(2003) 09 RAJ CK 0032

In the Rajasthan High Court

Case No : Civil Special Appeal (W) No. 513 of 2002

State of Rajasthan and Another — APPELLANT

Vs

Bheru Lal Menaria and Another — RESPONDENT

Date of Decision : 10-09-2003

Acts Referred:

Citation : (2004) 2 RLW 1082 : (2004) 1 WLC 585

Hon'ble Judges : Sunil Kumar Garg, J;Rajesh Balia, J

Bench : Division Bench

Advocate : Sagar Mal Mehta, -General and Sandeep Bhandawat, for the Appellant; Tribhuvan Gupta, for the Respondent

Final Decision : Allowed

Judgement

Balia, J.—The respondent-petitioner Bheru Lal Menaria, who was an employee of respondent non petitioner No. 2 Rajasthan Sahitya Academy filed the writ petition claiming the following reliefs:-

"(b) Respondent State Government may kindly be directed to approve the various resolutions dated 1.5.87, 15.4.96, 15.5.98, 16.7.99 and 17.7.99 passed/ resolved by the Sanchalika/Saraswati Sabha of the Rajasthan Sahitya Academy, Udaipur.

(c) Impugned decision communicated vide Annexure P/13 may kindly be quashed and State Government may kindly be directed to reconsider the case of the petitioner and Academy in the light of various representations after giving the opportunity of hearing to employees of the academy and its union;

(d) Respondents may kindly be directed to enforce the pension scheme for the petitioner and employees of Rajasthan Sahitya Academy from the date of its first resolution/when RSR was made applicable.

(e) Petitioner''s pension case may kindly be prepared and sent to Pension Authority for grant of pension after his superannuation.

2. The petitioner had superannuated on 30.9.1999.

3. The resolutions referred to in the relief Clause (b) are the resolutions made by the Academy for extending the benefit of Pension Scheme to its employees on their superannuation to replace the existing retiral scheme of Contributory Provident Fund. The letter Annex. P/13 is an emphatic note from the State Government disapproving the Pension Scheme for the employees of the Academy because of its financial constraints, conveying that the Finance Department is no agreeable to approve the Pension Scheme for the employees of the Academy.

4. The contention of the petitioner primarily rests on Annex. P/10 which was written to the Academy, Udaipur by the Assistant Secretary to the Government in response to their letter dated 23.4.1987 that until further orders, with reference to letter under reference, the State Government approves the applicability of Rajasthan Service Rules (hereinafter referred to as the RSR) to the Academy. On this premise, it was contended that once the provisions of RSR have been extended to the Academy, it included the extension of provisions relating to entitlement to pension to the employees of the Academy on superannuation and once the provisions of the RSR have been extended to govern the recruitment under Academy and that approval has not been withdrawn, the subsequent non acceptance of the resolutions by the State Government for extending the pension benefit to the employees of Academy are of little relevance and cannot affect the petitioner''s right to claim pension on his superannuation.

5. No return has been submitted by the State Government before the learned Single Judge and the writ petition was allowed by a short order which reads as under:-

"When the respondents are duly served with the notices and they have not chosen to file any reply then the averments made on oath in this petition have to be accepted. Accordingly, this petition is accepted and the State Government is directed to approve the resolutions dated 1.5.1987, 15.4.1996, 15.5.1998, 16.7.1999 and 17.7.1999 passed by the Sanchalika/Saraswati Sabha of the Rajasthan Sahitya Academy, Udaipur. Consequently, the impugned decision communicated vide order at Annex.P/13 is quashed."

6. While disposing of the writ petition, the learned Single Judge further stated.

"The Government is directed to reconsider the case of the petitioner and Academy in light of various representations after giving the opportunity of hearing to the employees of the academy and its Union. Thereafter, the respondents may consider the question of enforcement of Pension Scheme for the petitioner and employees of Rajasthan Sahitya Academy for the date of its first resolution and the pension case of the petitioner be prepared and sent to the Pension Authority for grant of pension after his superannuation."

