
(2008) 09 RAJ CK 0047
In the Rajasthan High Court

Bhana Ram

APPELLANT

Vs

Rajasthan Agricultural University and Others

RESPONDENT

Date of Decision : 08-09-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226

Citation : (2009) 1 RLW 506 : (2009) 1 WLN 42

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Judgement

Gopal Krishan Vyas, J.—In this writ petition, the petitioner has prayed for direction to the respondents to provide all terminal benefits to the petitioner including pension, gratuity, etc. after granting revision of pay scale revised from time to time with all consequential benefits forthwith alongwith simple interest at the rate of 12% upon retiral benefits.

2. Learned Counsel for the respondents, at the initial stage, raised serious preliminary objection with regard to the maintainability of the writ petition on account of the territorial jurisdiction of the Principal Seat of the High Court at Jodhpur. Therefore, I deem it just and proper to first decide the preliminary objection raised by learned Counsel for the respondents with regard to the territorial jurisdiction of this Court at the Principal Seat at Jodhpur.

3. The contention has been raised by learned Counsel for the respondents that although the petitioner was employee of the University but, till his retirement from service, being an employee of the Rajasthan Agricultural University, Bikaner, he was working in the office of the Zonal Director of Research, Agricultural Research Station, Fatehpur Shekhawati, District Sikar and the said Research Station being under the control of Director, Agricultural Research Station, Fatehpur Shekhawati (District Sikar), therefore being employee of the Research Station, Fatehpur Shekhawati, in view of the judgment of the apex Court in the case of Rajasthan High Court Advocates Association Vs. Union of India and Others, , the Principal Seat of the High Court at Jodhpur has no

jurisdiction to hear this writ petition because district Sikar in which the petitioner was working till his retirement falls under the jurisdiction of the Jaipur Bench of this High Court.

4. Learned Counsel for the respondents invited my attention towards another judgment of this Court dated 26.7.2006, passed in S.B. Civil Writ Petition No. 5670/2005, Mahendra Kumar Verma and Ors. v. State of Rajasthan and Ors. whereby the writ petition filed by the petitioners was dismissed while holding that no cause of action or its part arose within the territorial jurisdiction of the Principal Seat of the High Court and the learned Single Judge, while observing as above, dismissed the writ petition for want of territorial jurisdiction.

5. Yet another judgment reported in 2005(10) RDD 4670 , Anand Bardwa and Ors. v. Rajasthan Financial Corporation and Ors., has been referred to by the learned Counsel for the respondents in support of his contention. Therein, too, the same question was involved, therefore, the learned Single Judge of this Court dismissed the writ petition on the basis of lack of territorial jurisdiction.

6. With a view to examining the preliminary objections, the factual matrix in the case may be considered. It is the admitted position of the case that the petitioner Banna Ram is retired employee of the Rajasthan Agricultural University, Bikaner and he was working at the Agricultural Research Station, Fatehpur Shekhawati, District Sikar under the control of the Director of Research, Agricultural Research Station, Fatehpur Shekhawati (District Sikar); meaning thereby, the pension sanctioning authority is the Registrar, Rajasthan Agricultural University, Bikaner. Thus the employer's office is situated at Bikaner and Bikaner district is within the territorial jurisdiction of the Principal Seat of the High Court at Jodhpur.

7. In the judgment rendered by the Hon"ble apex Court in the case of Rajasthan High Court Advocates Association (supra), the expression "cause of action" has been adjudicated in para 17 and 18 as follows:

The expression "cause of action" has acquired a judicially-settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously, the expression means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises in "cause of action". It has to be left to be determined in each individual case as to where the cause of action arises. The Chief Justice of the High Court has not been conferred with the legislative competence to define cause of action or to declare where it would be deemed to have arisen so as to lay down artificial or deeming test for determining territorial jurisdiction over an individual case or

class of cases. The permanent Bench at Jaipur has been established by the Presidential Order issued under Sub-section (2) of Section 51 of the Act. The territorial jurisdiction of the permanent Bench at Jaipur is to be exercised in respect of the cases arising in the specified districts. Whether the case arises from one of the specified districts or not so as to determine the jurisdictional competence to hear by reference to territory bifurcated between the principal seat and the Bench seat, shall be an issue to be decided in an individual case by the Judge or Judges hearing the matter if a question may arise in that regard. The impugned explanation appended to the order of the Chief Justice dated 23.12.1976 runs counter to the Presidential Order and in a sense it is an inroad into the jurisdiction of the Judges hearing a particular case or cases, pre-empting a decision to be given in the facts of individual case whether it can be said to have arisen in the territory of a particular district. The High Court is right in taking the View which it has done.

