
(2004) 10 RAJ CK 0027
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3710 of 2004

Prasann Kumar

APPELLANT

Vs

Raj. Cooperative Dairy Federation and Another

RESPONDENT

Date of Decision : 01-10-2004

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 226, 311(2)

Citation : (2005) 2 RLW 1034 : (2005) 1 WLC 304

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : Vijay Mehta, for the Appellant; D.K. Parihar and M.R. Singhvi, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Kumar Garg, J.—This writ petition under Article 226 of the Constitution of India has been filed by the petitioner against the respondents on 26.8.2004 with the prayer that by an appropriate writ, order or direction, the impugned order dated 25.8.2004 (Annex.4) passed by the Chairman & Managing Director, Rajasthan Cooperative Dairy Federation Ltd., Jaipur (respondent No. 1) by which the superannuation age of the employees of the Rajasthan Cooperative Dairy Federation Ltd. (for short "the RCDF") was kept as 58 years with immediate effect in place of 60 years in partial modification to RCDF Order No. 6384-6423 dated 31st May, 2004 be quashed and set aside and further, since the petitioner has already retired on attaining the age of 58 years, therefore, directions be issued to the respondents to reinstate the petitioner with all consequential benefits.

2. The case of the petitioner as putforward by him in this writ petition is as follows:

The petitioner was appointed in the respondent Cooperative Institution on the post of Clerk on 13.11.1969 and now he has retired from service on attaining the

age of 58 years and at that time, he was holding the post of Senior Cashier in the office of the respondent No. 2 Managing Director, Uttariya Rajasthan Sahakari Dugdh Utpadak Sangh Ltd., Bikaner (for short "the Sangh").

According to the petitioner, the respondent No. 1 RCDF is a Cooperative Federation of milk producing cooperative societies of the State of Rajasthan and is State within the meaning of Article 12 of the Constitution of India. The respondent No. 2 Sangh is the part of the respondent No. 1 RCDF.

The further case of the petitioner is that the service conditions of the petitioner and the employees of the respondent No. 2 Sangh are governed by the Rajasthan Cooperative Dairy Federation Employees (Non-workman) Service Regulations 1980 (hereinafter referred to as "the Regulations of 1980") framed by the respondent No. 1 RCDF and by the resolutions adopted by the respondent No. 1 RCDF from time to time.

The further case of the petitioner is that vide Resolution No. 52 dated 11.4.1985, the respondent No. 1 RCDF resolved that the age limit for direct recruitment and retirement/superannuation shall be the same as applicable to the employees of Rajasthan Government, as amended from time to time and that Resolution was notified through Office Order dated 6.8.1985, a copy of which is marked as Annex.1.

The further case of the petitioner is that the State of Rajasthan vide notification dated 24.5.2004 (Annex.2) enhanced the age of retirement of its employees from 58 years to 60 years and in pursuance of the said Notification of the State Government Annex.2 dated 24.5.2004, the respondent No. 1 RCDF vide order dated 31.5.2004 (Annex.3) also enhanced the age of retirement of its employees from 58 years to 60 years.

The further case of the petitioner is that indisregard of the order of the State Government Annex.2 dated 24.5.2004 and despite Resolution No. 52 dated 11.4.1985, which was notified through order Annex.1 dated 6.8.1985, that age of retirement of the employees of respondent No. 1 RCDF shall be the same as that of the employees of the State Government, the respondent No. 1 RCDF issued another order Annex.4 dated 25.8.2004 by which the age of retirement/superannuation in RCDF was kept as 58 years with immediate effect in place of 60 years in partial modification to RCDF Order dated 31.5.2004 (Annex.3).

In this petition, the petitioner has challenged the order Annex.4 dated 25.8.2004 mainly on the ground that since the State Government through Notification Annex.2 dated 24.5.2004 had taken the decision of increasing the age of retirement of its employees from 58 years to 61 years and since through Resolution No. 52 dated 11.4.1985, which was notified vide office order Annex.1 dated 6.8.1985, it was resolved that age of retirement of employees of RCDF shall be same as was applicable to the employees of Rajasthan Government, therefore, reduction of age of the employees of RCDF from 60 years to 58 years through order Annex/I dated 25.8.2004 is per se illegal and the respondent No. 1

RCDF had no jurisdiction to reduce the age of retirement of its employees. Hence, impugned order Annex.4 dated 25.8.2004 is wholly illegal, without jurisdiction and arbitrary and thus, cannot be sustained and liable to be quashed and set aside.

It has been further submitted by the petitioner that since he has attained the age of 58 years on 31.8.2004, therefore, he has been retired from service in view of the impugned order Annex.4 dated 25.8.2004 reducing the age of retirement from 60 years to 58 years and had this order would have not been issued, the petitioner would have not been retired from service and since the order Annex.4 dated 25.8.2004 is per se illegal and without jurisdiction, therefore, retirement of petitioner from service on attaining the age of 58 years is also per se illegal and without jurisdiction. Therefore, the petitioner is entitled to reinstatement with all consequential benefits. Hence, this writ petition with the prayers as stated above.

