(1971) 11 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Special Appeal No. 33 of 1968

Shanti Lal APPELLANT

Vs

State of Rajasthan RESPONDENT

Date of Decision : 30-11-1971

Acts Referred:
Constitution of India, 1950 — Article 226, 309, 318

Citation : (1972) RLW 304 : (1971) WLN 708

Hon'ble Judges : S.N. Modi, J;L.N. Chhangani, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

L.N. Chhangani, J.—This is a special appeal against the judgment and order of a learned single Judge of this Court dated 4-5-67 dismissing the appellant''s application under Article 226 of the Constitution of India.

2. The facts giving rise to his appeal are briefly these. The appellant Shri Shanti Lal Ahuja was a member of the Indian Administrative Service For some time he was the member of the Rajasthan Board of Revenue and later on he worked as a Commissioner of Departmental Enquiries and Commissioner,(frood Supplies) to the Government of Rajasthan. He retired from service with effect from 17-11-1959 and was granted 120 days refused leave on his retirement. He was appointed a member of the Rajasthan Public Service Commission (hereinafter referred to as R P.S.C.) by an order of the Governor of Rajasthan dated 23-11-1959. In his order of appointment as a member of the R.P.S.U there was an endorsement while forwarding the copy to the Accountant General, Rajasthan, Jaipur, containing the following direction of the Governor:

....The period of re-employment of Shri Ahuja shall be from 17th March, 196(1 Under the provisions to Regulation 4 of the R.P.S.C. (Condition of Service) Regulations, 1951 the Governor has been pleased to order that Shri Ahuja''s pay on re-employment be fixed at the rate of Rs. 2,000/- p m. the pay of the post of

Member, R.P.S.C. his pension during this period being kept in abeyance. The amount of pension equivalent to Death cum Retirement Gratuity will be deducted from his pay.

The amount to be deducted from salary being the pension equivalent of death cum-retirement gratuity was calculated at Rs. 177.46 vide order No F. 14(11) Apptts (A)/59 dated 23-11-59. The petitioner-appellant took over as a Member of the R.P.S.G on 1.12.1959, and drew monthly salaries after the deduction of Rs. 177.46. He received the amount of death-cum retirement gratuity on 22-7-1960 after his ippoin mint as a number of the R.P.S.C. On 4-10-62 the appellant sent a detailed letter to the Special Secretary to the Government, Appointments (A) IV Department, Rajasthan, Jaipur protesting against the deduction of Rs. 177.46 from his salary and there was some correspondence between the appellant and the respondent in connection with the impropriety of the deduction and for the refund of the amount deducted after retirement from the R.P.S G On 27-5-1963 the appellant was informed that there was no question of refunding; the amount which was being deducted from his salary every month as pension equivalent of death-cum-retirement gratuity after his retirement from the R.P.S.C A already said hereinabove, the deduction was being made in accordance with the terms of the appellant''s appointment. On 26-8-63 the appellant filed the writ application praying for a writ of certiorari, mandamus, prohibition or any other appropriate writ, direction or order declaring the orders of the respondents to deduct the equated monthly amount of death-cum-retirement as illegal and without jurisdiction. The appellant''s case was that Regulation 5 of the Rajasthan Policy Service Commission (Conditions of Service) Regulations (hereinafter referred to as Regulation) gave only two alternatives to the appellant, namely:

(1) to determine whether at the time appointment of a retired Government servant as the Chairman or Member of the Public Service Commission, his pension was to be held in abeyance, whether wholly or in part, or in

(2) the alternative, to determine whether the pay fixed by this Regulation should be reduced by the amount not exceeding the amount of such pension including such portion of it as may have been commuted after the pension as allowed to be drawn in full.

3. The petitioner-appellants submission is that none of the two alternatives had been clearly determined but both had been applied in a confused manner. As the death-cum-retirement gratuity had been paid to the appellant there was no question of keeping it in abeyance.

4. With reference to the note under Rule 337 of the Rajasthan Service Rules (hereinafter referred to as the Rules), the appellant contended that the Governor was not competent under Article 309 of the Constitution to make any Service Rules in the case of a Member of the R.P.S.G. and that the very foundation of the jurisdiction assumed by the respondents in deducting the amount equated to monthly amount of death-cum retirement gratuity from the petitioner-

appellant''s pay was completely lacking and that the orders of the Government in this connection were absolutely without jurisdiction. The appellant''s case further was that if the payment of the pension was held in abeyance then on plain grammatical meaning of the words "held in abeyance" the was entitled to draw the amount held in abeyance after his retirement as the member to the R.P.S.C. According to the appellant, the orders of the Govt. were illegal and perverse and based on complete misunderstanding of the provisions of the Constitution as well as the Regulations.