It was submitted at the end by the learned Counsel for the appellant that the Division Bench of the High Court in its impugned order has observed that the permanent Bench at Jaipur shall have "exclusive jurisdiction" to hear the cases arising out of the 11 specified districts and the High Court at Jodhpur shall not have jurisdiction to hear those cases which fall within the territorial jurisdiction of Jaipur Bench. He submitted that the use of word "exclusive" prefixed to "jurisdiction" is uncalled for. We find no substance in this contention as well. The purpose of the Presidential Order is to carve out and define territorial jurisdiction between the principal seat at Jodhpur and the permanent Bench seat at Jaipur. The cases are to be heard accordingly, unless the Chief Justice may exercise in his discretion the power vested in him by the proviso to para 2 of the Presidential Order. Clauses (1) and (2) of Article 226 of the Constitution provide how territorial jurisdiction shall be exercised by any High Court. Although the said clauses do not deal with principal seat or permanent Bench of any High Court but in our opinion, there is no reason why the principle underlying there cannot be applied to the functioning of the bifurcated territorial jurisdiction between the principal seat and permanent Bench seat of any High Court. In case of a dispute arising whether an individual case or cases should be filed and heard at Jodhpur or Jaipur, the same has to be found out by applying the test-from which district the case arises, that is, in which district the cause of action can be said to have arisen and then exercising the jurisdiction under Article 226 of the Constitution.

Meaning thereby, according to the above judgment, the facts of each case need be seen while exercising the territorial jurisdiction. Apparently, facts of the present case clearly speak that the pension sanctioning authority is Rajasthan Agricultural University, Bikaner and Head of Department of the petitioner sits at Bikaner. As such the petitioner is having grievance at the hands of the authority who is situated at Bikaner, therefore, the cause of action after retirement of the petitioner arises at Bikaner because the petitioner is claiming relief against the authority which is in the Bikaner district and the same falls within the territorial

jurisdiction of the Principal Seat of the High Court at Jodhpur and as per the judgment of the apex Court the question of territorial jurisdiction is to be decided on the facts of each case.

8. In the other judgment cited by the learned Counsel for the respondents dated 26.7.2006, passed in S.B. Civil Writ Petition No. 5670/2005, Mahendra Kumar Verma and Ors. v. State of Rajasthan and Ors., both the petitioner and respondents were belonging to Ajmer and Jaipur districts, therefore, the learned Single Judge of this Court held that the Principal Seat of the High Court at Jodhpur has no jurisdiction.

9. Similarly, in the case of Anand Bardwa and Ors. v. Rajasthan Financial Corporation and Ors. reported in 2005(10) RDD 4670 , notice was issued by the Executive Director, Rajasthan Financial Corporation, Jaipur to the Branch Manager, RFC, Kota and, so also, order dated 6.5.2005 was passed by the Branch Manager, RFC, Kota, therefore, the learned Single Judge of this Court held that the Principal Seat of the High Court has no territorial jurisdiction as per the judgment of the Hon"ble apex Court.

In this view of the matter, when acceptance and denial for pension is to be made by the Rajasthan Agricultural University, Bikaner and University is established in Bikaner district and is within the territorial jurisdiction of the Principal Seat of the Rajasthan High Court at Jodhpur as per notification, therefore, this writ petition cannot be dismissed on the question of maintainability.

10. The preliminary objection thus raised by learned Counsel for the respondents is accordingly rejected.

11. Heard learned Counsel for the parties on merit of the case.

12. Learned Counsel for the petitioner argued that admittedly the petitioner was initially appointed with effect from 8.6.1987 as casual labour and he was given posting at the Agriculture Research Station, Fatehpur Shekhawati (District Sikar). After appointment of the petitioner, a final seniority list of working labour in different units under the University was published on 18.9.1994/3.10.1994, which is placed on record as Annex. 3. Name of the petitioner in this seniority-list is shown at Section No. 27. In the year 2004 also, again a final list of working labour district wise was also published on 3.9.2004. In that seniority list name of the petitioner was included at Section No. 11 of the seniority-list of Sikar district. Before issuance of the said seniority-list dated 3.9.2004, on 9.5.2001, an order was issued for granting pay-scale of the petitioner on the ex-cadre post and the petitioner's pay was fixed in the pay-scale of Rs. 1925-2395 and his pay was fixed with effect from 1.5.2001. The said benefit was extended to the petitioner as per the scheme of regularization framed by the respondents in the year 1990. Therefore, the petitioner was allowed the said pay-scale till his retirement with effect from 31.5.2005. But, no pensionary benefit was allowed by the respondents, therefore, the petitioner has preferred this writ petition with the prayer that although the petitioner is entitled for pensionary benefit yet the

respondents have not paid him retiral benefits and, so also, not granted the pensionary benefit therefore denial of pension and other retiral benefits is illegal, unjustified and unconstitutional.