A reply to the writ petition was filed by the respondent No. 1 RCDF wherein it was submitted that it is in the sole domain of the employer to fix the age of superannuation and if it is reduced, no employee has a right to challenge the same because there is no divesting of any of rights and for that, reliance has been placed on the decision of the Hon''ble Supreme Court in K. Nagaraj and Others Vs. State of Andhra Pradesh and Another,

It has been further submitted by the respondent No. 1 RCDF that the above decision in the case of K. Nagaraj (supra), was further followed by the Hon''ble Supreme Court in Yeshwant Singh Kothari and Others Vs. State Bank of Indore and Others,

It has been further submitted by the respondent No. 1 RCDF that reduction in retirement age does not infringe any of the fundamental rights and from that point of view also, the petitioner has got no case.

Apart from this, fixing of retirement age is a matter of policy and in such matter, there is no scope of judicial review as no legal or constitutional rights are violated. Hence, no interference is called for with the impugned order Annex.4.

It has been further submitted by the respondent No. 1 RCDF that the plea of the petitioner that since the Government of Rajasthan has enhanced the age of retirement of its employees from 58 years to 60 years through Notification Annex.2 dated 24.5.2004, therefore, that decision would be binding on the respondent No. 1 RCDF automatically is wrong one and the respondent No. 1 RCDF has full power and authority to fix the age of retirement of its employees and in this respect, reliance has been placed on Circular Annex.R/1 dated 29.5.2004 issued by the Government of Rajasthan, Jaipur by which the State Government authorized the Board of Directors of each PSU to make appropriate decision regarding the age of superannuation of its employees and thus, the action of the respondent No. 1 RCDF in keeping the age of retirement of its employees as 58 years in place of 60 years through impugned order Annex.4 cannot be said to be illegal or without jurisdiction or arbitrary. Hence, the writ

petition deserves to be dismissed.

A separate reply was filed by the respondent No. 2 Sangh.

Rejoinder to the reply submitted by the respondent No. 1 RCDF was also filed by the petitioner.

3. I have heard the learned counsel for the petitioner and the learned counsel for the respondents and gone through the entire materials available on record.

4. There is no dispute on the point that as per Resolution No. 52 dated 11.4.1985 of the respondent No. 1 RCDF, the age limit for direct recruitment and retirement/superannuation in RCDF shall be the same as applicable to the employees of Rajasthan Government from time to time and as per office order Annex. I dated 6.8.1985, the age limit for direct recruitment and retirement/superannuation shall be the same as applicable to the employees of Rajasthan Government amended from time to time except technical posts in all cadres in case of direct recruitment and the RCDF Regulations, 1980 were amended to the above extent in respect of employees covered under these regulations. However, it was made clear that the amendment will be applicable only for non-workmen. Thus, a distinction has been drawn between workmen and non-workmen and since at the time of retirement, the petitioner was holding the post of Senior Cashier, therefore, he cannot be termed as workman. This is one of the aspects of the matter.

5. There is also no dispute on the point that through Notification dated 24.5.2004 (Annex.2), the State Government raised the age of retirement of its employees from 58 years to 60 years.

6. There is also no dispute on the point that in pursuance of the order of the State Government dated 24.5.2004 (Annex.2), the respondent No. I RCDF through order Annex.3 doled 31.5.2004 has also enhanced the age of retirement of its employees from 58 years to 60 years.

7. There is also no dispute on the point that as per Circular Annex.R/1 dated 29th May, 2004 issued by the State Government, the State Government, alter consideration of matter, authorized Board of Directors of each PSU to make appropriate decision regarding the age of superannuation of its employees.

8. There is also no dispute on the point that thereafter through order Annex.4 dated 25th August, 2004, the respondent No. 1 RCDF again reduced the age of retirement of its employees from 60 years to 58 years and for convenience, the order Annex.4 dated 25.8.2004 is quoted here:-

"Consequent upon Government of Rajasthan, Animal Husbandry Department letter No. F.1(1)/AH/2004 Part dated 23rd August, 2004 and in compliance of decision of the Board of Directors of RCDF vide Resolution No. 84(1) dated 24th August, 2004, the age of retirement/superannuation in RCDF is kept as 58 years with immediate effect in place of 60 years in partial modification to RCDF Order

No. 6384-6423 dated 31st May, 2004."

9. The question for consideration is whether in the facts and circumstances just narrated above, order Annex.4 dated 25.8.2004 passed by the respondent No. 1 RCDF reducing the age of retirement of its employees from 60 years to 58 years can be said to be per se illegal and without jurisdiction or not.

