act, the following sub-rule shall be substituted, namely :—

(1) Subject to the provisions of sub-rule (1-A), the All India Services Death-cum-Retirement Benefits) Rules, 1958, as amended from time to time hereinafter referred to as the said Rules) shall apply mutatis mutandis to—

(a) all permanent District and Sessions Judges drawn from amongst the officers of the Judicial Service of the former State of Madhya Pradesh in the same manner as they have hitherto applied to them with effect from the 29th October, 1951 by virtue of rule 7 (2) of the Madhya Pradesh Judicial Services Classification, Recruitment and Conditions of Services) Rules, 1955;

(b) all permanent, District and Sessions Judges in the State who are drawn from amongst the officers of the Judicial Services of the former States of Madhya Bharat, Vindhya Pradesh and Bhopal, with effect from the 1st April, 1958 subject to the exercise of option as provided in rule 3 ;

(c) all other permanent District and Sessions Judges in the State not falling within clauses (a) and (b) above.

(1-A). With regard to the age of compulsory retirement the permanent, District and Sessions Judge shall be governed by the Madhya Pradesh (Anivarya Seva Nivritti-Ayu) Niyam, 1967 as specified in the Schedule to the Madhya Pradesh Shaskiya Sewak Adhivarshiki-Ayu) Adhiniyam, 1967 and the provisions of Fundamental Rule 56, as substituted by section 2 of the said Act.

4. Amendments when to come into force.—Amendments made by section 2 and 3 shall come into force with effect from the 15th December, 1967.

5. Repeal.—The Madhya Pradesh Shaskiya Sevak (Adhivarshiki-Ayu) Adhyadesh, 1967 (12 of 1967) is hereby repealed.[1]

SCHEDULE

[*See* sections 2 and 3]

Rules

1. (1) These rules may be called the Madhya Pradesh (Anivarya Seva Nivritti-Ayu) Niyam, 1967.

(2) They shall come into force with effect from the 15th December, 1967.

2. (1) The age of compulsory retirement of Government servants other than Class IV Government servants shall be [2]58 years.

(2) The age of compulsory retirement of Class IV Government servants shall be 60 years.

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1. Published in M.P. Rajpatra (Asadharan) dated 23-12-1967 Page 3144.
2. Substituted by M.P. Act No. 9 of 1976.

3. Those Government Servants who have already attained the age of 58 years on the date mentioned in sub-rule (2) of rule 1 and are in service of the said date shall, as from the said date, be entitled to such leave as may be due for a period not exceeding 120 days and shall stand retired on the date next following the date of completion of such leave:

Provided that the duration of such leave shall, in no case, extend beyond the date of attainment of the age of 58 years.

COMMENTS

Synopsis

(1) Order of compulsory retirement on payment of three month's salary, not bad.
(2) Correction of entry about age.
(3) Court's declaratory decree is not monetary decree.
(4) Raising age of Superannuation.
(5) Compulsory retirement.

(1) Order of compulsory retirement on payment of three month's salary, not bad.—It is argued that there was a man who took his reversion with ill-grace, did not join on his substantive post for long seven years, went to the High Court four years after the passing of the said reversion order, deprived the State of his services in whatever capacity, and thereby exhibited lack of devotion to duty, used intemperate and offensive language towards the superior officer for which he was charge-sheeted and actually removed from service on that count. If the Government took all these factors into consideration in taking a decision as to whether it would be in public interest to retain him after the age of 55 years, could that decision be called *mala fide* at all ? And after all, the petitioner was only promoted temporarily as Assistant Engineer. He had no vested right to continue on the post and he was also not selected by Public Service Commission.

The High Court of Madhya Pradesh agreeing with the above argument of Government advocate held that the decision of the Government in compulsorily retiring the petitioner at the age of 55 years, could not be attack on the ground of '*mala fide*'.

It was further argued by the petitioner that the order of retirement under the Rule could be effective only if the State Government simultaneously offered payment to him of his three month's salary. Unless she payment of an exact amount accompanied the service of notice, the order of compulsorily retirement would be bad.

