

(2002) 02 RAJ CK 0003

In the Rajasthan High Court

Case No : Civil Special Appeal (W) No. 773 of 2001

Salag Ram Sharma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 11-02-2002

Acts Referred:

Rajasthan Service Rules, 1951 — Rule 56(1)

Citation : (2002) 3 WLN 528

Hon'ble Judges : D.N. Joshi, J;B.S. Chauhan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—This appeal has been filed against the judgment and order of the learned Single Judge dated 25.1.1996, by which claim of the appellant that as per Sub-rule (1) of Rule 56 of the Rajasthan Service Rules, 1951 (hereinafter called "the Rules, 1951"), he should not have been retired on 31st August, 1983 and the respondents should have accorded him all consequential benefits has been rejected.

2. Facts and circumstances giving rise to this case are that appellant was appointed as Assistant Teacher w.e.f. 1.8.1950 and his date of birth was 1.9.1929. He was given retirement on attaining the age of 55 years vide order dated 15.5.1984 with effect from 31.8.1984. Appellant, being aggrieved and dissatisfied, filed writ petition on various grounds which was dismissed by the impugned judgment and order dated 25.1.1996. Hence this appeal.

3. The controversy involved in this case lies in a very narrow compass as to whether the appellant, whose date of birth is 1.9.1929, after attaining the age of superannuation, i.e. on becoming 55 years of age, would retire on 1.9.1984 or 31.8.1984. This issue becomes relevant for the reason that in certain Statutory Rules, particularly in Education Department, a teacher may be permitted to continue In service upto the end of the academic session if he retires in the mid

thereof. Rule 56 of the Rules, 1951 reads as under:

Compulsory retirement on attaining age of superannuation.--(1)(i) Except as otherwise provided in these rules, the date of compulsory retirement of a Government servant....is the afternoon of the last day of the month In which he attains the age of 55 years...

Thus, this provision requires interpretation as to whether the day on which he was born and the day on which his birthday falls, are to be included or excluded for reckoning the age of superannuation. In *G. Vatsala Rani Vs. Selection Committee for Admission to Medical Colleges, Bangalore Medical College, Bangalore*, , the Mysore High Court explained the provisions of Section 4 of the Majority Act, 1875. In the said case, question arose as to whether petitioner therein, who was born on 2.10.1950, would complete 16 years of age on 2.10.1966 or on 1.10.1966. The Court held that even for the purpose of admissions, age is to be determined excluding the date on which his/her birthday falls. The Court held as under:

But in the absence of any such express provision,.....it is well settled that any specified age in law has to be computed as having been attained or completed on the day preceding the anniversary of the birthday, that is, the day preceding the day of the calendar corresponding to the day of birth of the person.

The Court held that she completed the age of 16 years on 1.10.1966.

4. In *Siddeshwari Kumari Srivastava v. State of U.P. and Ors.*, 1991 All. L.W. 561 the Allahabad High Court considered the same issue and held that the date on which an employee is born, has to be included and day of his anniversary is to be excluded for calculation while determining the exact date of superannuation. Similar view has been reiterated by this Court in *Kistoor Singh v. State of Rajastnan and Ors.*, RLW 1998 (3) 1769.

5. The Hon''ble Supreme Court has considered the issue in *Prabhu Dayal Sesma Vs. State of Rajasthan and another*, and placed reliance on the judgments of English Courts in *Rex v. Scoffin* (1930) 1 KB 741; and *Re: Shurey, Savory v. Shurey* (1918) 1 Ch. 263 wherein the issue had arisen as to whether a person attains a specified age in law on the anniversary of his birthday or on the day preceding that anniversary and considered the entire law on the subject and came to the conclusion that the date comes on the preceding and not on the date his anniversary falls. The Apex Court observed as under:

In calculating a persons''s age the day of his birth must be counted as a whole day and he attains a specified age on the day preceding the anniversary of his birth day. We have to apply well accepted rules for computation of time. One such rules is that fractions of a day will be omitted in computing a period of time in years or months in the sense that a fraction of a day will be treated as a full day. A legal day commences at 12 O''clock midnight and continues until the same hour the following night. There is a popular misconception that a person does

attain a particular age unless and until he has completed a given number of years. In the absence of any express provisions, it is well-settled that any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birth day.

6. In view of the above, we do not find any merit in the appeal. The judgment of the learned Single Judge does not call for any interference as it has rightly been held that appellant had attained the age of superannuation on 31st August, 1984. The appeal is dismissed accordingly.