
(2000) 10 RAJ CK 0039

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3946 of 1994

Pukh Raj Singhvi

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 13-10-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 19, 21, 226

Citation : (2000) 4 RLW 572 : (2001) 4 WLC 173 : (2001) 1 WLN 33

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajesh Balia, J.—Heard the learned Counsel for the parties.

2. The facts are frugal and the issue not very complex but is of a vital importance to the petitioner who is struggling long for his retiral benefits since his retirement from service after rendering almost 38 years of service, of which until 1962, to be precise 16th November, 1962 with the State Government and, thereafter, w.e.f. 17th November, 1962 with the University of Jodhpur, now named as Jai Narayan Vyas University.

3. The claim of the petitioner in the petition is to secure the pensionary benefits for the period for which the petitioner has served the State Government, that is to say, from 18th August, 1941 to 16th November, 1962. The service chronologer of the petitioner shows, about which there is no dispute, that on 18th August, 1941, he was appointed as L.D.C. in the erstwhile State of Jodhpur. On formation of State of Rajasthan, the petitioner was shifted to Jaipur in 1948. There he was promoted and has been appointed as U.D.C. in 1956 in the office of the Registrar, Cooperative Societies, Jaipur. In 1960, he was transferred to the Directorate of Technical Education, Rajasthan, Jodhpur, While the petitioner was working at the Directorate of Technical Education, Rajasthan, Jodhpur University was inaugurated in 1962 and in the infancy of its formative years, services of

experienced persons were required by the University. Knowing about existing vacancy of U.D.C. in the University of Jodhpur, the petitioner made an application through proper channel, namely, the Director of Technical Education, Jodhpur (the Head of the Department under which he was working) to the University of Jodhpur for seeking appointment as U.D.C. While forwarding the application of the petitioner, the Director, Technical Education, Jodhpur made a positive endorsement No. F.2(15)DTE/E/ 20820 on 22.10.1961 as under:

Forwarded to the Special Officer, University of Jodhpur for favourable consideration. The appellant is efficient, hard working and reliable and capable to hold responsible post.

As a consequence of this, the petitioner was offered appointment by the University of Jodhpur in November, 1962. The petitioner forwarded a letter of his resignation to the Director of Technical Education, Rajasthan, Jodhpur to enable him to take new appointment in the following terms:

I am most grateful to you for forwarding my application dated 21.10.1962 to the Special Officer, University of Jodhpur vide your endorsement No. F.2(15)DTE/E/20820 dated 22.10.1962, as a consequence of which I have been offered a post of U.D.C.

I, therefore, request you kindly to accept my resignation with immediate effect and waive the period of notice so that I may join the University as early as possible.

For this act of kindness, I shall be most grateful.

4. The aforesaid two documents have emerged from the record of the University of Jodhpur which was produced by the learned Counsel of the University of Jodhpur in pursuance of direction of this Court vide order dated 15th September, 2000, during the course of hearing.

5. According to the submission made by the learned Counsel for the petitioner, in the presence of the petitioner himself, the amount payable to the petitioner as retiral benefits as the member of the Jodhpur Contributory Provident Fund Scheme, the petitioner was paid those retiral benefits. As the petitioner was a member of the Jodhpur Contributory Provident Fund Scheme of erstwhile State of Jodhpur, and his services came to an end after 1st April, 1951 though he was not entitled to any pensionary benefit when his services came to an end with effect from 17th November, 1962, when he joined the services of the University of Jodhpur. However for the employees of erstwhile State of Marwar, who had retired from the State Service after 1.4.1951, the State Government invited such employees to opt for pension, if not already opted, vide Memorandum dated 17.10.1987.

