**(2005) 02 RAJ CK 0026**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition No. 1288 of 2003

Rajendra Nath Sharma APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

**Date of Decision :** 15-02-2005

**Acts Referred:**

- Constitution of India, 1950 — Article 14, 16
- Rajasthan Agricultural Produce Marketing Committee Service (Pension) Rules, 1995 — Rule 10(2)
- Rajasthan Agricultural Produce Markets Act, 1961 — Section 36
- Rajasthan Agriculture Produce Market (Mandi Samiti Employees Service) Rules, 1975 — Rule 10
- Rajasthan Service Rules, 1951 — Rule 179

**Citation :** (2005) 2 RLW 1258 : (2005) 2 WLC 593

**Hon'ble Judges :** Rajendra Prasad Vyas, J

**Bench :** Single Bench

**Advocate :** I.R. Choudhary, in S.B. C. Writ Petition No. 1719/2001 and R.N. Upadhaya, in S.B. Civil Writ Petition No. 1288/2003, for the Appellant; S.N. Tiwari, Dy. Govt. Advocate, for the Respondent

**Final Decision :** Allowed

## Judgement

Rajendra Prasad Vyas, J.—A common question is involved in both the aforesaid writ petitions, therefore, they are decided by this common order.

2. The main question arising for consideration in the Instant petitions is that whether the services rendered by the petitioners from the date of initial appointment from 1964 to 1976 can be treated as qualifying service for the purpose of pension, in view of the Rule 10(2) of me Rajasthan Agriculture Produce Market Service (Pension) Rules, 1995, (hereinafter referred to as to " Rules, 1995") or from the date of the Contributory Provident Fund.

3. The factual aspect of the matter is that the petitioner No. 1, Rajendra Nath Sharma, was initially appointed as Lower Division Clerk (L.D.C.) on 1.5.64 and was confirmed on this post on 1.7.74 and, thereafter, retired on 31.1.2002 as

 

Assistant. Secretary, Mandi Samiti, Bikaner, on attaining the age of superannuation.

4. Similarly, Petitioner No. 2, Tilok Chand Kalra, was initially appointed as Lower Division Clerk (L.D.C.) on 13.11.67 and was confirmed on 1.7.74 and retired on 31.10.2002, on attaining the age of superannuation from the post of Supervisor, Mandi Samiti, Chittorgarh.

5. Petitioner Ram Pratap was initially appointed as L.D.C. In Krishi Upaj Mandi Samiti, Jodhpur, w.e.f. 6.9.1969 and was confirmed on 1.7.74 and retired on 31.3.99.

6. At the time of appointment of the petitioner, the service of the employees of Krishi Upaj Mandi Samiti were controlled by the Agriculture Department, Government of Rajasthan. The Rajasthan Stage Agriculture Marketing Board was constituted in the year, 1974, and their control was transferred to the Board. In the year 1975, Rajasthan Agriculture Produce Market (Mandi Samiti Employees Service) Rules, 1975 (for short, "the Rules, 1975") were framed under the orders of the State Government, in the year 1996m, whereby the employees were required to contribute 8% of their pay towards provident fund with effect from 1.3.76 and Mandi Samiti were also required to contribute the same amount towards contributory provident fund. The petitioners commenced such contribution w.e.f. 1.3.1976. Therefore, in that situation, petitioner are not responsible for the contribution of CPF amount w.e.f. 1.3.76.

7. It was further mentioned that the Government vide notification dated 30.5.1979 published the Draft Rules, in the Rajasthan Gazette dated 7.6.1979, for amendment in the Rules of 1975, intending to make contribution to CPF provident fund, since the date of appointment of the employees but the same could not be materialised for not making the final publication and the employees of the mandi Samiti were deprived form making contribution to the CPF since their initial date of appointment, for which no fault could be found with the employees, like petitioners, it was the responsibility of the Mandi Samiti to deduct CPF from the salary of the petitioners from the date of initial appointment till the date of retirement, but the contributory amount was stated to deduct w.e.f. 1.3, 1976, so petitioners are not responsible for this cut-off date as determined by the department, otherwise, in case, specific rule is framed, then the petitioners were under an obligation to give contribution of the amount since the date of their initial appointment, till the age of superannuation.