In the case of the *State of Uttar Pradesh Vs. Dinanath Rai*, decided on 11th October, 1968 : 1969 Service Law Reporter 647 (SC) the relevant portion of the Rule for interpretation reads thus:

".....Provided that in the case of notice of the appointing authority the latter may substitute for the whole or part of this period of notice pay in lieu thereof provided further that it shall be open to the appointing authority to relieve a Government servant without any notice or accept notice for a short period, without requiring the Government servant to pay any penalty in lieu of notice."

Their Lordships construed the rule differently and observed:

"The rule does not say that the pay should be given in cash or by the cheque at the time the notice is issued. Knowing the way the Government are run, it would be difficult to ascribe this intention to the rule making authority. There is no doubt that the Government servant would be entitled to the pay in lieu of notice but this would be in the ordinary course."

In the present case the language of the rule is akin to the language used in the Rule in *Dinanath Rai's Case*. 1969 Ser. L.R. 647 (SC) and we would prefer to construe the rule in the manner it was done in *Dinanath's case*. The payment contemplated by the Rule is neither payment to be made forthwith, simultaneously with the notice, nor would the notice be effective only upon payment being made. Payment could follow in the ordinary course.

Even otherwise there was substantial compliance of the rule. The offer of Rs. 1770/- towards three month's salary, was made, presumbly, on the same day notice of compulsory retirement was served or soon thereafter. The petition does not disclose the date of service of notice. The grievance of the petitioner is that the salary offered was calculated on the basis, as if the petitioner was stopped at the Efficiency Bar. According to him, the question of crossing the Competent authority had to consider the question prior to or on the date the petitioner became entitled to it and that date was 1.3.1969. If he was not considered on that date for any reason whatsoever, it would be presumed, he says, that the competent authority had no objection to his crossing the efficiency bar.

The High Court held that the petitioner cannot claim the sanction to cross the Efficiency Bar simply because he had retired. The sanction could be given or withheld or even after his retirement. If it was given, he could claim benefits even though retired. If it was withheld, he did not lose anything, because he had already stopped at that stage. It was, therefore held that no punishment inflicted. *U.K. Narayanan Vs. State of Madhya Pradesh and others.* 1975 M.P.L.J. 404 : 1975 J.L.J. 760.

(2) **Correction of entry about age.**—The facts of the case are that in the year 1957 when for the first time after the reorganisation of States, the petitioner was called upon by the Settlement Officer to disclose his date of birth. The year 1917 mentioned in the Service Book did not seem proper record as the date and the month of the petitioner's birth were not mentioned and the Service Book indicated nothing to show that the entry was verified with reference to any confirmatory documentary evidence like the matriculation certificate or the Municipal Birth certificate. The petitioner produced the matriculation certificate and entered the date of birth as 8th April, 1915, not with an idea of creating conflict, nor there is reason to believe that the entry was made on the insistence of Shri R.L. Gupta. Presumably he made the entry having reason to believe that the same shall be acted upon. Whatever be the real intention in the mind of the petitioner, any reasonable man would accept the declaration to be true and scton act on it.

A duty was cast upon the petitioner to disclose his date of birth along with confirmatory evidence. He chose to produce the matriculation certificate. He entered the date as shown therein without protest. He was therefore debarred from producing the horoscope instead and asserting that the real date of birth was 13th Shukla Samvat, 1974 equivalent to 20th August, 1917. He could have agitated the issue then and get the decision on the question of his date of birth. He has come to the High Court thirteen years after when the Government has chosen to act on his own admission , they gave him extension of service for a year and retired him with effect from 22nd April, 1971.

It was held that the petitioner was guiity of acquiescence. He accepted the date of birth as 8th April, 1915. The case also attracts the doctrine of estoppel by negligence. The petitioner allowed the two entries to continue and thereby led the Government to choose the entry which *prima facie* appeared genuine and had the support of confirmatory evidence. The petitioner cannot now turn round and say that he has been prejudiced. He should have taken steps to get one of the entries prejudicial to him scored out. He had permitted them to continue and the Government could legitimately act on the entry which was supported by the petitioner's matriculation certificate. It was customary with the Government to rely on the matriculation certificate mostly, for purpose of date of birth. The petitioner's negligence lay in permitting the two entries to continue, and the latter entry in particular to be construed as his own admission in the matter of date of birth.

