
(1971) 03 RAJ CK 0020
In the Rajasthan High Court
Case No : Civil Writ Petition No. 10 of 1969

Achaldas

APPELLANT

Vs

The Municipal Council and Others

RESPONDENT

Date of Decision : 19-03-1971

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2
Industrial Employment (Standing Orders) Act, 1946 — Section 13B, 2

Citation : (1971) RLW 559 : (1971) WLN 347

Hon'ble Judges : Jagat Narayan, C.J;R.D. Gattani, J

Bench : Division Bench

Judgement

Jagat Narayan, C.J.—This petition under Article 226 of the Constitution has been referred for decision to a Division Bench by a learned Single Judge of this Court.

2. The material facts which appear to have been established from the record are these. Achal Das, petitioner, was born on 1.3.14. He joined the advice of the Municipal Board, Jodhpur, on 11.7.34. At that time the Jodhpur Municipality was a department of the erstwhile State of Jodhpur and he was governed, by the Jodhpur Government Service Regulations under which a Government servant was required to retire from service on attaining the age of 55 years. The Jodhpur Municipal Act was framed in 1943 and it made the Jodhpur Government Service Regulations applicable to officers and servants of the Jodhpur Municipality. This did not make any change in the service conditions of the petitioner as he was already governed by the Jodhpur Government Service Regulations. Since however he ceased to be a Jodhpur Government servant on the coming into force of the Jodhpur Municipal Act, 1943 he was governed by the Jodhpur Government Service Regulations only by virtue of the provisions of Section 66 as contained in the Jodhpur Municipal Act, 1943 which read as follows:

Application of the Jodhpur Government Service Regulations to the Municipal servants:

The Jodhpur Government Service Regulations will apply to all officers and servants of the Municipality.

3. The legal effect of this change was that the Jodhpur Government Service Regulations, as they stood in 1943 were applicable to, the petitioner with effect from the coming into force of that Act and future amendments of these Regulations were not applicable to him. In this connection we may refer to the decision of their Lordships of the Supreme Court in D. Shjama Rao v. The Union Territory of Pondicherry (1976) 20 S.T.C. 215 (S.C.).

4. By an order dated 6.12.48 Regulation 8 of the Jodhpur Government Service Regulations was amended so as to raise the age of superannuation to 58 years. This amendment was not applicable to the petitioner with the result that his age of superannuation continued to be 55 years under Regulation 8 of the Jodhpur Government Service Regulations as it stood in 1943. In March 1949 Jodhpur State was integrated with Rajasthan and the Jodhpur Municipal Act, 1943 was continued in force by virtue of the provisions of the Rajasthan Administration Ordinance No. 1 of the petitioner thus continued to be 55 years after the formation of Rajasthan.

5. The Rajasthan Municipalities Act, 1959 came into force with effect from 17.10.1959. u/s 2 of this, Act the Jodhpur Municipality. Act was, repealed and the Rajasthan Act became, applicable to the Jodhpur Municipality u/s 297 of this Act power was given to the, State Government to prescribe the conditions of service of Municipal servants including the fixation of the age of superannuation.

6. The Rajasthan Municipal Subordinate and Ministerial Service Rules, 1963 were brought into force from 24th October 1983, Rule 36 of these Rules runs as follows:

Regulation of pay allowances, leave, pension, gratuity, provident fund, discipline, conduct etc. : Subject to the provisions of Section 310 of the Act and except as provided in these rules pay, allowances, pension, leave and other conditions of service, shall be regulated by rules made u/s 297 of the Act, and pending the, issue of such rules, by the following rules:

(i) The Rajasthan Service Rule 3, 1951 (except provisions relating to pension and payment of, medical allowances) as amended from time to time.

(2) Rajasthan Travelling Allowance Rules as amended from time to time.

(3) Rajasthan Civil Service (Classification, Control and Appeal) Rules, 1958 as amended from time to time.

The age of superannuation is prescribed by the Rajasthan Service Rules, 1951 The age of superannuation was raised from 55 years to 58 years in the Rajasthan Service Rules vide Finance Department's Notification No. F.1(84)F.D.A. (Rules) 62 dated 31.8.63 by making a suitable amendment in Rule 56. This rule was again amended under Notification No F.1(42)FD/Exp-Rules/67-II dated 13th June

1967 and the age of superannuation was reduced to 55 years.

7. On 22nd June 1967 the Local-Self-Government Department Notification No Tax (Rules) F.53/(Misc)/DLB/63 dated 22.6.67 was issued in exercise of the powers conferred u/s 297 of the Rajasthan Municipalities Act, 1959 making Notification No. F.1(42) FD/Exp-Rules/67-1 dated 13 6.67 along with instructions as contained in the Notification No. F.1(42)FD/Exp-Rules/67-II dated 13th June 1967 applicable to the Municipal employees except Class IV servants.

8. The petitioner was to attain the age of 55 years on 1.3.69. A notice dated 6.11.68 was accordingly served on him by the Commissioner, Municipal Council, Jodhpur, informing him that he will be retired on 28.2.69 on attaining the age of superannuation. The petitioner thereupon filed the present writ petition on 2.1.69 which was admitted by a learned Single Judge and the State of Rajasthan and the Municipal Council, Jodhpur, were restrained from carrying out the order of retirement of the petitioner till the disposal of the writ petition.

