
(2003) 10 RAJ CK 0003

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 778 of 2002

Mithlesh Sharan Sharma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-10-2003

Acts Referred:

Rajasthan Civil Services (Pension) Rules, 1996 — Rule 43(1)

Citation : (2004) 4 RLW 2206 : (2004) 1 WLC 456

Hon'ble Judges : Shiv Kumar Sharma, J;Khem Chand Sharma, J

Bench : Division Bench

Advocate : M.M. Mehrishi, for the Appellant; R.N. Mathur, A.A.G., for the Respondent

Judgement

Khem Chand Sharma, J.—The appellant petitioner (hereinafter to be referred to as "the petitioner") was an employee of the police department. He was subjected to disciplinary proceedings on the charge of wilfull absence from duty for the period from 8.10.1975 to 9.6.1978 and after due enquiry the Superintendent of Police, Bharatpur vide its order 17.4.1979 terminated the services of the petitioner. The petitioner's appeal against the order of termination was also dismissed by the Deputy Inspector General of Police, Jaipur vide order dated 27.12.1979. The petitioner again preferred an appeal before the Commissioner (Home) challenging the order dated 27.12.1979. However, Deputy Secretary (Home) vide letter dated 25.4.80 informed the petitioner that there was no provision of filing second appeal and that he may file review petition before his Excellency the Governor. It appears that the petitioner preferred a review petition before the Governor, but of no avail.

2. It would be pertinent to state here that in the mean time some criminal case was also registered against the petitioner, but ultimately the petitioner was acquitted of the charges by the trial court.

3. In the aforesaid circumstances, the petitioner filed a writ petition before this Court, which came to be registered as SB Civil Writ Petition No. 4071/94. The

learned single Judge of this court, after hearing counsel for the parties, while declining to interfere with the order of dismissal, disposed of the petitioner's writ petition, vide order dated 8.11.96, in the following manner:

"..... since the petitioner has already retired from service on attaining the age of superannuation, I deem it appropriate to direct the respondents to release the post retiral benefits such as pension, gratuity and other allowances, if any, which may be admissible to the petitioner in accordance with rules. Since the period of absence from duty from 8.10.75 to 9.6.78 was without obtaining the prior sanction of the competent authority, the said period cannot be considered as a period on duty and for which the petitioner cannot be held entitled for benefit of any increments promotion or any other consequential benefits in lieu thereof.

4. It appears to us that the petitioner sought review of the aforesaid order of the learned Single Judge on the grounds set out in his review petition No. 5/1997. Having considered the apprehension of the petitioner, the learned Single Judge vide its order dated 25.1.1997 disposed of the review petition directing the respondents to release the post retiral benefits to the petitioner within a period of 90 days from the date of submission of certified copy of the order.

5. Despite clear directions, the respondents did not release the retiral benefits to the petitioner nor did they file any appeal against the aforesaid orders of the learned Single Judge. Ultimately, the petitioner filed a contempt petition bearing No. 371/97. The contempt petition came to be heard before the learned Single Judge on 24.2.2000 and the learned Judge directed the petitioner to submit the statement of payment so far made to the petitioner and the payment to be paid to the petitioner. The learned Single Judge, after considering the contents of the contempt petition and the reply filed on behalf of the contemnors concluded that sufficient compliance of the court's order has been made by the authorities and therefore, no interference was called for. Accordingly, the learned Single Judge vide its order dated 9.5.2000 dismissed the contempt petition and ordered that if any amount is due to be paid, the petitioner may approach the concern authorities in accordance with law.

6. After dismissal of the contempt petition the petitioner moved an application to the respondents praying therein to make payment of balance sum and the pensionary benefits. However, on failure on the part of respondents to make payment of due, the petitioner filed S.B. Civil Misc. Application No. 114/2001 seeking clarification/modification of the order dated 8.11.96 as the respondent department stopped to pay the pension to the petitioner and the department intended to recover the amount already paid to the petitioner. In reply to this application, the respondents raised objection as to the maintainability of the Misc. Application and averred that petitioner was not entitled to any pensionary benefits in terms of Rule 72 of the Rajasthan Service Rules.

7. The learned Single Judge while dismissing the above Misc. Application vide its order dated 8.1.2002 observed that whatever has already been paid to the

petitioner in terms of pensionary benefits may not be recovered from the petitioner. As regards post retiral benefits, the court held that since the services of the petitioner already stood terminated and affirmed by the court vide its order dated 8.11.96, the question of any payment on said account does not arise as the same is not admissible in view of his termination.

8. Feeling aggrieved by the aforesaid order dated 8.1.2002 passed in Misc. Application No. 114/2001, the petitioner has filed this special appeal u/s 18 of the Rajasthan High Court Ordinance.

9. We have heard learned counsel for the parties and have gone through the various orders passed by the learned Single Judge.

10. Undisputedly, the provisions of Rajasthan Service Rules, disentitle a government servant whose services have been dismissed/terminated after he is held guilty of some charge. In the case at hand, the petitioner has already been paid retiral benefits till October, 1998 as also some part of gratuity amount, but that does not mean that illegality once committed should be allowed to be perpetuated.

11. However, keeping in view the entire facts and circumstances of the case, particularly the fact that petitioner served the State Government as Sipoy of the Police Department right from 17.11.1949 till he was removed from service on 17.4.1979 i.e. approximately 30 years, which is more than the qualifying service, as also the fact that he is 75 years old as on date and might be burdened with numerous liabilities as being head of the family, coupled with the important fact that the respondents were directed by the learned Single Judge vide its order dated 8.11.1996 to release the pension and that order attained finality as the respondents did not prefer any appeal against the said order, we feel that it would be in the interest of justice to allow compassionate allowance on a special consideration to the petitioner in terms of Rule 43 of the Rajasthan Service Rules, 1996, inasmuch we find that the order dated 8.1.2002 passed by the learned Single Judge on a Misc. Application No. 114/2001 reversing its earlier order dated 8.11.96 denying the petitioner of his right to get retiral benefits already allowed, has caused prejudice to the petitioner as it is trite that act of court shall prejudice no man (*Actus curiae neminem gravabit*).

12. Sub-rule (1) of Rule 43 of the Rules provides that a Government servant who is dismissed or removed from service shall forfeit his pension and gratuity. The proviso to Sub-rule (1) of Rule 43 provides that the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two thirds of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension.

13. In this view of the matter, we hold the petitioner entitled to get compassionate allowance and direct the respondents to make payment of compassionate allowance to the petitioner in accordance with the proviso to Sub-

rule (1) of Rule 43 of the RSR within two months from the date of presentation of a copy of this judgment.

14. The special appeal stands disposed of with the above directions. There will be no order as to costs.