Further it was held that the petitioner was guilty of supression and mis-statement of facts inasmuch as he did not disclose initially that he had himself entered in Part II of his Service Book the 8th April, 1915, to be his date of birth. He also did not speak about the declaration he had submitted in February, 1960. If he was force to make the entry as he later contended, that would be a disputed question of facts on which the High Court would not go in evidence. In so far as the admission in the declaration of February, 1960 is concerned, there is no such plea of undue influence or coercion or misapprehension. *Prima facie*, however, the two documents were held to be voluntarily executed. *Makradhwraj Singh Vs. State of Madhya Pradesh and another.* 1974 M.P.L.J. 31.

(3) Court's declaratory decree is not monetary decree.—In Civil Appeal No. 670 of 1965 *L.N. Saxena Vs. State of M.P.*, decided on the 30th January, 1967, the Supreme Court held that retirement of a Government servant after he attains the age of 55 years, on three month's notice on the basis of the General Administration Department Memorandum No. 433-258-I (iii) 763 dated the 28th February, 1963 is invalid in since the said memorandum was merely an executive direction and not a rule governing the conditions of service of Government servants. The decision affected a large number of retirements ordered on the basis of the aforesaid memorandum and involved considerable financial burden on the State Exchequer by way of payment of arrears. There were likely to be other complications regarding continuance in service etc.

Therefore after the decision of that appeal the Governor had promulgated an Ordinance which was replaced on April 20, 1963 by the M.P. Shaskiya Sevak Anivarya Sevaniviriti ka Vidhimanyatakaran Vidyayak Takaram Vidyeyak Adhiniyam, 1967 (5 of 1967) validating the retirement of certain Government servants, including that of appellant, despite the jugment of Supreme Court.

By virtue of this Act, the State is vested with a right not to pay the dues of appellant from the date of his retirement (December 3, 1963) onwards. In effect this Act has made provisions of Compulsorily Retirement Rules, 1965 applicable from March 1, 1963.

The appellant again moved the High Court challenging the validity of the Act which was dismissed so an appeal was filed to the Supreme Court.

It is argued on behalf of the appellant; (i) that a right of property being a judgment-debt, protected by Article 19 (1) (f) of the Constitution, had been created by the Supreme Court's Decree dated 30th January, 1967 in favour of the appellant and against the State. Since the impugned Act to effect, seeks to expropriate the appellant of that right without providing for any compensation it is ultra vires Article 31 (2) of the Constitution ;

(ii) That the impugned Act is ultra vires the Constitution inasmuch as it seeks to validate the retirement of the appellant and other like him by changing their service conditions with retrospective effect. In so so doing, the State legislature has over-stepped the limits of legislative powers conferred on it by Article 309 of the Constitution. Reliance was placed on the decision of the Supreme Court in the *State of Mysore Vs. Padamabhacharya etc.* (1966) 2 SCR 494.

(iii) that the impugned Act, encroaches upon the judicial field inasmuch at it overrules and make unenforceable the decision dated 30th January, 1967 in Supreme Court in Civil Appeal No 670 of 1963, and in so doing, it offends Articles 141, 142 and 144 of the Consitution ;

(iv) Even if the impugned Act is valid, clauses (b) and (c) of section 5 of the Act, on a proper construction, do not vacate the decree of the Supreme Court, requiring the respondent to the appellant the pecuniary benefits resulting from the success of his earlier appeal (CAA. 670/65) in Supreme Court. Clause (b) of section 5 merely bars the maintenance or continuation of any proceeding for any amount as payment, towards salary. The appellant is not seeking to maintain or continue any execution proceeding in Court, for the recovery of any amount towards salary, the decree being a declaratory one.

None of these contentions were held to be tenable.