8. It is submitted by the learned counsel appearing on behalf of respondents that the Agriculture Produce Market (Provident Fund) Rules, 1982 (for short, "Rules, 1982") were published vide Notification dated 22.7.1982. In which no provision was made for making contribution to the Contributory Provident Fund w.e.f. Initial date of appointment of the employees who were appointed prior to the year, 1976.

9. It is further submitted by the learned counsel that the Rajasthan Agriculture

 

Produce Market Board Service (Pension) Rules, 1975, (hereinafter referred to as, "the Rules, 1975") were made applicable vide Notification dated 21.3.1995 whereby options for contribution to the CPF were sought from the employees.

10. It is also submitted that prior to the Rules of 1975, no pension rules were in existence. It was the responsibility of the Mandi Samiti to deduct the amount of CPF from the salary of the employees and deposit the same in the Contributory Provident Fund account along with the Samiti''s Contribution.

11. Petitioner No. 1, Rajendra Nath, was in continuous service since 1.5.64 and petitioner No. 2, Tilok Chand was also in continuous service from 13.11.67. Similarly, petitioner, Ram Pratap was in continuous service from 6.9.69.

12. Their services were quite satisfactory during their entire service tenure till their retirement, on attaining the age of superannuation w.e.f. 31.1.2002, 31,10.2002 and 31.3.99 respectively. Therefore, they are entitled to receive all retrial benefits, including gratuity, payment of pension and arrears of gratuity etc. which should be counted from the date of their initial appointment, i.e. in the case of petitioner No. 1 w.e.f 1.5.64; in the case of petitioner No. 2 w.e.f. 13.11.67 and in case of Ram Pratap w.e.f. 6.9.69.

13. Thereafter respondent No. 2 vide letter dated 3.10.1997 recommended to the Secretary to the Government, Agriculture (Gr.II) Department, Rajasthan, Jaipur, to frame Rules for depositing the contribution to the Contributory Provident Fund from 1965 to 1976.

14. The next contention of the learned counsel for the petitioners is that by virtue of powers conferred u/s 36 of the Rajasthan Agricultural Produce Market Act, 1961 (for short "1961 Act.") the State of Rajasthan framed 1995 Rules. Rule 10(2) of the Rules provides that while determining the qualifying service, for the purpose of computation of the pension, only the period, where this contribution is made under the CPF Scheme, shall be taken into consideration as qualifying service. Since CPF Scheme came into force with effect from March 1, 1976, the services rendered by the petitioner from 1965 to February, 1976, were completely obliterated for the purpose of computation of pension, in terms of the aforesaid Rule (2) of the Rules, 1995.

15. The next contention of the learned counsel for the petitioners is that Respondents have not counted their entire period of service. The respondents have counted the qualifying service for the purpose of pension, including gratuity and arrears etc. w.e.f. 1.5.64 in case of petitioner No. 1; 13.11.67 in case of petitioner No. 2 and 6.9.69 in case of the petitioner Ram Pratap.

16. It has been pointed out that as regards the pension of work charge employees, they have counted their service from the date of their initial appointment, but, in cases of petitioners, who were regular employees, they have counted the period, from the date of contribution towards CPF, which is not justified in the eye of law. A series of correspondence has taken place regarding

 

counting of period of service for the purpose of giving pensioner benefits period from the date of their initial appointment, rather than from the date of their contributions of the CPF amount. But by taking resort to provisions existed in Rule 10 of Rules of 1975, their services have not been taken into consideration, from the date of their initial appointment.

17. it has also been pointed out that counting of the qualifying service from the date of contribution of the CPF under Rule 10 of the Rules, 1975, is arbitrary and discriminatory, having no reasonable differential between the persons (Rajasthan Government Employees) in whose case the entire period of service is counted as qualifying service for purpose of retrial benefits like gratuity and pension and arrears of pension any gratuity amount at one hand and the other employees like petitioners on the other hand, because there is no reasonable nexus in the aforesaid provision of Rule 10 of the Rules, 1975, by which the object is sought to have been achieved by it. !n this view of the matter, the provisions of Rule 10 is arbitrary and violative to Articles 14 and 16 of the Constitution of India.

