
(2010) 11 RAJ CK 0170
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1122 of 2001

Smt. Ram Kumari Anwara

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 22-11-2010

Acts Referred:

Rajasthan Service Rules, 1951 — Rule 256, 256C, 256D, 86, 86(3)

Citation : (2010) 11 RAJ CK 0170

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mohammad Rafiq, J.—This writ petition has been filed by the Petitioner, who was serving the Respondents as Headmistress. Petitioner was appointed with the Respondents on 3/11/1970. She worked with the Respondents continuously upto 13/5/1987 and beyond that period, it is contended by the Petitioner that she became so sick that she was unable to attend duties and she made number of applications duly supported by the medical certificates for grant of medical leave although those applications were received by the Respondents but they never conveyed about rejection of her leave nor otherwise conveyed sanction thereof. It is contended that Petitioner in this state of affair attained the age of superannuation of 58 years prevailing on 31/3/1999. She then prayed for settling her retiral dues but when nothing was done she filed this writ petition.

2. Learned Counsel for the Petitioner has argued that even if it was a case of absence of the Petitioner for a long time, Respondents could not have withheld retiral dues unless they in terms of Rule 86 of the RSR subjected her to regular departmental proceedings on charge of willful absence which although was not willful absence but was for reasons of her illness which was beyond her control. It is therefore contended that in terms of 256 (d) of the Rajasthan Service Rules 1951, Petitioner should be accorded proportionate pensionary benefits and also Gratuity etc.

3. Learned Counsel for the Respondents has opposed the writ petition and submitted that Petitioner has been willfully absenting from duty from 13/5/1987 and writ petition has also been filed belatedly in the year 2001. If her leave application was not accepted, there was no justification for her to have remained absent from duties. Learned Counsel referred to the notice served upon the Petitioner on 21/11/1990 (Ann.4) to report on duty but she did not submit reply there to.

4. Upon hearing learned Counsel for the parties and perusing the material available on record, I find that here is a case where a Headmistress of a Government School, who had served the Respondents from 3/11/1970 till 13/5/1987 and remained absent from 13/5/1987 for more than 11 years till 31/3/1999 when she retired, yet Respondents did not serve upon her 3 any charge-sheet provided under the provisions of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 (shall hereinafter be referred as the "Rules of 1958"). Nothing has been brought on record to show that she was dealt with in appropriate departmental proceedings on charge of willful absence. Whether or not there was any justification for her to apply for medical leave or whether actually she was so sick as to be unable to attend the duties, is a disputed question of fact. Facts remains however that Respondents did not pass any order to initiate departmental proceedings against her or to otherwise dispense with her services. Rule 86 of RSR clearly provides that if a Government servant, who is absent from duty without leave or before leave applied for has been sanctioned by the competent authority shall be treated to have remained willfully absent from duty and such absence shall amount to interruption in service involving forfeiture of past service unless, on satisfactory reasons being furnished, the absence is regularized by grant of leave due or is commuted into extra-ordinary leave by the authority competent to sanction leave. Sub Rule (3) of Rule 86 of RSR provides that if a Government servant, who willfully remains absent from duty for a period exceeding one month and if the charge of willful absence from duty is proved against him, he may be removed from service after initiation of departmental proceedings against him provided under the provisions of the Rules of 4 1958. Though nothing has been shown by the Respondents but there is hardly any justification in not paying to her retiral dues muchless a proportionate pension which has all been prayed on the basis of Rule 256D of RSR, which provides as under:

256D. Notwithstanding the provisions contained in Rule 256C in respect of a Government servant retiring on or after 1-9-1986 the amount of superannuation, retiring, invalid and compensation service gratuity and pension shall be as follows:

(a) Service Gratuity.-The service gratuity for qualifying service of less than 10 years shall be allowed at the rate of half month's emoluments for every completed six monthly period of service.

(b) Pension.-The amount of pension shall be determined at 50% of

"emoluments" subject to a minimum of Rs. 300/- per month. The amount of pension arrived at shall be related to the maximum qualifying service of 33 years.

In the case of a Government servant who, at the time of retirement has rendered qualifying service of 10 years or more but less than 33 years, the amount of his pension shall be such proportion of the maximum admissible pension as the qualifying service rendered by him bears to the maximum qualifying service of 33 years.

5. In the result, writ petition is allowed. Respondents are directed to compute the Proportionate Pension of the Petitioner and Gratuity on the basis of service rendered by her from 3/11/1970 till 13/5/1987 and make payment of the same to her together with interest @6% p.a.