5. The application was opposed by the State. The State''s case was that the appellant cannot escape the burden of note 3 below Rule 337 of the Rules, he being a retired State Officer appointed as the Member of the R.P.S.C. and it is not correct to say that both the alternatives mentioned in proviso to Regulation 4 had not been applied to the appellant. His fixation of pay is governed by the first alternative alone whereby his pension has been kept in abeyance wholly which includes pension equivalent to death-cum-retirement gratuity in terms of the explanation below Regulation 4 which states that the term ''pension'' shall include pension equivalent to death cum - retirement gratuity. The State also challenged the implications of the expression "held in abeyance" suggested by the appellant and stated that on an acceptance of the petitioner-appellant''s implication, he could even claim the amount of pension kept in abeyance that such a claim is contrary to the practice prevailing in the country. The State also took the plea that the appellant having accepted the appointment on terms and conditions specified in the endorsement to the appointment order dated 23-11-1959, and having withdrawn the amount of death-cum-retirement gratuity and, having accepted the salary after deduction for quite a log period, he is not entitled to any "relief in the exercise of extra-ordinary jurisdiction.

6. It may be mentioned that on 17-11-85 the State submitted replies to some ten queries said to have been made from the Government Advocate. In this reply it was added that under note 5 below Rule 346 of the Rules the pension equivalent to death-cum-retirement gratuity has to be taken into consideration for the purpose of pay on re-employment only w.e.f, 1-9-1955. Reference was, also made to the illustration showing the method of calculating pension equivalent to Death-cum-Retirement Gratuity & the correctness of the calculation of an amount of Rs. 17746 in the appellant''s case. It was also contended that the Government decision inserted below Rule 337 lays down a specific rule specifically. meant to, govern retired State Officers who may be re-employed as, members of the R.P.S.C, arid that the proviso to Regulation 4 applies to all retired officers and that the combined effect of these two provisions is that in the gases of a Retired State Officer who may be appointed as Member of the R.P.S.C. the Government will have to adopt only first alternative of the proviso to Regulation 4 and simultaneously effect will also have to be given to the requirement of note 3 under Rule 337, of the Rules in deducting the amount of pension equivalent to death-cum-retirement gratuity. Reference was also made to explanation to Regulation 4 saying that the term ''pension'' shall include

pension equivalent to death-cum retirement gratuity. The State''s case thus was that it acted under the first alternative and after keeping the whole pension in abeyance it deducted pension equivalent to death cum-retirement; gratuity under the relevant rule of the Rajasthan Service Rules. The pension equivalent to death-cum-retirement gratuity was only deducted from the pay instead of keeping the same in abeyance as the abeyance of the death-cum-retirement gratuity is provided only in the form of deduction monthly from pay basis of the calculation laid down in the illustration given below note 5 of Rule 346 of the Rules in view of the fact that under the rules the amount on account of death-cum-retirement gratuity has to be paid on retirement.

7. Subsequently the application came up before the learned single judge. The learned single Judge recorded the following conclusion-

The above order is perfectly in conformity with regulation 4 of the Rajasthan Public Service Commission (Conditions of Service) Regulations, 1951.

Having regard to. the amount of Rs. 24,000/- as death-cum-retirement gratiuty and the average expectancy of life as 1927 years on the date of appellant''s retirement, the learned single Judge calculated the monthly equivalent to Rs. 177 46 and observed that "this was in accordance with the order off the Governor which was passed in conformity with Regulation 4 of the Rajasthan Public Service Commission (Conditions of Service,) Regulations, 1951." The learned Judge further observed, "The object of this regulation is to enable the Government to so regulate the total emoluments of a retired Government servant, who is re-employed, that during the period of such re-employment this retirement benefits are withheld from him and he only received the salary or emoluments which he would have got if he Were not a retired Govt. servant "He further observed that "as the amount of Rs. 24,000/- was paid to the petitioner in a lump sum the Governor was entitled to make a deduction of Rs. 177,46 per month from the salary of Rs. 2,000/- per month during the period of the re-employment of the petitioner." On these findings, the learned single Judge dismissed the writ petition. The petitioner feeling aggrieved from the judgment of the learned single Judge has filed the present special appeal.

