
(2015) 09 RAJ CK 0024

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 49 of 2005

Jaipur Nagar Nigam and Others

APPELLANT

Vs

Mohan Lal

RESPONDENT

Date of Decision : 10-09-2015

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2016) 1 WLN 240

Hon'ble Judges : Ajay Rastogi, J;Prakash Gupta, J

Bench : Division Bench

Advocate : Naina Saraf, for the Appellant; Shailesh Kumar Panwar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ajay Rastogi, J—Instant intra-court appeal has been preferred against order of the learned Single Judge dt. 27.05.2004 directing the appellant to consider case of the respondent employee for grant of pensionary benefits of 32 years of qualifying service which he rendered in accordance with Rules.

2. The brief facts which are necessary & culled out to consider the controversy are that the respondent who is almost a illiterate person initially appointed as class-I V employee in the Municipal Board Jaipur on 31.5.1958 (now the Jaipur Municipal Corporation). He was suffering from Recurrent Efrisodes of Allergic Asthma and was under the regular medical treatment and because of his medical illness he submitted application Annx. 1 dt. 25.10.1990, it appears to be a typed copy and the blanks have been filled in and he showed his intention that he is working in the cadre of class-I V and because of his old age he is unable to serve and wanted to be relieved from the job and because of the aforesaid reason he has shown his inclination to resign and his application was accepted by the authority vide letter dt. 21.12.1990 and the department has shown its concern about the fact that the respondent employee is unable to serve and a composite order was passed by the authority of the Jaipur Municipal Board dt. 21.12.1990

while accepting his request granted appointment to one of his son Manak Chand as Safai Karam achari in the regular pay-scale-750-12-798-13-850-15-940.

3. It is not disputed that the post which was held by the respondent employee of class-I V in Jaipur Municipal Board is a pensionable post and the qualifying service of 32 years rendered he was eligible for full pension and other retiral benefits. It is also not the case of the appellant that there was any enquiry departmental/judicial pending or there was any reason for which his request to be relieved from the job would have been denied to him and even for the payment of gratuity he had approached to the prescribed authority and under order of the prescribed authority he was paid his gratuity and interest vide order dt. 01.01.1998 after almost 8 years of his relinquishment from the job.

4. At this point of time he served a legal notice for releasing his pension and other retiral benefits but when the notice was not responded by the appellant he approached to the learned Single Judge of this Court by filing writ petition and the learned Single Judge vide judgment dt. 27.05.2004 allowed the writ petition placing reliance on the judgment reported in 1998(2)SLR 646 and was of the view that the application which has been placed on record indicates that because of his medical illness he has shown its inability to serve and wants to be relieved from the job and merely a nominal enclosure of word resignation being indicated in the application prayed for that in itself cannot be considered sufficient to forfeit his 32 years of qualifying service and the request that because of old age he was unable to serve and wanted to be relieved from job has to be taken note in the manner indicated and under these facts and circumstances the qualifying service of 32 years cannot be forfeited and allowed the writ petition under order impugned dt. 27.05.2004.

5. The main thrust of submission of counsel for appellant is that as he had tendered his resignation and which has been accepted by the competent authority and while accepting his application for resignation prayed for his dependent son got appointment on temporary basis as Safai Karam chari vide order dt. 21.12.1990 his resignation forfeits past service as contemplated u/R. 208 of the Rules, 1951 and corresponding R.25 of Rules, 1996 the learned Single Judge was not at all justified in directing the appellant to release pension and other retiral benefits of the employee who was ineligible to get pension & retiral benefits on acceptance of his resignation which entails forfeiture of his past service and submits that the order of the learned Single Judge is not sustainable and deserves to be quashed and set aside.

7. Counsel for respondent on the other hand while supporting the order impugned of the learned Single Judge submits that the employee was illiterate and working in the cadre of class-I V and no one informs him about the distinction between the term resignation and retirement, however, the fact is that because of his medical illness he has shown his inability to serve hence wanted to be relieved from job and was completely unaware of the nomenclature of voluntary retirement or resignation and fine distinction between the two is

foreign for him, however, submits that his application if read as a whole it only indicates that he was unable to serve because of medical illness and wanted to be relieved from the job and submits that it cannot be said to be a resignation which entails forfeiture of his past service of 32 years which he had rendered from 1958 to 1990 to deprive him of the rights of pension and other retiral benefits for the service which he had rendered and further submits that as regards the employment of his son is concerned, the dependent was not eligible to seek compassionate appointment as provided under the then Rules 1975 and submits that the employment offered to his son as Safai Karam chari in a composite order dt. 21.12.1990 in no manner could deprive him of his pension and retiral benefits to which he is entitled for under the law and withholding of his retiral benefits has been examined by the learned Single Judge at length and forfeiture of his past 32 years of service confer right of livelihood in old age protected u/Art. 21 of the Constitution and in the facts & circumstances of the instant case the order of the learned Single Judge does not call for any interference by this Court.

8. We have heard counsel for the parties and with their assistance perused the material on record.

9. For better appreciation and proper adjudication of the controversy raised for our consideration in the present appeal, it would be necessary to notice the relevant provisions which were applicable at the relevant point of time in the year 1990. Rule 244 deals with compulsory/voluntary retirement of an employee from the government service and R.208 deals with resignation, dismissal or removal for misconduct etc.

