
(2010) 01 RAJ CK 0055
In the Rajasthan High Court

Rajasthan State Seed Organic Production Certification Agency	APPELLANT
Vs	
Dr. G.D. Harsh and Others	RESPONDENT

Date of Decision : 12-01-2010

Acts Referred:

Rajasthan State Seed Certification Agency Rules, 1976 — Rule 21, 33

Citation : (2010) 1 RLW 809 : (2010) 1 WLN 641

Hon'ble Judges : Gopal Krishan Vyas, J;A.M. Kapadia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Gopal Krishan Vyas, J.—The instant special appeal has been filed by Rajasthan State Seed Organic Production Certification Agency against the judgment dated 29.4.2008 passed by learned Single Judge in SB Civil Writ Petition No. 1319/2007 whereby the writ petition filed by the petitioners-respondents was allowed.

2. As per the brief facts of the case, the respondents - petitioners filed a writ petition before this Court challenging the order of superannuation, attaining the age of 58 years in which it was submitted that there are no service rules and service conditions in existence in the appellant Agency and service conditions of the employees are regulated by the Rajasthan Service Rules and all the employees are availing facilities of house rent, bonus, surrender leave and selection scale etc. as are availed by the State Government servants. It is also contended that for the purpose of promotion, the promotions were granted to the employees as per the procedure through the departmental promotion committee and Rajasthan Civil Services (Absorption) Rules, 1969 were also made applicable upon the employees. In the writ petition, it is stated that no service rules have yet been framed and for the said purpose, representation was made by the employees time and again. Thereafter, a circular dated 24.3.2006 was issued by the appellant to the effect that the problems may be submitted to the Director and he will decide the matter within 30 days. Therefore, in response thereto, writ

petitioners made a representation on 17.5.2006 but till date of filing of the writ petition, no employee was given retirement but for the first time, writ petitioners were informed that since they are going to complete 58 years of service in the month of April, 2007, they shall stand retired w.e.f. 30.4.2007. The said documents have been placed on record in the writ petition as Annexure-12 and the same was challenged by way of filing the writ petition.

3. The main ground which is taken in the writ petition is that no service rules have yet been framed and the State Government has decided to retire the government employees after attaining the age of 60 years and service conditions of statutory bodies are governed in conformity with the Rajasthan Service Rules, therefore, the writ petitioners made a representation to the Government, so also to the Board of Directors but no decision was taken with regard to age of superannuation of the employees of the appellant agency, since there is no age fixed for superannuation, therefore, there is no question of retiring the petitioners on attaining the age of 58 years. The provisions of RSR is also made applicable upon the employees, in which the age of superannuation shall be 60 years and if the RSR is not adopted, then, there is no provision regarding the age of superannuation and no employee can be retired from the service till framing of the Rules.

4. While narrating above facts, the writ petition was filed by the respondents - petitioners in which reply was filed and it is contended in the reply by the appellants - non petitioners that the service rules were framed in 1980 vide resolution dated 1.11.1980 and according to Regulation 41 - there is provision for Compulsory Retirement on Attaining Age of Superannuation, which says that the compulsory retirement of an employee shall be on the date on which he attains the age of 55 years and that he may be retained in service after the date of compulsory retirement with sanction of the Board and in the interest of the Agency till 58 years for the reasons to be recorded in writing but shall not be retained after age of 58 years. Further, it is stated in reply that benefits were given from time to time as per separate decision of the Board including benefit of selection grade and different resolutions were passed, therefore, the question of applicability of RSR does not arise. In reply, it is stated that the appellant Agency made recommendation to the State Government to increase the date of superannuation from 58 years to 60 years but said request was not accepted by the Government of Rajasthan. Therefore, in view of the judgment of Hon"ble Division Bench of this Court rendered in D.B. Civil Special Appeal No. 135/2007 decided on 01.03.2007 (Rajasthan State Agricultural Marketing Board v. Govind Narayan Lata and Anr.), no right can be claimed by the petitioners - respondents that they are entitled to retain in service as per the provisions of RSR or till rules are framed.

