
(2015) 08 RAJ CK 0014
In the Rajasthan High Court
Case No : Civil Writ Petition No. 14440 of 2010

S.N. Rajoria and Others

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 12-08-2015

Acts Referred:

Constitution of India, 1950 — Article 14
Electricity (Supply) Act, 1948 — Section 79(c)

Citation : (2015) 08 RAJ CK 0014

Hon'ble Judges : Ajay Rastogi, J;J.K. Ranka, J

Bench : Division Bench

Advocate : Ashok Gaur, Senior Advocate assisted by Ashwani Jaiman, for the Appellant; Sonal Singh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ajay Rastogi, J—Instant writ petition has been jointly filed by the petitioners who as alleged are retired employees of various companies namely Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Jaipur Vidyut Vitran Nigam Ltd. & Rajasthan Rajya Vidyut Utpadan Nigam Ltd. & Jodhpur Discom, created after unbundling of the then Rajasthan State Electricity Board with the grievance that though they had upend for CPF scheme & are members of the Rajasthan State Electricity Board Payment of Gratuity Rules, 1972 ("Rules, 1972") but a discrimination has been made by the respondents by creating retired employees into two different classes for the purpose of grant of gratuity; one alike present petitioners who opted for CPF scheme & members of the Rules, 1972 & the others who opted for pension & were members of the RSEB Employees Pension Regulations, 1988 ("Regulations, 1988").

2. It manifests from the record that on 28.06.1957 the then Rajasthan State Electricity Board was constituted to produce/generate, transmit & supply of electricity in the State of Rajasthan and at the relevant point of time Contributory Provident Fund Scheme (CPF) was introduced & made applicable to the

employees of the erstwhile Board & became effective for those who were appointed on or after 01.07.1957 & in the year 1972 the Board notified the Rules, 1972 for the purpose of providing gratuity to its employees to a maximum amount of gratuity equal to 20 months' salary or Rs. 24,000/- whichever was less & from time to time it came to be enhanced by issuing various orders due to revision of pay-scale by the department & amended in accordance with the provisions of the Payment of Gratuity Act, 1972 & made it applicable only to such of the employees who opted for CPF Scheme & continued to be the members of the Rules, 1972 but sometime thereafter Regulations, 1988 came to be introduced & made applicable w.e.f. 28.11.1988 and thus both the categories of the employees who opted for CPF Scheme or pension as the case may be, their retiral benefits and gratuity in particular are regulated separately & under the Rules, 1972 & Regulations, 1988 respectively & it has a statutory force.

3. It may be further noticed that the government under its policy dissolved the erstwhile RSEB and its assets & liabilities were inherited to five companies which adopted those Rules which were earlier existing & introduced by the then erstwhile RSEB for its employees; viz-a-viz one who opted for CPF became member of the Rules, 1972 & the other who opted for Pension became member of the Regulations, 1988. However, Explanation (2) appended to the Rules, 1972 clearly excludes/eliminates such of the employees who were working in the Board but were eligible for pension & gratuity as per the Rules of the State Government and at the same time R.12 envisages that the gratuity shall be payable in terms & accordance with the amendments if any made from time to time under the Payment of Gratuity Act, 1972 & further provides that it shall not be in any case less favourable to those employees who opted for CPF & members of the Rules, 1972, at the same time those who became members of Pension Regulations, 1988 they were covered u/R3(j) and excluded such of the employees who are members of CPF scheme & continue to be the member of said scheme and as regards gratuity is concerned Reg.-47 of the Regulations, 1988 postulates that the decision & interpretations given by the Government of Rajasthan in respect of pension & gratuity Rules, with amendments from time to time, being similarly worded as these regulations, shall apply mutatis mutandis to the employees of the Board who have opted for pensionary benefits.

4. Since these are two separate schemes available for the employees of the Board; who opted for CPF Scheme became member of the Rules, 1972 and those who opted for pension became member of Regulations, 1988 as the case may be & shall be governed accordingly.

