

(2001) 08 RAJ CK 0051
In the Rajasthan High Court
Case No : Civil Special Appeal No. 554 of 2001

Anand Bharti and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 02-08-2001

Acts Referred:

Rajasthan Service Rules, 1951 — Rule 86

Citation : (2002) 92 FLR 533 : (2002) 2 RLW 890 : (2002) 1 WLC 203 : (2003) 2 WLN 243

Hon'ble Judges : Rajesh Balia, J;H.R. Panwar, J

Bench : Division Bench

Advocate : Jagdish Vyas, for the Appellant;

Final Decision : Dismissed

Judgement

Balia, J.—Heard learned counsel for the appellants.

2. The petitioners-appellants are the legal representatives of the deceased employee of the State who in the first instance had joined the service of respondents as Vaidhya w.e.f 24.7.1964. From 5th July, 1977 he remained absent from duty without leave and thereafter, he tried to join alongwith an application for leave on 2nd August, 1984. His leave application was rejected. Thereafter he was allowed to join on 7.5.89 when he reappeared with the leave application. That application was decided on 29.5.90. The order communicated him that it is not possible to sanction leave of such an inordinate long period and therefore he is being offered fresh appointment.

3. The incumbent died on 4.8.90. His legal representatives laid claim to emoluments for the period between July 1977 to 7.5.89 and the pension as the employee had died while in service. While considering the claim of the petitioners, the pay and services for the period prior to 7.5.1989 were denied to them.

4. This led to filing of this petition. The petition was dismissed by the learned

Single Judge by holding that according to the decision rendered by the Supreme Court in Jeevanlal Ltd.'s case (1), and Shahoordul Haque's case (2), holding that continued absence for long time will give rise to presumption that the employee himself has abandoned the services and in such cases it is not necessary to conduct an enquiry. It was further noticed that in such cases where such a presumption can be raised, further question whether any notice before termination was necessary or duty given on the assumption that he was not punished is not relevant. The Supreme Court on that premise had thought it fit that in cases arising out of long unauthorised absence from duty. In appropriate case presumption of voluntary abandonment can be raised, and such cases need not be examined as if it is a case of imposition of penalty which required holding an enquiry.

5. The learned Single Judge has further observed that in such cases no enquiry is required. We are of the opinion that no opinion need be expressed in this case on the question whether in case the services are sought to be terminated by way of punishment, an enquiry is required to be held or not. The fact remains that the unduly long absence from duty without sanctioned leave in given cases may result in voluntary presumption of abandonment of service and in such case no element of punishment is involved which may require adherence to principles of natural justice.

6. The facts of Shahoordul Haque's case are nearer home. It was case where after long absence the employee was allowed to rejoin. The question was raised whether once an incumbent was allowed to join but not given benefit of the past services. Considering such consequence to be a part of punishment, a contention has been raised that once the petitioner has been allowed to join it must be deemed that long delay has been condoned and no punishment could be imposed. However the Court refused to examine the case on the premise that denial of benefit of past services was by way of punishment by holding that the case warranted raising of inference that the incumbent had voluntarily abandoned the service and no element of punishment is involved so as to examine the case from that aspect at all.

7. Attention may also be invited to the provisions of the Rajasthan Service Rules, 1955. Rule 86 provides that a Govt. servant who has remained absent from duty without leave or before leave applied for has been sanctioned by the competent authority, shall be treated to have remained wilfully absent from duty and such absence shall amount to interruption in service involving forfeiture of past service unless, on satisfactory reasons being furnished the absence is regularised by grant of leave due or is commuted into extra-ordinary leave by the authority competent to sanction leave. Obviously, present is a case where the Rules 86 is operated and the forfeiture of past services resulting in break of services for a long unauthorised absence has taken place as a result of non sanctioning of leave for the long period of absence upto 1989 applied in 1989 and treated the joining to be a fresh appointment on that anvil.

8. The fact that the incumbent has failed to give satisfactory explanation while he was alive before his authorities to whom he applied for leave which was refused during his life time, it resulted in interruption in services and forfeiture of past services. Hence, the services prior to date of joining afresh cannot be counted as qualifying services under the Rules. The petitioners on principle of no work no wages cannot ask for emoluments for the period during which the deceased incumbent remained unauthorisedly absent from duty and had not discharged any duties. As a result of break in service as per Rule 86, past services are not to be counted for computing qualifying service, hence no right to get pension can be claimed on that basis.

9. We are further of the opinion that once the application for leave of the incumbent was considered and decided on merit and he has not raised any objection during his life time, it is not open for his legal representatives to agitate its validity.

10. In the result, we do not find any merit in this appeal, and it is hereby dismissed. However, this would not come in the way of the legal representatives of the deceased employee in getting any benefit arising to a person as an heir of an incumbent dying while in service by considering him in service w.e.f. 7.5.89 and on mat premise if he is entitled to any benefit, same may be considered expcditiously.