5. In the rejoinder, it is stated by the petitioners respondents that regulations which are said to be framed have not come into force till today as no approval has been granted by the Central Government and further that no employee has

been retired at the age of 55 years. While placing on record, the resolution dated 1.11.1980, it was submitted by the respondents appellants that the regulations were approved on 1.11.1980 and on the basis of decision, raising the age of superannuation from 58 years to 60 years, the Director prepared a note for raising the age of superannuation of the employees of appellant Agency and referred to the Government. However, the Government opined that age should not be raised from 58 years to 60 years.

6. After considering all the material on record, the learned Single Judge while allowing the writ petition filed by the petitioners - respondents held that so called Employees Service Regulations of the respondent appellant Agency were not framed with the approval of the Central Seeds Certification Board and at the time of making of such regulations in the year 1980, even at the time of issuing of impugned order dated 16.1.2007. It is also held by learned Single Judge that even at the time of filing of the writ petition, the said employees service regulations were not approved in accordance with Rule 21 of the Rajasthan State Seed Certification Agency Rules 1976 (hereinafter referred to as the Rules of 1976). Though during the pendency of the writ petition, Rule 21 of the Rules of 1976 was amended and the said amended was brought to the notice of the learned Single Judge, in which it has been held that agency is competent to frame the rules and approval is not necessary. But learned Single Judge allowed the writ petition and held that the judgment in case of Govind Narayan Lata is not applicable in this case and the age of retirement is specifically a part of conditions of service and it cannot be suggested that by a mere administrative order, the respondent Agency could fix the age of retirement contrary to the Rules of 1976 which envisage framing of Regulations in that regard and held that impugned order cannot be sustained. Learned single Judge allowed the writ petition and quashed the order dated 16.1.2007 Annexure-12 and passed an order for reinstatement and held that the petitioners shall be entitled to all consequential benefits; monetary part whereof shall be paid within a month from today. Further, the petitioners were also held entitled to the costs of writ petition which is quantified at Rs. 6,600/- and further, it is ordered that the respondents shall be entitled to frame the requisite Rules/Regulations governing the service conditions of its employees and this order shall not otherwise be of any impediment in framing of the necessary Rules/Regulations in accordance with law.

7. Learned Counsel for the appellant vehemently argued that it is always open for the employer to superannuate his employees and in appellant Agency, the regulations were framed in the year 1980 known as Employees Service Regulations. The said regulations were framed in the year 1980 and were approved by the Board in its meeting held on 1.11.1980. In Regulation 41, it has been specifically provided that employee shall be retired on attaining the age of 55 years and it can be extended upto 58 years for the reasons recorded in writing by the agency and such administrative decision cannot be questions by the employees and they cannot take advantage of the fact that by separate resolution, some benefits are extended by the employees of the Agency including

the benefits of surrender leave and other benefits which is available to the employees of the State Government, therefore, service rules of the State Govt. will apply and they are entitled for benefit of age of superannuation upto age of 60 years as decided by the State Government under the Rajasthan Service Rules. The provisions of Rajasthan Service Rules are not applicable in toto in the appellant agency and there is separate provisions for regulating the service conditions of the employee and regulations were framed in the year 1980 then the service conditions of the employees are required to be governed in accordance with those regulations but the learned Single Judge rejected the plea erroneously which is not tenable.