5. It is reflected from the material before us that in terms of provisions contained in Rules, 1972 & the Regulations, 1988, the State Government in light thereof, following the amendment made by the Central Government under the Payment of Gratuity Act, 1972, enhanced the amount of gratuity pursuant to their notification dt. 12.09.2008 from Rs. 3.5 lacs to Rs. 10 lacs & made applicable w.e.f. 01.01.2007 to the employees who opted for pension & members of the

Regulations, 1988 & the further amendment made by the State Government is in respect of those employees who opted for CPF Scheme & members of the Rules, 1972 enhancing the amount of gratuity to the self same tune of Rs. 10 lacs pursuant to their notification dt. 24.06.2010, which according to the petitioners is a discriminatory & in violation of Art. 14 of the Constitution of India.

6. Counsel for petitioners further submits that retired employees constitutes a homogeneous class & despite being similarly situated are being treated differently on two separate pedestals as one who opted for CPF Scheme alike the present petitioners & members of Rules, 1972, their gratuity is enhanced only w.e.f. 24.05.2010 whereas those who are their counterparts & opted for pension & members of the Regulations, 1988 their gratuity was enhanced w.e.f. 01.01.2007 and according to him this distinction is nothing but an eye wash & a corresponding difference between two class of retired employees of the erstwhile Board/Companies being an artificial distinction is wholly arbitrary & in violation of Art. 14 of the Constitution of India.

7. Counsel further submits that for the purpose of grant of gratuity no such distinction could have been made amongst the retired employees whether they are pension holders or the members of CPF Scheme by no intelligible differentia any distinction made for the purpose of gratuity on the ground that one set of employees are pension holders and the other set of employees are CPF holder being artificial, is not legally sustainable in law and the present petitioners who are members of the CPF scheme & retired in the intervening period & who retired earlier thereto at least they too are entitled for enhanced gratuity w.e.f. 01.01.2007 and it has been prayed that the order issued by the respondents enhancing the gratuity from Rs. 3.5 lacs to Rs. 10 lacs w.e.f. 24.05.2010 vide order dt. 24.06.2010 be quashed & set aside & it may be substituted to be made applicable w.e.f. 01.01.2007 in maintaining parity amongst the class of retired employees irrespective of they being member of CPF Scheme or of the Pension Scheme.

8. Reply to the writ petition has been filed by the respondents & apart from making reference in detail of the scheme of Rules, 1972 & Regulations, 1988, it has been averred that there was no co-relationship ever maintained in respect of grant of gratuity amongst the employees either they opted for CPF Scheme & members of the Rules, 1972 or they opted for Pension & members of the Regulations, 1988 & in support thereof a comparative chart has been made & referred to at page-73 of the paper book & the counsel appearing for respondents submits that both the schemes are regulated by separate rules for grant of gratuity and the present dispute raised by the petitioners on the premise that members of two schemes are compatible & entitled for grant of gratuity with retrospective effect i.e. w.e.f.01.01.2007, in absence of any specific scheme of Rules being floated governing retiral benefits to its employees who opted either for CPF or pension, they could not be in any manner compared with & certainly either scheme separately takes care of retiral benefits to the employees who

opted for CPF or pension & have to be regulated accordingly.

9. Counsel further submits that the scheme of Rules, 1972 & Regulations, 1988 are distinct and separately deals with the quantified sum of gratuity to be awarded to the employees who opted for CPF Scheme & pension Scheme as well and there being no comparison as such what is being pleaded & prayed for by the petitioners is based on hypothetical situation & the retired employees cannot be considered to have constituted a homogeneous class and the schemes regulating retiral benefits cannot be compared & further submits that once the petitioners had chosen to opt for CPF Scheme & became members of the Rules, 1972, no grievance could now be raised at such a belated stage to have comparison with such of the employees who opted for Pension & became the members of the Regulations, 1988 as long as the relevant separate Scheme is regulating CPF & Pension separately it is valid & intra-vires & cannot be held to be unjustified & thus what is being prayed for by the petitioners in substituting gratuity to be made applicable to the employees/members of the CPF w.e.f. 01.01.2007 is contrary to the provisions of the Scheme of Rules, 1972.

10. We have heard counsel for the parties & with their assistance perused the material on record. Before we may take note of the submissions made, it will be appropriate to first examine both the schemes which governs the two sets of employees regulated by the Rules, 1972 & by the Regulations, 1988.