6. The petitioner laid his claim of pension in pursuance of a memorandum dated 17th October, 1987 issued by the State of Rajasthan giving an option to the ex-employees of the State of Rajasthan, who retired after 1st April, 1951, the date

on which the Rajasthan Civil Service Rules, 1951 came into force from the post under the Government availing themselves retirement benefits available under the Jodhpur Contributory Provident Fund Rules to opt for pension rules as existing in the Rajasthan Service Rules, 1951 on the date of their respective retirement. In pursuance of this memorandum issued by the Government of Rajasthan on 17th October, 1987 (Annx.I), the petitioner gave his option and claimed for fixation of his pension. The pension case of the petitioner was forwarded by the Director, Technical Education, Jodhpur on 15th December, 1987, recommending his case for pension. A letter was again addressed by the Assistant Director, Technical Education, Jodhpur" on 30th June, 1988 to the Director, Pension Department, Rajasthan, Jaipur for approving the pension case of the petitioner. However, by communication dated 1st September, 1988, the Assistant Director Technical Education informed the petitioner that the Director of Pension, Rajasthan, Jaipur, vide his letter dated 19th August, 1988, has Informed that because the petitioner has resigned from the service, he is not entitled to pension. Vide letter dated 21st September, 1988 addressed to the Director, Pension Department, Rajasthan, Jaipur, the petitioner raised objection to the denial of his pensionary benefits pointing out that his retiral benefits otherwise due on retirement including gratuity and bonus etc. alongwith balance outstanding to him under Contributory Fund Scheme were already paid to him and requested the Director to reconsider his case for release of pension. The petitioner made representations again on 9th January, 1989 and 11th March, 1990. No response was made. Ultimately on 15th May, 1994, the petitioner sent a notice for demand of justice to the State of Rajasthan through the Education Secretary, Government of Rajasthan, Jaipur; Director of Technical Education, Rajasthan, Jodhpur; Director of Pensions, Government of Rajasthan, Jaipur and the Registrar, J.N. Vyas University, Jodhpur for giving him the pensionary benefits for the period of service rendered by him under the State Government from 18th August, 1941 to 16th November, 1962. On failure to get any response from the first of the three addressees, the petitioner has filed this petition. The University of Jodhpur, vide its letter dated 27th July, 1994, made it clear that so far as the Jodhpur University is concerned, it is not concerned with the pension case of the petitioner as it relates to grant of pension from the Government of Rajasthan for the services rendered by the petitioner with the State of Rajasthan before joining of the service of Jodhpur University.

7. The petitioner has contended that pension is not a bounty but is given as a security for the dignified living after superannuation or retirement in consideration of the services rendered in consideration of the services rendered to the employer for a period. It also forms the necessary stem for the sustenance of the retired employee and becomes necessary part of his livelihood and denial of such a pension on unjust or erroneous ground is not only arbitrary and violative of Article 14 but is also violative of Article 21 of the Constitution of India.

8. Mr. P.K. Lohra, learned Counsel for the respondents-The State of Rajasthan and its other Departments, has contested the claim of the petitioner on two fold

grounds. On merit it has been, pointed out by the learned Counsel that since the petitioner has not been superannuated from the service on completion of the age of retirement but has left the service by tendering resignation, under Rule 208(a) of the Rajasthan Service Rules, 1951, his past services are forfeited and he is not entitled to any pensionary benefits or retiral benefits by treating it to be a case of retirement. Therefore, the Director of Pension was right in refusing to accede to the request of the petitioner for grant of pension. The other ground on which the respondents want to non- suit the petitioner is laches in approaching this Court pointing out that once the Director of Pension has rejected the claim of the petitioner for grant of pension in 1,988, the filing of the petition in 1994 was grossly belated. A civil suit for recovery of pension would have been barred by time. Therefore, this Court ought not, in exercise of extra-ordinary jurisdiction, have entertained the petitioner and grant any relief. He pointed out that it would be sound exercise of discretion to deny relief even in case of breach of fundamental right where the petitioner is found to be guilty of gross laches.

