
(1992) 05 RAJ CK 0003

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2002 of 1988

Bhoor Singh

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 06-05-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 311

Citation : (1992) WLN 94

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajesh Balia, J.—The petition raises short issue.

2. The petitioner who was in fact due to retire on completion of 55 years of age, on 1.11.1981, due to over-sight or by mistake, was allowed to continue in service upto 25th July, 1983 and was superannuated with effect from that date. The petitioner was also paid the regular emoluments by treating him as continuing in service in the regular pay scale at the state at which he was drawing his emoluments at the relevant time. After the petitioner was retired from services his pensionary benefits were not fixed for long and the petitioner approached this Court through Writ Petition No. 3246 of 1984 making a complaint against non-fixation of his pension and retiral benefits. This Court vide its order dated 2.1.1986, directed to determine the pension of the petitioner within a period of 3 months and to pay the petitioner pension and other post retiral benefits. The order was not complied with in time and the petitioner had to file another Writ Petition being No. 1544 of 1986, in which ultimately a statement was made on 9.3.1987 that the payment of pension has already been made. The Court directed to pay 12 per cent on the delayed payment of pension amount on 9.3.1987, along with Rs. 1000/- by way of cost. The petitioner later on came to know that in fact Rs. 10,550/- had been paid less than the amount which legitimately become due to him as pension and other retiral benefits and,

once against the petitioner had to approach this Court through Contempt Petition No. 198 of 1988. In reply to the contempt petition, the respondents made statement that to avoid financial hardship to the petitioner, provisional pension of Rs. 262.50 per month has been sanctioned and a sum of Rs. 10,550.80 has been paid to the petitioner through Bank Draft on January 3, 1987. In the said reply, it was further stated that the petitioner was, in fact, was to retire on 31.10.1981 but since he was actually retired on 27.5.1983, his over-stay has been regularised by order dated 6.2.1987, which has been produced alongwith the writ petition as Ex. 1 and is the impugned order. According to that order, regularisation of his over-stay and pay fixation was made on 6.2.1988 on the lowest of pay scale of Rs. 420-70. The revision of pay with effect from the date of attaining age of 55 years until the date of his actual superannuation is proposed to have made under Rule 337 of the Rajasthan Service Rules and the Government decision made there under. According to the said order, the petitioner's over-stay on the post was treated as re-employment and he was fixed on the minimum of the pay scale applicable to the post which the petitioner was holding as on 31st October, 1981 and one increment was granted on completion of one years" over-stay. This has resulted in actual deduction of emoluments of the petitioner and, therefore, a recovery of Rs. 7761.45 was ordered to be made against the petitioner and vide Annxs. 2 and 3 the petitioner was called upon to make good the over-payment made to him.

3. However, while the petitioner's pension was fixed with effect from 1.11.1981, the petitioner was not paid any pension for the period from 1.11.1981 to 25.7.1983 and date of his superannuation was treated as on 25.7.1983.

4. It is this action of the respondents of fixing the petitioner on a pay lower than what he was drawing with effect from 1.11.1981 to the date of his actual superannuation, the petitioner challenges in this writ petition.

5. In the aforesaid circumstances, the petitioner challenges the action of the respondents in refusing the regular emoluments from 1.11.1981 to 25.7.1983 and also the order to effect recovery for the alleged sum over-paid to the petitioner.

6. The respondents No. 1, 2 and 4 are represented by learned Addl. G.A. Respondent No. 3 has not appeared deposit service. No reply has been filed.

7. I have board learned Counsel for the parties appearing. Perused the record placed before and the relevant rules. The relevant Rules, which have direct bearing on the controversy may be reproduced here in below. In this connection, Rule 337 of the Rajasthan Service Rules, alongwith relevant extract of Government decision made thereunder, is quoted as under:

337. Pay of re-employed pensioners--No Government servant, Civil or Military may retire with the view of being re-employed and drawing pension in addition to pay, whether in the general service or in the service of any Local Fund.

Government of Rajasthan's decision

1. (a) The initial pay on re-employment should be fixed at the minimum of the scale of pay prescribed for the post in which an individual is re-employed.

In cases where it is felt that the fixation of initial pay of the re-employed officer at the minimum of the prescribed pay scale will cause undue hardship the pay may be fixed at a higher stage by allowing one increment for each year of service which the officer has rendered before retirement in a post not lower than that in which he is re-employed.

(b) In addition to (a) above, the Government servant may be permitted to draw separately any pension and Death-cum-Retirement Gratuity sanctioned to him and to retain any other form of retirement benefit for which he is eligible e.g., Government's contribution and Special Contribution to a Contributory Provident Fund, gratuity, commuted value of pension, etc., provided that the total amount of initial pay as at (a) above plus the gross amount of pension and/or the pension equivalent of other forms of retirement benefit does not exceed:

(i) the pay he drew before his retirement (pre-retirement pay), or

(ii) Rs. 3,000/- whichever is less.

Note I. - In all cases where either of these limits is exceeded, the pension and other retirement benefits may be paid in full and the necessary adjustments made in the pay so as to ensure that the total of pay and pensionary benefits is within the prescribed limits.

8. Rule 346. Re-employment after superannuation or retiring pension-

A Government servant who is in receipt of a Superannuation or Retiring Pension shall not be re-employed or continue to be reemployed in service paid from the Consolidated Fund or from a Local Fund except on public grounds. Sanction to re-employment or extension of the term of employment may be given as follows:

(i) By the Government when the pensioner served before retirement in a gazetted appointment;

(ii) By any authority subordinate to Government to whom the Government may delegate its powers under this Rule in respect of pensioners re-employed in establishments under the control of such authority.

