

(1999) 10 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Special Appeal No"s. 726 of 1998 and 397 of 1999

Som Dutta Purohit

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 08-10-1999

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2000) 3 WLN 527

Hon'ble Judges : Shiva Raj V. Patil, C.J.;Bhagwati Prasad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Bhagwati Prasad, J.—In these two appeals, the learned Counsel for the appellants have raised grievance that Rule 21C of the Rajasthan Service Rules (For short "the R.S.R.") is violative of provision of Article 309 of the Constitution of India. This question was not before the learned Single Judge. By seeking amendment, in writ petition, at appellate level, this question was raised.

2. The learned Counsel for the appellants has stressed that under Rule 21C of the R.S.R., the provision has been made to felicitate the State Government to pass an order whereby an employee can be asked to deposit any amount of arrears of pension/family pension and dearness relief in the General Provident Fund Account. The learned Counsel for the appellants has submitted that this power conferred on the State Government by Rule 21C of the R.S.R. empowers the State to requisition the property vested in the appellants.

3. As and when the petitioners-appellants become entitled to receive the arrears, the arrears become property of the petitioners-appellants. To requisition a property of the petitioners no rules can be framed by the State Government under Article 309 of the Constitution. The domain of the State Government does not extend to legislate on a field where under the Constitution, only Central Government can legislate. Framing of Rule 21C gives the power of requisition to

the Government. Any law providing for requisition of the property is beyond the legislative competence of the State Government under Article 309 of the Constitution.

4. The learned Counsel for the appellants has further argued that once appellants have been held entitled, then State Government cannot withhold their property in the manner provided under Rule 21C of the R.S.R. The learned Counsel has further stated that State Government has issued a notification under Rule 21C produced with the writ petition as Annex. P/2. In this notification, the State Government has prescribed in Clause 16, the procedure for payment of arrears. The pensioner should either be paid in 60 equal instalments or arrears shall be deposited in G.P.F. Account of the employee until 31st March, 2003. During this period, the petitioners shall not be entitled to withdraw this amount except in case of death of pensioner or family pensioner.

5. The case of the petitioners is that notification of the State Government is discriminatory inasmuch as, the petitioners are required to deposit their property without there being a proper legislation for requisition of property and therefore it is denial of the legitimate rights of the petitioners.

6. Another grievance of the petitioners in relation to this notification is that this notification prescribes that those pensioners who attained the age of 70 years on or before 1.1.1998 shall be paid the entire amount of arrears in cash. According to the learned Counsel for the petitioners, there is no nexus for providing such relief only to those pensioners who have attained the age of 70 years on 1.1.1998. The learned Counsel for the petitioners has challenged such discrimination and has submitted that petitioners should also be permitted to get entire amount.

7. Reliance has been placed by the learned Counsel for the petitioners on the decision of Hon''ble Supreme Court rendered in the case of T.S. Thiruvengadam Vs. Secretary to Government of India, Ministry of Finance, Department of Expenditure, New Delhi and Others, wherein the Hon''ble Supreme Court has held that those who were absorbed under Rule 37 of the CCS (Pension) Rules could not be subjected to different treatment, once class of people was completely deprived and therefore the Hon''ble Supreme Court struck down that provision being discriminatory.

8. The learned Counsel for the respondent-State has contested the petition and has placed reliance on Supreme Court decisions rendered in the case of State of Rajasthan and another etc. Vs. Amrit Lal Gandhi and others etc., and State of Uttar Pradesh Vs. Uttar Pradesh University Colleges Pensioners' Association, . He has submitted that State Government has framed Rule 21C of the R.S.R. because of the financial stringency and the Hon''ble Supreme Court has held that such kind of classification is permissible when financial stringency is pleaded by the State Government. The arrears of pension are not being denied to the petitioners. The only provision made by the State Government is for deferred

payment. The arrears are to be first deposited for specified period and then taken with interest, as admissible in GPF Matters. Thus, the petitioners are not being rendered to a position where he can make a complaint. The State Government in terms of the Supreme Court Decision is within its rights to lay down such criteria.

9. We have Heard the learned Counsel for the parties and have perused the record.

10. The learned Counsel for the appellants has not been able to refute the argument of the counsel for the respondents that the State Government could plead financial stringency. In this regard it could frame schemes for deferred payment. The next question raised by the learned Counsel is regarding payment being made to those who have attained the age of 70 years on 1.1.1998. This question is also of fixing a cut off date. Such fixing of date is in consonance with the accepted principles of framing up a policy. Such framing of policy is saved by the ratio of the case in State of Rajasthan v. Amrit Lal Gandhi (supra). The Hon"ble Supreme Court in State of Rajasthan v. Amrit Lal Gandhi (supra) has clearly held that paying capacity is a relevant and valid consideration. In this regard, no injustice is seen in the rule as canvassed by the learned Counsel for the appellants.

11. It is, thus, difficult to accept the contention of the learned Counsel for the appellants. The appellants have not been denied the payment. The only provision made by the respondent State is for deferred payment and if the payment is deposited in GPF Account, then it will take interest in terms of the provision made in GPF Matters. We think that there is nothing unreasonable for making such provision.

12. As and when an order is made to make the deposit of arrears in the G.P.F. Account, it cannot be said that it is requisitioning the property. The provision is made because with revision of pension, heavy payments become due to be paid. Difficulty in capacity to pay has been pleaded by the State Government. This argument is permissible as per the Supreme Court decision in the case of State of Rajasthan v. Amrit Lal Gandhi (supra). Thus, no unconstitutionality can be seen in enacting the Rule 21C of the R.S.R.

13. In the result, we find no merit in the appeals as discussed above. The same are, thus, held meritless and, therefore, dismissed with costs.