

(1991) 02 RAJ CK 0062

In the Rajasthan High Court

Case No : Civil Writ Petition No. 288 of 1989

Rajasthan Nagar Palika Seva Nirwat Karmchari Sangh

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 26-02-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1991) 2 WLN 562

Hon'ble Judges : V.S. Dave, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.S. Dave, J.—Despite repeated observations of this Court, the State of Rajasthan has exhibited, as usual these days, its could attitude towards the cases pending in this Court and no assistance has been lent, as no reply has been submitted despite repeated notices. In January, 1989 the service of notice of this petition was effected on "the State but no reply was filed despite several opportunities and one months" time was asked for in August, 1989, when it was listed before my learned brother Hon"ble M.B. Sharma. He observed in his order that, "One month"s time is prayed for but I grant six weeks. Put up after six weeks as prayed." This two weeks" grace period was not enough for the State and case lingered on for yet in another year and a half and when the case was listed on 8-2-91, the arguments commenced but without any reply. However, the case was adjourned as the Court was of the opinion that in a matter where policy of the State was under challenge, the State Government"s reply must be obtained. Case was then taken up on 18-2-91 and the petitioner"s arguments were completed. I did not proceed to dictation the judgment on that day and once again observed in the order sheet about the failure of the State Government to file reply but thinking that State Government may still have one more opportunity as the Court wanted its categorical reply, fixed the case for dictation of judgment today. But during this period also, no reply has been filed

nor any effort has been made on behalf of the Department of Local Self Government to appear and place its case before the Court.

2. Shri K.N. Garg for the State is present in the Court. He is not even having the file of the case with him since it has not been ear-marked to him despite the fact that he had been associated with this Court in regular hearing cases for almost over a month. Thus, this Court has no option but to proceed with this judgment, in absence of any assistance from the respondents which shows unaccountability of the officer incharge of the case.

3. This is a writ petition by a represented body viz., Rajasthan Nagar Palika Seva Nirwat Karmchari Sangh, who are the retired employees from Municipal Services under the Government of Rajasthan. They form a class of officers, who were earlier having the benefit of contributory provident fund while they were serving in various municipalities till the date of the superannuation. With effect from 1-11-56 when Ajmer and Merwara merged with the State of Rajasthan, municipal services once again were integrated and with the repeal of Rajasthan Town Municipalities Act, 1951 and Ajmer and Merwara Municipalities Regulations, an Act known as Rajasthan Municipalities Act, 1959 was brought into force and the unified municipal services were constituted for whole of the State and accordingly Rules were framed under the aforesaid Act (hereinafter referred to as the "Act of 1959"). Rajasthan Municipal Service Rules, 1963 were brought into force w.e.f. 28-11-63 for the State Municipal Service Employees, Rajasthan Municipal (Subordinate and Ministerial) Service Rules, 1963 was brought into force w.e.f. 24-11-63 and about Class IV employees Rajasthan Municipalities (Class IV) Service Rules, 1964 were brought into force w.e.f. 2-5-64. Thus, the services of the employees of all classes in all the Municipalities in Rajasthan were governed under the provisions of the aforesaid Rules. In the Rajasthan Municipal Service Rules, 1963, provisions were made for provident fund, pension etc. and the relevant rules are Rule 35 and Rule 36 of the Rajasthan Municipal Service Rules, 1963, which are reproduced hereinbelow:

35. All members of the service including those who have, since before the date of the constitution of the service, been regular subscribers to a contributory provident Fund shall subscribe to that Fund in accordance with the Rules applicable thereto, and the contribution, if any, of the Board on that account shall be determined in accordance with the provisions applicable to the fund:

Provided that a member of the service who was entitled to the benefit of a pension under the Rajasthan Service Rules, before the date of the Constitution of the service shall be entitled to the payment of the pension by the Government out of the consolidated fund of the State and every Board shall make and pay pension contribution on that account in accordance with the rates laid down in the Rajasthan Service Rules. If any member of the service was entitled to the benefit of pension under any other rules before the constitution of the service, he shall be entitled to the payment of pension by the Board out of its fund under the same rules.

36. Regulation of pay, allowance, leave, pension, gratuity, provident Fund, discipline conduct etc: Subject to provisions of Sub-section (4) of the Section 307 and except as provided in these rules the pay, allowances, pension, leave and other conditions of the service of the members of the service shall be regulated by rules made u/s 297 of the Act, and pending the issue of such rules, by the following rules:

(1) The Rajasthan Service Rules, 1951 (except provisions relating to pension and payment of medical allowances as amended upto date)

(2) The Rajasthan Travelling Allowance Rules as amended upto date; and

(3) The Rajasthan Civil Services (Classification, Control and Appeal Rules, 1958 as amended upto date.

