(1995) 02 RAJ CK 0060

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1899 of 1987

Deen Dayal Khunteta	APPELLANT
Vs	
The State of Rajasthan and Another	RESPONDENT

Date of Decision : 09-02-1995

Acts Referred:
Constitution of India, 1950 — Article 14, 16

Citation : (1995) 1 RLW 419 : (1995) 2 WLC 22 : (1995) 1 WLN 378

Hon'ble Judges : G.C. Mittal, C.J;M.P. Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.P. Singh, J.—The petitioner was a member of Rajasthan Judicial Service. He was compulsorily retired from service under Rule 244(2) of the Rajasthan Service Rules, 1951 (in short, the Rules) with effect from 2.8.1985. He had four months unutilised privilege leave at his credit.

2. After his retirement, he made a request to the High Court through its Registrar for grant of cash equivalent to leave salary in respect of unutilised privilege leave. The Registrar vide his letter No. Estt. B-2/IV/13/77/B-7655, dated 5.10.1985 informed him that since the order of retirement was passed under Rule 244 (2) of the Rules, he was not entitled to get any amount in respect of the unutilised Privilege Leave as per Rule 91(b)(1) of the Rules.

3. The denial of the said benefits has been challenged on the ground of discrimination. He claims the same benefit which is being given to the Government employees who retired under Rule 244(1).

4. In order to appreciate the controversy, the provisions of Rule 244(1) and 244(2) are to be examined and compared.

5. Under this Sub-rule (1) of Rule 244, a Government servant seeks his voluntary retirement. The Government servant may, after giving at least three

month''s previous notice in writing to the Appointing Authority, retire from service on the date on which he completes 20 years of qualifying service or attains the age of 45 years whichever is earlier or any date thereafter to be specified in the notice. This option is exercised by him voluntarily.

6. Under Rule 244(2), the retirement of a Government servant is made by the Appointing Authority which has the absolute right to retire in public interest any Government servant by giving him at least three months'' pervious notice in writing, from service on the date on which he completed 25 years of qualifying service or on the date on which he attains the age of 50 years, whichever is earlier, or on any date thereafter.

7. In view of the provisions of Rule 244(2), the right is exercised by the Appointing Authority against a Government servant whose efficiency is impaired but against him it is not desirable to make formal charges of inefficiency or who has ceased to be fully efficient. The provisions of this Rule are used only in the case of Government servant who is considered unfit for retention and has become a dead wood.

8. The basic difference between Sub-rules (1) and (2) of Rule 244 is that under Sub-rule (1) the Government servant exercises his own option of retirement on completion of 20 years of qualifying service or attains the age of 45 years, whereas under Sub-rule (2) the order of compulsory retirement is passed by the Appointing Authority after completion of his 25 years of qualifying service or 50 years of age on the ground that he has lost his efficiency and his retention in service has become practically useless. Though, the order of compulsory retirement is not a punishment but the order is passed under Sub-rule (2) after carefully examining the service record of that employee.

9. Now, the question arises for cash payment in lieu of unutilised privilege leave on the date of retirement as contemplated by rule 91(B) which was inserted in the Rules vide No. F.D. Memo No. F.1(49) F.D.(Gr.2)/82, dated 22.2.1983. The relevant portion of Rule 91-B(1) runs as follows:

(1) A Government servant on retirement from service on superannuation, invalid, compensation or retirement pension under rule 244(1), shall be paid cash equivalent to leave salary in respect of the period of unutilised privilege leave not exceeding 1240 days) at his credit at the time of retirement.

10. According to this, only those persons, who have taken voluntary retirement under Rule 244(1) would be entitled for cash payment in respect of the period of unutilised privilege leave not exceeding 240 days at his credit at the time of his retirement. Before 1991, it was only for 180 days. No such provision has been made regarding those persons who have been compulsorily retired under Rule 244(2).

11. The contention of the learned Counsel for the petitioner is that the order of compulsory retirement under Rule 244(2) is not penal in character nor it carries

an element of punishment. Making distinction, between the employees who sought voluntary retirement under Rule 244(1) and those who have been compulsorily retired under Rule 244(2), is discriminatory and arbitrary. There is no nexus sought to be achieved by creating two different groups. They constitute one class. The classification does not have rational relation to the object. The action of the respondent in denying the cash payment in lieu of unutilised privilege leave to the petitioner, is hit by Article 14 and 16 of the Constitution of India.

12. Reference was made to a case reported in 1986 (2) S.L.J. 225 Amor Singh v. The Chief Secretory to Government, Punjab, Chandigarh & Another. The Court was of the view that the Government employees who are prematurely/ compulsorily retired under service rules and those Government employees who retired on attaining the age of superannuation do not constitute different classes. The object of confering pensionary/retirement benefits is only to ensure a comfortable living after the retirement. Denying this benefit to those persons who have been compulsorily retired was discriminatory. The view expressed in the case of Amar Singh (Supra) was reiterated in another case reported in 1988 (3) SLJ 152 O.P. Vijh v. The State of Haryana & Others.

13. Article 14 of the Constitution only providers equality before the law or the equal protection of the laws but this principle of equality does not mean that every law must be applicable to all persons who are not by nature, attainment or circumstances in the same position. This Article prohibits class legislation but does not bar a reasonable classification. In order to pass the test of permissible classification, two conditions must be fulfilled,

(i) That the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the Group and;

(ii) That, that differentia must have a rational relation to the object sought to be achieved.

14. The only distinction between Sub-rules (1) & (2) of Rule 244 is that the one relates to voluntary retirement and the other compulsory retirement, but the result in both the cases is the same. The employee ceases to be in Government service. Applying the guiding principles of Article 14, in the instant case, we find no justification to see the existence of two different classes of such employees. There is hardly any intelligible differentia which distinguishes one from the other Moreover, there is no rational nexus to the object for which the rule has been framed.

15. If Rule 91 (b) provides for cash payment in lieu of unutilised privilege leave due on the date of retirement to the employee covered under Rule 244(1) then why should it be dented to those employees who retired under Sub-rule (2) of Rule 244 of the Rules. The object of providing cash'' payment of unutilised leave is that the Government servant who retires from service may have some cash in

his hand to arrange his affairs after retirement. The learned Advocate General appearing on behalf of the State has not been able to justify the denial of this privilege to the petitioner and creation of a separate class under Sub-rule (2) of Rule 244.

16. After hearing the learned Counsel for the parties and giving our anxious though over the matter, we are of the view that the petitioner, though, was compulsorily retired under Rule 244(2), is also entitled to the benefits contained under Rule 91(b) giving benefit to the employees who sought voluntary retirement under Rule 244(1) of the Rules.

17. For the reasons given above, the writ petition succeeds and is allowed. The order of the Additional Registrar dated 5. 10. 1985 is hereby quashed. The respondents are directed to grant the cash payment in lieu of unutilised privilege leave to the petitioner for the number of days permissible under rules within a period of three months from today.