
(1992) 01 RAJ CK 0070

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1335 of 1989

R.S.E.B. Retired Employees Association and Another

APPELLANT

Vs

The Rajasthan State Electricity Board and Others

RESPONDENT

Date of Decision : 22-01-1992

Acts Referred:

Constitution of India, 1950 — Article 14
Electricity (Supply) Act, 1948 — Section 78A

Citation : (1992) 1 RLW 333 : (1992) 3 WLC 33 : (1992) 1 WLN 166

Hon'ble Judges : Rajesh Bajaj, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajesh Balia, J.—Only question raised in aforesaid petition is whether members of petitioner association are entitled to exercise their option for pension and other pensionary benefits in response to memorandum dated 17.10.1987 issued by the Govt. of Rajasthan (Ex.27).

2. Aforesaid petition has been filed by the Rajasthan State Electricity Board Retired Employees Association, Jodhpur and another representing the interest of certain retired employees of the Rajasthan State Electricity Board, list of which has been attached as Schedule "A" to the writ petition. All these persons named in the Schedule "A" were employees of the Electrical and Mechanical Department of Govt. of Rajasthan when they were placed at the disposal of the Rajasthan State Electricity Board vide order dated 12.2.1958 (Ex.1). All the incumbents, named in Schedule "A" are stated to be employees who were members of the Jodhpur State Contributory Provident Fund at the time of their entry into service for the purposes of retiral benefits. After services of these persons were placed at the disposal of the Board, directives dated 16/28th March, 1960 were issued by the Govt. of Rajasthan in exercise of powers u/s 78A of the Electricity [Supply] Act, 1948 which inter-alia mentioned as under:

1. Salaries, allowances and other emoluments of the service personal placed

under the administrative control of the Board shall be continued to be paid on the same basis at the same scales and the same manner as would have been done if they had continued as employees of the Government Electrical Deptt. and shall not be varied to their disadvantage.

Any contribution e. g. towards pensions leave allowances payable by the Board irrespective of staff working under the Board shall continue to be payable in the same manner as hitherto.

2. The present rate structure in the various areas of the State shall not be varied except with the previous approval of Government.

3. By these directives, the employees whose services were placed at the disposal of the Board were entitled to the same emoluments as were being paid to them as employees of the Govt. in Electrical Department. Thereafter, another circular dated 10th August, 1960 was issued by the Govt. of Rajasthan which is placed on record as Ex.3 which made it clear that pending final decision regarding the transfer of Govt. Servant concerned to the service of the Board, they will be treated on deputation. It was further stated in the said circular that the question regarding the manner in which liability for pension is to be shared or discharged will be decided later on but in case of these who retire before final decision in this regard, the Board may discharge its liability by payment of pension contribution at the prescribed rates, so that settlement of the pension claims of the Govt. servants concerned may not be held up. This clearly meant that until final decision was taken regarding the transfer of Govt. Servants to the service of the Board, they were entitled to be treated as Govt. Servants on deputation and in case of their retirement before such final decision regarding the transfer, they were entitled to the same pensionary benefits as Govt. Servants were entitled to.

4. Yet another notice was issued by the Govt. of Rajasthan on 25th Oct. 1972 (Ex.4); relevant clauses of which for the present purposes are quoted herein below:

1. On the publication of this notice in the Rajasthan Rajpatra all the Govt. employees who are in continuous service from a date prior to the 1st July, 1957 shall exercise their option in the form given at Appendix "A" within 3 months from the date of publication to the Secretary to the Govt., Irrigation and Power Deptt., Jaipur through the Secretary, Rajasthan State Electricity Board, Jaipur with an advance copy to the Secretary to the Govt. Irrigation and Power Deptt. Jaipur for absorption in the Board for reversion to the Govt. Any request for extension of the aforesaid time limit for exercising such option, seeking clarification of review, will not be entertained. If any Govt. employee does not exercise his clear option for reversion to the service of the Govt. before the expiry of the prescribed time limit, it will be presumed that he has exercised his option in favour of his continuance in the Board's service accepting the grades and service conditions framed by the Board under its regulations and the Rajasthan State Electricity Board Contributory Provident Fund Scheme.

2. ...

3. ...

4. ...