4. Similar provisions were contained in Rules 35 and 36 of the Subordinate and Municipal Service Rules as well as Class IV Service Rules. It may be pertinent to mention here that earlier to these Rules, benefit of provident fund was extended to the employees whose salary was not less than Rs. 25/- p.m. under the provisions of the Rajasthan Town Municipalities Provident Fund Rules, 1955. Those rules were later on re-framed after the commencement of the Act of 1959 and came to be known as the Rajasthan Municipalities Provident Fund Rules, 1960. It may also be relevant to mention here that before the merger of various States into State of Rajasthan, the matter about contribution towards provident fund was governed under the various State Rules such as Ajmer Merwara Provident Fund Rules, 1937, Bikaner Provident Fund Rules, Udaipur Provident Fund Rules, Jodhpur Government Service Regulation so on and so forth and to bring parity the State once again thought it proper to make Rajasthan Municipalities (Contributory Fund and Gratuity) Rules, 1969 which were brought into force w.e.f. 2nd August, 1970 and with the commencement of these Rules, the Rajasthan Municipalities Provident Fund Rules, 1960, as quoted above, were repelled. By these rules of 1969, uniformity among the employees of all types of Municipalities were sought to be enforced and an option was given to the employees of the erstwhile States to elect the Rules of 1969 as contemplated under Rule 4 of the Rules of 1969. It may be observed here that in order to have some rationality and bringing uniformity in the matter of service besides the Rajasthan Municipalities (Contributory Provident Fund and Gratuity) Rules, 1969 several other rules were brought into force such as Conveyance allowance Order No. 24 (43) LSG/61 dated 30-8-62, The Rajasthan Municipalities (Supply of Liveries to Employees) Rules, 1963, The Rajasthan Municipalities (Observance of Holidays and Regulating Hours of Work) Rules, 1961, Hard Duty Allowance to fire Staff No. Est/(5) F. 18 (E) (59))/68/30589-949 dated 3-10-70, Staffing Pattern for Municipal Boards F. 24 (2) DLB/64-65/42554 dated 27/28-12-65, Staffing Pattern for Municipal Councils F. 24 (2) Integ. DLB/66/578-822 dated 31-10-66 and F. 24 (24) Integ. DLB/66/4044 dated 6-2-67 and Payment of House Rent Allowance Rules. On 17-9-87 a Gazette Notification in respect of an order purported to have been passed on 26-5-84 came to be passed whereby the

employees of the Ajmer, Merwara Municipalities appointed/retired prior to 2-8-70 were granted pensionary benefits as indicated in the order. This notification has created three classes amongst the municipal employees of Ajmer State it self employees who had been appointed before 1-11-56, employees who have been appointed between 1-11-56 and 1-8-70 and those appointed after 1-8-70. A protest was lodged against the aforesaid notification as the action of the State Government was discriminatory between different employees of the Municipalities but the State Government did not pay any attention.

5. The grievance of the petitioner association is that the employees who were in service of the Municipalities in State of Rajasthan other than the Municipalities under Ajmer Merwara have been treated differently. Not only that, the employees from the erstwhile Ajmer State themselves have been divided into three categories and there is inter se discrimination also. The grievance is that both the sets of employees i.e., employees coming from Ajmer Merwara and the United State of Rajasthan, all had been, by earlier Rule, subjected to a similar treatment and the Rules covered service matters and service prospects. Thus, there is no lawful justification in denying the pensionary benefits to the members of the petitioner association if the same had been extended to the employees of the erstwhile Ajmer Merwara Municipalities. The contention of the petitioner is that the Provident Fund facilities were available not only to the employees of the Ajmer Merwara but in other State also and, therefore, the treatment which has been meted out to the employees of the erstwhile Ajmer Merwara Municipalities, should be extended to the members of the association, whose list is given in Schedule-A. Regarding denial of the pensionary benefits to the members of the petitioner association, a letter was addressed to the Chairman and Administrator by the Dy. Secretary of the Local Self Government on 9-9-88 followed by a telegram and a letter of the Director, Local Bodies. To raise a protest, the petitioner association filed a representation on 26-10-88 but having not got any relief from the respondents, this writ petition has been filed.

6. Continuing the contentions against the action of the State Government, the petitioner's contention is that the State Government extended the benefit to the members of the Ajmer Marwara when the service had already been integrated, is per se discriminatory and strikes at the root of equality principle in the matters regarding employment as enshrined in Article 16 of the Constitution of India. Its further submission is that fixation of the date 2-8-70 in the notification is highly discriminatory. Merely because the provident fund and gratuity Rules, 1969 had been brought into force on this date, this date cannot be decisive for the purpose of giving pensionary benefits. Similarly, vide order dated 9-9-88 when again the date 1-10-87 has been fixed, that too is a discriminatory fixation as no event has taken place on this date.

7. I have already observed at the out set that the Court is handicapped because of the reply having not been filed by the State Government and lack of assistance from the office of the Government Advocate or any counsel specially

appointed by the Director, Local Bodies. Hence, I had to decide the case on the material available on record.

8. I need not repeat the history of the growth of legislation in respect of pension and gratuity as I have already mentioned them while giving the facts on the basis of which the writ petition has been filed.

