
(2004) 05 RAJ CK 0022
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1540 of 1999

Kanhaiya Lal

APPELLANT

Vs

Rajasthan Agriculture University and Others

RESPONDENT

Date of Decision : 26-05-2004

Acts Referred:

Rajasthan Service Rules, 1951 — Rule 208

Rajasthan University Pension Regulations, 1990 — Regulation 26

Citation : (2004) 4 RLW 2680 : (2004) 3 WLC 530

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Advocate : Prem Asopa and J.K. Yadav, for the Appellant; R.A. Katta, for the Respondent

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—The petitioner was initially appointed as Research Assistant on adhoc basis vide order dated January 15, 1974 and thereafter got regular appointment as Research Assistant (Chemistry) on being selected by duly constituted Selection Committee vide order dated Sept. 4, 1975. On November 14, 1982 the petitioner was selected on the post of Assistant Professor and vide order dated August 4, 1993 the petitioner was granted senior scale of Assistant Professor w.e.f. January 1, 1991. On October 22, 1992 the petitioner made request for voluntary retirement on the ground of ill health but the request was not considered and vide letter dated January 15, 1993 the petitioner withdrew his resignation. Again vide letter dated Feb. 3, 1994 the petitioner tendered resignation which was accepted vide letter dated May 11/16, 1994. In the instant writ petition, the petitioner seeks to quash the letter dated May 11/16, 1994 with a further direction to treat the voluntary retirement of the petitioner w.e.f. May 3, 1999 and to grant him all the pensionary benefits. Validity of clause 26(a) of the Rajasthan University Pension Regulations 1990 (for short "Regulations") so far it relates to the term "resignation" has also been assailed by the petitioner.

2. In the return filed by the respondents it has been averred that resignation of the petitioner was rightly accepted on completion of one month from the date of tendering the resignation w.e.f. April 18, 1994. Adhoc services rendered by the petitioner were not countable. Since the petitioner had not rendered qualifying service, he is not entitled to pensionary benefits.

3. I have bestowed my thoughtful consideration to the rival submissions and scanned the material on record.

4. As per Regulation 22 the service of an employee does not qualify for pension unless it conforms to the following conditions:

(i) It is a paid service of a regularly appointed employee under the University.

(ii) The employment is in substantive, temporary or officiating capacity.

According to Regulation 21 the qualifying service begins from the date the employee takes charge of the post of which he is first appointed. Regulation 17(a) provides that a retiring pension shall be granted to an employee who seeks voluntary retirement and is permitted to retire "from service after he has given at least 3 months previous notice in writing to the Appointing Authority after completing 20 years of qualifying service.

5. Conjoint reading of aforequoted provisions goes to show that qualifying service for the purpose of pension (including temporary service) is 20 years and the petitioner from the date of his first appointment i.e. January 15, 1974 till January 15, 1994 undeniably completed 20 years of service,

6. Regulation 26(a), which relates to resignation, provides that "Resignation or dismissal or removal from service for misconduct, insolvency, inefficiency (not due to age) or failure to pass a prescribed examination may entail forfeiture of past service." Evidently Regulation 26(a) connotes that past service of an employee can be forfeited only on the ground of misconduct, insolvency, inefficiency and incompetency. Resignation on the ground of age would not be deemed to be a resignation requiring forfeiture of service. Provisions of Rule 208(a) of Rajasthan Service Rules 1951 ("RSR" for short) which are somewhat similar to Regulation 26(a) reads as under:-

"208. Resignation, dismissal or removal for misconduct etc-

(a) 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 entail forfeiture of past service."

This Court in *Lochan Vishal v. State of Rajasthan*, 1998 (2) SLR 646, had occasion to examine Rule 208 and it was indicated thus:-

(para 9)

".....According to me if the Rule is read as a whole, it is designed to visit forfeiture of service to an employee if he leaves the service or is dismissed or

removal from it for misconduct insolvency or inefficiency. If the resignation of the public service is due to age, it cannot be considered to a resignation requiring forfeiture of service."

7. Since the resignation of the petitioner in the instant case is not for misconduct, insufficiency, insolvency or incompetency, it is not one which will entail forfeiture of past service. In view of the fact that the petitioner has rendered 20 years of qualifying service, he is entitled to all pensionary benefits according to law.

8. For these reasons, I allow the writ petition and direct the respondents to consider the case of the petitioner for grant of pensionary benefits in accordance with law and finalise the same within three months from the date of receipt of copy of this order. There shall be no order as to costs.