8. Learned Counsel for the appellant further argued that although according to Rule 21 of the Rules of 1976, the approval of the Central Seed Certification Board is necessary but in view of the judgment of Supreme Court till approval is obtained, the authority is entitled to frame its administrative guidelines and act upon the same, therefore, the judgment rendered by learned single Judge deserves to be quashed on this ground alone. In the above preposition, learned Counsel for the appellant has invited the attention of this Court towards the following judgments:

1. 2001 JT (SC) 5

2. Prasann Kumar Vs. Raj. Cooperative Dairy Federation and Another,

3. Dhananjay Malik and Others Vs. State of Uttaranchal and Others,

9. While citing the above judgment, it is submitted that even if it is presumed that the approval is necessary under Rule 21 of the Rules of 1976 from the Central Seed Certification Board, the appellant Agency has all the powers to take administrative decisions for the purpose of granting certain service benefits and it cannot be questioned, therefore, the judgment learned Single Judge deserves to be quashed and the writ petition filed by the petitioners against the order of superannuation deserves to be dismissed. Further it is argued that the matter was considered for extension of age of superannuation from 58 years to 60 years and matter was sent to the State Government and State Government rejected and opined that superannuation age of the employees shall not be raised from 58 years to 60 years, therefore, while taking into consideration this fact, the impugned order Annexure-12 was passed in which there is no illegality. More so, it is in consonance with the provisions of the Regulations of 1980 but all these aspects of the matter have not been considered by learned Single Judge, which is erroneous. Further, it is argued that during the pendency of the writ petition, Rule 21 itself was amended and it was provided that the government Board of the Rajasthan State Seed Certification Board shall have the power except in technical matters to frame Regulations, rules and to alter, amend and repeal them from time to time for the administrative and management affairs of the agency and for carrying out its objectives. Restriction of approval was lifted vide Annexure R2/5 dated 30.4.2007 but learned Single Judge has held that alleged

amendment in Rule 21 does not having been brought about in accordance with Rule 33 of the Rule 1976 which is specific provisions for amendment in the rules, therefore, the plea of amendment of the rules has been rejected by learned Single Judge, which is also erroneous. In this view of the matter, the judgment rendered by learned Single Judge may kindly be quashed and writ petition filed by the petitioners-respondents may be dismissed with costs.

10. Per contra, learned Counsel for the petitioners - respondents vehemently argued that the judgment rendered by learned Single Judge is based upon sound consideration of relevant provisions of law. Learned Single Judge has not committed any error while adjudicating the present controversy.

11. Learned Counsel Mr. M.C. Bhoot, appearing for the petitioners -respondents submits that there is power left with the employer to frame the rules for regulating service conditions of the employees. In this case also, the appellant Agency has framed rules known as Employees Service Regulations but those Rules were required to be approved by the Board as per Rule 21 of the Rules of 1976 and as per the reply of the respondents, the rules were approved by the Board in its meeting held on 1.11.1980 with certain amendments but at the time of filing reply no such publication was brought to the notice of the Court and upon objection raised by the petitioners, the said regulations were published but without incorporating the amendment made in the meeting of the Board held on 1.11.1980. Therefore, an attempt has been made by the appellant to mislead this Court.

12. Learned Counsel for the respondents argued that for the purpose of framing valid rules, the approval under Rule 21 of the Rules of 1976 by Central Seed Corporation Board is necessary. For the said arguments, it is submitted that Rajasthan State Seed Certification Rules were framed in the year 1976 and as per Rule 21 approval is necessary and admittedly till filing of the writ petition, the said regulations which is alleged to be framed by the appellant Agency were not got approved by the appellant Agency and subsequently during the pendency of the writ petition, an amendment was made in Rule 21 of the Rules of 1976 at the instance of the appellant agency for the said purpose the Government issued memorandum on 30.4.2007 which is placed on record as Annexure-R2/5 whereby Rule 21 of the Rules of 1976 was amended but learned Single Judge while deciding the writ petition held that for the purpose of amending rules as per Rule 33 of the Rules of 1976, the resolution is required to be passed by ordinary general meeting of the Board but no such resolution of the Board of the appellant Agency for the purpose of amendment of the Rules of 1976 has been placed on record. Therefore, learned Single Judge observed in the judgment that the manner in which the Agency has solicited and obtained the office order dated 30.4.2007 from the Central government concerning a matter that was subjudice before this Court gives rise to serious questions on the respondent Agency's conduct and while giving above finding it is held that such alleged amendment to Rule 21 does not appear to be amendment in accordance with the requirement of

