
(1992) 10 RAJ CK 0024

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3148 of 1990

Hanuman Prasad Yadav

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 14-10-1992

Acts Referred:

Rajasthan Service Rules, 1951 — Rule 169, 170, 170A

Citation : (1993) 1 LLJ 1215 : (1993) 1 WLC 356

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : G.G. Sharma, for the Appellant;

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—The petitioner joined service in the erstwhile State of Ajmer, as L.D.C. on March 21, 1946 and retired from service of the Government of Rajasthan on January 31, 1982. For the last over three decades the petitioner has been vigorously pursuing his case in the courts of law with the faint hope that his grievance will ultimately be remedied. He has not been paid amount due to him in the light of a judgment and decree passed by a Court of competent jurisdiction. He has not been paid post retirement benefits for last more than 10 years and 6 months.

2. After his appointment as L.D.C. in the year 1946, the petitioner was confirmed on that post in 1953. He was promoted as U.D.C. in the year 1955. After the merger of the erstwhile State of Ajmer in Rajasthan with effect from January 1, 1956, petitioner was posted as Inspector Land Records. He was posted in Tehsil Dudu by the Collector Jaipur in pursuance of the directions of the Commissioner Ajmer Division. The petitioner remained posted at Dudu between May 25, 1957 to April 30, 1958. In the year 1958, he was selected by the Rajasthan Public Service Commission for the post of Zildar. He was appointed on that post by the Chief Engineer, Irrigation, Jaipur vide order dated April 16, 1958. On October 12, 1961 he was sought to be reverted to the so-called parent department. He was

not allowed to join duty and was not given any posting order in the so-called parent department. He was sent back to Irrigation Department. There also he was not given posting order.

3. Against his reversion the petitioner filed a civil suit in the court of Munsif City (West) Jaipur. The suit was decreed on April 2, 1974 by the Trial Court. Even after decree was passed by the Civil Court, the petitioner was not taken back in service. The State Government filed an appeal before the District Judge Jaipur City, which was dismissed on February 9, 1982. The judgment and decree of the trial court were upheld. A Second Appeal preferred by the State was dismissed by this Court on September 15, 1986. Undaunted by the reversal in the two appellate courts, the State Government filed a SLP before the Supreme Court. The Apex Court dismissed the SLP on October 25, 1988. The Departmental Authorities did not stop there. A review petition was preferred before the Supreme Court. Their Lordships declined to interfere and dismissed the review petition on August 31, 1988. The petitioner who remained without any pay and allowances from October 17, 1961 was taken on duty only for a short span of 20 days i.e. from January 11, 1982 to January 31, 1982. He retired from service on January 31, 1982. Thus, the petitioner who had been selected for appointment on the post of Zileadar by the Rajasthan Public Service Commission in the year 1958 could render physical service to the public on that post for a period of 20 days only after October 17, 1961. In between this period an appeal had been filed by the petitioner before the Rajasthan Civil Services Appellate Tribunal. This appeal was decided by the Tribunal vide its order dated, December 15, 1981. The Tribunal made certain scathing observations on the treatment meted out to the petitioner by observing:

"We have heard the learned counsel for the appellant and the Standing Counsel for the State. The appellant was wrongly sent from Irrigation Department to the Revenue Department. The Finance Department had already observed that the sending back of the appellant to the Revenue Department was in view of the fact that the appellant was a substantive employee of the Irrigation Department. We failed to understand why the appellant was sent back to the Revenue Department. The mental agony which the appellant suffered cannot be described which could better be imagined only. An employee of the State Government cannot be left on wisdom and mercy of the heads of the offices or heads of the departments to be treated in the manner they like. Officers of the Irrigation Department had acted in a most irresponsible manner and have put the State exchequer to an immense loss on account of rashness. Probably the State Government feeling itself helpless initiated proceedings against him despite the observations made by the Finance Department."

4. The petitioner has come out with the case that his juniors were given promotion to the post of Dy. Collector. He has claimed that in the cadre of Zileaders he was just below Shri Laxmi Narain. S/Shri Premshankar Purohit, Gopi Chand, Thana Lal, Kailash Narain and Harjit Singh, who were junior to him, were

promoted to the post of Dy. Collector. The petitioner claims that a sum of Rs. 1,22,057.09 was pay able to him in pursuance of the judgment and decree passed by the Civil Court which was upheld by the Supreme Court, but, so far, no amount has been paid to him. The petitioner has not been given promotion nor he has been paid pension etc.

5. On July 30, 1990 a notice was issued by this Court to the non- petitioners to show cause as to why the writ petition be not admitted and disposed of. Learned Government Advocate sought time on August 31, 1990 to file reply. The request was repeated on October 16, 1990 and February 26, 1991. Thereafter, the case was listed only on August 28, 1992. When the case was taken for consideration on that day, learned Dy. Government Advocate was directed to submit explanation for not making payment of salary, pension and amount of gratuity payable to the petitioner. Learned Dy. Government Advocate was also directed to instruct the Head Legal Assistant and a competent officer of the Irrigation Department to remain present in the court along with service record of the petitioner on September 8, 1992. The case was, however, listed on October 12, 1992 and on that day, the learned Dy. Government Advocate expressed his inability to render any assistance to the court by stating that the Government Advocates are no more dealing with the case of Irrigation Department. The Court then directed the matter to be listed on October 13, 1992. On October 13, 1992 the Court directed the Registry to print the name Shri N.C. Goyal Advocate in the cause list because he had filed reply. That has been done. Today also none has appeared on behalf of the respondents to show the factual position. The record sought for by the Court has not been produced and none has appeared on behalf of the irrigation Department.