13. As per the petitioner he was satisfactorily working substantively as an employee in the ex-Cadre post after granting regular pay-scale and all the University employees who rendered more than ten years of service are entitled to pensionary benefit in accordance with the pension rules prevailing in the University, therefore, denial of pensionary benefit is in violation of the provisions of Article 14 and 16 of the Constitution of India. Learned Counsel for the petitioner submits that being an employee of the University, he has right to get pensionary benefit as per Pension Regulations but without assigning any reason the petitioner has been denied the pensionary benefit which is not tenable, the petitioner is entitled for pensionary benefit as per pension rules prevailing in the respondent University since 1.1.1990.

14. Learned Counsel for the petitioner vehemently argued that other employees who were working in Class IV cadre are getting pensionary benefits in accordance with the Pension Regulations whereas said benefit has been denied to the petitioner which is discriminatory and In violation of Article 14 of the Constitution of India, therefore, it may be declared that no different rules or regulation can be framed for the employees of the same University. The respondent University shall follow the statutory Pension Regulation 1990 for all the employees irrespective of mode of appointment and regularization of services of the employees.

15. Per contra, learned Counsel for the respondent University vehemently argued that the petitioner was admittedly appointed as casual labour and he was granted the benefit of ex-cadre post as per the scheme so framed by the University in which there is no provision for granting the benefit to the person who was appointed on an ex-cadre post, therefore, the petitioner cannot claim any right for the grant of pensionary, benefit.

16. Learned Counsel for the respondents vehemently argued that a scheme was promulgated by the University for the benefit of its casual labour which is known as "Dainik Vaitan Bhogi Karmachari Kalyan Yojana Rules 1990 (in short, to be called hereinafter as "the Scheme of 1990"), therefore, the services conditions of the petitioner are to be governed under the said scheme.

17. It is submitted by learned Counsel for the respondents that the petitioner was paid daily-wages till completion of ten years of his service and, thereafter, he was paid regular salary in the said pay-scale and till the date of his retirement, he was allowed the said pay-scale of the ex-cadre post. Therefore, it is obvious that petitioner was not conferred the regular status of employment inasmuch as there was no sanctioned post on which the petitioner could be adjusted, therefore, the claim of the petitioner with regard to pensionary benefit deserves to be rejected on this ground alone. Learned Counsel for the respondents further

prayed that no deduction was made towards contribution of pension or gratuity, therefore, the petitioner cannot claim any pensionary benefit as a matter of right. Further, it is submitted by learned Counsel for the respondents that daily-wagers or casual labours are not entitled to claim the terminal benefits, therefore, the terminal benefits like pension and gratuity etc. cannot be allowed to the petitioner.

18. With regard to contention of the petitioner for violation of Articles 14 and 16 of the Constitution of India, learned Counsel for the respondents submits that this writ petition deserves to be dismissed on the ground that in para 10 of the writ petition it is specifically stated by the petitioner that similarly situated persons have been granted benefit of pension and gratuity but the petitioner has not given the names of such persons. Therefore, the formation of the said scheme specifically postulates that it does not give any right of pension and the petitioner cannot claim the benefit at par with the regular employees of the University appointed against sanctioned posts, therefore, the contention of the petitioner to treat him at par with the regular employees and grant him pensionary benefit is totally untenable, and, accordingly, the instant writ petition deserves to be dismissed with heavy cost.

19. Learned Counsel for the respondents further argued that no mandamus can be issued without there being any order but this writ petition has been filed without any order of denial by the petitioner. Therefore, this writ petition deserves to be dismissed being premature.