8. We have heard Mr. Dutta for the appellant and Mr. M D. Purohit Deputy Government Advocate. The first contention on behalf of the appellant is that the main order does not contain any direction for the deduction of pension equivalent of the death-cum-retirement gratuity. In the endorsement forwarding a copy to the Assistant Accountant General the Special Secretary while fixing the salary made a direction for the deduction of the monthly equivalent of the death-cum-retirement gratuity. This is not the order of the Governor and the direction having been made by the Secretary must be ignored. The contention is altogether devoid of any force. The main order appointing the appellant has no doubt been made in the name of the Governor but is signed by the Special Secretary. Similarly, the direction in the endorsement forwarding the copy to the Special Secretary regarding fixation of pay and deduction of the monthly

equivalent of death-cum-retirement gratuity is in the name of the Governor and has been authenticated by the Secretary. The direction must be treated as having been made by the Governor. The appellant''s contention has no force and must be dismissed.

9. The State having taken a positive stand that in issuing the impugned order the Governor acted under the first alternative, the crucial question for determination is whither the first alternative of Regulation 4 reasonably envisages a direction for the deduction of the monthly equivalent of the death-cum-retirement gratuity as a consequence of the keeping pension in abeyance or such a direction is inconsistent with the Regulation For determining this question, it will be necessary to notice the relevant rules Governing the conditions of service.

10. The first rule to be noticed is Rule 2 of the Rajasthan Service Rules Proviso (2) of this rule, so far as relevant for our purposes, reads as follows:

Provided further that these Rules shall not apply-

(d) to the Chairman and Members of the Raj. Public Service Commission, who will be governed by regulations made under Article 318 of the Constitution of India.

(e) to members of the All India Services in matters covered by the Rules made by the Union Government,

11. The next important rule deserving notice is the All Indian Service (Death-cum-retirement benefits) Rules, 1958 (herein after referred to as D.C R. Rules). Below Rule 26 regarding "acceptance of employment after retirement," there are added Government of India''s Decisions, the decision (3 2) reading as follows:

Indian Administrative/Police Service officers are treated as non cadre officers after their retirement. Their re-employment in cadre posts shall be regulated by Rule 9, of the Indian Administrative/Police Service (Cadre) Rules, 1954. As regards their re-employment in non-Cadre posts, State Government rules will apply.

The post of a Number of the R.P.S.G. is a non-cadre post and consequently, the Rajasthan Service Rules should apply, subject of course to the effect of Clause (d) of proviso (2) Rule 2 of the Rules to which we may revert at a later stage. Clause (e) of the second proviso to Rule 2 of the Rules cannot stand in the way as it excludes the operation of the Rules to the members of the All India Services only in matters covered by the Rules made by the Union Government. No rules made by the Union Government providing for cases of re employment of the retired members of the AH India Services as Chairmen and Members of the Public Service Commission have been brought to our notice The Government decision referred to above, clearly contemplates the application of the Rajasthan Service Rules.

12. Taking up the Rajasthan Service Rules, we may first refer to Rule 346 of the

Rules which provides that "A Government Servant who is in receipt of a superannuation or Retiring Pension shall not be re-employed in service paid from the Consolidated Fund or from a Local Fund, except on public grounds " Note 2 below that rule provides that when in special and, exceptional circumstances it is considered desirable to re employ a Government servant who has been permitted to retire on proportionate pension in a post under the Government, the pay of the post should be reduced by the full amount of his pension. Note 5 below that rule relates to death-cum-retirement gratuity and reads as follows-

The pension equivalent of Death-cum-Retirement Gratuity may be taken into consideration for the purpose of fixation only with effect from 1-9-1955 for all cases of re-employment and continued reemployment. No recoveries on account of pension equivalent upto 31-8-1955 will be enforced in any case.

An illustration showing the method of calculating the pension equivalent to the death-cum-retirement gratuity is also given. Reference may also be made to Rule 305 of the Rules providing that "a gratuity is paid in a single sum, and not by instalments, on receipt of the Accountant General''s authority."

13. A combined effect of these rules clearly is:

(1) that a member of the All India Services retiring from the State Service, when re-employed on a non-cadre post, should be deprived of his retirement benefits;

(2) That the death-cum-retirement gratuity is also to be treated as a pension;

(3) That the payment of the death-cum-retirement gratuity should be in lump sum and the rules do not contemplate postponement or withholding of the payment of the death-cum-retirement gratuity;

(4) That in case of death-cum-retirement gratuity the withdrawal of the pensionary benefits during the period of re-employment should be effected by deduction of pension equivalent of the death-cum-retirement gratuity during the period of re-employment instead of postponing or with-holding the amount of gratuity

14. At this stage, we may refer to Rule 337 note (3) of the Rules specifically providing for cases of re-employment of retired State Officers as Chairman and Members of the R.P.S.C It reads as follows-

In case of a State Officer re-employed as Member of the Rajasthan Public Service Commission the pension shall be held in abeyance and the pension equivalent of the death-cum retirement gratuity received by the officer will be deducted from the pay fixed as Member of the Rajasthan Public Service Commission.