10. In K. Nagaraj's case (supra), the Hon"ble Supreme Court repelled a challenge to the reduction of retirement age from 58 to 55 on the basis of the policy of the Government, which was found not to be irrational or violating recognized norms of employment plan. It was also noticed that not to provide for an age of retirement at all would be contrary to public interest because the State cannot afford the luxury of allowing its employees to continue in service after they have passed the point of peak and that rules of retirement do not take away the right of a member to his livelihood, the only limit is to the right to hold office till the stated number of years.

11. The same view was reiterated by the Hon"ble Supreme Court in the case of Yeshwant Singh Kothari (supra), and in that case, it was further held that scope of judicial review in the matter of fixation of retirement age is very limited one.

12. In the case of K. Nagaraj (supra), the Hon"ble Supreme Court has further held:-

"The termination of service of an employee on account of his reaching the age of superannuation does not amount to his removal from service within the meaning of Article 311(2). The reduction of the age of retirement from 58 to 55 in the instant case, is found to be not hit by Article 14 or Article 16, since it is not arbitrary or unreasonable in the circumstances of the case. But, apart from this position, it is difficult to appreciate how the retirement of an employee in accordance with a law or rules regulating his conditions of service can amount to his "removal" from service. It is well settled that Article 311(2) is attracted only when a civil servant is reduced in rank, dismissed or removed from service by way of penalty, that is to say, when the effect of the order passed against him in this behalf is to visit him with evil consequences."

13. Before proceeding further, it may be stated here that the word "superannuation" means discharge from a post on account of age, the act of retiring a person on a pension. It is usually referred to as retirement.

14. The fixation of the age of retirement is essentially a matter of executive policy largely dependent on the "felt need of the administration".

15. It is now well settled that it is permissible to have different retirement ages for different classes or categories of the staff in the same organization and for that, the decision of the Hon"ble Supreme Court in *Osmania University v. V.S. Mathurangam* 1997 SC 2758, may be referred to.

16. It is also now well settled that unless there is an express legislative bar, a

State or its instrumentalities have the power to reduce the age of retirement and this can be done unilaterally because a public servant relationship is ultimately governed by the principle of status.

17. A matter of policy decision for the executive must be left to the consideration of the State Government. The wisdom in a policy decision of the Government, as such, is not justiciable unless where such policy decision is capricious, arbitrary, whimsical so as to offend Article 14 of the Constitution or any statutory or constitutional provision.

18. In the present case, since retirement age in RCDF has been reduced from 60 years to 58 years for all employees, therefore, it cannot be said that it is violative of Article 14 of the Constitution of India nor it can be said that it was arbitrary in nature.

19. Not only this, the Hon'ble Supreme Court in the case of V.S. Mathurangam (supra), has observed that it is permissible to have different retirement ages for different classes or categories of the staff in the same organisation and when this being the position, if the State Government had increased the retirement age of its employees from 58 to 60 years, the RCDF has full discretion to keep the retirement age of its employees as 58 years in place of 60 years and that cannot be challenged on the ground that since the State Government had increased the retirement age of its employees from 58 years to 60 years, therefore, that decision of the State Government should be followed by RCDF because the law is that even in same Department, retirement age can be different one. The order Annex.1 dated 6.8.1985 also reveals that even in RCDF a distinction about retirement age has been made between workmen and non-workmen. Therefore, from this point of view also, the order Annex.4 cannot be said to be arbitrary or irrational.

20. Apart from this, the State Government through Circular Annex.R/1 dated 29th May, 2004 authorized Board of Directors of each PSU to make appropriate decision regarding the age of superannuation of its employees and thereafter, Board of Directors of RCDF considered the matter and vide Resolution No. 84(1) dated 24th August, 2004, it decided to keep the retirement age in RCDF as 58 years in place of 60 years and in compliance of the said decision of the Board of Directors of RCDF vide Resolution No. 84(1) dated 24th August, 2004, through impugned order Annex. 1 dated 25.8.2004, the age of retirement/superannuation in RCDF was kept as 58 years with immediate effect in place of 60 years. The decision of the RCDF keeping the retirement age of its employees as 58 years in place of 60 years cannot be said to be capricious, arbitrary, mala fide, unfair, unreasonable and irrational, it was within the competence of RCDF to keep the retirement age of its employees as 58 years in place of 60 years. It cannot be said that in reducing the retirement age from 60 years to 58 years, the RCDF acted arbitrarily or irrationally.

21. Hence, no interference is called for with the decision of RCDF to reduce

retirement age of its employees from 60 years to 58 years, as RCDF was fully authorized and competent to do so and further, it does not appear that the said decision of RCDF was capricious or arbitrary or malafide or unreasonable or irrational or based on extraneous consideration.

22. It may be stated here that in reducing or increasing the age of retirement, as the case may be, it is not necessary that Government servants should be heard prior. Therefore, in cases when there is policy decision by the Government, in such matter, principles of natural justice are not applicable.

23. For the reasons stated above, there is no merit in this writ petition and the same deserves to be dismissed.

Accordingly, this writ petition filed by the petitioner is dismissed. No order as to costs.