20. It is further contended by learned Counsel for the respondents that the petitioner has also not disclosed the fact that for regularization the petitioner and 16 other persons preferred writ petition at the Jaipur Bench before retirement, therefore, this writ petition deserves to be dismissed for concealment of facts also. Further, it is submitted that the petitioner has received the amount of EPF and UPF without any protest or raising voice for other claim, therefore, he is now estopped from claiming any further terminal benefits because under the Scheme of 1990 the workman who come in the seniority can be regularized against the sanctioned posts in the event of the availability of the sanctioned posts and till absorption upon the sanctioned posts no ex-cadre employee can claim the right of pensionary benefit, therefore, the pension regulation applicable to the regular employee do not apply to the services of those employees who remain on Ex-Cadre posts till their retirement. Admittedly, till retirement the petitioner worked on the ex-cadre post and accepted the EPF and UPF which is said to have been deducted from his salary by the University as per Scheme. Therefore, there is no question of granting any pensionary benefit to the petitioner because the Pension Regulations are not applicable to the ex-cadre post on which the petitioner was working up to his retirement. So also, there is no express provision for grant of pensionary benefit in the Scheme of 1990 under which petitioner was granted benefit of ex-cadre post and was allowed pay-scale. On the aforesaid submissions, it is prayed by the respondents that the writ petition may be

dismissed with cost.

21. I have considered the rival submissions made by both the parties.

22. In this case, following facts are not disputed:

1. The date of appointment of the petitioner is 8.6.1987 and he worked till 31.5.2005 and retired from service on attaining the age of superannuation.

2. There is no dispute with regard to framing of the Dainik Vaitan Bhogi Karmachari Kalyan Yojana Rules 1990 in which the petitioner was granted pay-scale of the ex-cadre post after completion of ten years of service.

3. It is not disputed by the parties that the petitioner is employee of the University. Moreover, it is admitted specifically that the petitioner was initially appointed as casual labour and, later on, he was granted ex-cadre post and the pay-scale under the Scheme so framed by the University in 1990 under which PF was also deducted from the salary of the petitioner.

4. It is nowhere disputed that in the University pension regulations of 1990 were made applicable with effect from 1.1.1990 by which pension benefits have been provided by the University for those employees who fall under Regulation 2(2) of the Pension Regulations 1990.

5. It is not in dispute that the petitioner worked as an employee of the University upon the ex-cadre post till attaining the age of superannuation.

23. I have carefully perused the entire proceedings of the case and consider the rival arguments made by both the parties.

24. Admittedly, the petitioner worked for more than 15 years with the University and he was given ex cadre post under the so called Scheme framed by the University and was granted the regular pay-scale. Upon perusal of the Scheme of 1990 filed by the respondent with the reply as Annex. R/6 it is obvious that there is provision for deduction of PF under Rule 22 under which the deductions were made from the salary of the petitioner. Upon perusal of the Scheme, it is abundantly clear that there is no provision with regard to retiral benefits; meaning thereby this Scheme was framed only to grant the benefit of regular service and grant pay-scale to the casual labour who worked for more than 5 and 10 years. It is however nowhere provided as to what type of benefit will be given after retirement. Therefore, the purpose of floating the scheme by the University was only to grant ex-cadre status to the casual labours to satisfy the right to live enshrined in Article 21 of the Constitution of India. The respondent University is an instrumentality of the State, therefore, it was obviously felt necessary by the University to grant pay-scale and regularity in employment till age of superannuation to the casual labours who worked for more than 5 or 10 years as casual labours in the University.

25. Although the said Scheme of 1990 under which petitioner was granted ex-cadre post and pay-scale is not statutory scheme but it was promulgated for the

benefit of those employees who worked for more than 10 years and for whom regular vacancies were not available, therefore, to the extent of granting ex-cadre post and pay-scale it is true that this non-statutory scheme was framed by the University, but, at the same time, the University cannot refuse to accept the fact that the ex-cadre employees who were given the benefit of regular pay-scale under the scheme cannot be treated as an employee of the University, and not entitled for retiral benefits at par with regular employees on the ground that the mode of appointment was different and they were allowed to work on the ex-cadre posts till their retirement, therefore, for the purpose of granting retiral benefits obviously all the employees are to be governed under the Pension Regulations framed by the University to grant retiral benefits to their employees. For the said purpose, in the University Pension Regulations 1990, specific provision has been provided under Regulation 2(11) which reads as under:

Reg. 2(ii) These regulations shall also apply to all existing employees- both teaching and non-teaching -who opt for pension scheme under these regulations within the period specified in Reg. 4 for exercising option. In case of employees who do not exercise option with the specified period, it will be deemed that the concerned employee has opted for the pension scheme under these regulations. Provided that these regulations shall not apply to:

- (a) Persons employed on contract or part time basis,
- (b) Persons on deputation to the University,
- (c) Purely temporary and dally wages staff,
- (d) Re-employed pensioners.