6. The reply filed in this case on November 6, 1990 shows that the facts set out by the petitioner in his writ petition have been admitted by the respondents. Respondents have admitted that the petitioner was officiating as Officer, Land Records in the year 1957 and he was selected by the Rajasthan Public Service Commission for appointment on the post of Zildar. According to the respondents the matter has remained subjudice since 1961. After 1988 when the Supreme Court has dismissed the Review Petition the matter is under process. It has also been stated in para No. 12 of the reply that the petitioner was considered for promotion on the post of Dy. Collector in the year 1975, but, he was not found suitable on the basis of record.

7. A rejoinder has been filed by the petitioner in which he has stated that the petitioner was out of job between October 17, 1963 to January 10, 1982 and there could not have been any record of service of the petitioner of this period and therefore there was no occasion for the respondent to have treated him unsuitable. According to the petitioner, there has been no fair consideration of his case for promotion and his right of equality before law has been infringed.

8. Once a Court of competent jurisdiction has declared the action of the Chief Engineer in bringing about reversion of the petitioner as unlawful, it was

obligatory for the departmental authorities to reinstate the petitioner in service on the same post from which he was reverted. It was only in the year 1982 that the petitioner was taken back in service even though the suit had been decreed as early as in the year 1974. Thus, the petitioner was prevented from rendering service between April 2, 1974 to January 11, 1982 without any reason or rhyme. Whatsoever may have been the position, once the Apex Court dismissed the SLP filed by the respondents then they ought to have taken steps for making payment of arrears of salary to the petitioner in terms of the order passed by the Court and to have given full effect to the decision of the Court by considering his case for promotion to the next higher post w.e.f. the date persons junior to him were so promoted. That apart, there could be little justification for non-finalising the pension case of the petitioner for more than 8 years counted from the time of filing of the writ petition and over ten years and nine months as on date. No explanation whatsoever has been offered by the respondents as to why the pension case of the petitioner has not so far been finalised. Pension is neither a bounty nor a charity, but, a legal right conferred upon the employee by a Statute. It has been regarded as a right to property by the Supreme Court in its decision, *Deokinandan Prasad Vs. The State of Bihar and Others*, Any doubt regarding the nature of right to receive pension has been cleared by the Constitution Bench decision in above quoted decision of the Supreme Court, *D.S. Nakara and Others Vs. Union of India (UOI)*, Gratuity admissible to the employee under the Rajasthan Service Rules stands at par with the right to receive pension. An employee can be denied pension or a part thereof only in accordance with the order made either under Rule 169 or 170 of the Rajasthan Service Rules, 1951. Similarly the gratuity of an employee can be withheld only during the pendency of a judicial proceeding or a departmental enquiry. This is what has been provided in Rule 170-A of the "1951 Rules". Even in that event, the employee is entitled to payment of provisional pension.

9. So far as the present case is concerned, it has not even been suggested by the respondents that the pension and gratuity of the petitioner has been withheld on account of pendency of departmental proceedings against him. Even it has not been stated that the departmental enquiry has been initiated against him. A period of over a decade is too long for a person even to survive without a source of sustenance.

10. Since, the petitioner has been denied his right to property without any authority of law, which the respondents failed to explain as to why the payment for which the petitioner became entitled to get as a result of the judgment and decree dated April 2, 1974 passed by the learned Munsif have not been made. It is a fit case in which appropriate direction is required to be given to the respondents to make payment of all dues to the petitioner including his pension, gratuity and other retirement benefits within a specified time and also to pay interest on the amount of pension and gratuity since the date the same became due to him.

11. The writ petition is, therefore, allowed. Respondents are directed to make payment of arrears of salary to the petitioner admissible in accordance with the judgment and decree passed by the learned Munsif on April 2, 1974. Respondents are also directed to arrange payment of pension and gratuity to the petitioner including the arrears of pension. Necessary action in this regard must be taken within a period of four months of the submission of certified copy of this order. The petitioner shall get interest at the rate of 12% per annum on the amount of gratuity w.e.f. February 1, 1982. On the amount of arrears of pension respondents shall pay 12% interest from the date of this order. The respondents are also directed to consider the case of the petitioner for promotion from the date of junior persons were so promoted. In case, he is found suitable, he should be given promotion with all consequential benefits. In that event his pension and gratuity shall also be revised accordingly. Since the petitioner has been put to immense harassment, it is a fit case in which respondents should pay costs to the petitioner which is assessed at Rs.3,500/-. The Government must hold an enquiry in this matter and fix the responsibility of the officer concerned who has defaulted in giving effect to the judgment and decree passed by the learned Munsif dated April 2, 1974. The amount of interest on the gratuity and pension must be recovered from the salary of the officer concerned.