5. (a) A Govt. employee who opts to serve the Board and is covered under the pension Scheme shall have the option to accept any of the following benefits:

(i) to receive proportionate pension/gratuity according to rules for service rendered under Govt. or

(ii) to accept in lieu of pension or any other form of retiring benefits or gratuity that may be admissible under (i) above, Government Contribution to the Provident Fund maintained by the Board of an amount equal to 8% of his monthly pay drawn from time to time during service under Govt. with simple interest at the rate applicable from time to time and also special contribution if admissible to employees governed by Jodhpur Contributory Provident Fund Rules. The amount of the contribution together with interest thereon will earn simple interest at two percent per annum from the date of transfer of service till such time as becomes payable.

(iii) to continue to be governed by the pension scheme as applicable to him under the Rajasthan Service Rules as existing on the date of publication of this notice:

Provided that if option at (i) above is exercised the Govt. employee concerned will not be eligible to receive family pension benefits admissible to him under Chapter XXIII, XXIII-A and XXIV of the Rajasthan Service Rules on the date of transfer of his service to the Board.

No deduction of portion of gratuity where it is required to be surrendered in terms of Rules 268-G of Rajasthan Service Rules will be made in their case.

(b) In the case of Govt. servant who is a subscriber to the Jodhpur Contributory Provident Fund Scheme, the amount standing to his credit alongwith Govt. contribution plus interest thereon and special contribution if admissible on the date of transfer of his services to the Board shall be transferred to the Provident Fund Account of the employee under the Board. Provided that the amount equivalent to Govt. contribution plus interest thereon shall not be payable to the employee if he resigns or in any other manner voluntarily leaves the service of the Board before reaching the age of 55 years.

(c) The amount of pensionary and provident fund benefits referred to in Clauses (a) and (b) above, shall become payable on the Govt. employee.

(i) attaining the age of 55 years or completing 30 years qualifying service (including his service under the Govt.) in the Board,

Or

(ii) retiring prematurely under circumstances which would not have resulted in a forfeiture of pensionary or other retirement benefits, had he continued in Govt. service.

(d) Grant of full pensionary or other retirement benefits admissible to the Govt. employees as per Rajasthan Service Rules or Jodhpur Contributory Fund Scheme existing on the date of publication of this notice is hereby guaranteed by the Govt.

6. ...

7. Any Govt. employee on appointment by the Board on any cost in the Board, as a result of his option for the Board's service or who is deemed to have opted for the Board's service in terms of para (1) above shall cease to be in the service of the Govt. with effect from the date of the issue of the Government orders finally transferring him to the Board and any lien held by him on any post including supernumary post under the Government will be terminated with effect from the date of issue of the aforesaid orders.

8. ...

9. ...

10. ...

11. ...

5. It may further be stated that as envisaged under clause"(7) above, thereafter on much later dates, orders were issued on different dates by the Government finally transferring the said employees to the Board and their lien was terminated with effect from the date on which their services were respectively ordered to be finally transferred by the Govt. to the Board.

6. On these premises, it is contended that all the persons continued to be the Govt. servants until the date of issuance of Govt. orders finally transferring them to the Board and lien held by them on the posts with Govt. was terminated and new lien on the post under the Board was acquired.

7. On the aforesaid foundation, it is contended by learned Counsel for the petitioners that the dates, on which their lien was terminated as a result of acquisition of new lien on a permanent post with the Board in pursuance of Govt. order finally transferring their services to the Board, should be treated as their respective dates of retirement from the Govt. service, and as a consequence of retirement from Govt. service, retiral benefits for their period of service with the Govt. should be computed in accordance with law applicable to retired Govt. Employees. As a further corollary of this submission, the petitioner submits that a result of decision of this Court rendered in Retired Contributory Provident Fund Holders Association, Jodhpur v. The State of Rajasthan RLV 1986 42 as affirmed by a Division Bench of this Court in State of Rajasthan v. Retired Contributory Provident Fund Holders Association 1987(1)RLR 353, the Govt. of Rajasthan

issued a memorandum dated 17.10.1987 after SLP filed by State of Rajasthan against aforesaid decision was rejected by the Hon"ble Supreme Court on 11.8.87. Under this memorandum, ex- employees of the State Government who retired after 1.4.51 from a post under the Govt. availing themselves of retirement benefits available under the Jodhpur Contributory Provident Fund Rules and had not opted for pension inspite of various chances having been given to them to opt for pension, were allowed an opportunity to exercise option under the existing Rajasthan Service Rules, 1951 on the date of their respective retirement. It is submitted by the learned Counsel for the petitioners that the members of the petitioner Association named in Schedule "A" fall in the same category as members of Jodhpur Contributory Provident Fund in as much as they have retired after 1.4.51 and were members of the Jodhpur Contributory Provident Fund and had not opted for pension on earlier occasion. But these employees have not been so treated and option under memorandum dated 17.10.87 has not been made available to them on the ground that they were absorbed by Board before they retired from Govt. service and cannot be treated to have retired from a post of Government. Merely because they were ultimately absorbed in the services of the Electricity Board after serving for qualifying period under State, they cannot be denied the benefit of said memorandum. His further case is that after obtaining their options in pursuance of the memorandum dated 17.10.87, the members of the petitioner Association named in Schedule "A" should be allowed pension calculated on the basis of the service rendered upto the date of their permanent absorption in the Board as per the terms of Ex.4 as qualifying period for pension.