9. Considering in the first instance, the objection raised for denying relief to the petitioner in exercise of extra-ordinary jurisdiction on the ground of laches., the learned Counsel for the respondents has placed reliance on the decision of the Supreme Court in *The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others*, Wherein the Supreme Court observed:

The equitable doctrine, namely, "delay defeats equity" has its fullest application in the matter of grant of relief under Article 226 of the Constitution. The discretionary relief can be provided one has not by his act or conduct given a go-by to his rights. Equity favours a vigilant rather than an indolent litigant and this being the basic tenet of law.

10. Apart from the aforesaid case, the learned Counsel for the respondents has also placed reliance on *Durga Prashad Vs. Chief Controller of Imports and Exports*, wherein the Supreme Court annunciated that relief can be denied in a given case even in respect of breach of fundamental right on the ground of laches.

11. It is true and there cannot be any dispute or doubt about the question that the relief under Article 226 is discretionary and while considering exercise of discretion in favour of a petitioner, the laches if any on the part of the petitioner, is a relevant consideration and in given circumstances such relief claimed by the petitioner can be denied even in case of a breach of fundamental right is alleged. However, the question remains ultimately the exercise of discretion in each case depending on facts and circumstances shown to exist, relief claimed and the nature of right effected. The principle has been annunciated in the Constitutional Bench in *Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others*, that ordinarily where no intervening rights accrue or other question arise, relief on the ground of, laches only ought not to be denied. The Court referred to its earlier decision in *Tilokchand and Motichand and Others Vs. H.B. Munshi and Another*, , wherein the Court has stated:

The party claiming Fundamental Rights must move the Court before other rights come into existence. The action of courts cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court,

Applying the same principle, the Court also referred to another earlier decision of the Court in *Rabindranath Bose and Others Vs. The Union of India (UOI) and Others*, wherein the Court had said:

It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion affected a long time ago would not be set aside after the lapse of a number of years.

12. Thus, advertent to the principle that where breach of right and the action taken for remedy is separated by long distance of time which has resulted in giving rise to other claims in between, it would be equally unjust to disturb those settled rights by invoking discretionary jurisdiction of the Court. In the case which was being considered by the Supreme Court in the *Deodhar's* case the Court found that "no rights have, therefore, accrued in favour of others by reason of the delay in filing the petition."

Finding thus, the Court observed:

It may be noticed that the claim for enforcement of the fundamental right of equal opportunity under Article 16 is itself a fundamental right guaranteed under Article 32 and this Court which has been assigned the role of a sentinel on the qui vive for protection of the fundamental rights cannot easily allow itself to be persuaded to refuse relief solely on the jejune ground of laches, delay or the like.

13. Hence it is clear from the aforesaid case that ordinarily the relief ought not to be denied solely on the ground of laches where during the time between the alleged breach and remedy claimed, other rights and equities have not accrued. Further principle which is to be noticed as emerging from the decision in *Municipal Council, Ahmednagar's* case (*supra*) is that while considering the question of laches where no period of limitation is fixed for the purpose of invoking extra-ordinary remedy, the court has said:

It is now a well-settled principle of law that while no period of limitation is fixed but in the normal course of events, the period the party is required for filing a civil proceeding ought to be the guiding factor.

This was the principle annunciated by the Supreme Court on earlier occasion also in *State of Madhya Pradesh Vs. Bhailal Bhai and Others*,

14. Considering aforesaid test, it is to be noticed that no intervening right of any third party has accrued, which are likely to be unsettled and affected by grant of relief to the petitioner, if he is found entitled thereto. So far as claim becoming barred by limitation is concerned, in the present case, the claim of the petitioner is for the release of pension which is recurring right of the petitioner, if he is

entitled thereof, every month and a recurring cause of action. Therefore a civil suit for claiming the recovery and pension founded on recurring cause of action shall not be barred by time. In the event of filing a civil suit, on establishment of such right the only question would be that the petitioner may not be able to recover the amount which was due three years before the filing of the suit as in rent suits, had the petitioner proceeded to avail the remedy of a civil suit. The principle that the pension is a recurring cause of action and the delay ordinarily should not come in the way for granting relief if the case is otherwise made out, is now accepted by the Division Bench of this Court also in Smt. Rukma Vs. State of Rajasthan, While considering the claim to pension by a widow of the deceased employee, in a case where she had laid a claim to pension since year 1977 and for which she has been constantly approaching the Government. In the year 1997, the writ petition was filed under Article 226 of the Constitution which was rejected by the learned Single Judge inter alia on the ground of laches. Allowing the appeal, the Court observed:

It is settled law that in case of pension, the cause of action is recurring and therefore there, is no question of any delay or laches.

15. Subsequent to the aforesaid decision, another Division Bench of this Court in Laxman Singh v. State of Rajasthan and Ors. D.B. Civil Special Appeal No. 330/1998 decided on 4.9.2000, reversing the judgment of the learned Single Judge, reported in Laxman Singh Kavadia v. The State of Rajasthan 1998 (2) WLC 331 rejecting the petition of the appellant in a pension case on the ground of laches, observed:

The question of limitation may be vital in some cases and it may be insignificant in some cases like pension etc. It is a continuous cause to the man who retired from service at the age of 58 years after putting number of years of service. Instead of approaching the Court immediately, when pension is denied, he may prefer to make representation. It is true that after he was told no in the year 1976, he waited for 12 years. However, in our considered opinion, the delay in such cases particularly, when the petitioner was pursuing the remedy of representation, should not have come in his way.

16. In the aforesaid case of Laxman Singh, the incumbent has retired in 1974. His claim for pension has been denied in 1976 and he filed a writ petition before this Court in the year 1988 which was rejected by the learned Single Judge in August, 1997. On appeal the Division Bench was of the view that exercise of discretion in denying relief solely on the ground of laches was not justified. These two decisions fortify me in coming to the conclusion that the petition of the petitioner to opt for pension in lieu of Contributory Provident Fund, cannot be denied consideration on the ground of laches only. In 1988 after he was informed about refusal of his claim, the petitioner had promptly lodged protest against denial and thereafter continuously made representations for reconsidering his case of pension to the Director from 1988 to 1990 as referred to above and has, thereafter, filed this petition on 16.8.1994 after making a demand for justice.

Delay cannot in this context be said to be on account of gross and wilful neglect on the part of the petitioner to pursue his claim.

17. The right to pension, is now, well settled is not a bounty but is a payment to which an employee is entitled to as a matter of right as retiral benefit for services rendered by him for long, to be quantified in accordance with rules. It is a measure of social security provided against economic want to the employees, who on account of catching up with age have not remained efficient and fit enough to serve, to live a dignified life in retirement as measure of humane devise of eliminating inefficient hands from employment.

18. Article 39(c) requires the State to secure that health and strength of workers are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Article 41 obligates the State, within its economic capacity, to provide assistance in cases of unemployment, old age, sickness and disability and in other cases of undeserved want. Article 43(3) requires the State to endeavour to secure among other things full employment of leisure and social and cultural opportunities. The provision for retiral benefits flow from such obligations. The retiral benefit schemes like pension, gratuity and provident fund are common amongst Government employments. The need for such retiral benefits and object behind such schemes is highlighted in following observations of National Commission on Labour in its report on social security at P. 162:

It is a major aspect of public policy today and the extent of its prevalence is a measure of the progress made by a country towards the ideal of a Welfare State...Social security envisages that the members of a community shall be protected by collective action against social risks causing undue hardship and privation to individuals whose private resources can seldom be adequate to meet them. It covers, through an appropriate organisation, certain risks to which a person is exposed. These risks are such that an individual of small means cannot effectively provide for them by his own ability or foresight alone or even in private combination with his colleagues. The concept of social security is based on ideals of human dignity and social justice. The under-lying ideal behind social security measures is that a citizen who has contributed or is likely to contribute to his country's welfare should be given protection against certain hazards.