the Rules of 1976. Therefore, the alleged amendment is required to be ignored and held that the alleged Regulations of 1980 could only be treated as draft Regulations not having any operation on the service conditions of the petitioners. Meaning thereby, the so called amendment made in Rule 21 of the Rules of 1976 by which it appears has been given to the Board for framing regulations at their own cannot be treated in force. It is also held by learned Single Judge that even if it is assumed that Rule 21 of the Rules of 1976 is amended then also Rules and Regulations are required to be framed in conformity with the Rules of 1976, which has not been done in this case. Learned Single Judge has also held that no such Regulations were in force at the time of issuing impugned order dated 16.1.2007, therefore, in the order impugned, it is nowhere highlighted that these orders are hereby issued in accordance with the Regulations of 1980.

13. It is also argued that upon perusal of the impugned order dated 16.1.2007, it will reveal that there is no mention in the order with regard to passing order impugned under Regulations 41, therefore, obviously it cannot be said that on the date of passing impugned order dated 16.1.2007, Regulations 41 was in operation. Learned Single Judge has taken note of all the facts and circumstances of the case and has held that impugned order has been passed without any provision of law. More so, on the basis of so called decision of the State Government whose reference is given in the impugned order. Learned Counsel for the petitioners-respondents vehemently argued that for all purposes, the benefit which is made available to the employees of the State Government by the State Government have been granted to the petitioners - respondents, therefore by implication RSR is made applicable upon the employees of the appellant Agency. While inviting attention towards Annexure-2 dated 30.3.1996 whereby selection scale was granted in accordance with order dated 25.1.1992 of the Finance Department and the order Annexure-3 dated 15.5.1997 whereby surrender leave was granted to all the employees so also Annexure-4 whereby seniority list was published, it is submitted that for all purposes, the appellant Agency has acted upon in accordance with the provisions of RSR but for the purpose of superannuating their employees they are not taking into consideration the age of superannuating which is 60 years as provided to the employees of the State Government. Learned Single Judge while deciding this controversy has rightly come to the conclusion that the Employees Service Regulations 1980 cannot be treated to be in force on the date when the impugned order dated 16.1.2007 was passed by the appellant Agency. The finding given by learned Single Judge does not require any interference, more so, the appellant Agency is required to get approval of the Rules or to frame the rules without any further delay because employees of the appellant Agency are suffering irreparable loss in absence of statutory service rules. In this view of the matter, it is argued that this special appeal may be dismissed with cost.

14. We have considered the rival submissions made by the parties and perused the entire record of the case as well as the judgment rendered by learned Single Judge.

15. First of all, upon perusal of Annexure-12, it is abundantly clear that this order has been passed in pursuance of order passed by Finance Department of the Government of Rajasthan dated 10.8.2004 Annexure-R-2/6, which reads as under:

jktLFkku ljdkj

foRr foHkkx

?fu;e vuqHkkx?

fo"k; & jktDh; foHkkxksa ds vfrfjDr vU; laLFkkvksa ds deZpkjh;ksa dh vf/kokf"kZdh vk;q ds IEcU/k esa

mijksDr fo"k; esa funsZ"kkuqlkj ys[k gS fd jkT; ljdkj esa lela[;d vf/klwpuk fnukad 24-5-2004 ds }kjk jkT; deZpkjh;ksa dh vf/kokf"kZdh vk;q 58 ls 60 o"kZ dh gS A ;g fu.kZ; vU; v)Z ljdkjh laxBu jkT; ljdkjks ds midzeksa ,oa fu;e rFkk cksMksZ ds deZpkjh;ksa ij ykxw ugh fd;k x;k gS A foRr foHkkx }kjk Lok;RRk"kk"kh laLFkkvks ds deZpkjh;ksa dh vf/kokf"kZdh vk;q esa o`f) ds vkns"k tkjh ugh fd;s x;s gSA vU; v)Z ljdkjh laxBu jkT; ljdkjks ds midzeksa fuxe cksMksZ ds deZpkjh;ksa dh vf/kokf"kZdh vk;q ds IEcU/k esa foRr foHkkx dk vfHker fuEukuqlkj gS%