18. During the Course of arguments, learned counsel for the petitioners submitted a decision of this Hon''ble Court passed in Adhik Lal Choudhary v. State of Rajasthan and Ors., S.B. Civil Writ Petition No. 3552/2001, filed in the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur, in which same controversy regarding payment of pension, gratuity and other admissible benefits to the employees of Mandi Samiti was set as rest.

19. Similar, controversy regarding counting of service period for the purpose of granting pensionary benefits from the date of initial appointment appointment till the date of superannuation, rather than date of deduction of CPF contribution, has been raised in the instant petition.

20. I have examined the judgment rendered in the said writ petition at length. In is an admitted position that the Court has taken into consideration grounds raised in the present writ petition and making interpretation and scrutiny of said Rules of 1975 with reference to provisions to Rule 10(2) as well as with reference to Rule 179 of the RSR. It is evident that even a temporary employee is entitled to get pension pursuant to the afore-quoted rule. Undeniably Rule 10(2) of 1995 Rules was framed ignoring the provisions contained in Rule 179 of RSR. The arbitrary and discriminatory and violative of Article 14 and 16 of the Constitution of India. Even otherwise, the contribution made towards CPF by the respondent, does not make any distinction for the reason that as per the scheme, whatever contribution was made, has to be refunded back to the employer after making deduction from the employees contribution. The employer''s contribution has to be transferred towards pension fund, whereas for the purpose of qualifying service for pension as per provision of Rule 179 of the RSR, service must be under Government; the employment may be in substantive/permanent, temporary of officiating capacity and the service may be paid by the Government.

21. It is submitted on behalf of the petitioners that the Court has observed that

 

services rendered by the petitioner from 1965 to 1976 ought to have been treated as qualifying service for the purpose of pension. The Court has disposed of the writ petition in the following terms that sub rule (2) of the Rule 10 of 1995 Rule shall stand quashed and set aside being violative to Article 14 and 16 of the Constitution of India. The respondents were directed to compute the qualifying service of the petitioner from 1965 to May 31, 1997, treating the salary of the petitioner in the pay scale of 6500-10500 and difference of the pension shall be paid to the petitioner within three months from the date of receipt of a certified copy of this order.

22. In support of his contention, learned counsel for the petitioner has also placed reliance on the case of Vasant Gangaramasa Chanda v. State of Maharastra and Ors., JT 1996 (Supp.) SC 544, in which it is held that pension is not a bounty of the State, but it is a right attached to the office and cannot be arbitrarily denied. It was further held that while reading the rule, the word ''later'' must be read as which-ever is ''earlier'' and so the rule is valid, but otherwise, it would violate Article 14 of the Constitution of India.

23. In view of the observations made in Adhik Lal Choudhary v. State and Ors. (supra), I have examined the whole matter. It is an admitted position on record that controversy set at rest in that decision is applicable, for the purposes, in case of the petitioner also. This position has not been controverted by the counsel for the respondents.

24. In view of this face, cases of the present petitioners are squarely covered by the decision rendered in S.B.C. Writ Petition No. 3552/2001.

25. In the result, the writ petition are allowed. The petitioners are entitled to get benefit for the purpose of pension and gratuity while counting their services from the date of initial appointment, i.e. for petitioner No. 1 as 1.5,64, petitioner No. 2 as 13.11.67 and for petitioner Ram Pratap as 6.9,69, rather than considering their case from the date of deduction of CPF for the purpose of qualifying service for the grant of pension and gratuity and other retrial benefits and arrears of pension. The Respondents are directed to decide the case of the petitioners, as mentioned above, within a period of three months'' from the date of receipt of a certified copy of this order, otherwise petitioners Would be entitled to get interest at the rate of 12 per cent per annum after expiry of three months'' period, till the date of making final payment of amount to the petitioners.

26. No order as to costs.

 