On perusal of the Supreme Court decree referred to above would show that it is not a money decree, raising a judgment-debt. It is a declaratory decree declaring that the respondent's order dated September 11, 1963, compulsorily retiring the appellant was invalid, and consequently the appellant would be deemed to have continued in service till he attained the age of 58 years. The further declaration that he will be entitled to such benefits as may accrue to him by virtue of the success of the writ petition was only incidental or ancilliary to the main relief and will fall or stand with the same. This being the position the decree did not create an indefeasible right of property in favour of the appellant.

The distinction between a 'legislative and a 'judicial act is well known, though in some specific instance the line which separates one category from the other may not be easily discernible. Adjudication of the parties according to law enacted by the legislature is a judicial function. In the performance of this function the court interprets and gives effect to the intent and mandate of the legislature as embodied in the statute. On the other hand, it is for the legislature to lay down the law prescribing norms of conduct which will govern parties and transactions and to require and to give effect to that law.

It was therefore, held that in enacting the impugned provisions, the legislature has not exceeded the limits of its legislative powers nor encroached on the judicial field. *I. N. Saksena Vs. The State of Madhya Pradesh.* 1976 U.J. (SC) 223.

In *Piare Dusada and others Vs. The King Emperor* 1944 F.C.R. 61, the Governor General by Ordinance repealed the Special Criminal Courts Ordinance II of 1942. There was a provision in the repealing ordinance for confirmation and continuance of sentences of Special courts and retrial of pending cases. The appellant therein had been convicted and sentenced by Special Criminal Court which was held have to jurisdiction to try the case by an order of a court Section 3 (1) of the Special Criminal Courts (Repeal) Or-

dinance, 1943 conferred validity and full effectiveness on sentences passed by Special Criminal Courts by conferring jurisdiction on them with retrospective effect. The Federal Court held that by promulgating and repealing Ordinance of 1943, the legislative authority had not attempted to do indirectly what it could not do directly or to exercise judicial power in the guise of legislation It was further, held that the Ordinance was not invalid on the ground that the legislative authority had validated by respective legislation proceedings held in courts which were void for want of jurisdiction as there was nothing in the Indian Constitution which precluded legislative from doing so.

(4) **Raising the age of superannuation.**—In the case of *Batahari Jena Vs. The State of Orissa.* A I.R. 1971 S.C. 1516, reliance was placed on certain observations in the decision of the supreme Court in Gurdev Singh Sindhu Vs. *State of Punjab.* (1964) SCR 587 : A.I.R. 1964 S.C. 1585. There the Supreme Court struck down Article 9.1 of the Pepsu Service Regulations under which the Government sought to retain an absolute right to retire any Government servant after he had completed ten years qualifying service without giving any reason. In that case the petitioner who had been appointed as an Assistant Superintendent of Police in the erstwhile Patiala State on February 4, 1942 and confirmed in that rank on the regular vacancy after undergoing practical district training courses, and after promotion to the rank of Superintendent of Police in an officiating capacity in February 1950 in the said State of Pepsu, was asked to show cause by notice dated 25th March 1963 as to why he should not be compulsorily retired. The petitioner complained that the notice issued to him was invalid on the ground that the article on which it was based was itself ultra vires and inoperative and only question before the Court was whether the impugned article was shown to be constitutionally invalid. Referring to *Satish Chandra Anand Vs. The Union of India* 1953 SCR 585 : A.I.R. 1953 S.C. 250, and to certain dicta of the majority Judges in *Moti Ram Deka Vs. General Manager, North East Frontier Railway.* A.I.R. 1964 S.C. 600 : (1964) 5 SCR 683, the Supreme Court observed by way of explanation that : ".....the majority judgment took the precaution of adding a note of caution that if a rule of compulsory retirement purported to give authority to the Government to terminate the services of a permanent public servant at a very early stage of his career the question about the validity of such a rule may have to be examined. That is how in accepting the view that a rule of compulsory retirement can be treated as valid and as constituting an exception to the General rule that the termination of the services of a permanent public servant would amount to his removal under Art. 311 (2), the Supreme Court added a rider and made it perfectly clear that if the minimum period of service which was prescribed by the relevant rules upheld by the earlier decisions was 25 years, it could not be reasonably reduced in that behalf. In other words, the majority judgment indicates that what indicates what influenced the decision was the fact that a fairly large number of years had been prescribed by the rule of compulsory retirement as constituting the minimum period of service after which alone the said rule could be invoked.

