
(2003) 07 RAJ CK 0124
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2253 of 2002

Ratan Lal Patni

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 22-07-2003

Acts Referred:

Rajasthan Service Rules, 1951 — Rule 244(2), 91, 91B(1)

Citation : (2004) 3 RLW 1519 : (2004) 1 WLC 298

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : Rakesh Arora, for the Appellant; Dinesh Maheshwari, for Respondents No. 2 and 3 and Mahipal Bishnoi, for the Respondent

Final Decision : Allowed

Judgement

Sunil Kumar Garg, J.—This writ petition has been filed by the petitioner under Article 226 of the Constitution of India against the respondents on 02.07.2002 with a prayer that by an appropriate writ, order or direction, the respondents may be directed to make payment of unutilised privilege leave for 159 days to the petitioner with all consequential benefits and with interest @ 24% p.a. on the said amount and penal interest w.e.f. 08.11.1995.

2. The facts of the case as put forward by the petitioner are as under:

i) That the petitioner while working on the post of Senior Reader in the office of respondent No. 3 (The District & Sessions Judge, Pratapgarh, Distt. Chittorgarh) was retired compulsorily under Rule 244(2) of the Rajasthan Service Rules, 1951 (for short, "the Rules, 1951) vide order dated 6/8.11.1995.

ii) That further case of the petitioner is that after the compulsory retirement he was paid all retiral benefits but was not paid the payment of unutilised privilege leave which is admissible under Rule 91 of the Rules of 1951 though a period of seven years has elapsed.

iii) Further case of the petitioner is that when he was not paid the payment of unutilised privilege leave, he submitted a representation on 10.1.96 requesting therein that in view of the law laid down by Division Bench of this Court in the case of Deen Dayal Khunteta v. The State of Rajasthan (1), the petitioner was entitled for grant of amount of unutilised privilege leave.

iv) Further case of the petitioner is that he again submitted applications to the respondent No, 3 (The Dist. Judge, Pratapgarh) from time to time and also personally requested him for grant of payment of unutilised privilege leave. Copies of applications dtd. 19.12.1998 and 13.7.99 are marked as Annex.3 and 3A respectively.

v) Further case of the petitioner is that since payment of unutilized privilege leave was not made by the respondents, therefore, he gave a notice for demand of justice on 19.2.2002 (Annex.4).

vi) Further case of the petitioner is that since payment was not made to him, he sent various reminders to the respondents.

vii) Further case of the petitioner is that even the person who is retired compulsorily under Rule 244(2) of the Rules of 1951, is also entitled for grant of unutilized privilege leave and hence, this writ petition with the abovementioned prayer.

3. A reply to the writ petition was filed by the respondents No. 2 and 3 and their case is that the petitioner was retired on 6.11.95 and this writ petition has been filed after 7 years, therefore, this writ petition deserves to be dismissed on the ground of delay and laches. It has further been submitted by the respondents that as per Rule 91B(i) of the Rules of 1951, a person who is retired compulsorily is not entitled to cash payment in respect of period of unutilized privilege leave. It has also been submitted by the learned counsel for the respondents that the matter regarding payment of unutilized privilege leave is under consideration and, therefore, this writ petition is premature and hence, the present writ petition should be dismissed.

4. Heard and perused the record.

5. So far as delay is concerned, it may be stated here that the petitioner was retired compulsorily vide order dtd. 6/8.11.95 (Annex.1) and he made request for payment of unutilized privilege leave through representation dtd. 10.1.96 (Annex.2), 19.12.98 (Annex.3) and 13.7.99 (Annex.3A) and thereafter through various letters, he made request to the respondents for payment of unutilized privilege leave. Thus, after retirement, the petitioner was regularly approaching the respondents for redressal of his grievance and hence, the preliminary objection raised by the learned counsel for the respondents that the writ petition filed by the petitioner deserves to be dismissed on the ground of delay stands rejected as the petitioner was pursuing his matter after his retirement with the respondents.

6. So far as argument raised by the learned counsel for the respondents that Rule 91B(1) of the Rules of 1951 does not provide for cash payment in respect of period of unutilized privilege leave for a Government servant who is retired compulsorily is concerned, it is submitted that Rule 91B(1) does not provide that the Government servant who is retired compulsorily is not entitled to payment of unutilized privilege leave. For convenience Rule 91B(1) of the Rules of 1951 is quoted hereunder:

"91B. Cash payment in lieu of unutilized privilege leave on the date of retirement:-

(1) A Government servant on retirement from service on superannuation, invalid, compensation or retirement pension under Rule 244(1) shall be paid cash equivalent to leave salary in respect of the period of unutilized privilege leave not exceeding 240 days at his credit at the time of retirement.

2."

7. A perusal of Rule 91B(1) of the Rules of 1951 clearly shows that it provides that even a Government Servant who is retired compulsorily is entitled to payment of unutilized privilege leave.

8. The Division Bench of this Court in the case of Deen Dayal (supra), has held that the employees who are compulsorily retired under Rule 244(2) of the Rules of 1951 are also entitled to the benefits under Rule 91(B).

9. In view of the discussions just made hereinabove, it is held that the petitioner who had been retired compulsorily is also entitled to the payment of unutilized privilege leave.

10. For the reasons mentioned above, the writ petition deserves to be allowed.

Accordingly the present writ petition is allowed and the respondents are directed to make payment of unutilized privilege leave due to the petitioner as per Rules.

No order as to costs.