
(2003) 12 RAJ CK 0003

In the Rajasthan High Court

Case No : Civil Special Appeal No. 54 of 2001

State of Rajasthan and Others

APPELLANT

Vs

J.N.V. University and Others

RESPONDENT

Date of Decision : 11-12-2003

Acts Referred:

Rajasthan Service Rules, 1951 — Rule 208

Citation : (2004) 4 RLW 2235 : (2004) 2 WLC 543

Hon'ble Judges : O.P. Bishnoi, J;N.N. Mathur, J

Bench : Division Bench

Advocate : I.S. Pareek, Addl. Government Advocate, for the Appellant; M. Mridul, Assisted by Vivek Shah, for the Respondent

Final Decision : Dismissed

Judgement

N.N. Mathur, J.—By the impugned judgment dated 13th October, 2000, the learned Single Judge has directed the appellants herein to determine pension of the third respondent Pukh Raj Singhi by taking his eligible service between 18.8.1941 to 16.11.1982, that is to say untill before he joined the service of the University on 17.11.1962 as per the rules applicable from time to time with effect from the date of filing of writ petition i.e. 16.8.1994.

2. The core question arises for consideration in this Special Appeal is as to whether a person, who has left the service by tendering resignation, is entitled to retrial benefits?

3. The factual score which has bearing on the controversy involved is that the third respondent herein Pukh Raj Singhi was appointed as L.D.C. on 18th August, 1941 in the erstwhile State of jodhpur, on formation of Slate of Rajasthan, he was shifted to Jaipur in the year 1948. There, he was promoted as U.D.C. in the year 1956 in the office of the Registrar, Cooperative Societies. In the year 1960, he was transferred to the office of Directorate of Technical Education, Jodhpur. In the year 1962, when the Jodhpur University was established, he applied for

appointment on the post of U.D.C. The Director, Technical Education, Jodhpur on 22.10.1961 forwarded his application to the University for favourable consideration. In November, 1962, he was offered appointment on the post of U.D.C. by the University. Accordingly, he submitted resignation with immediate effect and made a request to waive the period of notice. He joined the Jodhpur University as U.D.C. with effect from 17.11.1962. Vide memorandum dated 17th October, 1987, the employees of the erstwhile State of Marwar, who had retired from the State service after 1.4.1951, the State Government invited such employees to opt for pension, if not already opted. The third respondent gave option for pension under the Communication dated 15.12.1987 addressed to the Director, Technical Education, Jodhpur. The claim for fixation of pay was forwarded by the Director, Technical Education on 30th June, 1988 to the Director, Pension Department, Rajasthan, Jaipur. However, the third respondent was informed under the Communication dated 19th August, 1988 by the Assistant Director, Technical Education that he was not entitled to pension because he had resigned from the service of the State Government. He raised an objection by way of Communication dated 21.9.1988 pointing out that his retirement benefits otherwise due on retirement including gratuity and bonus etc. alongwith balance outstanding to him under the Contributory fund Scheme were already paid to him considering as if he had retired from the service. He continued to make representations to the State Government as well as to the J.N.V. University. On failure to get any response from the appellant State, he approached to this Court by way of writ petition in the year 1994.

4. The petition was contested by the appellant State on the ground of laches as well as on merits. As regards the laches, the claim of the respondent herein was rejected vide Communication dated 21.9.1988 but the writ petition was filed as late as in the year 1994 i.e. after lapse of period of about six years. It was submitted that since the respondent did not retire from service on completion of age of superannuation but left the service by tendering resignation, in view of Rule 208(a) of the Rajasthan Service Rules, 1951, hereinafter referred-to as "the RSR", his past services stood forfeited and, as such, he was not entitled to any pensionary benefits or retirement benefits by treating it to be a case of retirement. The learned Single Judge held that in a case where during the time between the alleged breach and remedy claimed, other rights and equities have not accrued, a person can not be non-suited on the ground of laches. The learned Single Judge also held that the respondent herein could not be non-suited on the ground of laches in view of the settled position of law that in cases of pension, the cause of action is recurring and no questions of any delay or laches arises. The learned single Judge in order to mitigate the effect of delay, granted relief only from the date of filing of the writ petition. As regards the merits of the case, the learned Single Judge held that under Rule 208(b) of the RSR, the circumstances in which the respondent herein submitted resignation, cannot be treated to be resignation and, as such, his case may be considered to be a case of retirement from service on 16.11.1962. The learned Single Judge held that the

respondent herein entitle for pensionary benefits as per memorandum dated 17th October, 1987 on exercise of his option for the period of service between 1941 to 1962 with the State.