The Court further observed that that the safeguards which Article 311 (2) affords to permanent public servants is no more than this that in case it is intended to dismiss, remove or reduce them in rank a reasonable opportunity should be given to them of showing against the action proposed to be taken in regard to them. A claim for security to tenure does not mean security to tenure for dishonest, corrupt, or inefficient public servants. The claim merely insists that before they are removed, the permanent public servants should be given an opportunity to meet the charge on which they are sought to be re-

moved. Therefore, it seems that only two exceptions can be treated as valid in dealing with the scope and effect of the protection afforded by Article 311 (2), if a permanent public servant is asked to retire on the ground that he has reached the age of superannuation which has been reasonably fixed, Article 311 (1) does not apply, because such retirement is neither dismissal nor removal of the public servants. If a permanent public servant is compulsorily retired under the rules which prescribe the normal age of superannuation and provide for a reasonably long period of qualified service after which alone compulsory retirement can be ordered, that again may not amount to dismissal or removal under Article 311 (2) mainly because that is the effect of a long series of decisions of Supreme Court. But where while reserving the power to the State to compulsorily retire a permanent public servant, a rule is framed prescribing a proper age of superannuation, and another rule is added giving the power to the State to compulsorily retire a public servant at the end of 10 years of his service, that cannot, be treated as falling outside Article 311 (2). The termination of the service of a permanent public servant under such a rule though compulsory retirement, is, in substance removal under Article 311 (2)".

The above observations relied on the counsel do not help the appellant The above observations show that a rule which permits a Government to ask an officer to retire after an unreasonably short period of service must before the normal age of supernnuation would be hit by Article 311. They cannot apply when the period of qualifying service mentioned in the rule is not unreasonably shot and the normal age of superannuation fixed is not unaccountably early. Before May 1963 a Government servant in Government servant in Orissa had to retire on attaining the age of 55 years whether he had completed 30 years' qualifying service or not. The fact that the age of superannuation was raised from 55 or 58 while Government reserved to itself a right to ask any employee to retire at the age of 55 does not violate Article 311 (2). Secondly the order did not cast any aspersions or stigma on the appellant which would attract Article 311, A Government has a right to require the Government servant to retire at the age of 55 without assigning any reason. The fact that by the notificatiou of 5th February. 1964 certain guidelines were indicated to the Heads of Departments in considering whether a Government servant should continue in service beyond the case of 55 years, one of the factors for consideration being lack of integrity, did not imply that any officer whose continuance in service was not advised lacked in integrity. *Batahare Jena Vs. The Orissa.* A.I.R. S.C. 1516.

It is well known that a law or statutory rule should be so interpreted as to make it valid and not valid. If this expression is confined to what was argued before the High Court namely that it gives power to the Government to allow a Government servant to remain in service even beyond the age of 55 years for special reasons the rule will not be rendered invalid and its validity will not be put in jeopardy. So construed it is apparent that the appellant could not have been retired compulsory under the Saurashtra Rules before he had attained age of 55 years. By applying the Bombay rule his conditions of service were varied to his disadvantage because he could then be compulsorily retired as soon as he attained the age of 50 years. *Takherrary Shivdattary Mankad Vs. State of Gujarat.* A.I.R. 1770 S.C. 143.

(5) **Compulsory retirement.**—In *Moti Ram Deka Vs. General Manager N. E.F. Railway Maligaon Pendu.* 1964 (5) S.C.R. 1964 L.C.R. 683 : A.I.R. 1964 S.C. 600 one of the matters which came up for consideration was the effect of a service rule which permitted compulsory retirement without fixing the

