
(2013) 04 RAJ CK 0111

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4313 of 1995

Nagar Parishad Chungi Karamchari Sangh, Beawar

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 02-04-2013

Acts Referred:

Citation : (2013) LabIC 3896

Hon'ble Judges : Amitava Roy, C.J;Meena V. Gomber, J

Bench : Division Bench

Advocate : Sunil Samdaria, for the Appellant; S.N. Kumawat, Addl. Advt. General, B.K. Sharma and S.V. Sharma, for the Respondent

Judgement

Amitava Roy, C.J.—The notification dated 8.9.1989 (Exhibit-2 to the writ petition), excluding the applicability of the Rajasthan Municipal Services (Pension) Rules, 1989 (for short, hereinafter referred to as the Rules"), in particular, to the employees of the Ajmer-Merwara Municipalities (for short, hereinafter referred to as "Municipalities") appointed before 1.11.1956 and 1.11.1956 to 1.8.1970, is the subject matter of impingement in the present proceedings. We have heard Mr. Sunil Samdaria, learned counsel for the petitioner and Mr. S.N. Kumawat, Additional Advocate General, Mr. B.K. Sharma and Mr. S.V. Sharma for the respondents.

2. The petitioner is a registered Union representing the concerned employees of the Municipalities. It is stated that the City of Beawar initially was a part of the erstwhile Ajmer State, which was subsequently, with effect from 1.11.1956, merged with the State of Rajasthan. The employees of the erstwhile Municipal Council, Beawar however, continued to be governed by the Central Laws and Rules, as applicable to them, before such merger. Prior to the promulgation of the , 1959 (for short hereinafter referred to as "the Act"), Ajmer Merwara Municipalities Regulations, 1925 were applicable to the employees of the municipalities of the then Ajmer Merwara, which included the Municipal Council, Beawar.

3. According to the petitioner, with the enactment of the Act, the respondent-Council was integrated with the other municipalities in the State with effect from the date of its enforcement i.e. 17.10.1959. Consequent upon such enactment, amongst others, Ajmer Merwara Regulations were repealed and in terms of Section 2 of the Act, all Councils and Boards, established and constituted under the laws and enactments so repealed, were construed to be established and constituted thereunder, it was thereafter, that the Rajasthan Municipalities (Contributory Provident Fund and Gratuity) Rules, 1969 (for short, hereinafter referred to as "1969 Rules"), were promulgated with effect from 2.8.1970. The petitioner has insisted that in terms of the proviso to Rule 4 thereof, the municipal employees governed by the erstwhile Ajmer Merwara Provident Fund Rules, 1937, were excluded from the purview of the application thereof and thus, there was no scope for them to make any provident fund contribution. It referred to an order dated 26.5.1984 of the respondent-State providing for the grant of benefit of pension to the following categories of employees of the erstwhile Ajmer Merwara area, who had been appointed or retired before the enforcement of the 1969 Rules, from the funds of the respective municipal board/council:--

(1) Employees appointed before 1.11.1956 and those who had retired and would be so retired.

(2) Employees who had been appointed between 1.11.1956 and 1.8.1970 or those who have meanwhile retired from service.

4. The order also mentioned that those who had been appointed on or after 2.8.1970, would not be entitled to pension. It was clarified as well that in cases of officers and employees who had offered their share to the contributory provident fund, some interest thereon would first be deposited in the municipal account, whereafter the pension due, would be released to them. The impugned notification was issued thereafter incorporating sub-rule (2) in Rule 4 of the Rules as hereunder:--

In exercise of the powers conferred under Rule 24 of the Rajasthan Municipal Services (Pension) Rules, 1989, the Governor has been pleased to make the following amendments in these rules namely:--

In Rule 4 of the said Rules, the following shall be added as Para 2 after the existing Para:--

(i) the employees of Kota Municipal Council appointed in between the period from 1.4.51 to 9.7.56.

(ii) Employees of Ajmer-Merwara Municipalities appointed prior to 1.11.56 and the employees appointed from 1.11.56 to 1.8.70.

By order of the Governor

Sd./- Illegible

Secy, to Govt. L.S.G. Deptt.

Dated: 8.9.89

5. The challenge is thus to this exclusionary insertion in Rule 4 of the Rules so far as it relates to the employees of Ajmer-Merwara Municipalities imputing artificial classification in the homogenous class of municipal employees without any intelligible basis and thus being violative of Articles 14 & 21 of the Constitution of India.