7. A perusal of the order shows that it is self-contradictory in this contends. On the one hand, the learned Single Judge directed the State Government to

approve all the resolutions passed by Sanchalika/Saraswati Sabha of the Academy and in the next breath, it has stated that the Government shall reconsider the case of the petitioner and Academy in the light of various representations after giving an opportunity of hearing to the employees of the Academy but in the same moment, the learned Single Judge directed to prepare the case of the petitioner for grant of pension after his superannuation.

8. Apparently, the order read as a whole leaves no room for consideration by the State Government whether to approve or not to approve the resolutions for extension of Pension Scheme to the employees of the Academy.

9. Be that as it may, we are of the opinion that, notwithstanding no reply was filed, the judgment of the learned Single Judge does not show application of mind to the material produced by the petitioner himself, which did not justify the directions noticed above without considering the impact of the material on record

10. From the material on record, it is amply established that at no point of time, the State Government has approved the Pension Scheme to be made applicable to the employees of the Academy. The petitioner in his petition has quoted two resolutions as contained in the minutes of Academy meeting held on 13.4.1987 and 1.5.1987 which betrays that while there was consensus between the State Government and the Academy in the meeting held with the Deputy Secretary (Education) to extend the RSR for governing recruitment and general service conditions of the employees of such recruitment, there was no such consensus of accepting the Pension Scheme in place of CPF Scheme as a part of retiral scheme under service conditions of the employees of the Academy. The minutes of the meeting dated 13.4.1987 clearly mentions that it was the view of the Academy that so far as question of extending benefits of pension in place of CPF, the State Government shall not suffer additional financial expenditure. Thus did not represent the view of the State on the point and it was noted that all academies shall pass resolutions to that effect and send to the Government and on these resolutions, the State Government shall take a decision expeditiously.

11. Likewise, in its meeting held on 1.5.1987, the Academy expressed that for the employees and officers of the Academy, the RSR may be ''applicable as it is being applicable now; at the same time, it was also resolved that employees of the Academy may also be given the benefit of pension in lieu of current CPF Scheme, for which necessary approval may be sought from the State Government Annex. 10 does not speak specifically anything about grant of approval of Pension Scheme but only speaks of the continuance of RSR to the employees of the Academy. From the minutes of meeting dated 1.5.1987, it is obvious that RSR were already extended to the recruitment of employees and officers of the Academy and the were continued. The minutes dated 13.4.1987 and 1.5.87 also show that notwithstanding the recruitment and appointments were held in consonance with the RSR, the Pension Scheme was not still applicable to the Academy. Therefore Annex. P/10 cannot be read out of context so as to draw any such inference that with the approval for confirmed

governance by RSR, the Pension Scheme was also extended. By Annex. P/10, nothing new has been approved for the Academy, only status quo has been maintained.

12. Thus stand is further fortified from the fact that employees of the Academy had been members of the Contributory Provident Fund and are still members of the CPF and number of resolutions have been passed by the Academy from time to time requiring State Government to approve the extension of Pension Scheme to the employees of Academy in place of CPF. Had RSR been extended to the Academy in its full force, including the Pension Scheme by order Annex. P/10 in no circumstance, there resolutions would have been necessary. On the contrary, continuance of the Contributory Provident Fund notwithstanding order Annex. P/10 and minutes of the meeting held prior to issuance of Annex. P/10 and thereafter goes to show that the consistent recommendations and the requirement of the Academy to extend the pension benefit to its employees needed approval of the State Government but the State Government has not accepted the request to accord such approval for the financial reasons. The petitioner has also placed on record letters from the State Government clarifying that the Pension Scheme is not being approved for the Academy. Annex. P/12 is dated 8.8.1988 addressed by Secretary, Rajasthan Sahitya Academy, Udaipur requiring the State Government to sanction the Pension Scheme for the Academy, following the extension of RSR to the Academy employees in pursuance of its resolution dated 1.5.1987. Annex. P/13 is the letter dated 2.9.1996 informing all the Academies including respondent No. 3 that the Government has not approved the extension of Pension Scheme to the employees of the Academy. Another letter has been produced by the petitioner as Annex.P/18 representation dated 13.5.1998 to the State Government for extending the Pension Scheme to its employees at par with the Pension Scheme benefits extended to the employees of Sports Council of Rajasthan and the employees of the Rajasthan Agriculture Produce Marketing Board, Municipal Corporations etc. where the Pension Scheme has been introduced in place of Provident Fund Scheme. Annex.P/18 was respondent to by the Deputy Secretary, Finance Department that the case will be further examined on receipt of proposal for the Education Department.

