

(2001) 09 RAJ CK 0029

In the Rajasthan High Court

Case No : Civil Special Appeal No. 1219 of 1997

Panna Lal

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 11-09-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Citation : (2002) 3 WLN 231

Hon'ble Judges : Rajesh Balia, J; Jagat Singh, J

Bench : Division Bench

Judgement

Rajesh Balia, J.—The appellant had been appointed as an untrained Physical Instructor in the Education Department, Churu by order dated 27th Dec, 1972 on temporary basis after his name was sponsored by the District Employment Exchange, Churu. The petitioner was confirmed as an substantive employee in the Govt. service w.e.f. 28th Dec, 1974. By yet another order dated 20th April, 1983 the appellant-petitioner was treated to be trained in terms of the Govt. order dated 12th Dec., 1978 and he was accordingly fixed in the pay scale applicable to trained teachers w.e.f. 29.12.1982 on completion of 10 years of service, with future increments due on 29th December of the succeeding years. Thereafter, vide order dated 11th March, 1983 (Annx. P/2) while working on the post he was made to superannuate on 29th Feb., 1998 on completion of 55 years of age only.

2. During the fixation of retiral benefits, the question has been raised by the petitioner that he has been prematurely retired before completion of age of superannuation which at the relevant time for the Rajasthan State employees was 58 years and not 35 years. The petitioner raised this objection before the concerned authorities. He was informed that he has been rightly retired on the completion of 55 years of age because his appointment can be treated to have been given Under the Rajasthan Civil Services (Absorption of Ex-Service Personnel) Rules, 1959 and they can be appointed under the rules maximum

upto the age of 55 years, and therefore, his prayer for treating his services to be continuous upto 58 years has been refused.

3. On receipt of this communication, petitioner preferred Writ Petition No. 994/1996 before this Court raising grievance about his premature superannuation. This Court disposed of the said petition by order dated 17th Feb., 1997 by holding that for the petitioner's claim, that he had to be superannuated in 1991, he may make a representation before the respondents to allow him a notional fixation for the term in which he was not kept in service and similarly situated persons were reinstated by Annx. 4 filed in the aforesaid writ petition. The respondents were directed to examine the case of the petitioner in that light within two months from the date of submission of the representation. It was left open for the petitioner to file a fresh writ petition if he is not given relief on such a representation.

4. In pursuance of above direction, the petitioner made a representation before the respondents which was rejected by the impugned order dated 5th May, 1997. The claim of the petitioner has not been entertained on the ground that since the petitioner's appointment can only be justified Under the Rules of 1959, the appointment could be given only for five years on contract basis or until he attains the age of 55 years whichever is earlier and in view of that, the provisions of Rajasthan Service Rules, 1951 do not apply. While considering the other cases referred to by the petitioner viz. Govind Singh and Bhopal Singh, it was reasoned that they were appointed under the regular procedure and therefore, their case cannot be equated with the case of the petitioner for claiming the age of superannuation to be 58 as is envisaged Under the Rajasthan Service Rules, 1951. This led to filing of the writ petition out of which the present appeal has arisen.

5. Learned Single Judge has held that the illustrations given of other ex-servicemen viz. Govind Singh and Bhopal Singh are not identical to the case of the petitioner as both of them were appointed under the regular rules and not under the Absorption of Ex-Service Personnel Rules whereas the services of the petitioner were regularised under the Ex-Servicemen Rules and those rules not being amended the retirement of petitioner at 55 was proper and has rightly been upheld by the Director, and dismissed the writ petition.

6. It has been contended by the learned Counsel for the appellant that the petitioner has not been appointed in the first instance Under the Rules of 1959 at all. He has pointed out that while the Rules of 1959 envisage appointment only for 5 years on contract basis and not a temporary or regular appointment to be continued upto the age of superannuation at all, the appointment was given to the petitioner after securing him name from the employment exchange for an indefinite period and not on a contract basis at all for a fixed term of 5 years. He has been given appointment in the first instance on temporary basis in 1972 and on completion of two years service he was duly confirmed in the service which was to last until he attains the age of superannuation. In his appointment order

it has been clearly written that he has been appointed as untrained Physical Instructor. Vide order dated 20th April, 1983 (Annx. P/4) he has also been held to be a trained teacher in pursuance of the Govt. order dated 12th Dec, 1978. All these orders continued to remain in force until the petitioner retired and they have not been amended, rescinded or recalled by any authority so as to draw any inference that the appointment given to the petitioner was not on regular establishment and was in any way irregular except to the fact that while the appointment was given it was as untrained teacher. Later on he was treated as trained teacher under the circular of the Govt. dated 12th Dec, 1978 and not Under the Rules of 1959. Learned Counsel for the respondents has reiterated the reasons conveyed to the petitioner for denying him the benefit of service upto 58 years of age.