11. The erstwhile RSEB in exercise of the power conferred by Section 79(c) & (k) of the Electricity (Supply) Act, 1948 made the rules for the purpose of providing the gratuity benefits to its employees, namely the Rajasthan State Electricity Board Payment of Gratuity Rules, 1972 & the Explanation (2) appended thereto in positive terms makes an exclusion of those employees who are eligible for pension & gratuity as per pension & gratuity Rules of the State Government. It appears that while enacting these Rules, the authority taking note of the fact that since the gratuity is payable to the employees who are members of the said scheme in terms as made admissible by the Central Government under the Payment of Gratuity Act, 1972 & taking note thereof R.12 was introduced which envisages that whenever there is an amendment made for grant of gratuity to the employees as per Payment of Gratuity Act, 1972 or any other matter effecting the amount of gratuity the same shall be deemed to have been incorporated in these Rules meaning thereby that whenever any amendment is made under the Payment of Gratuity Act, 1972 there is no need to make any corresponding amendment in these Rules and that became applicable to the holders of CPF scheme.

12. The Explanation (2) appended to R.1 & also R.12 of the Scheme of Rules, 1972 being relevant for the present purpose reproduced ad infra:--

"Explanation (2):-- These Rules will apply to all the employees of the Board whether on regular pay scale or not, but will not apply to those employees who though are working in the Board but are eligible for pension and Gratuity as per

pension and the Gratuity Rules of the State Government and will not also apply to the employees covered under Jodhpur Provident Fund Scheme and are eligible to Gratuity as per the State Rules applicable to them."

"R. 12:-- Board may make suitable amendments in these Rules from time to time so as to provide further benefits which are in no way be less beneficial than the benefits accruing to the employee as per the amount of Gratuity Act, 1972 as amended from time to time provided, however, that such amendments shall be in no case be less favourable to the employee than provided for in these Rules.

Provided further that if by virtue of the amendment made by the Central Government in the Payment of Gratuity Act, 1972 in regard to the amount of Gratuity or any other matter effecting the amount of Gratuity the same shall be deemed to have been incorporated in these rules from the date such amendment of the Central Government comes into force whether these rules are amended by Board or not. Provided that if such amendments of the Central Government are less favourable than the present Gratuity Rules of the Board the same shall not be applicable."

13. From the above provision, it is thus clear that the employees who are either eligible or opted for CPF Scheme, their gratuity is to be paid in terms of R.12 of the Scheme of Rules, 1972 with further amendments which came to be made in light of the notification issued by the Central Government dt. 18.05.2010 substituting gratuity from Rs. 3.5 lacs to Rs. 10 lacs & in light thereof a corresponding order came to be issued by the respondents dt. 24.06.2010, in consonance with R.12 of the Rules, 1972, enhancing amount of gratuity to the self same tune from Rs. 3.5 lacs to Rs. 10 lacs & made it effective from 24.05.2010.

14. However, the RSEB at a later point of time introduced the Regulations namely the RSEB Employees Pension Regulations, 1988 w.e.f. 28.11.1988 & such of the employees who opted for Pension Scheme became member of the Regulations, 1988, their gratuity has to be in consonance with the benefits as admissible to the employees of the State Government & in accordance with the Rajasthan Civil Services (Pension) Rules, 1996 but does not cover such of the employees who are members of RSEB CPF Scheme & opts to continue to be the member of the said scheme as referred to in Reg.-3(j) of the Regulations, 1988 and by virtue of Reg.-47 it was mandated that the government decisions & interpretations in respect of pension & gratuity with amendment made from time to time shall apply to the members of the Board who opted for pensionary benefits. Reg. 3(j) & Reg. 47 of Regulations, 1988 being relevant for the present purpose reads ad infra:--

"Reg. 3(j) "Excluded employee" means an employee on regular time scale/service who is member of the RSEB CPF Scheme and opts to continue to be the member of the said scheme. Person employed on daily labour/workcharged and through Contractor shall also be considered as excluded employee.

Reg. 47:-- Government of Rajasthan's Decision: The decision and interpretations given by the Government of Rajasthan in respect of pension and Gratuity Rules, with amendments from time to time, being similarly worded as these regulations, shall apply mutatis mutandis to the employees of the Board who have opted for pensionary benefits."

