
(1995) 02 RAJ CK 0028
In the Rajasthan High Court
Case No : Civil Writ Petition No. 43 of 1990

Jagat Prakash Roy Bhatnagar

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 02-02-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 14, 16, 21, 226

Citation : (1995) 3 WLC 348 : (1995) 1 WLN 441

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Arun Madan, J.—This writ petition under Article 226 of the Constitution of India has been filed by the above named petitioner for violation of his fundamental rights under Article 14, 16 & 21 of the Constitution of India who is an old man of about 84 years and physically handicapped in the last span of his existence, a poor person with no help from anybody and passing the last days of his life in acute pain and agony for want of pension, since his basic means of livelihood have been taken away by the instrumentality of the State, viz, the department of industries, Government of Rajasthan, Jaipur.

2. The facts giving rise to the filing of this writ petition, briefly stated are that the petitioner was appointed as a Weaving Instructor, Panchayat Samiti, Masuda on 23.3.1956 in the erstwhile State, of Ajmer which was merged into the State of Rajasthan on 1.11.1956. He was allowed to continue on the same post by the department of industries in panchayat samiti, Masuda. While in service he remained posted at various places and on reaching the age of superannuation, i.e., 55 years as then he retired from service w.e.f. 1.7.1967 but the notional period of 3 years" of service was allowed to be added, i.e., 58 years and thus his qualifying service for the purposes of pension is 14 years 7 months and 8 days. It is rather unfortunate that inspite of the petitioner having served the

department of industries for over 14 years he was not confirmed and his services were not regularised by the department, as a consequence of which he was not given the benefit of pension. The petitioner had made several representations for confirmation and regularisation but all turned to deaf ears of the authorities.

3. In partial acknowledgment of the liability to give pensionary benefits, the petitioner was given paltry sum of Rs. 1309.50 towards pension and gratuity and thereafter he has not been paid anything on account of pension till date. In his appeal before the Rajasthan Civil Services Appellate Tribunal, Jaipur (for short the "Tribunal"), the petitioner had prayed for regularisation and confirmation of his service on the post of Weaving Instructor and to fix his pay and to sanction his final pension and had also claimed interest at the rate of 12% per annum on the arrears of pension and gratuity.

4. A perusal of the order passed by the Tribunal reveals that in the reply filed before the Tribunal the respondents took the plea that the petitioner being a temporary employee was not entitled to pension according to the then existing Rules, intimation of which was given to him on 4.12.1968 and that he was only entitled to get gratuity which has since been disbursed to him. On behalf of the petitioner it was urged before the learned Tribunal that entitlement of pension is a fundamental right of a government servant which cannot be denied to him. In terms of judgment of this court in the matter of Ismail Khan v. State of Rajasthan & Others 1986 RLR 24 and it was further argued that there is no impediment in making the post of Weaving Instructor permanent even prior to the date of petitioner's retirement for which reliance was placed by the petitioner on the judgment of Punjab & Haryana High Court in the matter of Pritam Singh v. Union Territory Chandigarh & Others: 1986 (1) SLR 621.

5. In Ismail v. State of Raj. & Others (Supra) it has been held by this court that pensionary right is a fundamental right of a government servant and which should be fulfilled by the employer. It was further held by this court that "Arts. 14 and 16 of the Constitution are fundamental rights and preamble of the Constitution provides for social justice. Everyone knows that the wage earners and salary earners cannot save much, if they act as a devoted and faithful employee without the expectation from anyone else other than the employer". It was further held by this court that the pension which a government servant will get or earn and other consequential benefits are given only for the purpose and with the intention that there should be no grievance to an employee during the term of his employment and this basic need of the employee should be looked into by the employer after the said employee retires from service and when he becomes physically unfit. For the above said reasons it was held by this court that the pensionary rights given to the pensioners are the fundamental rights and are arising out of the employment and its condition which is to be fulfilled by the employer. This court further held that the period during which the employee has worked even as a daily wage earner towards a regular employment may be of temporary nature but the said employee cannot be brought within the

classification of casual labour or a temporary appointee. It was further held that the right of pension is a right inherited by the employee because of his long association and service rendered to a particular institution. An employee cannot be thrown out and cannot be asked to starve when physically he becomes unfit because of the age factor. It is the solemn duty of an employer to see that the persons who have served the institution for a pretty long time and who have participated in the development of the institution and in the functioning of the institution cannot be allowed and should not be allowed to starve when they are old. Pensionary benefits are the benefits which arise out of the service conditions as a part of the service condition that after the retirement one should be given some benefits so that he can maintain himself and he can pass over to the next world peacefully without starvation. It was held by this court that the pensionary right given to the pensioners are the fundamental rights having arisen during the course of employment and its condition which is obligatory to be fulfilled by the employer.

