
(2011) 03 RAJ CK 0123
In the Rajasthan High Court
Case No : Civil Writ Petition No. 124 of 2009

Sirajudin

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 18-03-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 309, 311

Citation : (2011) 03 RAJ CK 0123

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Judgement

Govind Mathur, J.—Being appointed as Mechanic (Instrument Repair) vide order dated 31.12.1970, fixation of the Petitioner's pay was made in the pay-scale of Rs. 100-180. The Petitioner after serving the Respondents for substantial term noticed that the pay-scale applicable for the post of Mechanic (Instrument Repair) at the time of his initial appointment was of Rs. 120-240, thus, to claim fixation in the pay-scale aforesaid he submitted a representation to the competent authority. An appeal then was preferred by him before the Rajasthan Civil Services Appellate Tribunal, Jaipur, to claim for fixation of his pay in the pay-scale of Rs. 120-240, on the date of his initial appointment and further fixation in corresponding pay-scale thereto. During pendency of the appeal, vide notification dated 7.8.2002, the Governor of Rajasthan while exercising powers under proviso to Article 309 of the Constitution of India made an amendment with the Rajasthan Civil Services (New Pay-scales) Rules, 1969 (for short "the Rules of 1969" hereinafter) substituting the pay-scale of Rs. 100-180 in place of the pay-scale of Rs. 120-240 for the post of Mechanic (Instrument Repair). Learned Tribunal in view of the pay-scale prescribed as a consequent to the amendment introduced vide notification dated 7.8.2002, rejected the appeal preferred by the Petitioner.

2. By this petition for writ, the Petitioner is questioning validity of the judgment passed by the Tribunal dated 14.10.2008 and also the notification dated

7.8.2002 making amendment in the pay Rules of 1969.

3. The submission of learned Counsel for the Petitioner is that at the time of initial appointment of the Petitioner, the pay-scale prescribed for the post of Mechanic (Instrument Repair) was of Rs. 120-240, thus, he was entitled for fixation of his pay in the pay-scale aforesaid. The Respondents under the notification impugned dated 7.8.2002 introduced an amendment with the Rules, that affects his vested rights adversely. According to counsel for the Petitioner, a benefit that has accrued under the existing rules cannot be taken away by an amendment with retrospective effect and no statutory rules or administrative order can whittle down a right which has become crystallized, and no rule can be framed under proviso to Article 309 of the Constitution of India which affects or impairs the vested rights.

4. The contention is substantiated by placing reliance upon the judgment of the Hon'ble Supreme Court in State of Gujarat v. Raman Lal Keshav Lal Soni, reported in 1983 Lab. I.C. 391 . Reliance is also placed by learned Counsel upon the judgments of Hon'ble Supreme Court in Ex-Capt. K.C. Arora and Another Vs. State of Haryana and Others, R.S. Ajara and Others Vs. State of Gujarat and Others,

5. While contesting the claim of the Petitioner, the submission of learned Counsel for the Respondents is that as per the Rules of 1969, Mechanic (Instrument Repair) is entitled for getting pay in the running pay-scale of Rs. 100-180. The same pay-scale was allowed to the Petitioner, however, nothing is said by the Respondents as what was the occasion to amend the Rules of 1969 in the year 2002, with retrospective effect, adversely effecting vested right of the Petitioner for fixation of his pay in the pay-scale of Rs. 120-240. Learned Counsel for the Respondents has contested the claim with assertion that the grant of pay is a prerogative of the employer and any change made therein is not open for interference by this Court while exercising powers under Article 226 of the Constitution of India.

6. Heard learned Counsel for the parties.

7. It is not in dispute that at the time of appointment of the Petitioner, that is in the year 1970, the pay-scale prescribed for the post of Mechanic (Instrument Repair) was of Rs. 120-240, but fixation of the Petitioner's pay was made in the pay-scale of Rs. 100-180. The pay-scale of Rs. 120-240 for the post of Mechanic (Instrument Repair) was prescribed in the Rules of 1969 at Sr. No. 14 in the Schedule-I Section (F) relating to the Department of Education (Technical), thus, the entitlement of the Petitioner for fixation of his pay in the pay-scale aforesaid was a statutory one. The Respondents instead of making fixation of Petitioner's pay in the pay-scale prescribed by statute erroneously fixed in the pay-scale of Rs. 100-180. The pay-scale of Rs. 120-240 for the post of Mechanic (Instrument Repair) remained in currency upto issuance of the notification dated 7.8.2002, making amendment in the Rules of 1969. The Respondents, if, would have made

correct fixation of the Petitioner at the time of his initial appointment, he would have been certainly fixed in the pay-scale of Rs. 120-240.