15. The scheme of Regulations, 1988 clearly manifests that it was introduced by the erstwhile Board as an alternative option for holders of the CPF Scheme and ample opportunity was afforded to the employees either to continue with CPF Scheme & gratuity shall be paid under the Rules 1972 or switch over/opt for pension as per the Pension & gratuity Rules of the State Government under Regulations, 1988 and as regards gratuity is concerned, it has been clearly taken care of & indicated that the payment of gratuity shall be made to the employees who opted for CPF or pension in terms of their option to either Scheme of Rules which separately governs their retiral benefits & gratuity in particular and those who opted & were member of the Scheme of Rules, 1972 were consciously considered to be excluded from the Scheme of Regulations, 1988 and such of the employees who became member of the pension scheme it was decided that that they will be entitled for pension & gratuity as admissible to the employees of the State Government & we do find that these are two separate schemes & as regards gratuity is concerned, in both the scheme of Rules/Regulations respectively of 1972 & 1988 there exists clause of exclusion and those who are members of the Regulations, 1988 & opted for pension they are entitled for pension & gratuity in terms of the Rules of the State Government & were specifically & consciously excluded from the benefit of the Rules, 1972, at the same time those who opted for CPF Scheme & members of the Rules, 1972 were excluded from the benefit of Regulations, 1988 and there may not be any comparison amongst these two separate categories being regulated/governed by separate set of Rules/Regulations, of which reference has been made (supra) & gratuity in particular and merely because they are retired employees, that cannot be construed to be on the same pedestal for the purpose of grant of retiral benefits being extended to the employees who opted under the relevant scheme of which he is the member and taking R.12 of the Rules, 1972 into consideration as the Central Government substituted gratuity from Rs. 3.5 lacs to Rs. 10 lacs vide its notification dt. 18.05.2010, a corresponding order came to be issued in light thereof dt. 24.06.2010 substituting the self same figure from Rs. 3.5 lacs to Rs. 10 lacs & made effective from 24.05.2010 and at the same time those who are members of the Regulations, 1988 the State Government substituted amount of gratuity from Rs. 3.5 lacs to Rs. 10 lacs w.e.f. 01.01.2007 under the Rajasthan Civil Services Pension Rules, 1996 vide notification dt. 12.09.2008 & by virtue of Reg.-47 the same became applicable in regard to such of the employees who opted for pensionary benefits and since these are two separate & distinct schemes existing for regulating their retiral benefits & gratuity in particular under the Rules, 1972 & Regulations, 1988 we find no basis for their comparison as prayed for.

16. The submission made by counsel for petitioners that the retired employees constitutes homogeneous class and despite being similarly situated are being differently treated is without substance for the reason that the retired employees may constitute a homogeneous class but the retiral benefits has to be computed in terms of the relevant scheme of Rules of which one is the member and indisputably the amount of gratuity has been enhanced accordingly under both the Rules, 1972 & Regulations, 1988 respectively which in our considered view does not call for any interference.

17. The further submission made that by no intelligible differentia any distinction could be made for the purpose of gratuity on the ground that one set of employees are pension holders and the other set of employees and members of the CPF Scheme is without substance for the reason that in view of Scheme of Rules, 1972 & the Regulations, 1988 being introduced separately pursuant to which the employee once exercised his option and became member of either scheme, certainly its retiral benefits shall be regulated accordingly and thus what is being contended before us by the petitioners is without substance & deserves outright rejection and apart from it, we find that the petitioners have challenged the order dt. 24.06.2010, however, the scheme of Rules, 1972 & Regulations, 1988 of which reference has been made supra in fact regulates the retiral benefits which are payable to the members of (CPF or Pension) respective Schemes is not a subject matter of challenge.

18. At this moment, we would like to reproduce the chart which has been referred to by the respondents regarding both the two separate categories of the retired employees being governed by separate set of Rules/Regulations & reads ad infra:--

"For CPF holders (governed by the Payment of Gratuity Act, 1972 and RSEB Payment of Gratuity Rules, 1972):--

For GPF holders (governed by RSEB Employees Pension Regulations, 1988 and the Rajasthan Civil Services (Pension) Rules, 1996):--

19. We find substance in what has been averred by the respondents in their reply that gratuity is payable to the employees in terms of their relevant Scheme of Rules, 1972 or Regulations, 1988 & there was no parity ever maintained and the gratuity has been increased from time to time and both the schemes are neither dependent nor having co-relationship with each other and since separately governs the retiral benefits of the employees who are members of CPF Scheme or Pension from its very inception, we do not find any substance in what is being contended by the petitioners treating them to constitute a homogeneous class or in violation of Art. 14 of the Constitution of India.

20. Consequently, the writ petition is devoid of merit & accordingly dismissed.