

(1997) 06 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2968 of 1989

Lochan Vishal

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 09-06-1997

Acts Referred:

Rajasthan Service Rules, 1951 — Rule 244

Citation : (1997) 2 RLW 1016 : (1997) 3 WLC 189 : (1997) 1 WLN 315

Hon'ble Judges : V.G. Palshikar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.G. Palshikar, J.—By this petition, the petitioner has challenged the communication dt. 10.4.89 (Annex. 5) by which he is informed that under the present Rules, he is not entitled to any pension and therefore, his case is dropped.

2. The petitioner was appointed as Lower Division Clerk in the P.W.D. on 1.11.1938, since then he is working in the said department in accordance with the provisions of Rule 244 of the Rajasthan Service Rules, 1951 (hereinafter referred to as the Rules").

3. On 7.1.64, an order was passed accepting the resignation of the petitioner with effect from 31.1.64. It is pertinent to note that the petitioner was a Member of Jodhpur Contributory Provident Fund Scheme and his account was 7131.

4. That on 17th October, 1987, a memorandum was issued by the State of Rajasthan in the Finance Department regarding grant of option to the employees of the State who retired availing themselves of the retirement benefits under the Jodhpur Contributory Provident Fund Rules to come over to pensionary benefits under the Rajasthan Service Rules, 1951. Since the petitioner was a Member of the Jodhpur Contributory Provident Fund and has retired after coming into force

of the Rajasthan Service Rules, 1951 from 1.4.955 was entitled to exercise this option. Accordingly the petitioner exercised his option and chose to take up pensioner benefits under the Rules. His application was duly forwarded on 23.4.1988 by the Superintending Engineer, P.W.D. Circle-I, Jodhpur with necessary papers. However, the petitioner was informed by the impugned communication that he is not entitled to pension under the existing rules and therefore, this case is dropped.

5. This communication is assailed by the petitioner on the ground that Government has put wholly incorrect interpretation on the provisions of the Rule 208 of the Rules to hold that the petitioner is not entitled to pensioner benefits. It was submitted by the learned Counsel for the petitioner that such interpretation is inconsistent with the object of the Rules and is arbitrary and therefore, the Rules are unsustainable in law, if this interpretation is accepted. It was submitted on behalf of the State that the interpretation put by the State is correct. The petitioner having resigned from service is not entitled to pensionary benefits.

6. For proper adjudication of the issues involved in the present petition, it would be necessary to notice in detail the provisions of Rule 244 which reads deals with voluntary retirement and compulsory retirement of a Government employee from Government Service and Rule 208 which deals with resignation, removal or dismissal of the Government employee. Rule 244 reads thus:

[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 with-hold permission to retire a Government servant;

Provided that it shall be open to the Appointing Authority to with-hold 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;

In respect of Government servants governed by pension rules:

(i) The service qualifying for retirement benefits shall be enhanced by the addition of five years in such cases. The resultant length of service after taking into account the addition of national service shall in no case be more than 33 years qualifying service or the qualifying service the Government servant concerned could have counted had he retired on attainment of superannuation age, whichever is less.

(ii) In cases where qualifying service is increase under (i).above, the emoluments as defined in Rule 250(C) of the Rajasthan Service Rules which the Government servant was receiving immediately before the date of retirement shall be taken into account for the purpose of calculation of pension and gratuity.

(iii) In respect of Government servants governed by the Contributory Provident Fund Scheme : Government contribution (bonus and special contribution) shall be enhanced by the amount which would have accrued by the addition of five years notional service.

(iv) The notional contribution shall be added on the basis of the amount of subscription made immediately before the date of retirement without subscribing to the fund on or after the date of his retirement.

(v) The resultant increase in the aforesaid manner shall in no case be more than the contribution (bonus and special contribution) which could have been credited in his provident fund account had he retired on completion of 33 years qualifying service or on attainment of the age of superannuation whichever is less.

(vi) The benefit of five years, notional qualifying service mentioned in this clause shall not be admissible to a Government servant who is retired under Sub-rule (2) of this Rule.

(e) A Government servant who give notice of voluntary retirement under-clause (a) of Sub-rule (1) shall satisfy himself by means of a reference to the appointing authority who is competent to retire him to the effect that he has, in fact,

completed 20 years qualifying services for pension.

(f) A Government servant may, with the approval of the Appointing Authority, withdraw the notice given under Clause (a) of the sub-rule provided the request for such withdrawal is made before the expiry of the notice.

(g) The authority competent to retire a Government servant may, in deserving cases, accept the notice contemplated under Clause (a) of this sub-rule for a period of less than 3 months with the concurrence of the Government in the Finance Department.

(h) Deleted.

Rule 208 reads thus:

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.

7. The case of the petitioner is now required to examine in light of these two Rules. The petitioner applied for voluntary retirement on 1.1.64, in this, he specifically submitted that he has completed 25 years of service on 13.11.1963 and requests retirement from Government service immediately and in case, it is not possible to retire him under Rule 244(2) of the Rajasthan Service Rules, the letter be treated as a letter of resignation. It is then said that the resignation be accepted as acceptable under the Rules. It is therefore, directed to consider the order dated 7.1.64 accepting the resignation of the petitioner passed by the State in light of what is provided for voluntary retirement in Rule 244(1). The Rule contemplates a notice in writing to the appointing authority declaring intention of the Government servant to take optional retirement on completion of 25 years qualifying service. It is then stipulated that a Government servant may presume acceptance of this notice 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 notice. In the present case, unfortunately for the petitioner, the document dated 1.1.1964 cannot be said to be a notice of optional retirement under Rule 244(1), even if it is presumed that it is a notice of optional retirement under that Rule, the Government has by an

order dated 7.1.1964 held that the petitioner voluntarily retiring but his resignation is accepted. Consequently, it cannot be said that the action of the respondents in not giving benefit of Rule 244(1) to the petitioner is in any manner assailable in law. The petitioner cannot make any grievance of this aspect.

8. That takes the case of the petitioner to Rule 208 which provides for consequence of resignation from public service. This Rule provides that resignation of the public service will entail forfeiture of past service, the consequence being loss of pensionary benefits. The Rule obviously has penal consequence and is therefore, required to be strictly interpreted. The consequence of forfeiture of past service which entails forfeiture of pensionary benefits can occur in the following contingency only;

- (i) Resignation of public service not due to age;
- (ii) To dismiss from public service for misconduct insolvency or inefficiency;
- (iii) Removal from Government service for misconduct insolvency or inefficiency;
- (vi) Failure to pass a prescribed examination.

9. By Clause (b) of Rule 208, it is stipulated that the resignation of an appointment to take up another appointment is not a resignation of a public service. 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. The petitioner in the present case has tendered 25 years of service desired retirement because of his clumsy drafting and incorrect statement of the provisions of law. It was denied to him and his resignation was accepted certainly the resignation from public service is not for any inefficiency arising due to age or any other misconduct, its resignation due to age and other domestic difficulties, such resignation in my opinion is not one which will entail forfeiture of past service. The respondents were, therefore, in error in denying the benefits of pension etc. to the petitioner after the pension scheme was made applicable to employees like the petitioner. In the circumstances, a writ of mandamus is liable to issue directing respondents to consider the case of the petitioner for grant of pensionary benefits in accordance with law and finalise the same as expeditiously as possible preferably in six months.

10. In the result, the petition succeeds and is allowed. There will be no order as to costs.