19. Like other retiral benefits pension is also a measure of security for old age, inability and death of bread winner to ensure a descent living standard in old age when the person has ceased to be employed after long and satisfactory services under the employer.

20. In *Burhanpur Tapti Mills Ltd. Vs. Burhanpur Tapti Mills Mazdoor Sangh*, , Hidayatulla, J. speaking for the Court placed the retiral benefits, gratuity and pension at par in the nature, Court said:

A scheme of gratuity and a scheme of pension have much in common. Gratuity is a lump sum payment while pension is a periodic payment of a stated sum. They

are both efficiency devices and are considered necessary for an orderly and humane elimination from industry of superannuated or disabled employees who but for such retiring benefits would continue in employment even though they function inefficiently.

21. Analysing the difference between compensation for retrenchment as solatium for premature termination, the provident fund to be an inducement to thrift for saving a portion of present earnings for a rainy day or for his old age, and about the retiral benefits after placing of category of gratuity and pension at par, the Court said:

Gratuity is a retiral benefit of a very different kind, because it is earned by giving service.

22. Thus, the gratuity and pension though different in mode of payment represent the consideration for the services rendered by him in past.

23. In *Deokinandan Prasad v. State of Bihar* AIR 1974 SC 1409, the Court held right to pension under rules as right to property and its denial by executive order, as violation of Article 19 and 31 of the Constitution to grant the relief to the appellant before it, reversing the decision of Patna High Court. In coming to this conclusion the Court approved the Full Bench decision of Punjab and Haryana High Court in *K.R. Erry v. The State of Punjab* ILR (1967) 1 P& H 278 holding that the pension is not to be treated as bounty payable on sweet will and pleasure of the Govt. and that right to superannuation pension including its amount is a valuable right vesting in a Govt. Servant.

24. In *D.S. Nakara and Others Vs. Union of India (UOI)*, , a Constitution Bench of the Court held denial of rightful claim to pension on irrelevant consideration to be an arbitrary and unreasonable action of the State violating Article 14 of the Constitution, whose reach is to cut at every arbitrary and unreasonable action of the State in all spheres of its activities. In coming to this conclusion, the Court observed while treating the object and history of development of rules providing pensionary benefits that the pension scheme is "to assure an assured decent living standard in old age" ensuring economic security.

25. If that be the ambience of right to pension as retiral benefit, the irresistible conclusion is that a periodical amount payable to a retired or superannuated employees in consideration of his past services, as a measure of social and economic security against undeserved want to ensure an assured decent living standard in old age, must also be a part of fundamental right to life under Article 21, which is not restricted to bare minimal animal existence, but is right to a dignified living as a human being and includes right to livelihood. It will not be incorrect to say that for a retired Govt. employee in the twilight of his life periodical payment of pension is essential part of his sustenance and primary source of livelihood in most cases necessary for his dignified existence as a human being. This scheme for pension framed in discharged of its obligation to give effect to directive principles of State policy, the same becomes part of right

to life under Article 21 as a result of coherent and harmonious reading of Part III and Part IV of the Constitution.

26. Thus viewed when a grievance against denial of such right by the State or instrumentality is made, and the right is to receive release of periodical payment, it will not ordinarily be justified to deny such claim consideration on merit on the ground of laches only and deny the same.

27. In view of the aforesaid position, I am not impressed by the contention raised by the learned Counsel for the respondents to non-suit the petitioner solely on the ground of laches. The other decisions of a learned single Judge of this Court rejecting the claim of pension on the ground of laches cited before me by the learned Counsel need not be considered in view of the two Division Bench decisions of this Court referred to above.

28. Coming to the merit of the case, it would be proper to refer to Rule 208 of the Rajasthan Service Rules, which reads as under:

208. Resignation, dismissal or removal for misconduct etc.--(a) Resignation of the public service or dismissal or removal from it for misconduct, insolvency, inefficiency, not due to age or failure to pass a prescribed examination entails forfeiture of past service.