15. It must follow as result of the above discussion that the direction for the deduction of the pension equivalent to death-cum-retirement gratuity from the appellant''s salary during the period of re-employment is prima facie justified.

16. The appellant, however, emphasised Clause (d) of the second proviso the

Rule 2 of the Rules and contended that the Rules having been promulgated by the Governor under Article 309 of the Constitution, cannot apply to the Chairman and members of the R.P.S.C. whose conditions of services are to be determined by the Regulations under Article 318 of the Constitution.

17. It is true that no rules regulating the conditions of services of the Chairman and Members of the R.P.S.C. can be framed under Article 309 the Constitution. This, however, is not equivalent to saying that the Rules cannot provide for keeping in abeyance the pensioner benefits available under the Rules to the State Officers on re-employment even as Chairman or Members of the R.P.S.C. It may of course be conceded that these Rules may not be applicable if they are inconsistent with any regulations framed under Article 318 of the Constitution regulating the conditions of services of the Chairman and Members of the R.P.S.C.

18. A consideration of the Regulations and these Rules reveal that there is no inconsistency between the two. The Regulations also provide for keeping in abeyance the pensionary benefits. The explanation to the Regulation 4 further states that the death-cum-retirement gratuity will also be treated as pension.

19. As stated earlier, the service rules providing for the immediate payment of the death-cum-retirement gratuity specifically provide for the deduction of the pension equivalent from the monthly salary''s the mode of the pension equivalent from the monthly salary as the mode of keeping the pension in abeyance. Regulation 4 being silent in this behalf the Rules providing for withdrawal of pensionary benefits in general and note 3 below Rule 337 of the Rules deserve to be held applicable to the appellant and a combined effect of Regulation 4 can be easily stated to be that the Governor may direct deduction of the pension equivalent to the death cum-retirement gratuity to give effect to the direction for keeping the pension in abeyance.

20. Further, we are of the opinion that even if the Rules are not in terms applicable to the Members of the R.P.S.C. yet the general principle embodied in these rules can be invoked as an aid in interpreting Regulation 4. With this aid, it will be quite fair and reasonable to hold that the Governor while directing "the keeping in abeyance" the pension may contemplate the payment of the death-cum-retirement gratuity and give effect to the direction for keeping the pension in abeyance by ordering deduction of the pension equivalent of death-cum-retirement gratuity.

21. There is yet another angle from which the matter may be looked at. The twin objects of the Regulation are-

1. to fix the minimum emoluments of the Members of Rajasthan Public Service Commission at Rs. 2,000/- and

2. to deprive the Member of the pensionary benefits during the period of re-employment, though discretion has been reserved for the deprivation of the pensionary benefits in full or in part.

Having regard to this dominant object and in the back ground of the policy disclosed in the Rules, it will not be proper to read the two clauses as mutually exclusive and exhaustive. On the other hand, it will be proper to treat these two alternatives as illustrative and to infer that there is nothing in the clause read as a whole to prevent the Governor from combining both the alternatives for the purpose of depriving of the pensionary bent fits, the only limitation being that the Governor cannot go beyond merely depriving the officer of the maximum benefits.

22. The appellant has also contended that in any case he was entitled to refund of the account deducted after his retirement as the Member of the R.P.S.C. In this connection, he emphasised the use of the terms, "keeping in abeyance with according to him, mean "suspension, temporary inactivity" We cannot accept this argument. During the course of re-employment the petitioner-appellant''s pension other than death-cum-retirement gratuity, was also kept in abeyance and he himself has not made any claim for payment of the amount withheld during the period of re-employment. Indeed, it was never, nor could have been intended that after retirement he will be paid in lump sum what bad been withheld during the period of re-employment. The position with regard to death-cum-retirement gratuity pension cannot be different.

23. In this view of the matter, we have no hesitation in agreeing with the conclusion of the learned single Judge that the order of the Governor is not in any way inconsistent with the Regulation. We may also add that having regard to the appellant''s conduct in having accepted appointment, having withdrawn the amount of death-cum-retirement gratuity after the order of appointment and having acquiesced in the order of appointment and having withdrawn the salary after deduction for quite a long period, he is not entitled to any relief in the exercise of extraordinary jurisdiction. We may observe that the ingenuous argument based on the language of the Regulation in stating the two alternatives available to the Governor cannot induce us to invalidate the order of the Governor based on appraisement of the true spirit of the Regulation in the back ground of the policy indicated by the service rules.

24. We do not see any force in this appeal and dismiss it. There will be no order as to costs.

25. The learned Counsel for the appellant prays for leave to appeal to the Supreme Court. The leave is refused.

