

(2012) 11 RAJ CK 0013

In the Rajasthan High Court

Case No : Civil Special Appeal (W) No. 1986 of 2011

Kesha Ram

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 05-11-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 323, 332
Prevention of Damage to Public Property Act, 1984 — Section 3

Citation : (2013) LabIC 133

Hon'ble Judges : Vineet Kothari, J;Dinesh Maheshwari, J

Bench : Division Bench

Advocate : Rakesh Arora, for the Appellant; I.S. Pareek, Govt. Counsel, for the Respondent

Final Decision : Dismissed

Judgement

1. After having heard the learned counsel for the writ petitioner - appellant and having perused the material placed on record, we are unable to find any reason to consider interference in the present matter where, by the impugned order dated 16.09.2011, the learned Single Judge of this Court has dismissed the writ petition filed by the petitioner - appellant on his grievance against the order retiring him compulsorily. The sum and substance of the matter remains that the petitioner - appellant had been working on the post of Constable; and allegedly filed an application seeking compulsory retirement that was rejected on 30.07.2000 with the observations that an FIR No. 142/97 for offences under Sections 147, 148, 323/ 149, 353, 332, 458 IPC and Section 3 of the PDPP Act had been registered against him at Police Station Jawaja, District Ajmer in which, after investigation, challan had been filed. Thereafter, the appellant was ordered to be compulsorily retired from service by the order dated 30.11.2000 (Annexure 2) under Rule 53 (1) of the Rajasthan Civil Service (Pension) Rules, 1996.

2. Seeking to question the order so passed against him, the petitioner - appellant filed the writ petition leading to this appeal and it was pointed out before the

learned Single Judge of this Court on behalf of the petitioner that in the said criminal case, he was acquitted by the judgment dated 13.11.2006. It was further submitted that an application was filed by the petitioner - appellant seeking all retiral benefits but the same was not allowed. It was also pointed out that earlier, he filed a writ petition, being S.B. Civil Writ Petition No. 4499/2004, challenging the order of compulsory retirement, wherein this Court directed him to make a representation to the respondents; and the respondents were directed to decide the representation while considering all the facts and grounds raised. However, the representation so made was considered and rejected on 10.01.2005. It was submitted before the learned Single Judge that the petitioner's prayer for voluntary retirement was rejected in the month of July 2000 solely on the ground that a criminal case was registered against him but just four months thereafter, he was given the order of compulsory retirement. It was contended that when the petitioner had been acquitted of the charges levelled against him in the year 2006, the respondents were, in the given set of facts and circumstances, under an obligation to reconsider his case. It was also contended that since after acquittal, the petitioner was entitled for all the retiral benefits, as if the order of compulsory retirement had not been passed.

3. The learned Single Judge found no reason to consider interference in the matter while observing that the Government was not at fault in declining the prayer of the petitioner for voluntary retirement because of the pendency of the criminal case. The other submission as made on behalf of the petitioner-appellant that because of acquittal by the criminal court, he was entitled to all the benefits as if the order of compulsory retirement had not been passed was rejected by the learned Single Judge with the observations that at the time of passing of the order of compulsory retirement, the entire service record is examined and the criminal case alone would not have been the reason for passing the order of compulsory retirement. The learned Single Judge observed that if after assessing the entire service record, the employer came to the conclusion that the petitioner was not competent to discharge the official duties and had lost his utility, there was no error in passing the order of compulsory retirement. The learned Single, therefore, found no case for interference in the writ jurisdiction.

4. Seeking to question the order aforesaid, the learned counsel for the petitioner - appellant submitted that when the petitioner's application for voluntary retirement was declined only because of pendency of the criminal case and when the respondents chose to pass the order for his compulsory retirement because of the pendency of the said criminal case, they ought to have reconsidered the matter upon acquittal of the petitioner. The learned counsel also submitted that the respondents have acted wholly unfair and have not released all the pensionary benefits to the petitioner-appellant. Learned counsel vehemently contended that even if the order of compulsory retirement is maintained for any reason, the petitioner - appellant cannot be deprived of his retiral dues and benefits; and necessary writ, order or direction to that extent ought to have been

issued.

5. So far as the principal issue as raised in the writ petition regarding validity of the order of compulsory retirement is concerned, we are at one with what has been observed by the learned Single Judge that the order of compulsory retirement is passed after consideration of the entire service record and one particular fact or factor is not examined in isolation. It remains indisputable that the petitioner - appellant had completed the requisite years of service and could have been compulsorily retired for valid reasons. Nothing of substance appears to have been placed before the learned Single Judge for consideration in this matter so as to examine the merits of the order of compulsory retirement. It appears that the only endeavour on behalf of the writ petitioner before the learned Single Judge was to seek reconsideration of his matter because of passing of the order of acquittal in the criminal case. Such an attempt being totally devoid of merit, the learned Single Judge cannot be said to have committed any error in dismissing the writ petition.

6. So far as the question of retiral benefits is concerned, the submissions before the learned Single Judge had been that the case of the petitioner - appellant be considered as if the order of compulsory retirement had not been passed. There was no reason or basis that the order of compulsory retirement could have been treated as annulled or non-est on such submissions; and, in our view, the learned Single Judge has rightly rejected the arguments as advanced in this regard.

7. The learned counsel for the petitioner - appellant, however, submitted that necessary directions to the respondents for releasing all the retiral dues and benefits to the appellant may be given, even if the order of compulsory retirement is maintained as such. We find no reason or basis for entering into this aspect of the matter because no such grievance appears to have been made before the learned Single Judge that the respondents were not releasing the retiral benefits to the petitioner-appellant with reference to the services rendered by him. On the other hand, the learned Government Counsel has referred to paragraph 4 of the reply to the writ petition carrying the averments that the pension case of the petitioner-appellant has been decided and the pension payments order, gratuity order and commutation order have been issued.

8. Though we are unable to find any basis to issue any writ, order or direction in this appeal but, in the interest of justice, it does appear appropriate and hence, is observed that in case of any grievance remaining as regards retiral dues, it shall be open for the petitioner - appellant to make a proper representation, which shall be considered by the respondents in accordance with law. Subject to the observations foregoing, the appeal fails and is, therefore, dismissed. No costs.