13. Thus, from the material produced by the petitioner himself, it was clear that the Pension Scheme was never in force in the Academy nor was it approved for the employees of the Academy by the State Government at any point of lime. Therefore, on the basis of assertions made in the petition alongwith its documents, the relief could not have been granted to the petitioner merely because no reply was filed by the Stale.

14. We may also notice here that the very premise that because RSR was made applicable to the Academy, also does not lead to any such conclusion that under RSR, an incumbent is entitled to pension invariably. Chapter XVII of RSR do not admit of extension of Pension Rules to its employees in all circumstances. The

Rules reads:-

"The rules in this part shall apply to all Government servants except that the rules relating to grant of service pensions will not be applicable to those entitled to the benefit of Contributory Provident Fund in lieu of pension."

15. The extension of RSR to any establishment where CPF Scheme is in vogue and its employees are members of the CPF, the introduction of Pension Scheme depended on the extension of Pension Scheme to those employees and their opting for benefit of Pension in lieu of CPF.

16. There is no dispute that the employees of the Academy were members of the Contributory Provident Fund and unless Pension Scheme was extended to it and options were invited from them, the Chapter relating to Pension Rules of RSR and extension of service pension would not have ipso facto become applicable to the Academy employees. Therefore, when the question of approval of Pension Scheme was still pending consideration before the State Government unless the same is approved by the State Government, the state is not reached where the employees of the Academy could be given an option to opt for pension and on such option, to extend Pension Scheme to them.

17. The extension of Pension Scheme depended on approval of the Pension Scheme for the Academy in lieu of CPF which was governing the employees of the Academy. We have also noticed that pension Rules because of the letter Annex.P/10 did not become application to Academy automatically.

18. The upshot of the above discussion is that since employees of the Academy were already members of CPF and Pension Scheme has not been approved for the employees of the Academy even after extension of the provisions of the RSR, Part VIII, chapter XVH governing Pension Rules would not have been applicable to the employees of the Academy. We are, therefore, of the opinion that in the absence of Pension Scheme being approved for the employees of the Academy, the members of CPF could not have become automatically entitled to Pension Scheme because of the applicability of provisions of the R.S.R to the employees of the Academy.

19. However, before concluding, we may notice that the petitioner has placed on record the material to suggest that to the employees of other autonomous bodies of the State like Sports Council, the benefits of Pension Scheme have been extended.

20. We may notice that though the local authorities like; Municipal Council and the Agriculture Produce Marketing Board are not comparable entity with the Academy but the Sports Council, which is not a local authority, do fall in the same category in respect of which Pension Scheme has been approved by the State and has been implemented there.

21. In these circumstances, it is required of the State Government, when it was brought to its notice that when the Sports Council as well as the Academy served

the common purpose of the welfare of the society; one in the matter of providing facilities for improving health conditions of the members of the society and the other for improving the intrinsic personality of the members of the society; the consideration for extension of Pension Scheme should have received equal consideration.

22. In the aforesaid circumstances, we allow this appeal and set aside the judgment of the learned Single Judge. The petition filed by the petitioner is dismissed subject to direction to the State Government to consider the case of the respondent Academy for adoption of Pension Scheme for its employees in the light of the material placed by the academy before it and considering the extension of such benefit to the comparable autonomous institutions created by the State Government.

23. There shall be no order as to costs.