6. The State-respondent, in its reply, has in substance averred that the employees of the Municipalities appointed before 1.11.1956 and between 1.11.1956 and 1.8.1970 are not entitled to get pension from the State Government, as in the Municipal Council, Beawar, which was a former entity of Ajmer-Merwara State, there was no provision for deduction of employees' contribution towards the funds for pension. According to the respondents, at the time of framing of the Rules, the funds maintained by the local bodies in respect of each employee making such contribution necessary, were transferred in the PD account as Pension Fund. They stated that the Pension Fund of the respective municipal council held the amounts deducted from the salary or pay of its employees towards contribution for pension and the amount in deposit used to be credited in the PD account or State Treasury towards Pension Fund. As in the "Municipalities", no such system of contribution for pension from the employees was prevalent, no amount was deposited in the PD account or State Treasury. The respondents clarified that there are two categories of pensioner in municipalities as hereunder:--

(1) Employees who have contributed towards pension and such contribution has been deposited by the Municipal Council in the PD account or State Treasury.

(2) Employees of the Municipal Council who have not contributed towards the pension and no money had been deposited in the PD account/State Treasury.

7. According to the answering respondents, the pension to the first category of employees is paid by the State Government and form a distinctly different class from the other category who are entitled to get pension from their respective municipal council, subject to the conditions prescribed, and not from the State Government. The respondents reiterated that the employees of the Municipal Council, Beawar appointed prior to 1.11.1956 and between 1.11.1956 and 1.8.1970 did not contribute towards pension, and thus, they were not entitled to any pension as a matter of right from the State Government.

8. Mr. Samdaria has argued with particular reference to Section 2(b) of the Act that with the enactment thereof, all municipalities constituted and in existence prior thereto and the employees thereof got assimilated as an indivisible conglomerate and were thus, assuredly covered, amongst others, by the Rules entitling them to pension thereunder. While admitting that prior to the year 1987, there was no concept of pension to any municipal employee of the State

and that it was only vide Government Order dated 17.9.1987, that such benefit was extended to the employees of the municipalities for Ajmer-Merwara Area, the learned counsel has urged that the plea of omission to contribute towards the municipal fund, as a disqualification for the members of the petitioner-Union for pension under the Rules, is apparently untenable as they, in terms of Rule 4 of the 1969 Rules, were excluded from the purview thereof. While contending that the members of the petitioner-Union are "employees" within the meaning of the Rules, Mr. Samdaria has emphatically urged that as the impugned notification seeks to introduce a hostile discrimination by effecting an artificial classification, amongst persons, constituting a homogenous class, it is liable to be adjudged illegal and unconstitutional. The learned counsel however, on being queried by this Court, did candidly admit that the employees of the "Municipalities" were in receipt of pension from the local funds, availability whereof was however, not guaranteed at all time.

9. Learned counsel for the respondents have, in unison, argued that as the employees of the "Municipalities" are admittedly in receipt of pension, in absence of any contribution made by them to the local pension fund, they had no right to claim the said benefit from the State coffers. While contending that there had never been a total exclusion of these employees from the purview of 1969 Rules and rather it had been open for them to opt to be within the ken thereof. The learned counsel insisted that not only the Ajmer-Merwara Municipalities is financially very sound, in the necessary exigencies, subject to the conditions prescribed, the State Government does, in appropriate cases, replenish the deficiencies, if called for.

10. We have carefully considered the rival pleadings and also the arguments advanced.

To start with, the expression "employee" has been defined in Rule 2(g) of the Rules as hereunder:--

2. Definition:--

(g) "Employee" means an employee appointed u/s 310 of the Rajasthan Municipalities Act, 1959 by the Board and includes an officer appointed u/s 307 or 308 of the said Act.

11. Incidentally therefore, Sections 307, 308 and 310 of the Act are also quoted hereunder:--

307. Administrative Officers.- (1) Subject to the forgoing provisions of this chapter and the rules made u/s 297 or any other provision of this chapter, the State Government shall appoint.

(i) Such number of Commissioners for every council as may be determined.

(ii) an executive officer for every board for which such officer is required by rule to be appointed, and

(iii) a secretary for every council which resolves to appoint a secretary in addition to the commissioner and for every board for which no executive officer is appointed.

(2) All officers and servants appointed under S. 308 or S. 310 or under any other provisions of this Act shall be subordinate to the commissioner in the case of a city and to the executive officer in any other case.

(3) In addition to any duties imposed upon or delegated to him by or under this Act a Commissioner or an executive officer, as the case may be, shall, subject to the control of the president or the chairman of the council or board.

(a) watch over the financial and executive municipal administration of the Municipality.

(b) take prompt steps to remove and defect or irregularity brought to notice in the course of the audit of the municipal accounts or pointed out in the audit report.

(c) report all cases of fraud, embezzlement, theft or loss of municipal money or property.