26. Careful perusal of the aforequoted Regulation 2(ii) will reveal that only those persons who are specifically enumerated In the above Regulation 2(H) are debarred from getting penslonery benefit. Therefore, In that view of the matter, the ex-cadre employees are also entitled to get penslonery benefit under statutory Pension Regulations being employees of the University. Admittedly for the purpose of granting penslonery benefit the employee is required to complete 10 years of service and that period is to be counted as per Regulation 21 in which it is provided that the qualifying service of a employee begins from the date he take charge of the post to which he is first appointed but it does not qualify till he has completed 18 years of age, except for grant of compensation gratuity; meaning thereby, in this case, it not disputed by the respondents that the day on which he was appointed he was not less than 18 years of age. But It is accepted that the petitioner was appointed on 8.6.1987 and he retired from service on 31.5.2005 upon attaining the age of superannuation.

27. In Regulation 29, it is provided that an employee eligible for pension under any of the categories mentioned in Regulation 5, Chapter-2, shall be granted on retirement the amount of pension to be determined at 50 per cent of emoluments last drawn by him subject to a minimum of Rs. 300/- per month.

The amount of pension so arrived at shall be related to the maximum qualifying service of 33 years. In the case of an employee who at the time of retirement has rendered qualifying service of 10 years of more but less than 33 years, the amount of his pension shall be such proportion of the maximum admissible pension as the qualifying service rendered by him bears to the maximum qualifying service of 33 years;

28. In this view of the matter, when there is no specific denial for pensionary benefit to the ex-cadre employees of the University, the petitioner is obviously entitled to pensionary benefit under Pension Regulations 1990. The respondent cannot deny the pensionary benefit to the employee who has completed more than 10 years service and was working on ex-cadre post till his retirement.

29. The contention of the respondent with regard to not treating the petitioner as regular employee, I am afraid, if such contention on the part of the University is allowed to prevail, then, certainly the whole purpose of protection of Article 14 of the Constitution of India will be frustrated because the employer is one i.e., the Rajasthan Agricultural University therefore different mode of appointment is totally irrelevant for the purpose of granting pensioner benefits and the claim of the petitioner cannot be denied in view of the fact that specific exclusion has been made for not granting the pensionary benefit under Regulation 2(ii) of the Pension Regulations 1990 in which the petitioner's case does not fall because it is nowhere provided in Regulation 2(ii) that those persons who were given ex-cadre post and pay scale under the Scheme will not be entitled to pensionary benefit. When denial of pensioner benefit is not expressly provided in the Pension Regulations applicable to the employees of the University, then, certainly the Pension Regulations framed by the University are applicable to all the employees except those who are excluded under Regulation 2(ii) of the Pension Regulations.

30. With regard to the contention of the respondents that ex-cadre employees cannot be treated to be regularly appointed persons in service, in my opinion, this contention is baseless and unfounded. When the University has chosen to grant financial benefit of regular pay-scale to the employees after completion of 10 years of service, while granting ex-cadre post the intention of the University to treat the ex-cadre employees at par with the regular employees because it is provided in the Scheme that they will continue till the date of superannuation. In this view of the matter, once it is specifically provided that after granting the ex-cadre post the employee will remain in service till retirement upon attaining the age of superannuation, then, those absorbed on the ex-cadre post shall be treated at par with the regular employees of the University for the purpose of allowing pension and other retiral benefits.

31. In the net result of above discussion, it is held that all the employees of the University working in the regular cadre and Ex-Cadre are employees of the respondent University and as per Pension Regulations 1990 of the University the entitlement to pension is available to all those employees except those who fall under the Regulation 2(ii) of the Pension Regulation of the University and, as per

facts of the present case, petitioner's case does not fall in the category of exclusion under Regulation 2(H), therefore, the petitioner is entitled for pension and other retiral benefits.

32. In this view of the matter, the denial of the pensionary benefits under the University Pension Regulations 1990 to those employees who were absorbed on the ex cadre posts is totally unconstitutional, arbitrary and illegal. The University is under obligation to grant all the retiral benefits including pension and gratuity to those employees who were absorbed in the ex cadre and granted regular pay-scale with continuity in service till attaining the age of superannuation.

33. In view of the aforesaid, this writ petition is allowed. The respondents are directed to grant all retiral benefits including pension and gratuity as well as other terminal benefits to the petitioner, within a period of three months of the date of production of certified copy of this order.

34. It is however clarified that the amount of EPF and UPF paid to the petitioner shall be adjusted from the arrears of pension and gratuity to which the petitioner is entitled with effect from 1.6.2005 and, if any amount further becomes due, the same shall be deposited by the petitioner with the University.

35. There shall however be no order as to costs.