8. As a matter of fact, the amendment in the Rules of 1969 was introduced only after filing of the appeal by the Petitioner before the Tribunal. The amendment so introduced adversely affects the Petitioner's vested rights for getting his pay fixed in a higher pay-scale. The Hon'ble Supreme Court in *State of Gujarat v. Raman Lal Keshav Lal Soni* (supra) while dealing with a similar eventuality held as under:

Now in 1978 before the Amending Act was passed thanks to the provisions of the principle Act of 1961 the ex-municipal employees who had been allocated to the panchayat service as Secretaries Officer and servants of Gram and Nagar Panchayats, had achieved the status of government servants. Their status as government servants could not be extinguished so long as the posts were not abolished and their services were not terminated in accordance with the provisions of Article 311 of the Constitution. Nor was it permissible to single them out for differential treatment. That would offend Article 14 of the Constitution. An attempt was made to justify the purported differentiation on the basis of history and ancestry as it were. It was said that Talatis and Kotwals who became secretaries, officers and servants of Gram and Nagar Panchayats were government servants, even to start with, while municipal employees who became such secretaries, officers and servants of Gram and Nagar Panchayats were not. Each carried the mark or the "brand" of his origin and a classification on the basis of the source from which they came into the service, it was claimed, was permissible. We are clear that it is not. Once they had joined the common stream of service to perform the same duties, it is clearly not permissible to make any classification on the basis of their origin. Such a classification would be unreasonable and entirely irrelevant to the object sought to be achieved. It is to navigate around these two obstacles of Article 311 and Article 14 that the Amending Act is sought to be made retrospective, to bring about an artificial situation as if the erstwhile municipal employees never became members of a service under the State. Can a law be made to destroy today's accrued constitutional rights by artificially reverting to a situation which existed 17 years ago ? No.

The legislation is pure and simple self-deceptive if we may use such an expression with reference to a legislature made law. The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution and have to conform to the dos and don'ts of the Constitution, neither prospective nor retrospective laws can be made so to

contravene fundamental rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say 20 years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated

back by 20 years. We are concerned with today's rights and not yesterday's. A legislature cannot legislate today with reference to a situation that obtained 20 years ago and ignore the march of events and the constitutional rights accrued in the course of the 20 years. That would be most arbitrary, unreasonable and a negation of history.... Today's equals cannot be made unequal by saying that they were unequal 20 years ago and we will restore that position by making a law today and making it retrospective. Constitutional rights, constitutional obligations and constitutional consequences cannot be tampered with that way. A law which if made today would be plainly invalid as offending constitutional provisions in the context of the existing situation cannot become valid by being made retrospective. Past virtue (constitutional) cannot be made to wipe out present vice (constitutional) by making retrospective laws. We are, therefore, firmly of the view that the Gujarat Panchayats (Third Amendment) Act 1978 is

unconstitutional as it offends Articles 311 and 14 and is arbitrary and unreasonable.

9. The Hon'ble Supreme Court also in *R.S. Ajara and Ors. (supra)* and *Ex. Capt. K.C. Arora and Anr. (supra)* held that a benefit that has accrued under the existing rules cannot be taken away by an amendment with retrospective effect and no statutory rule or administrative order can whittle down or destroy any right which has become crystallized and no rule can be framed under the proviso to Article 309 of the Constitution which affects or impairs the vested rights. As already stated earlier, in the instant matter a statutory right accrued in favour of the Petitioner at the time of his initial appointment for getting his pay fixed in the pay-scale of Rs. 120-240 and that has been taken away by making an amendment with retrospective effect.

10. In view of law discussed above and has held by the Hon'ble Supreme Court in the cases referred above such withdrawal of vested right by making amendments in the Rules by exercising powers under the proviso to Article 309 of the Constitution is impermissible. The amendment introduced in the Rules of 1969 in Schedule-I Section (F), Department of Education (Technical) under the Notification dated 7.8.2002, thus, is nothing but arbitrary exercise of powers and as such, is in violation of Article 14 of the Constitution of India.

11. The petition for writ, therefore, deserves to be allowed. The amendment introduced in the Rules of 1969 under the Notification dated 7.8.2002 changing the pay-scale prescribed for the post of Mechanical (Instrument Repair) with retrospective effect is quashed. The Petitioner is declared entitled to be fixed in the pay-scale of Rs. 120-240 on the date of his initial appointment. The Petitioner is also declared entitled for all consequential benefits. The judgment impugned dated 14.10.2008 passed by Rajasthan Civil Services Appellate Tribunal too is quashed and the appeal preferred by the Petitioner i.e. Appeal No. 567/2000 (*Sirazudin v. State and Ors.*) is allowed.