6. In this writ petition show cause notice was issued by this court on 8.1.1990 to non-petitioners with the direction as to why the petition be not admitted and disposed of at the admission stage itself. On 11.5.1992, when the matter was taken up again this court while keeping in view the fact that the petitioner had, prior to his attaining the age of superannuation, put in more than 10 years of service without, regularisation of his services by the respondents and since he was not considered entitled for the grant of pensionary benefits on this ground alone by the Tribunal, learned Deputy Govt. Advocate for the State was specifically directed to obtain positive instructions from the State Government with regard to its decision regarding petitioner's case for regularisation/confirmation of his past services rendered to the respondents and final decision in this regard should be conveyed to the court by 20th of May, 1992 so as to enable this court to proceed further in the matter. Subsequently on 4.2.1993 an application was filed in this court under Article 226 of the Constitution of India read with Order 6 Rule 17 CPC and Section 151 CPC for amendment of this writ petition. In the reliefs clause prayer was made inter alia to the effect that respondent Nos. 1 and 2 viz, the State of Rajasthan through the Secretary of Industries Department and the Director of Industries, Rajasthan, Jaipur be directed to make the post of the petitioner permanent in view of the recommendations of the State Government. In this regard in terms of its letters, dated 5.10.1983 and 17.3.1984 which are on the record, the contents of the same clearly reveal that both, the Assistant Secretary as well as the Deputy Secretary, Industries Department, Government of Rajasthan had strongly recommended the case of the petitioner for confirmation and for payment of pension/gratuity and other consequential benefits as may be admissible to the petitioner in accordance with the Rules.

7. It was argued by Shri G.G. Sharma, learned Counsel for the petitioner that instead of considering the case of the petitioner sympathetically and notwithstanding the recommendations of the State Government as referred to

above, the same were grossly overlooked and Ignored by the respondents to put the petitioner in jeopardy disadvantage and harassment and rather the respondents neglected the communications by the State functionaries of the Industries Department as referred to above.

8. During the course of hearing Shri G.G. Sharma, learned Counsel for the petitioner has placed reliance upon the decision of this court in the matter of Smt. Amina v. State of Rajasthan and others: S.B. Civil Writ Petition No. 5792 of 1990, decided on 30.1.1995 in support of his contention and stated that the ratio of the said decision is fully attracted to the facts of the present case. In Smt. Amina's case (supra) this court while dealing with the case of a widow who was denied the family pension for continuously long spell of time, this court had the occasion to examine the proposition of law laid down by the Apex Court as well as various other High Courts are referred to in the said decision and this court held the petitioner entitled for the relief of family pension and this court directed the respondents to release the family pension to the widow of the deceased Government servant for the period due with all consequential benefits with interest at the rate of Rs. 12% per annum.

9. I have heard learned Counsel for the petitioner and examined rival claims and contentions and also perused the reply filed by the respondents.

10. In my opinion since the petitioner had rendered continuous service of 14 years 7 months and 8 days with the respondents which is more than the statutory period of qualifying service of ten years for entitlement to pension and other consequential benefits which are admissible to an employee on his retirement from any government department, the case of the petitioner is fully covered within the ambit of the Rules for entitlement for claiming pensionary benefits. I am further of the opinion that this is a case of extreme hardship which has resulted to the petitioner who has not only been neglected but denied the relief of pension on the sole ground of his services having not been regularised by the respondents. I am further of the considered opinion that from the perusal of the letters dated 5.10.1983 and 17.3.1984, as referred to above, whereby the case of the petitioner was recommended by the State Government for pension, the petitioner ought to have been confirmed by the respondents on the post of Weaving Instructor from which he retired in the year 1967 and that the principle of promissory estoppel is fully attracted to the facts of the present case, even otherwise if the aforesaid letters were not written recommending the case of the petitioner for confirmation and for payment of pensionary benefits, even then the services of the petitioner are deemed to have been regularised, since the petitioner has put in more than 10 years' qualifying service for eligibility to claim pensionary benefits. As per Rule 179 of the Rajasthan Service Rules, 1951 which is fully attracted to the facts of present case a government servant is entitled to pension irrespective of the fact whether the employment is substantive or permanent or in officiating capacity and the employee is entitled for payment of pension in accordance with the said Rules.

11. As a matter of fact, it is settled proposition of law that pension is not a matter of grace or bounty depending upon the sweet will of the employer and that it creates a vested right in an individual for pension in accordance with Rules as so observed by the Apex Court in the matter of D.S. Nakara & Others v. Union of India reported in 1983 (47) FLR 42.

12. It is a matter of regret that despite the matter having been notified in the cause list for hearing on 2.2.1995 and the names of the parties' counsel having also been shown in the cause list none appeared for the State and no assistance was rendered to this court on behalf of the respondents.

13. The writ petition is consequently allowed with costs which are quantified at Rs. 3000/- out of which a sum of Rs. 1000/- shall be paid by the petitioner to the Legal Aid Board, Rajasthan High Court Bench, Jaipur. I direct the respondents to treat the petitioner as a confirmed employee on the post of Weaving Instructor from which post he retired after attaining the age of superannuation on 1.7.1967. I further direct the respondents to pay to the petitioner the entire amount of pension and other consequential benefits as admissible to him w.e.f. the date he retired from service i.e., 1.7.1967 with interest at the rate of Rs. 12% per annum from due date till realisation of the full amount within a period of four months from today. It is further directed that the total amount found due to the petitioner with interest at the above rate shall be paid by the Bank Draft at the residential address of the petitioner as indicated in the writ petition. It is further directed that for future guidance and in order to avoid harassment and inconvenience to the Government servants, it shall be obligatory upon every Department/ Undertaking of the State Government, that the process for finalisation of pensionary and other consequential benefits as admissible to the said employee should commence atleast six months in advance before the intended date of retirement and in all probability should stand completed by the time when the concerned Government servant retires on reaching the age of superannuation, i.e., 58 years and the Draft should be kept ready by the concerned Department to be handed over to the said employee as soon as the said employee retires from service. A certified copy of this order be sent to the Chief Secretary, Government of Rajasthan, Jaipur for future guidance and immediate compliance in public interest.