10. Old R.244(1) which relates to voluntary retirement & R.208 which are pari-materia to R. 50(1) & R.25 of Pension Rules, 1996 are quoted ad infra : -

"[244(1)], Optional Retirement on Completion of 20 years qualifying service.-(a) A Government servant may, after giving at least 3 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:

Provided that it shall be open to the Appointing Authority to withhold permission to retire a Government servant;

(i) who is under suspension;

(ii) in whose case disciplinary proceedings are pending or contemplated for the imposition of a major penalty and the disciplinary authority having regard to the circumstances of the case is of the view that such disciplinary proceedings might result in imposition of the penalty of removal or dismissal from service;

(iii) in whose case prosecution is contemplated or may have been launched in a court of law;

(b) A Government servant who has given notice for seeking retirement under Clause (a) of this sub-rule, may presume acceptance of the notice of retirement and the retirement shall be effective in terms of the notice automatically unless an order in writing to the contrary has been issued by the Competent Authority and served upon the Government servant before the expiry of the period of the notice.

(c) If a Government servant seeks retirement under this sub-rule while he is on leave not due, without returning to duty, the retirement shall take effect from the date of commencement of the leave not due and the leave salary paid in respect of such leave shall be recovered from him.

(d) A Government servant who seeks voluntary retirement under Clause (a) of this sub-rule shall be entitled to a weightage of a 5 years qualifying service which shall be given as an addition to the qualifying service actually rendered by him. The grant of weightage upto 5 years shall, however, be subject to the following conditions;

208, Resignation, dismissal or removal for misconduct etc.

(1) Resignation of the public service or dismissal or removal from it for misconduct, insolvency, inefficiency not due to age or failure to pass a prescribed examination entails forfeiture of past service.

(b) Resignation of an appointment to take up, with proper permission, another appointment, whether permanent or temporary, service in which counts in full or in part, is not a resignation of public service.

In cases where an interruption in service is inevitable due to the two appointments being at different stations, such interruptions, not exceeding the joining time permissible under the rules on transfer, shall be covered by grant of leave of any kind due to the Government servant on the date relief or by formal condonation under Rule 212 to the extent to which the period is not covered by the leave due to the Government servant."

11. At the outset it may be noticed that while R.208 of the Rules, 1951 was in vogue the respondent employee as alleged resigned from service, he has been denied pension and his qualifying service of 32 years was forfeited by operation of law. There cannot be any doubt that the expressions superannuation, voluntary/compulsory retirement and resignation convey different connotations. Voluntary retirement and resignation are the voluntary acts on the part of the employee from relieving service but they operate differently and the primary distinction is that in case of resignation it can be tendered with no minimum qualifying service but in case of voluntary retirement it can be sought only after one has rendered prescribed period of qualifying service and the fundamental distinction is that in case of form retiral benefits are denied because of forfeiture of past service but in case of later one is entitled to pension & retiral benefits obviously for the qualifying service which one has rendered while on resignation

there is no requirement of seeking permission or submitting statutory notice of three months as mandated while permission by the concerned competent authority is a condition seeking voluntary retirement unless waived and resignation on its acceptance by the competent authority becomes effective, however in case of voluntary retirement if no order to the contrary is passed by the competent authority the application for voluntary retirement becomes effective after three months of its submission by fiction of law and as regards the procedure of tendering application for resignation or voluntary retirement, that has to be examined in reference to the relevant Rules/Regulations which obviously has to be complied with by the employee. At the same time person/employee who became dead wood & lost its utility to the public service or because of doubtful integrity is compulsorily retired u/R. 244(2) of RSR still the employee is entitled for pension & retiral benefits for the service rendered by him. In this context R. 208 of the Rules, 1951 or R.25 of the Rules, 1996 which are *pari materia* indicates evil consequences on resignation from public service entails forfeiture of past service and loss of pensionary benefits, at the same time those who are dismissed or removed from service as per their conduct, insolvency or insufficiency in the contingencies entails forfeiture of pensionary benefits, at the same time person who is compulsorily or voluntarily retired is eligible for pension & retiral benefits for the qualifying service rendered by him.

12. Taking note of the scheme of Rules and R.208 of the Rules, 1951 or R.25 of the Rules, 1996 according to us, appears to have been designed to visit forfeiture of past service of an employee if he resigns from service or dismissed or removed from service on account of insolvency or insufficiency. But in case of resignation from public service due to age or failed to qualify the departmental qualifying examination that may not be considered to be a resignation to entail forfeiture of past service.

13. In the instant case the application submitted by the respondent employee Annx. 1 we consider it appropriate to quote as under : -

14. If we look into in totality in fact he has shown his inability to work because of his illness and wanted to be voluntarily relieved from service and the application which he submitted dt. 25.10.1990 for being relieved from service was accepted on 21.12.1990 and offer was made to his son to be inducted as Safai Karamchari on temporary basis.

15. It is not disputed by the appellants that for his 32 years of qualifying service he is eligible for pension and other retiral benefits of Class-I V held by him and in our considered view such hyper technicalities should not come in his way depriving him of his legitimate claim of pension & retiral benefits for 32 years of qualifying service rendered by him.

16. The learned Single Judge while examining the scope of R.208 and placing reliance upon the judgment, referred to *supra*, arrived to a conclusion that the application submitted by the employee in no manner could be considered to be

an application tendering resignation which may entail forfeiture of his past service.

17. In the peculiar facts and circum stances brought to our notice we are unable to satisfy that a person in a cadre of class-I V who has rendered 32 years of service could be deprived of his pension and other retiral benefits merely on account of technicalities which has been pointed out and considered by us.

18. We find no error being committed by the learned Single Judge while passing the order impugned which may require our interference in the inst ant intra-court appeal.

19. Consequently, in our considered view the appeal fails and is hereby dismissed. It is expected from the authority to comply order of the learned Single Judge within three months. No cost.