9. The case of the petitioner is that the Industrial Disputes Act 1947 and the Industrial Employment (Standing Orders) Act, 1946, came into force in Rajasthan in 1950 and the Jodhpur Municipality is an "industry" as defined u/s 2(j) of the Industrial Disputes Act, 1947. Further the petitioner being an employee in this "industry" on a salary of less than Rs. 500/- per month was a "workman" within the meaning of Section 2(s) of that Act. His further case is that the Municipality was an "industrial establishment" within the meaning of Section 2(e) of the Industrial Employment (Standing Orders) Act, 1940 and as no standing orders were framed and got certified as provided in this Act the petitioner is not governed by any age of superannuation and he has a right to continue in service till he is physically and mentally fit.

10. The petition has been contested on behalf of the Municipal Council, Jodhpur, as well as the State of Rajasthan.

11. It will be seen that the petitioner came to this Court on the allegation that the right accrued to him under the industrial law has been infringed. We may say at once that his writ petition should not have been entertained. He should have been left to seek redress under the industrial law which created the right which is said to have been infringed and which provides for suitable machinery to deal with such cases. Under the industrial law it is not every case of an industrial dispute that the Government is bound to refer to an authority or tribunal created under the Industrial Disputes Act. They may or may not refer a particular dispute. It is a question of expediency of which the government is the sole judge. If every workman whose industrial right is infringed is allowed to invoke the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution the safeguards which the Legislature thought fit to legislate along with the rights so created will be rendered nugatory.

12. Since however the case has been argued at length before us we proceed to give a decision on merits. In order to find out whether the petitioner is a

workman it is necessary to see whether the department of the Municipality in which he was working was an "industry" within the meaning of the Industrial Disputes Act. There are 3 reported decisions of the Supreme Court relating to Municipal Corporations namely D.N. Banerji Vs. P.R. Mukherjee and Others, , Baroda Borough Municipality Vs. Its Workmen, and Nagpur Corporation v. Its Employees AIR 1960 S.C. 657. We have been taken through these decisions by the learned Counsel for the parties and our conclusion is that in order to determine whether a particular department of the Municipality is an "industry" or not the predominant activities of that department are to be considered. Regal functions are primary and inalienable functions of. State and though they may be statutorily delegated to, a corporation they are necessarily excluded from the purview of the scope of the term "industry".

13. The petitioner is admittedly employed as a Revenue Inspector. According to the petition he is in charge of the collection of octroi duty and rents. The Administrator and Commissioner of Municipal Council, Jodhpur, has filed on affidavit to the effect that the duties of the petitioner are supervisory. As was held in The Corporation of the City of Nagpur Vs. Its Employees, supervision and actual performance of service are integral part of the same activity. We have to find out what is the predominant activity of the petitioner. The following figures of tie total income of the Board from octroi and from rent go to show that the predominant activity of the petitioner was to supervise the collection of octroi duty:

including		year	Financial Receipts		Total	Octroi	Rent
			Rs.		Rs.	Rs.	Teh-Bazari.
21,68,108.00		14,31,428.00	1,52,344.00		1967-68	27,57,520.00	17,40,780.00
1,74,133.00		1968-69	37,39,467.00		24,59,295.00	2,28,282.00	1069-70
40,15,821.00		26,04,869.00	2,24,431.00		Upto	17,66,372.00	13,47,281.00
88,340 00		Sept. 1970					

14. The collection of octroi duty is a regal function. It was observed in the The Corporation of the City of Nagpur Vs. Its Employees, that if a department of a Municipality discharges many functions, some pertaining to industry as defined in the Act, and other non-industrial activities the predominant functions of the department shall be the criterion for the purposes of the Act.

15. On behalf of the petitioner it was contended that the purpose of the collection of octroi duty was to enable the Municipality to perform its functions which are predominantly to provide material services to the community and therefore the collection of octroi duty should also be considered to be an activity relating to the provision of material services. We are unable to accept this contention in view of the decision of their Lordships of the Supreme Court in the The Corporation of the City of Nagpur Vs. Its Employees, . Only those departments of the Municipality which carry on the activity of providing material services are to be treated as "industry" within the meaning of the Industrial

Disputes Act.

16. We accordingly hold that the petitioner was not employed in an industry. He is therefore not a workman within the meaning of Section 2(a) of the Industrial Disputes Act, 1947. He is accordingly governed by the Rules framed by the State Government in exercise of the power conferred u/s 297 of the Rajasthan Municipalities Act, 1959.

17. This writ petition has therefore no force and is dismissed without any order as to costs.

18. Even if the petitioner had been employed in a branch of a Municipality providing material services to the community which could be regarded as an industry the Industrial Employment (Standing Orders) Act, 1946 would not apply to him because of Section 13B of the Act which runs as follows:

13-B Act not to apply to certain industrial establishments : - Nothing in this Act shall apply to an industrial establishment in so far as the workmen employed there in are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

As we have already pointed out above under Rule 36 of the Rajasthan Municipal Subordinate and Ministerial Service Rules, 1963, the Rajasthan Service Rules, 1951, the Rajasthan Travelling Allowance Rules and the Rajasthan Civil Services (Classification, Control and Appeal) Rules are applicable to all Municipal employees at present. So long as such rules are applicable to them nothing in the Industrial Employment (Standing Orders) Act, 1946 shall be applicable to Municipal employees. The reason for this exemption obviously is that Government frame rules to regulate the conditions of service of its employees after having due regard for their welfare and the Legislature does not consider it necessary to get them certified as being fair and reasonable by a certifying officer.

19. On this ground the present writ petition is wholly misconceived.