8. For the proposition that until final order of absorption was made by the State, the petitioners continued as Govt. servants notwithstanding the fact his services were placed at the disposal of the Board vide order dated 12.2.1958 (Ex.1), learned Counsel relies on a decision of this Court in Ram Dutt Purohit v. State of Rajasthan and Anr. S.B. Civil Writ Petition No. 1387 of 1970, decided on October 26, 1971 wherein a controversy arose whether a person whose services were placed at the disposal of the Board by the very order dated 12th February, 1958 and who was opted for absorption in the service of the Board, could he be termed as an employee of Board with effect from the date of his option so as not to be governed by Rajasthan Service Rules for being superannuated on attaining age of 55 years. The petitioner had contended that on exercise of his option, he became an employee of the Board, therefore, he cannot be superannuated from service on the basis of any rule in the Rajasthan Service Rules. This contention of the petitioner was repelled and it was held as under:

It will be recalled that the petitioner was holding substantive appointment in the service of the Rajasthan State before his transfer to the Board, and his service was placed at the disposal of the Board as aforesaid. He therefore acquired a lien on the post of upper division clerk, which he was holding on the relevant date, in terms of Rule 15 of the Rajasthan service Rules. So when his service was placed to the disposal of the Board, he was on "foreign service" within the meaning of

Rule 7(10) of the Raj. Service Rules. Consequently, by the virtue of Rule 16(b) he retained a lien on the post of upper division clerk in the service of the State Govt. While on "foreign service" with the Board. That lien could be suspended by the State Govt. under Rule 17(b) of the Rajasthan Service Rules, but it was to revive as seen as he ceased to be an deputation on "foreign service" with the Board. It is therefore quite clear that in accordance with the aforesaid provision of the Rajasthan Service Rules, the petitioner had a lien or, at any rate, a suspended lien on a post in the State service. A reference to Rule 18(a) of the Rajasthan Service Rules shows that lien could" in no circumstances determinated even with his consent, if the result will be to leave him without a lien or a suspended lien upon a permanent post." It is significant that although the petitioner has taken the pleas that he opted for the termination of his lien in the State Service, he has not ventured to state that he had acquired a lien or suspended lien upon a permanent post in the service of the Board. There is also no evidence to justify the conclusion that the petitioner acquired any such lien in the service of the Board. It must, therefore, be held that it was not permissible for the State Govt., what to say of the Board, to terminate his lien on the post of upper division clerk in the State service as that would have left him without a lien or a suspended lien on a permanent post and would, therefore, have violated the specific requirement of Rule 18(a) of the Rajasthan Service Rules. The petitioner, thereafter, must be taken to have retained a lien in the service of the State Government "...the exercise of the option could not by itself result in the termination of the petitioner's lien in face of requirement of Rule 18(a) of the Rajasthan Service Rules.

9. This view was founded on an earlier decision of a Division Bench of this Court in Rajasthan State Electricity Board, Jaipur v. Shri Kishan and Anr. I.L.R. (1970)Raj.207. The conclusion was supported on the ground that the fact that petitioner exercised option of June 20, 1985 in the form prescribed by the Board cannot have the effect of terminating his lien in State service.

10. The same view was reiterated by this Court in a recent decision dated 16.3.1990 in S.B. Civil Writ Petition No. 3057/88 Retired Contributory Provident Fund Holders Association, Jodhpur v. The State of Rajasthan and Ors. wherein under the like circumstances as in the present case. Question that fell for determination was that when did employees of the State Govt. (Who were also members of Contributory Provident Fund), absorbed by the University of Jodhpur and University of Udaipur cease to be members of State service and what was the effect of their absorption by the respective Universities. The Court observed as under:

In view of the discussion made hereinabove, I am firmly of the view that initially, the members of the petitioner Association, whose names are mentioned in Schedules "A" and "B" annexed with writ petition have served the State Government and later, on their selection, for their permanent absorption by the University concerned, they were absorbed in the University service after giving

their options and therefore, from the date, their lien was terminated by the Govt., they ceased to be Govt. servants and become entitled to proportionate pensionary benefits keeping in view their period of service with the Govt. Their employment under the University would not be employment or re-employment under the Government. Merely because, the members of the petitioner Association had not opted pension at a particular point of time in view of then prevailing circumstances, they cannot be estopped from claiming the right to opt for pension subsequently in the changed circumstances. So far as their Government service is concerned, it will be deemed that they have retired from the Govt. service from the date they have been permanently absorbed in the University services i.e. the date from which their lien has been terminated from the Govt. Service and as such, they became entitled to the proportionate pensionary benefits as per rules as regards the period they have served the State Government. Simply because they have been re-employed on their selection for permanent absorption in the respective Universities and have been actually absorbed as such by the University of Jodhpur/Udaipur after obtaining their options for permanent absorption, they cannot be estopped from claiming pensionary benefits for the period they served the Govt. on the ground that they have not retired from a post under the Government. They have actually ceased to be Government servants or for that matter have retired from a post under the Govt. from the date they have been permanently absorbed in the University service i.e. the date on which their lien in the Govt. service was actually terminated.

11. Special Appeal against this order was dismissed vide order dated 21.10.91 expressing agreement with the conclusions arrived-at by the learned Single Judge.

I am in respectful agreement.

12. In this view of the discussion, I hold that the members of the petitioner Association named in Schedule "A" continued to be Govt. Servants until their lien was terminated by issuing final order for transferring their services to the Rajasthan State Electricity Board and fresh lien was created over corresponding posts in Board and date of termination of lien from Govt. service be deemed to be date of their retirement from Govt. service.

13. This brings the call to examine the petitioners' claim for relief for granting them same option to opt for pension as has been afforded to the members of the Jodhpur Contributory Provident Fund vide aforesaid memorandum dated 17.10.87 issued in pursuance of judgment of this Court on the ground that they form the members of the same class viz., Retired Members of the Jodhpur Contributory Provident Fund who retired from Govt. service without exercising for pension and, therefore, they are also entitled to the same option as has been given to the others vide memorandum dated 17.10.1987. For this relief, learned Counsel for the petitioner places reliance on a decision of this Court in Retired Contributory Provident Fund Holders Association, Jodhpur's case (supra) [S.B.

Civil Writ Petition No. 3057/88 decided on 16.3.1990), a part of which has been quoted above.

14. While respondents do not dispute that present case is squarely covered by the aforesaid decision, they contend that in view of the decisions of their lordships of the Supreme Court rendered in *Krishna Kumar and Others Vs. Union of India* and others, and *State of Rajasthan v. Rajasthan Pensioner Samaj* reported in 1991 Lab. I.C. 1651, the decision of this Court in *Contributory Provident Fund Holders Association, Jodhpur's case* RLW 1986 42 as affirmed in *Retired C.P.F. Holders Association v. State of Rajasthan* 1987(1)R.L.R. 353 should be held to have been over ruled.

15. Having a close look at the two authorities cited before me, I am of the opinion that the contention of learned Counsel for the respondents cannot be accepted. In *Krishna Kumar's case (supra)*" the judgment of this Court was specifically referred to and distinguished on facts. It was absorbed in *Krishna Kumar's case (supra)* as under:

We have perused the judgments. The Central Administrative Tribunal in Transferred Application No. 27/87 was dealing with the case of the petitioners' right to revise options during the period from 1.4.69 to 14.7.72 as both the petitioners retired during that period. The Tribunal observed that no explanation was given to it nor could it find any such explanation. In *State of Rajasthan v. Retired C.P.F. Holders Association, Jodhpur* 1987(1)R.L.R. . 353 , the erstwhile employees of erstwhile princely State of Jodhpur who after becoming Govt. servants opted for Contributory Provident Fund wanted to give option to which over to Pension Scheme, were directed to be allowed to do so by the Rajasthan High Court relying on *D.S. Nakara and Others Vs. Union of India (UOI)*, which was also followed in *Union of India Vs. Bidhubhushan Malik and Others*, subject matter of which was High Court Judge's pension and as such both are distinguishable on facts.