7. The terms and conditions of the service in the employment of the State is governed by statutory rules and cannot be altered by agreement nor any estoppel can be pleaded against the service rules. We may briefly notice the Scheme of the Rajasthan Civil Services (Absorption of Ex-Service Personnel) Rules, 1959, to consider the rival contentions, we may briefly notice the Scheme of the Rules of 1959.

8. The notification framing Rules Under Article 309 of the Constitution came into force on 3rd Sept., 1959. Rule 2 envisaged direct recruitment to various departments not exceeding 12-1/2% of the posts to be filled in any such department in a calendar year. The claim of appointment of ex-servicemen under the Rules were to be considered only after vacancies remaining unfilled on exhausting the full quota reserved for Scheduled Caste and Scheduled Tribe. Part-II envisaged constitution of a Selection Board Under Rule 6. Rule 7 requires Administrative Department or Head of the Department to convey to Selection Board number of vacancies anticipated during the ensuing calendar year according to quota prescribed Under Rule 2, by the end of December. Rule 8 prescribes the maximum age upto which the ex-serviceman as defined Under Rule 4(iii) to be 50 years.

9. Part-III deals with procedure of recruitment. The applications for recruitment under the Rules are to be invited by Secretary of Selection Board by advertisement. Applications are to be made in prescribed form which is made available free of cost since 28.4.1973. Prior to that date 8 annas or 50 paise per form were payable, Under Rule 14 provides the Selection Board constituted Under Rule 6 to prepare the list of candidates found suitable by it, which shall be in excess of 50% of the vacancies conveyed to it. Said list is to be forwarded to the Govt. by Selection Board Under Rule 15 who in turn is required to send the list to the Public Service Commission in respect of select list for posts falling within its purview. The Govt. then prepares the list of selected candidates in order of merit. Thereafter the Govt. is to communicate the names of selected candidates to Administrative Department or Head of the Department concerned as the case may be, as per Rule 16.

10. Appointment seniority and pay is governed by Part-IV of the Rules-provision thereunder reads as under:

PART-IV-Appointment, Seniority, Pay etc.

17. Appointments.-The candidates selected Under Rule 16, shall be appointed by the Administrative Departments or the Heads of Departments, as the case may be, against the posts advertised. Their appointment shall be on contract basis for a period of five years at a time.

18. Seniority-1The persons appointed shall not be assigned any seniority vis-a-vis the regular employees.

19. Initial Pay-The initial salary to be allowed to such person appointed shall be fixed ad hoc by Government on the recommendations of the Selection Board.

20. Promotion to higher posts.-The persons appointed shall not be entitled as of right, to any promotion to higher ranks. There shall be no competition between them and the regular members of the service in the matter of future prospects and promotion. They may however, be considered for appointment to higher posts, should Government decide to earmark some of the higher posts for ex-military men.

21. Provident Fund-The persons appointed shall not be entitled to pension/gratuity. They may, if they like, subscribe to the General Provident Fund under the General Provident Fund (Rajasthan Service) Rules, 1954.

22. Other conditions of Service.-Except as provided in these Rules, the other conditions of service of the persons appointed under these Rules shall be regulated by-

(1) The Rajasthan Service Rules, 1951.

(2) The Rajasthan Travelling Allowance Rules, 1949 and

(3) The Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1950.

and any other rules made by the appropriate authority under the proviso to Article 309 of the Constitution of India and for the time being in force.

These Rules nowhere postulate the superannuation age to be 55 years as has been assumed by the authorities or by the learned Single Judge.