9. Rule 347. Power to keep pension in abeyance.

The authority competent to fix the pay and allowances of the appointment in which the pensioner is employed shall determine whether his pension shall be held wholly or partly in abeyance. If the pension is drawn wholly or in part such authority shall take the fact into account in fixing the pay to be allowed to him; provided that (i) where Government has delegated its power under Clause (ii) of Rule 346 to the Head of a Department, the latter may not allow the pensioner to draw the full pension in addition to the full pay of the post except when the

reemployment or continued employment is for "bona fide" temporary duty lasting for not more than a year or the pension does not exceed Rs. 200/- a month, and (ii) where the Government has delegated its power to pay other authority subordinate to itself, such authority may not allow the pensioner to draw in full a pension of more than Rs. 200/- a month in addition to the full pay of the post.

10. Rule 352. Pensioner not entitled to a separate pension for new service.-

Except as provided in Rule 350 to 351 Government servant, who, having been discharged with a pension, is subsequently reemployed, may not count his new service for a separate pension. Pension (if any) is admissible only for the new service combined with the old, the whole being counted as one service.

11. The perusal of these rules makes it abundantly clear that even in case where there is a re-employment of the Government servant after retirement, whether on superannuation or otherwise, his pay and emoluments taken together with the retiral benefits cannot exceed the emoluments which he was drawing at the time of retirement. The Government's decision read as above and Rule 347 makes it abundantly clear that in case on attaining the age of superannuation, pension or retiral benefits are released to the incumbent, then on re-employment of such employee such retiral benefits has to be taken into account while fixing the pay of the incumbent on re-employment, for his being continued on the post. The maximum permissible limit fixed is that the pay fixed and the retiral benefits given to such incumbent, taken together, must not exceed the last emoluments drawn by the incumbent on the date of his superannuation. It has further been made clear in Rule 352, that the incumbent is not allowed to count the period of service of such re-employed service/continued service, beyond superannuation, for qualifying service.

12. In the present case, the fact that the petitioner has not been paid any pensionary benefits from 1.11.1981 until the date of his actual superannuation, is not disputed. In this view of the matter, the question of adjusting the amount of pension against the actual paid emoluments simply do not arise. In terms of Government's decision under Rule 337, it is more than clear that while under Clause (a), a re-employee is to be fixed on the minimum of the pay scale which was being drawn by him at the time of retirement, besides the pension and death-cum-retirement gratuity and allowed to retain any other form of retiral benefits, with condition that the pension and other retiral benefits may be paid in full and necessary adjustments may be made in the pay so as to ensure that the total of pay so payable and pensionary benefits, taken together, does not exceed prescribed limit, namely, the pay which he had been drawing at the time of his retirement. In this view of the matter, the fixation of pay on the minimum of the pay scale is necessarily linked with the fact the incumbent has been paid retiral benefits. When the incumbent has not been paid any retired benefits, the question of fixing on the minimum of the pay scale and not giving retiral benefits for that period would be quite contrary to Articles 14 and 16 of the Constitution

as well as Article 311 of the Constitution of India, as it would result in forfeiture of retiral benefits for the period during which the petitioner has been re-employed. Such a view cannot be countenanced.

13. There is yet another angle from which the issue can be looked into. The provisions of Rule 337 envisage a situation where the person has been actually retired and has been re-employed under the terms of re-employment. But this rule do not envisage where a person is retained in service a in continuation of his past services and is not allowed to retire. That situation is enceded in Rule 56 of the Rules of 1951, relevant portion of which reads as under:

56. Compulsory retirement on attaining age of Superannuation-

(a)(1) Except as otherwise provided in these rules, the date of compulsory retirement of a Government servant, other than a Government servant of class IV is the afternoon of the last day of the month in which he attains the age of fifty five years. He may be retained in service after the date of compulsory retirement with the sanction of the Government on public ground which must be recorded in writing but he must not be retained after the age of 60 except in very special circumstances.

14. In the event of a person being allowed to continue in service, not by re-employment but by granting extension, the question of re-fixation of emoluments and adjustment of pension simply does not arise, because, in that event, the determination of pension until actual superannuation from service cannot be made. Undoubtedly, in the present case, the petitioner was not allowed to continue in service by conscious exercise of powers under Rule 56 but, neither he was re-employed in conscious powers of re-employment under the subsequent set of rules. In that event, if a situation has arisen on account of over-sight of the employer in passing appropriate order, the incumbent will be entitled to call upon the employer to exercise that set of rules, for the purpose of regularisation of continued services, which is more beneficial to him. Viewed from this angle also, if the petitioner is deemed to continue in service, he is entitled to be paid the continued emoluments of the post on which he has worked and his pay cannot be re-fixed treating him as "re-employed"; as, the same will be disadvantageous to him. His continuance in service beyond the age of 55 years cannot be attributed solely on him.

15. There is yet another expect of the matter. Reduction of emoluments retrospectively and ordering recovery on that basis is clearly an action which has evil consequences affecting adversely the concerned employee. Such order could have been passed only after following rules of natural justice. Undeniably, no opportunity of hearing was afforded to petitioner before impugned orders were passed. The orders are ultra vires for this reason also.

16. Viewed from any angle, I do not find any justification in action of the respondents to have passed the impugned order Annx. 1 dated 6.2.1988 reducing his emoluments retrospectively, and, in issuing the subsequent

directions for recovery of the amount from the petitioner.

17. The petition is, accordingly, allowed. The order Annx. 1 dated February 6, 1988 and the consequential communications dated 23.2.1-988 and 23.2.1988 (Annxs. 2 and 3) respectively are quashed. The respondents are further directed to release the payment which has been retained as a result of aforesaid orders, within a period of one month from today, with interest at the rate of Rs. 12 per cent per annum, alongwith any other dues which have not been made so far. There will be no order as to costs.