

(2010) 03 RAJ CK 0044
In the Rajasthan High Court

Rajasthan State Road Transport Corp.	APPELLANT
Vs	
S.B. Bheem	RESPONDENT

Date of Decision : 10-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan State Road Transport Corporation Employees Service Regulations, 1965 — Regulation 57, 57A(II)

Citation : (2010) 4 RLW 3354 : (2010) 6 SLR 242 : (2010) 2 WLN 300

Hon'ble Judges : Narendra Kumar Jain, J; Meena V. Gomber, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Narendra Kumar Jain, J.—Heard the learned Counsel for the parties.

2. This special appeal is directed against the impugned judgment dated 03.11.1998 passed by the learned single Judge allowing the writ petition of the writ petitioner (respondent herein) and directing the present appellant to treat the writ petitioner as retired under the RSRTC Employees Voluntary Retirement Scheme of 1989 (hereinafter referred as Scheme of 1989) and further to make the payment of benefits under the Scheme of 1989.

3. The respondent preferred a writ petition under Article 226 of the Constitution before the single Bench of this Court with a prayer that respondent (appellant herein) be directed to give all retiral benefits to him which are admissible under the Scheme of 1989.

4. The respondent was holding a post of works Manager in the appellant-corporation. The appellant-Corporation introduced the Rajasthan State Road Transport Corporation Employees Voluntary Retirement Scheme, 1989 vide order dated 10.12.1991 writ effect from 01.01.1992. The respondent was fully eligible for voluntary retirement under the said Scheme and therefore he filed an application on 18.02.1992 with a request that he be retired from 19.05.1992

under "the Scheme of 1989". Since his request was not accepted on or before 19.05.1992, therefore, he gave a reminder on 20.05.1992 that his application as per circular dated 10.12.1991 be expedited and he be retired voluntarily. Thereafter, the appellant-corporation, instead of retiring respondent under the Scheme of 1989, retired him under the Rule 57-A(II) of the RSRTC Service Regulation Rules, 1965 (hereinafter referred to as "Rules of 1965") vide order dated 26.05.1992. The respondent wrote a letter/representation on 27.05.1992 itself (Annexure -9) that he moved an application for voluntarily retirement under "the Scheme of 1989" whereas his order of voluntary retirement has wrongly been issued under Rule 57-A(II) of RSRTC Service Regulation Rules of 1965, therefore, his all payments may be settled as per the voluntary Retirement Scheme of 1989. Reminders were also given for payment under Scheme of 1989. The appellant never gave reply to it nor payment was made. Ultimately, the respondent preferred the writ petition.

5. The learned Single Judge allowed the writ petition by observing that writ petitioner moved an application for voluntary retirement under the Scheme of 1989. So far as Rule 57-A(II) of RSRTC Employees Service Regulations Rule, 1965 is concerned, he was not even eligible under the said rules as he had not completed his 25 years of service or 50 years of age, therefore, he could not be retired Voluntarily under the said Rules. The learned Single Judge has also observed that it is not the case of the Corporation that the Special Scheme introduced in the year 1989, made effective from 01.01.1992, has been withdrawn.

6. Being aggrieved with the aforesaid judgment, the Corporation has preferred the present special appeal.

7. The only submission of the learned Counsel for the appellant is that Scheme of 1989 came into force but it was never made effective, therefore, the respondent could not have been retired voluntarily under the said Scheme and he was rightly retired under Rule 57 of Rules of 1965, therefore, the learned Single Judge committed an illegality in passing the impugned order.