11. It is also apparent that appointment under the Rules is only through select list prepared by the Selection Board and finally accepted by the State Govt. Only such candidates are to be appointed whose names have been included in select list and conveyed to Administrative Department or Head of Department whose under vacancy exists and conveyed. Recruitment of ex-serviceman as such on that basis is not at all envisaged through calling names from employment exchange. The manner in which the petitioner's appointment has been made, rules out any connection between his appointment vide order Annexure-1 and

subsequent orders made for confirmation and considering him trained teacher, with the Rules of 1959. Under Rules of 1959 even no regular appointment has at all been envisaged Under Rule 17. So much so that irrespective of period for which appointment has been made, the appointee does not become entitled to any pension, as is clearly postulated in Rule 21. The scheme of Rules of 1959 is contrary to accept any claim to pension. On the other hand in the present case there is no dispute that pension is payable to the petitioner. Question is only what shall be the remuneration that will be treated last drawn from the purpose of corresponding amount of pension payable.

12. In these circumstances, resort to Rules of 1959 appears to have been taken only for the purpose of reducing the age of superannuation to reduce the extent of retiral benefit, including reduced amount of pension which he will otherwise be entitled to.

13. Apart from this the very tenor of the Rules of 1959 suggests that no appointment can be given on regular basis and regularisation of the service cannot be made Under the Rules of 1959. The appointment can only be offered on contract basis and that contract basis obviously cannot exceed the age of superannuation which is otherwise prevalent in the State of Rajasthan for its employees.

14. Therefore, in our opinion, there is no warrant firstly to conclude that appointment of the petitioner was Under the Rules of 1959 or could be regularised so as to deny him the benefit of the service rules governing the regular employees of the State in the matter of superannuation generally so as to reduce his superannuation age from 58 to 55 in the case of an employee who happened to be Ex-Serviceman personnel appointed to the service.

15. Assuming that the Rules of 1959 applies, the rules do not inhibit the age of superannuation contrary to the age of superannuation prescribed Under the Rules of 1951. It is only if any express contrary provision has been made in the Rules of 1959 that application of Rajasthan Service Rules 1951 is excluded. Infact if Rules of 1959 were to apply, the appointee could not be held entitled to any pension at all. That is not even the case of respondents. Resorting to Rules of 1959 to raise the plea of regularisation only to curtail the benefit of age of superannuation cannot be sustained.

16. We are, therefore, of the opinion that denial to the petitioner from continuing in service until he attains the age of 58, which is the age of superannuation in terms of the rules as are applicable to all State Govt. employees in the Education Department, was contrary to the Rules as well as in violation of Articles 14 and 16 of the Constitution. Merely because the petitioner has been earlier an ex-serviceman unless his appointment is given in accordance with the procedure adopted Under the Rules of 1959. He has been regularly appointed under the Rules. Subsequently, his appointment or confirmation as substantive since 1974 was never questioned, until question arose for his retiral benefits.

17. Appointment Under the Rules of 1959 is an appointment on contract basis only from the list prepared by State Govt. in order merit from amongst the candidates selected by the Board, which undisputedly is not the case.

18. Initial appointment has been given by regular procedure adopted by the Education Department in giving appointments by calling the names from employment exchange as was prevalent at the time when appointment was given to the petitioner and that appointment has continued after confirmation and regularisation as a trained teacher until he was forced to retire prematurely from service, such an action cannot be sustained.

19. Accordingly, we allow this appeal, set aside the order of the learned Single Judge and also allow the writ petition by quashing the order dated 5th May, 1997 rejecting the claim of the petitioner to remain in service until he attains the age of 58 in February, 1991. He shall be deemed to have been superannuated on attaining the age of 58 on the basis of his date of birth as 16th Feb., 1933 as recorded in his service record and he shall be allowed all consequential benefits arising therefrom. However, he shall not be entitled to claim any arrears of the periods during which he could have remained in service namely with effect from the date of invalid superannuation 29th Feb., 1988 to the date of regular superannuation 28th Feb., 1991 as the same had already been voluntarily foregone by him earlier. But on the basis of continuous service until the date of superannuation as aforesaid, all other benefits including the increments and fixation of retiral benefits on the basis of increased emoluments so notionally fixed be allowed to the appellant-petitioner. The said benefits shall be released to the petitioner within a period of three months, from the date of service of writ or on furnishing certified copy of this order on the respondents, whichever is earlier.

20. There shall be no orders as to costs.