16. It is clear from above that far from over ruling the decision rendered in *Retired Contributory Provident Fund Holders Association, Jodhpur's case(supra)*, their lordships of the Supreme Court have distinguished the said case on facts, therefore, the contention of learned Counsel for the respondents that the decision given in *Retired Contributory Provident Fund Holders Association, Jodhpur's case* RLW 1986 42 affirmed in 1987 (1) R.L.R. 353 should be deemed to have been over-ruled by the *Krishna Kumar's case (supra)*, cannot be accepted.

17. Likewise in 1991 Lab.I.C.1651, the matter for consideration before the Supreme Court was grant of family pension under the relevant rules to those widows of Govt. servants who had died before exercising their option in terms of memorandum dt. 17.1.0.87. The Hon''ble Supreme Court without deciding the controversy, on merits, disposed-off the matter on the basis of the statement made on behalf of the Government which is apparent from the following

observations:

3. It may be noted that after the arguments were closed, a suggestion was made by us asking the appellant, Government to sympathetically consider the plight of the widows before us and submit a proposal so that the long standing sufferings of the unfortunate widows could be ameliorated to some extent. Accordingly, a proposal is submitted by the appellant about which here to.

4. Though we are not inclined to go deep into the matter on account of the proposal placed by the Government, we are of the firm view that there is much force in the submission made on behalf of the appellant and hold that the order impugned cannot be sustained in the light of the principle laid down in Krishan Kumar's case 1990 Lab.I.C. 1490, wherein the decision in D.S. Nakara's case 1983 Lab.I.C. 1, is explained and distinguished. Accordingly, the impugned order is set aside.

18. Thus, it is apparent that in this case also, the Hon'ble Supreme Court expressed no final opinion on the judgment rendered in the earlier case of this Court .

19. Moreover, it has to be noted that members of Jodhpur State Contributory Provident Fund did not become entitled to pension ipso facto as a result of decisions of this Court in RLW 1986 42 as affirmed in 1987 [1] R.LR.353 but their entitlement to pension depended on exercise of option under notification dt.17.10.87 issued in pursuance of the said decisions. Obviously, these retired Govt. servants who had died prior to 18.10.87 could not exercise option made available on 17.10.87. In this view of the matter, in the absence of exercise of option by the Govt. employees, they did not become a part of the class of employees who have exercised option for pension. This factor makes the case of Pension Samaj 1991 Lab. IC 1651 clearly distinguishable on facts and do not apply to those who were alive on 17.10.87 and could exercise their option in terms of notification dated 17.10.87 if given to them.

20. It cannot be disputed and denied, even assuming that C.P.F. holders and pension holders initially formed different classes, that once decision rendered by this Court became final as aforesaid and in implementation thereof, State Govt. issued memorandum dt. 17.10.1987 by offering retired personnels of the Jodhpur Contributory Provident Fund to opt for pension under Rajasthan Service Rules, the same treatment cannot be denied to some of the contributors of the Jodhpur Provident Fund. Once it has been held that those persons whose services were absorbed permanently by the Board remained Govt. employees upto the date of their permanent absorption and termination of lien on the post with Govt., the date of termination of lien has to be treated as the date of retirement, the members of the petitioner association have to be treated as part of that class of Govt. servants to whom option under Notification dt. 17.10.87 was made available and they ought to be treated alike. The petitioners are entitled to the relief on the anvil of Article 14 of the Constitution.

21. Filing of writ petition on their behalf will be deemed to result in exercise of such option in terms of Notification dt.17.10.1987 by those who were then alive.

22. Petition is, therefore, allowed. The members of the petitioner Association whose names are mentioned in Schedule "A" with the writ petition and whose services were permanently transferred to the Rajasthan State Electricity Board and who were alive on 17.10.87 are entitled to opt for payment of pension on the basis of the period spent by them in the Govt. service from the date they entered into the service of the erstwhile Jodhpur State till the date of their permanent absorption with the Board that is to say the date on which their lien was terminated from the service of the Govt. of Rajasthan. They further entitled to all other retiral benefits according to the rules. The amount of Govt. Contribution towards their Contributory Provident Fund Account plus interest paid thereon and other retirement benefits already paid to them shall be adjusted against their pensionary and other retirement benefits payable to them in pursuance of exercise of option as per this order. However, in view of the decision rendered by the Hon"ble Supreme Court in State of Rajasthan's case 1991 Lab. I.C. 1651, the widows of such C.P.F Holders who have expired before 17.10.87, will not be entitled to family pension, but they will also be entitled to get ex gratia payment at the rate of 150 per month with effect from 1.11.1991 in addition to the admissible dearness allowance as has been directed by the Hon"ble Supreme Court in the aforesaid case.

There will be no order as to costs.