8. The learned Counsel for the respondent contended that from the application dated 18.02.1992 (Annexure-6), it is clear that respondent applied under the RSRTC Voluntary Retirement Scheme of 1989 and, in case, the said scheme had not been given effect then his application could have been rejected but the same was not rejected. When his application was not accepted upto 19.05.1992, then he wrote a reminder dated 20.05.1992, (Annexure-7), that he had submitted a request for voluntary retirement in accordance with Circular dated 10.12.1991 i.e. Voluntary Retirement Scheme, 1989, which may be accepted at the earliest. There after, the Corporation at its own, instead of passing order of voluntary retirement under the Scheme of 1989, passed an order dated 26.05.1992 of voluntary retirement of respondent under the Rule 57-A(II) of the RSRTC Employees Service Rules, 1965. The respondent filed a representation on 27.05.1992 itself that he has wrongly been retired under Regulation 57 of the

Rules of 1965 as he sought voluntary retirement under the "Scheme of 1989". In these circumstances, the learned Single Judge rightly allowed the writ petition of the respondent.

9. The learned Counsel for the respondent has also brought to our notice that the learned Single Judge had not awarded the interest on the retiral benefits, therefore, he also filed D.B. Civil Special Appeal No. 648/ 2001 for awarding the interest on retiral benefits. The Division Bench, vide its order dated 26.07.2001, disposed of the special appeal by observing that the RSRTC has also preferred D.B. Civil Special Appeal No. 150/ 1999 wherein he is also party and he will be at liberty to make his submission in this regard in the said appeal and, in case, the said submission is made, then the same will be considered while deciding the appeal of the Corporation. He has also placed on record a copy of the order dated 26.07.2001 alongwith his additional affidavit dated 29.01.2008. He, therefore, contended that the interest may also be awarded at a reasonable rate on the retiral benefits.

10. We have considered the submissions of the learned Counsel for the parties and examined the impugned judgment passed by the learned Single Judge. The learned Counsel for the appellant admits that RSRTC Employees Voluntary Retirement Scheme, 1989 came into force with effect from 01.01.1992 vide order dated 10.12.1991, the respondent was fully eligible for voluntary retirement under the said scheme. He also admits that so far as the Rule 57 of Rules of 1965 is concerned, the respondent was not eligible for voluntary retirement under the said rule, as he had not completed 25 years of service or 50 years of age. His only submission is that the Scheme of 1989 had not been given effect, therefore, the respondent could not have been retired under the said Scheme. During the course of arguments, he was asked to show any order whereby the Scheme of 1989, introduced vide order dated 10.12.1991, had been withdrawn. However, he could not place on record any document or order to show that the Scheme of 1989 had been withdrawn. In this regard, it is also relevant to mention that the learned Single Judge has specifically observed in the impugned order that it is not a case of the Corporation that the Special Scheme introduced in the year 1989 has been withdrawn. In these circumstances, it appears that this objection was neither taken by the appellant-Corporation before the learned Single Judge nor the learned Counsel for the appellant is able to satisfy this Court that the Voluntary Retirement Scheme of 1989 was ever withdrawn by the appellant-Corporation. If the Scheme of 1989 had not been given effect, as contended by learned Counsel for appellant, then at the most the application of respondent for voluntary retirement could have been declined/ rejected by the Corporation, but the said application under Scheme of 1989 could not have been converted suo motu under Rule 57 of Rules of 1965. So far as letter of respondent dated 20.05.1992 is concerned, it was given with reference to Circular dated 10.12.1991 i.e. Scheme of 1989 and no prayer was made to treat his application filed under Special Scheme of 1989, as one under Rule 57 of Rules of 1965.

11. There is no dispute between the parties that the respondent was not eligible for voluntary retirement under Rule 57 of RSRTC Service Rules 1965 as he had not completed the requisite service or age as per rules. In these circumstances, we are of the view that the learned Single Judge was fully justified in allowing the writ petition and directing the appellant-Corporation to treat the respondent as retired under the Voluntary Retirement Scheme, 1989, which was in existence at the relevant time and make the payment as per the said Scheme.

12. So far as the interest on retiral benefits is concerned, the law is settled on that point and it is held that respondent is entitled to interest on the retiral benefits.

13. In view of above discussions, we do not find any merit in this special appeal and the same is, accordingly, dismissed with no order as to cost.

14. The appellant-Corporation is directed to make the payment of retiral benefits to respondent with interest at the rate of 8% per annum from the date of filing of writ petition till the date of payment within a period of 30 days from today.