(b) Resignation of an appointment to take up, with proper permission, another appointment, whether permanent or temporary, services in which counts in full or in part, is not a resignation of public service.

In cases where an interruption in service is inevitable due to the two appointments being at different station, such interruptions, not exceeding the joining time permissible under the rules on transfer, shall be covered by grant of leave of any kind due to the Government servant on the date relief or by formal condonation under Rule 212 to the extent to which the period is not covered by the leave due to the Government servant.

29. A perusal of the rule goes to show that Clause (a) of Rule 208 speaks about forfeiture of past service on resignation of public servant and Clause (b) provides an exception thereto. Clause (b) envisages that where resignation is "to take up another appointment" whether permanent or temporary "with the proper permission", the services in which counts in full or in part, is not a resignation of public service. In the present case, it is apparent from the facts narrated above that the petitioner has applied for the appointment with the University of Jodhpur only through the Head of Department and the Head of Department while forwarding the application has recommended the case for his appointment. The petitioner after securing appointment from the University of Jodhpur in his letter of his resignation has clearly stated that he has been given appointment in pursuance of the recommendation made by the Director of Technical Education. In his forwarding letter, these facts clearly state that the appointment in University of Jodhpur has been obtained by the petitioner after bringing these

facts to the notice of the Head of Department and with his approval. It was enquired from the learned Counsel for the respondents whether any particular form for seeking permission for appointment in terms of Rule 208 is prescribed, of which his answer was negative. In these circumstances, the question of the proper permission has to be gathered from the circumstances and I have no doubt in my mind that the petitioner has secured another appointment after seeking permission and approval which must be treated as a proper permission within the meaning of Clause (b) of Rule 208 of the aforesaid Rules. He has applied for appointment through his head of department. The head of department has not merely acted as a part office in forwarding the application but has in fact recommended his case for favourable consideration to the University of Jodhpur. The petitioner on being offered appointment by the University, wrote a letter of resignation connecting it with his appointment in pursuance of endorsement with which application was forwarded to new employer and beseeched early release to enable him to accept new assignment which request was also granted. The chain of events clearly suggest that there was a proper approval of the Head of the Department under whom the petitioner was serving for seeking new appointment. In the absence of any particular form for seeking such approval, and prescribing specific authority for according such approval, the approval by the Head of Department in the case of Class III employee or ministerial staff serving under him must be considered as proper approval.

30. Another contention of the learned Counsel for the respondents is that Rule 208(b) only refers to the appointment with another department of Govt. and not other employment. I am unable to read any such restrictive operation of Rule 208(b). Reference to "another appointment" in Rule 208(b) is uninhabited in its tenor about the new employer. The only consideration is that the resignation for the purpose of another appointment should be with the proper permission. For the proper permission, no form is prescribed for securing another appointment. Under Rule 208(b) such resignation cannot be treated to be a resignation and, therefore, the petitioner's case must be considered to be case as of retirement from service on 16.11.1962.

31. Once this conclusion is reached, there is no further dispute between the parties that if it is not a case of resignation, the petitioner is entitled for pensionary benefits as per memorandum dated 17th October, 1987 on exercise of his option for the period between 1941 to 1962.

32. As a result, the petitioner is held entitled to relief claimed by him. Allowing the writ petition, the respondents are directed to determine the pension of the petitioner by taking his eligible service between 18.8.1941 to 16.11.1962, that is to say until before he joined the service of University on 17.11.1962 as per the rules applicable from time to time. However, looking to the facts and circumstances of the case, the petitioner shall be entitled to the actual release of pension only with effect from the date of filing of the writ petition and he shall

not be entitled to arrears prior to the date of filing of the writ petition, i.e. 16.8.1994. In the facts and circumstances, there shall be no order as to costs. The effect shall be given to the above directions within a period of two months.