(d) supply any return, statement, account or report or any other document in his charge or a copy thereof requisitioned by the council or board as the case may be, and

(e) make an explanation in regard to subject under discussion at a meeting thereof but not vote upon or make that any proposition thereat.

(4) Subject to any rules obtaining in this behalf, a council or board, as the case may be, may punish any officer appointed under this sec, otherwise than by dismissal or removal, by a resolution passed by a majority of not less than two thirds of the whole number of its numbers at a special general meeting and approved by the State Govt.

(5) Pending an inquiry into his conduct an officer appointed under this section may be placed under suspension by the State Government.

308. Technical Officers.-(1) Subject as aforesaid the State Government may, if it thinks necessary, appoint a health officer, a municipal engineer, a revenue officer or any other officer for the performance in a municipality, of such special or technical duties under this Act as may be prescribed.

(2) The provisions of sub-secs. (4) and (5) of S. 307 shall apply to and in respect of officers appointed under this section.

310. Subordinate officers, ministerial establishment and other servants.-(1) Subject to the provisions of Sections 304 to 306 and of any rules u/s 297 or any other provision of this Act.

(a) an assessor shall be appointed by a council or a board with the sanction of

the State Government, and

(b) a sanitary inspector or other inspector or subordinate officer or accountant or a member of the ministerial establishment shall be appointed by a council or a board.

(2) Subject to any rules under S. 297 or any other provision of this Act appointments to other posts, whether permanent or temporary, shall be made by the commissioner in the case of a city and the chairman of the board in any other case.

(3) All persons appointed under sub-section (1) or sub-section (2) shall be under the control and supervision of the president or the chairman, as the case may be.

(4) Without prejudice to such control and supervision, the persons so appointed shall be directly subject to the orders of the commissioner or the executive officer and shall perform such functions, exercise of such powers and discharge such duties as are laid down in rules or as may be required of them by the commissioner or the executive officer.

(5) A person appointed under sub-section (1) or sub-sec. (2) may be dismissed, removed or otherwise punished in accordance with rules then obtaining by the appointing authority, subject to a right of appeal of such dismissal, removal or punishment within the prescribed time limit.

(i) to the State Government, if the order appealed from is passed by a council or board, and

(ii) to the council or board if such order is passed by the commissioner or chairman.

12. The word "fund" has been defined in Rule 2(i) of the Rules as hereunder-

2. Definition:--

(i) "Fund" means the Municipal Employees Pension Fund to which pension paid to the retired employees shall be charged.

Rule 4 excludes the following categories of employees from the applicability thereof:--

4. Non-applicability of Rules.-(1) These rules shall not apply to the employees retired before 1.10.1987 or working on part-time/work-charged/contract deputation basis. (2) These rules shall not apply to the following:--

(i) The employees of Kota City Council appointed between 1-4-1951 to 9-7-1956.

(ii) Employees of Ajmer-Merwara Municipalities appointed before 1-11-1956 and 1-11-1956 to 1-8-1970.

13. Admittedly, the order dated 17.9.1987 evidently, prior to the framing of the Rules, but subsequent to enactment of the Act, provided for pension to the

following categories of employees of the Municipalities of Ex-Ajmer-Merwara Area:--

1. Employees appointed before 1.11.1956 and those who had retired and would be so retired.

2. Employees who had been appointed between 1.11.1956 and 1.8.1970 or those who have meanwhile retired from service.

14. Noticeably, these are the employees of the Ajmer-Merwara Municipalities, who are excluded from the purview of the Rules, in terms of Rule 4(2)(ii). There is no wrangle at the Bar that the employees of the Ajmer-Merwara Municipalities are receiving pension from its local funds. It is also not in dispute that they had not contributed to the fund, as contemplated in the 1969 Rules. Second proviso to Rule 4 thereof, in our comprehension, did not prohibitively exclude the employees governed by the Ajmer-Merwara Provident Fund Rules, 1937 to opt therefore. The members of the petitioner-Union thus, in the attendant factual backdrop, formed a class by themselves. The plea of discrimination is thus untenable. There is nothing on record to discard the stand of the State-respondents that pension from the State fund is payable only to those employees of the municipalities who contribute to the related fund and the contributions are transited to the PD account/State Treasury, for eventual release of pension.

15. In this view of the matter, the claim of the petitioner-Union, that the members thereof have an unassailable right to receive pension from the State fund, does not weigh with us. This is moreso when as admittedly, they are receiving pension from the funds of Ajmer-Merwara Municipalities.

16. In the singular factual setting, as above, challenge to the notification dated 8.9.1989 being unconstitutional, does not merit acceptance. Resultantly, Rule 4(2) of the Rules cannot be adjudged to be constitutionally invalid. The petition lacks in merit and thus stands dismissed.