1. Government employees, work charged employees and employees of Zila Parishads/Panchayat Samities are covered by the Cabinet decision of 24.5.2004.

2. It is not appropriate for Companies in poor financial health to increase the age of superannuation. Government companies are advised to take into account their financial health size of labour force, existing VRS Scheme etc. and whether they have pension schemes before taking a decision regarding increase in the age of superannuation. In FDs few companies may not increase age of retirement as it does not benefit them.

lwpuKfKZ ,oa vko;"d dk;Zokgh gsrq izsf"kr gS A

g- ?Mka- xksfoUn "kekZ?

foRr lfpo ?ekxksZik;?

16. Upon perusal of the above order upon which the order impugned has been passed, it will reveal that the impugned order is totally contrary to the decision of the State Government dated 10.8.2004. In para 2 of the aforesaid order dated 10.8.2004, the State Government opined that It is not appropriate for Companies in poor financial health to increase the age of superannuation. The Government companies are advised to take into account their financial health size of labour force, existing VRS Scheme etc. and whether they have pension schemes before talking a decision regarding increase in the age of superannuation. Meaning thereby, the directive of the State Government was for the companies having poor financial health. In this connection, very important aspect of the matter is required to considered. The case of the appellant before

the learned Single Judge was that the State Government had refused to grant approval for increasing the age of superannuation from 58 to 60 years. In support of the said contention, a reply to the rejoinder was filed before learned Single Judge and certain documents were placed on record and in para No.3 of the reply to the rejoinder at page 110 of the paper book it is stated that matter was referred to the State Government but State Government opined that the age should not be raised from 58 years to 60 years. The appellant Agency has placed on record document Annexure-R2/1A. Upon perusal of the said note, it is revealed that at the time of sending matter for seeking opinion of the State Government, the following assertions were made, which reads as under:

From the ensuing financial year i.e. April, 2007 the employees of RSSCA shall get retire and the Agency may face deficiency of technical and ministerial staff. The responsibility of bio certification has also been assigned to the Agency along with Seed certification works. RSSCA has informed that there is ban on new recruitment in their Agency. Under this situation, the prolonged services of the existing staff is needed in the Agency. It has been added by the Dir RSSCA that the financial conditions of the Agency is also sound, in case the Govt. agrees with extension in the age of retirement of employees of the RSSCA from 58 years to 60 years, no extra financial burden shall exist over the Agency.

In order to follow the issue may refer the case to Finance Deptt for taking necessary action on the aforesaid proposals regarding extension in the age of superannuation of the employees of the RSSCA, so that the Agency could submit the proposal before the Board of Directors.

After their approval of Secy. Agri/PSA, the proposal may be referred to F.D. Please.

AS(1) SD 12 6Ds (2) Secrat only As Sec Agrd Secretary Finance (Rules) Sd 1-4-6 Sd/12-6-08 sd 12-6

sd- sd 1406/PSNo 614-6-06 Mr960/SAI 17-6-06 173/SFIII/06 16-6-06 With reference to paras 12-16/N, FD is of the view that the age of superannuation of the employees of the Rajasthan State Seed Certification Agency should not be increased from 58 years to 60 years. In this regard a copy of U.O. Note of FD No. F.I (6)/FD(Rules)/98 dated 10-8-2004 is also enclosed. This bears approval of FS 3

sd 17-7-2006

(Banna Lal)

OSD II, FD

(Rules).

