(1971) 03 RAJ CK 0011

In the Rajasthan High Court

Ram Chandra APPELLANT

Vs

The State of Rajasthan and Another RESPONDENT

Date of Decision : 31-03-1971

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2
Industrial Employment (Standing Orders) Act, 1946 — Section 2

Citation : (1971) 2 LLJ 295 : (1971) 4 WLN 97

Hon'ble Judges : Jagat Narayan, C.J;R.D. Gattani, J

Bench : Division Bench

Judgement

R.D. Gattani, J.—This writ petition under Article 226 of the Constitution is one of those which were referred for decision to a Division Bench by a learned single Judge of this Court.

2. The material facts giving rise to this writ petition may be briefly stated as follows:--

The petitioner Shri Ram Chandra was appointed as accountant, Municipal Committee, Mount Abu on 2nd May, 1945. He was promoted as Revenue Officer of that Municipal Committee with effect from 1st October, 1958 and he served on this post till he was retired on 1st July, 1967. At the time when Mount Abu area became a part of the then State of Bombay under the Merged States (Laws) Act, 1950, the provisions of Bombay District Municipal Act, 1901 were applicable to Mount Abu municipal area from 1st November, 1956, however, Mount Abu area became a part of the State of Rajasthan under the terms of the States Re-organisation Act, 1956, but the Bombay District Municipal Act, 1901 continued to be in force in the said area till the Rajasthan Municipalities Act, 1959 came to be in force throughout Rajasthan from 17th October, 1959. u/s 2 read with item 13 of the Schedule appended to that Act, the Bombay District Municipal Act, 1901, was repealed. u/s 297 of the Rajasthan Municipalities Act, 1959 (hereinafter referred to as the Act), the Government of Rajasthan could make rules and pass orders generally for the purpose of carrying into effect the provisions of the Act and in particular and without prejudice to the generality of that power, the State Government is authorised to make rules or orders for various subjects including regulating the methods of recruitment, conditions of service, pay, allowances, leave, pension or provident fund, gratuity and conduct of Executive Officers or Secretaries of Boards etc.

3. The Rajasthan Municipal Service Rules, 1961 came into force in March, 1961. Rule 34 of these rules ran as follows:--

34. Regulation of pay, allowances, leave, pension, gratuity, provident fund, discipline, conduct etc.--Subject to the provisions of Sub-section (4) of Section 307 and except as provided in these rules the pay, allowances, pension, leave and other conditions of 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 from time to time.

(2) Rajasthan Travelling Allowance Rules as amended from time to time.

(3) Rajasthan Civil Service (Classification, Control and Appeal) Rules, 1958 as amended from time to time.

4. The Rajasthan Municipal Service Rules, 1961 were superseded by the Rajasthan Municipal Service Rules, 1963 which contained a provision similar to the above in Rule 36.

5. The age of superannuation is prescribed by the Rajasthan Service Rules, 1951. The age of superannuation was raised from 55 years to 58 years in the Rajasthan Service Rules, vide Finance Department''s Notification No. F. 1(84) F.D.A. (Rules) 62 dated 31-8-63 by making a suitable amendment in Rule 56. This rule was again amended under Notification No. F. 1(42) FD/Exp.-Rules/67-I dated 13th June, 1967 and the age of superannuation was reduced to 55 years.

6. On 22nd June, 1967 the Local Self-Government Department Notification No. Tax (Rules)/F. 53 (Misc)/DLB/63 dated 22-6-67 was issued in exercise of the powers conferred u/s 297 of the Rajasthan Municipalities Act, 1959 making Notification No. F. 1(42)FD/Exp.-Rules/67-I dated 13-6-67 along with instructions as contained in the Notification No. F. 1 (42) FD/Exp.-Rules/67-II dated 13th June, 1967 applicable to the municipal employees except class IV servants.

7. As the petitioner had already crossed 55 years of his age, he was under the terms of the notification of 22-6-67, referred to above, served with a notice and was retired from 1-7-1967.

