
(2010) 08 RAJ CK 0125
In the Rajasthan High Court

Mahaveer Prasad Jain

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 06-08-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2010) 08 RAJ CK 0125

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajay Rastogi, J.—Counsel submits that this controversy has been examined by this Court while vires of Sub-rule (2) of Rule 10 of Rules, 1995 were challenged in *Om Prakash Bansal v. State* CWP 2072/2001 decided vide judgment dt. 12/05/2004 : *Om Prakash Bansal Vs. State of Rajasthan and Others*, against which special appeal preferred has also been dismissed while affirming the judgment (supra) in Special Appeal-496/2004 vide judgment dt. 27/09/05).

2. In *Om Prakash Bansal v. State* (supra) this Court observed ad infra:

7. It is evident that even a temporary employee is entitled to get pension pursuant to the afore-quoted Rule, undeniably Rule 10.2 of 1995 Rules was framed ignoring the provisions contained in Rule 179 of RSR. The artificial distinction created by State of Rajasthan is arbitrary and discriminative and violative of Articles 14 and 16 of the Constitution of India. Even otherwise the contribution made towards CPF by the respondent, does not make any distinction for the reason that as per the scheme whatever contribution was made has to be refunded back to the employer after making deduction from the employees contribution. The employer's contribution has to be transferred towards pension fund.

8. For these reasons, I dispose of the writ petition in the following terms:

(i) Sub-rule (2) of Rule 10 of 1995 Rules shall stand quashed and set aside being violative of Articles 14 and 16 of the Constitution of India.

(ii)The respondents are directed to compute the qualifying service of the petitioner as 33 years and 6 months instead of 24 years and months and difference of pension shall be paid to the petitioner within three months from the date of receipt of copy of this order.

(iii)No order as to costs.

3. Taking note whereof, a co-ordinate Bench of this Court also decided a bunch of writ petitions (CWP-7013/2007 and eight other cognate cases) vide judgment dt. 25/08/08.

4. Counsel for respondents has also not disputed about the controversy being decided by this Court; however, submits that SLP against DB judgment (supra) is pending but there is no stay order passed by the Apex Court.

5. In view of judgment (supra), the writ petition is allowed and respondents are directed to compute total length of service rendered by petitioner from the date of initial appointment for the purposes of pension under Pension Rules with all consequential benefits. Appropriate orders in compliance of the order (supra) be passed along with computation of arrears due, within three months. No costs.