**(1993) 09 SC CK 0150**

**In the Supreme Court Of India**

**Case No :** Civil Appeal No. 5199 Of 1993

Ram Kumar Agrawal APPELLANT

Vs

State of M.P. and Others RESPONDENT

**Date of Decision :** 24-09-1993

**Acts Referred:**

**Citation :** (1995) 3 SCC 67 Supp

**Hon'ble Judges :** Yogeshwar Dayal, J;P. B. Sawant, J

**Bench :** Division Bench

**Final Decision :** Allowed

# Judgement

1. SPECIAL leave granted. The admitted facts are that the appellant joined the work-charged establishment of the respondent-Government as a Junior Engineer on 23/11/1968. He was appointed as a regular Junior Engineer with effect from 22/04/1972 and was promoted as an Assistant Engineer in 1979. He retired voluntarily from the said post on 6/01/1990. The Madhya Pradesh Civil Services Pension Rules, 1976 [hereinafter referred to as the 1976 Rules''] which apply to the regular posts such as the one held by the appellant since 4/05/1972, lay down the qualifying period of service of 20 years for an employee to be eligible for pension under Rule 42 thereof. The Madhya Pradesh Work-charged and Contingency Paid Employees'' Pension Rules, 1979 (hereinafter referred to as the 1979 Rules'') which came into force with effect from 1/01/1974, by Rule 4(2 make the 1976 Rules applicable to all permanent employees who have retired on or after 1/06/1976. Rule 2(c) of the 1979 Rules defines a "permanent employee" as follows:

"2 * * *

(C) ''Permanent employee'' means a contingency paid employee or a work-charged employee who has completed fifteen years of service or more on or after the 1/01/1974 :

PROVIDED that in respect of a contingency paid employee who has attained the age of superannuation on or after 1/04/1981 permanent employee means an employee who has completed ten years of service on or after the 1/01/1974."

2. The 1976 Rules read with the 1979 Rules make it clear that an employee who voluntarily retires under Rule 42(l)(a) of 1976 Rules after completing 20 years'' qualifying service by following the requisite procedure laid down therein, would be entitled to pension under the said rules. On the admitted facts stated above, the appellant had put in 21 years, one month and 14 days'' service when he sought voluntary retirement on 6/01/1990. On the basis of the said rules, therefore, he is entitled to the pension.

3. The respondent-Government, however, denied him the benefit of Rule 42(l)(a) of the 1976 Rules on the ground that the 1976 Rules did not apply to work-charged establishment in view of the provisions of Rule 2(2(a) thereof. Hence his service in the work-charged establishment from November 23, 196 8/05/1972 could not be taken into account for calculating the qualifying service under Rule 42(l)(a). According to the government if the said service is excluded, the appellant cannot be said to have put in 20 years'' service as a regular Junior Engineer from May 4, 197 2/01/1990. Unfortunately, the tribunal has also accepted the said contention and rejected the application of the appellant for pension by the impugned order.

4. AS pointed out earlier, in the present case, we have to read both the 1976 and the 1979 Rules together to calculate the qualifying service of the appellant. Since the 1979 Rules have made the 1976 Rules applicable to the work-charged establishment with effect from 1/01/1974, the service rendered by the appellant in the work-charged establishment from November 23, 196 8/05/1972 has to be counted for the purpose of calculating the qualifying service under Rule 42(l)(a) of the 1976 Rules. This being the case, the appellant who has put in more than 20 years of service is entitled to retire voluntarily under Rule 42(l)(a) and claim pension under the said Rules. The government as well as the Administrative tribunal have, therefore, committed an obvious error in interpreting the Rules. The impugned order has, therefore, to be set aside.

5. HENCE, we allow the appeal and set aside the order of the tribunal impugned in the appeal and direct that the appellant be paid the pension due to him with effect from 7/01/1990 till date with interest at 12 per cent per annum, within 6 weeks from today. The respondent to pay the costs of this appeal fixed at Rs. 2000 to the appellant along with the amount of the arrears of pension,