8. Against that retirement of his, the petitioner has moved this Court on the ground that the petitioner being a ''workman'' as defined u/s 2(s) of the Industrial Disputes Act should not have been retired from the service, so long as

he was mentally and physically fit to serve and carry on his duties and in case it is held that the petitioner is not a ''workman'' as defined in the Industrial Disputes Act, then also so long as he was not actually integrated in the Rajasthan Municipal Services, no question of his retirement arose.

9. The first contention of the petitioner is based upon the allegation that the Industrial Disputes Act, 1947 and the Industrial Employment (Standing Orders) Act, 1946 came into force in Rajasthan in 1950. According to the petitioner, Municipal Committee, Abu, is an ''industry'' as defined u/s 2(j) of the Industrial Disputes Act and an ''industrial establishment'' within the meaning of Section 2(e) of the Industrial Employment (Standing Orders) Act, 1946. It is further contended that the petitioner being an employee in this ''industry'' was a ''workman'' within the meaning of Section 2(s) of the Act and as no standing orders were framed and got certified as provided in the Industrial Employment (Standing Orders) Act, 1946 in respect of superannuation age, the petitioner was not governed by any other rule regarding his age of superannuation. While deciding Civil Writ Petition No. 949 of 1968, Mohanlal Kaul v. The State of Rajasthan and Ors. this very Bench has held that in order to determine whether a particular department of the municipality is an ''industry'' or not, the predominant activities of that department are to be considered. Regal functions are primary and inalienable functions of the State and though they may be statutorily delegated to a corporation they are necessarily excluded from the purview of the scope of the term ''According to the petitioner himself, at the time of his retirement, he was performing the functions of collecting and assessing taxes and maintaining the record in that connection and in connection with the recovery of the taxes. According to the respondents, however, at the time of his retirement, the petitioner was Revenue Officer and in that capacity he was wholly required to check and supervise the work of assessment and realisation of tax and to ensure that all revenues including the tax were correctly and timely recovered and duly credited to the municipal fund and that his duties were purely of executive and managerial nature to assist the Board in the matter of recovery of its revenue. Even assuming for a while that at the time of his retirement, the petitioner was performing the functions as alleged by him, we are, however, of the opinion that these functions did not make him a ''workman'' as defined in Section 2(s) of the Industrial Disputes Act. On the other hand, we are of the view that the functions which the petitioner was performing at the time of his retirement were regal in nature and, therefore, he could not be treated as a workman.

10. In regard to his other contention, it was urged that the Rajasthan Municipal Service Rules, 1961 or 1963 cannot apply to the petitioner as he has not yet been integrated in that service. A notification dated 15th May, 1969 appeared in the Rajasthan Gazette dated I6th May, 1969 under which the Rajasthan Municipal Service was created and constituted by the Government u/s 302 of the Rajasthan Municipalities Act, 1959 with effect from 1st April, 1960. The name of the petitioner is to be found in the list of Revenue Officers, Grade II in that

Gazette and this means that the petitioner was integrated in the Rajasthan Municipal Service as Revenue Officer, Grade II with effect from 1st April, 1960. When he is already so fixed, he shall be paid all arrears of salary, if any, in accordance with that fixation. We are, however, unable to accept the argument that so long as the petitioner was not actually fixed in one of the grades, the Rajasthan Municipal Service Rules, 1961 or 1963 could not be applied to him. There is a specific provision u/s 297 of the Rajasthan Municipalities Act enabling the Government to fix tenure of service of municipal employees and in exercise of this power Rule 56 of the Rajasthan Service Rules was made applicable both when the age of superannuation was 58 under it and when it was 55 under it. It was 55 in 1961 and again in 1967. It was 58 in 1963. The petitioner was thus governed by the age of superannuation fixed by the Government and he was rightly retired with effect from 1-7-1967.

11. We might state here that this writ petition was filed after inordinate delay. The petitioner was retired with effect from 1-7-1967 vide order dated 22nd June, 1967, referred to in Annexure-3, but this writ petition was, however, filed on 10-4-1969. This writ petition therefore, could have been rejected on the ground of inordinate delay also, but since it was referred to this Bench by a learned single Judge, we deemed it proper to hear and decide it on merits.

12. As a result of the above discussion this writ petition has no force and the same is dismissed with no order as to costs.