17. Meaning thereby, the above note clearly reveals that the financial condition of the agency was good and, therefore, it was mentioned that no extra financial burden shall exists over the agency. Meaning thereby even if the contention of

the appellant agency is accepted that there was an order of the Govt. dated 10.08.2004 for not increasing the age of superannuation from 58 years to 60 years but it was for those companies who were of the poor financial health, which is evident from Annexure-R2/6. Therefore, the reasons of passing order impugned on the basis of order of Finance Department of the State Govt. is totally baseless and has no foundation to stand. It appears from all the documents placed on record that appellant agency is of the view that the financial condition of the Agency is good and further they were of the opinion that no regulations are in existence, therefore, the matter was referred to the State Govt. for their opinion for enhancement of the age of superannuation from 58 years to 60 years. All the documents filed along with the reply and the assertion made in the reply loudly speaks that the appellant Agency is also of the opinion that age of retirement should be 60 years but for the purpose of dismissal of the writ petition, the Employees Service Regulations 1980, which were admittedly not approved in accordance with Rule 21 of the Rules of 1976 by the Central Seed Certification Board, were placed before the Court and prayed that as per Regulation 41, the age of superannuation should be 58 years and impugned order has rightly been passed.

18. In our opinion, the learned Single Judge has considered all the aspects of the matter and rightly held that the Employees Service Regulations 1980 was not in force on the date of passing impugned order of superannuation because they were not approved by the Central Seed Certification Board. Therefore, the conclusion and finding given by learned Single Judge with regard to non-existence of Employees Service Regulations 1980 does not require any interference.

19. With regard to concluding part of the judgment whereby it is held that as a consequence of quashing order dated 16.1.2007 Annexure-12, the petitioners are entitled for reinstatement and shall be entitled for all consequential benefits and monetary part thereof shall be paid within a month from today, so also held entitled for cost of writ petition which is quantified as Rs. 6,600/-, does not require any interference.

20. However, something is required to be said for continuance of service of the petitioners-respondents. It is admitted position of the petitioners that their case before the learned Single Judge was to the extent of quashing the order of superannuation Annexure-12 and directing the respondents for framing service rules laying down the service conditions of service and employees in accordance with the Seeds Act and Rules 1976 but whether the petitioners - respondents can claim continuance in service even after attaining the age of 60 years. For the said purpose, it is made clear that case of the petitioners - respondents before the learned Single Judge was that Government has fixed the age of retirement as 60 years w.e.f. 31.5.2004 and since the service conditions of statutory bodies are being governed in conformity with Rajasthan Service Rules, the statutory bodies like Rajasthan Housing Board, Raj. Vidhyut Vitran Nigam Ltd. etc. have also fixed

the retirement age as 60 years. The representation made by respondent No. 2 is still pending consideration and till today neither the Board of Director nor the Agency has taken decision for fixing the age of superannuation and since there is no age fixed for superannuation, the respondent No.2 has no jurisdiction to issue order Annexure-12 inasmuch till decision is taken, the age of superannuation will be 60 years. Meaning thereby, according to the petitioners - respondents they are entitled for continuance of service till attaining the age of 60 years because the State Government has enhanced the age of superannuation from 58 years to 60 years.

21. Therefore, in the interest of justice, we are of the opinion that the petitioners - respondents cannot claim any continuance in service beyond the age of 60 years, therefore, although the learned Single Judge has quashed the order dated 16.1.2007, superannuating the petitioners respondents but they are not entitled for continuity in service after attaining the age of 60 years. Therefore, till framing of the rules in accordance with the judgment passed by learned Single Judge, the appellant Agency shall grant benefit of 60 years of age of superannuation to their employees which is available to the employees of the State Government because in past the appellant agency accepted various provisions of RSR for the purpose of granting surrender leave, selection scale etc. so also the matter was referred to the State Government for approval to increase the age of superannuation from 58 years to 60 years.

22. With the above observation and direction, this special appeal is dismissed.