minimum period of service after which the rule could be invoked. According to the observations of Venkataram Ayyar J. in *State of Bombay Vs. Saubhagchand M. Joshi.* 1958 S.C.R. 571 : A.I.R. 1957 L.C. 892, the application of such a rule would be tantamount to dismissal removal under Article 31 (2) of the Constitution. There were certain other decisions of the Supreme Court which were relevant on this point viz. *P. Balakotaiah Vs. Union of India.* 1958 S.C.R. 1052 : A.I.R. 1958 S.C. 232 and *Dalip Singh Vs. State of Punjab.* 1961-1 S.C.R. 88 : A.I.R. 1960 S.C. 1305. All these decisions were considered in *Motiram Deka Vs. General Manager N.E F. Railways*, A.I.R. 1964 S.C. 600 and the true legal position was stated in the majority judgment at page 726 of of S.C.R. and at page 617 of A.I.R. thus : ".....We think that if any rule permits the appropriate authority to retire compulsorily a civil servant without imposing a limitation in that behalf that such civil servant should have put in a minimum period of service, that rule would be invalid and the so-called retirement ordered under the said Rule would amount to removal of the civil servant within the meaning of Article 311 (2)".

In *Gurdev Singh Sidhu Vs. State of Punjab.* 1964 7 S.C.R. 587 : A.I.R. 1964 S.C. 1585, it was pointed out that the only two exceptions to the protection afforded by Article 311 (2) were, (1) where a permanent public servant was asked to retire on the ground that he had reached the age of superannuation which was reasonably fixed ; (2) that he was compulsorily retired under the rule which prescribed the normal age of superannation and provided a reasonably long period of qualified service after which alone compulsory retirement could be valid. The basis on which this view has proceeded is that for efficient administration it is necessary that public servants should enjoy a sense of security of tenure and that the termination of service of a public servant under a rule which does not lay down a reasonably long period of qualified service is in substance removal under Article 311 (2), The principle is that the rule relating to compulsory retirement of Government servant must not only contain the outside limit of superannuation but there must also be a provision for a reasonably long period of qualified service which must be indicated with sufficient clarity. To give an example, if 55 years have been specified as the age of superannuation and if it is sought to retire the servant even before that period it should be provided in the rule that he could be retired after he has attained the age of 50 years or he has put in service for a period of 25 years

It is well settled that a law or a statutory rule should be so interpreted as to make it valid not invalid. It this expression is confined to what was argued before the High Court, namely that it gives power to government to allow a Government servant to remain in service beyond the age of 55 years for special reasons the rule will not be rendered invalid and its validity will not be put in jeopardy. So construed it is apparent that the appellant could not have been retired compulsorily under the Saurashtra Rules before he had attained the age of 55 years. By applying the Bombay rule his condition of service were varied to his disadvantage because he could then be compulsorily retired as soon as he attained the of 50 years. As the previous approval of the Central Government was not obtained in accordance with the proviso to Section 115 (7) of the States Re-organisation Act, 1956, the Bombay Rule could not be made applicable to the appellant. *Takhetrary Shivdattary Mankad Vs. State of Gujarat* A.I.R. 1970 S.C. 143 : 1969 Ser. 572 : (1970) I S.C.A. 138 : 11 Guj. L.R. 325 : (1970) 1 S.C.R. 244.

4. A Government servant may be given extension of service beyond the age 58 years subject to his physical fitness and outstanding quality of his work but not ordinarily beyond the age of 60 years.

[1]**4-A.** Notwithstanding anything contained in rule 4, a Government Servant who had been a freedom fighter may, on production of a certificate in the form below and subject to his otherwise being fit to be continued in service, be given extension of service beyond the age of 55 years for such period not exceeding the period for which such government servant was in actual detention and/or imprisonment including the period undergone as under rial in connection with the freedom movement, subject to maximum of three years.

Explanation.—For the purposes of this rule "a freedom fighter" mean a Government servant who was detained and/or imprisoned on account of his political activities in connection with freedom movement during the period from 1919 to 1946.]

5. The Madhya Pradesh (Age of Compulsory Retirement) Rules, 1966 are hereby repealed.

[2][FORM OF CERTIFICATE

CERTIFIED that Shri.....S/o.....
R/o.. .. ..was imprisoned and/or detained in connection with the freedom movement at the place, for the period and under the provisions of the law mentioned below.

Place	Period	Provision of law under which imprisoned or detained.

Dated the

District Magistrate.

Seal