9. Sections 303 to 306 of the Rajasthan Municipalities Act, 1959 provide for creation and constitution of the service while Section 297 enables the State Government to make rules in that behalf. From time to time, various rules have been framed and the purpose of successively passing the service rules was to remove discrimination between the employees coming from one State or the other. The history of the integration of the State including that of Ajmer Merwara gave rise to repeatedly passing the rules one after another and they had been made in order to bring uniformity and to have integration of service. When the Provident Fund Rules, 1969 were framed, there was a complete integration of the service and all the employees were governed under the Rules. By passing the order dated 26-5-84, the State Government placed the employees of the Ajmer Municipalities at a different pedestal more or less, those who were subscribers of the contributory provident fund and they were extended the benefit of the pension scheme. However, after promulgation of Rajasthan Municipal Service Rules, 1963, Rajasthan Municipal (Subordinate and Ministerial Service) Rules, 1963 and Rajasthan Municipal (Class IV) Service Rules, 1964 the employees of the Municipalities including the employees of the erstwhile Ajmer Merwara State became one class, this Merwara naturally similarly situated and no discrimination could be made qua Ajmer Merwara employees as throughout the Rajasthan including the employees of Ajmer Municipalities, who belong to CPF Scheme. Therefore, ex-facie, in absence of any explanation, it appears that once the benefit has been extended to the erstwhile Ajmer State employees, it was also required to be extended to similarly situated other employees, who too are entitled to pension. Like adding insult to the injury, the employees have been further discriminated by passing yet another order dated 9-9-88 by which pension benefits had been extended to all the employees w.e.f. 1-10-87 and the employees, who had been retired prior to this date have been totally ignored. The result of this is that employees of the Ajmer State being covered by order dated 26-5-84 are benefited and those who have retired after 1-10-87 have also been benefited and only small number of persons, who are forming the members of the association stand discrimination.

10. In my opinion, no discrimination could be made in the matter of the retired employees by picking up the dates arbitrarily else it is violative of Articles 14 and 16 of the Constitution of India. This Court as well as their Lordships of the Supreme Court of India has taken a similar view in series of cases that while taking policy decisions in the matter of the pension, due respect is to be given to Articles 14 and 16 of the Constitution of India and arbitrary dates should not be fixed.

11. A similar matter arose in *Purshottam Lal @ Purshottam Das v. R.S.R.T.C.* (S.B. Civil Writ petition No. 1760/86, decided on 19-1-90) wherein the question was as to whether the petitioner was entitled to pension under the memo issued by the corporation on 27-6-84 w.e.f. 1-1-79 i.e. from immediately after his retirement on 31-12-78. The corporation had given an option, to the employees to opt for contributory provident fund or to opt for pension. The option was to be furnished within three months and the facility of this option would be available only to those employees who are confirmed as on 30-9-64 and those who had retired after 1-9-81. Though they had taken the benefit of the contributory provident fund, they were given an option for pension subject to the condition that they will have to refund the corporation's-contribution to the provident fund along with interest. The Court after considering the various cases and the law held that fixation of the date 1-9-81 was unconstitutional and required to be struck down. The Court directed that the petitioner should be given an opportunity to elect to opt for pension within three months. A Division Bench of this Court consisting of the then Chief Justice Hon^{ble} J.S. Verma and Justice R.S. Verma-considered the question of option to elect benefits under Rules 268(H) of the Rajasthan Service Rules, 1951. Petitioner's grievance was that the benefit was only given to the Government servants who were in service on 29-2-64 and benefits had not been extended to the Government servants who had retired prior to that date with regard to the grant of family pension. Relying on the decision of *D.S. Nakara and Others Vs. Union of India (UOI)*, , their Lordships held that the date provided in Rule 268(H) i.e. 29-2-64 is liable to be struck down being violative of Article 14 of the Constitution of India.

12. I am also fortified by a catena of other decisions in this respect and to quote some of them i.e. *Labourers Working on Salal Hydro Project Vs. State of Jammu and Kashmir and Others*, , *State of Rajasthan Vs. Retired Contributory Provident Fund Holders Association*, and *M.L. Jain Vs. Union of India (UOI) and Others*, and the judgments delivered in common cause cases.

13. In view of the aforesaid discussions, in my opinion, this writ petition deserves to be allowed.

14. The result is that this writ petition is allowed. The order dated 26-5-84 published in the Gazette on 17-9-87 denying the members of the petitioner association the pensionary benefits and the order dated 9-9-88 is declared to be discriminatory qua the members of the petitioner association and it is directed that they will be entitled to the same pensionary benefits as has been given to the erstwhile employees, who were members of the Municipal Services in Ajmer Merwara. It is further directed that the contribution of the provident fund amount paid to the members of the petitioner association shall be adjusted towards the arrears of the total amount of pension to which they are found entitled from the date of entitlement. They shall also be entitled to be paid pension in future month by month in accordance with the provisions of the Rajasthan Service Rules with the benefit of commutation of pension etc. including all facilities which

are being provided to the persons placed in similar situation.

15. In view of the fact that none appeared to oppose the writ petition, the costs is reteretory.