5. It is contended by Shri I.S. Pareek, learned Additional Government Advocate that the learned single Judge committed an error in holding that in case of pension, the cause of action is recurring. It is submitted that in a case where entitlement of pension itself is in dispute, the question of recurring cause of action does not arise. On merits, it is submitted that the learned Single Judge has misread Rule 208 of the RSR, which clearly prescribes that the resignation entails forfeiture of services. The explanation under Sub-clause (b) of Rule 208 is not attracted in the circumstances of the instant case. Mr. M. Mridul Senior Advocate appearing for respondent No. 3, has supported the judgment of the learned Single Judge.

6. It is well settled that the High Court may refuse to exercise its extra ordinary powers where a person is guilty of laches or undue delay fro which there is no satisfactory explanation. Unless the facts and circumstances of the case clearly justify the laches or undue delay, he would not be entitled to any relief. However, the delay is not an absolute bar where it is explained or where the petition is for prohibition where the lack of jurisdiction is patent or where they delay has been caused by the party raising the grounds of delay or where there is a continuing wrong. Thus, the reasonableness of delay in filing the writ petition is to be assessed by the court having regard to the facts and circumstances of each case. The learned Single Judge following the binding decision of the Apex Court in Ram Chandra Shanker Deodhar v. The State of Maharashtra (1) and two Division Bench judgments of this Court in Smt. Rukma v. State of Rajasthan (2) and Anr. Division Bench judgment of this Court in Laxman Singh v. State of Rajasthan (3), concluded that the petition of the respondent No. 3 herein who opted for pension in lieu of contributory fund, can not be denied on the ground of laches only. It is significant to notice that the learned Single Judge has held that respondent No. 3 is entitled to pension only with effect from the date of filing of writ petition.

7. The Apex Court in State of Punjab v. Madan Singh (4), has held that when the Court exercising power under Article 226 of the Constitution comes to the conclusion that delay made by a party in a given case is not fatal, the appellate court would be reluctant to interfere with the decision. We do not find any justified reason to disturb the finding recorded by the learned Single Judge refusing to non-suit the third respondent on the ground of laches.

8. Turning to the merits of the case, it would be apt to acquaint with Rule 208 of the Rajasthan Service Rules, which reads as follows:-

"208. Resignation, dismissal or removal for misconduct etc. (a) Resignation of the public service or dismissal or removal from it for misconduct, insolvency, inefficiency, not due to age or failure to pass a prescribed examination entails forfeiture of past service.

(b) Resignation of an appointment to take up, with proper permission, another appointment, whether permanent or temporary, service in which counts in full or in part, is not a resignation of public service.

In cases where an interruption in service is inevitable due to the two appointments being at different station, such interruptions, not exceeding the joining time permissible under the rules on transfer, shall be covered by grant of leave of any kind due to the Government servant on the date relief or by formal condonation under Rule 212 to the extent to which the period is not covered by the leave due to the Government servant."

9. A bare reading of the rule goes to show that Sub-clause (a) of Rule 208 of the RSR speaks about the forfeiture of the past services on resignation by a public servant. Clause (b) of the rule envisages that where the resignation is to take up another appointment whether permanent or temporary with the proper permission, service in which counts in full or in part, it is not a resignation of public service. Thus Sub-clause (b) is exception of Sub-clause (a). In the instant case when the Jodhpur University came to be established in the year 1962, the third respondent applied to the University through the Director, Technical Education, who forwarded the application and recommended the case for appointment with the endorsement No. F.2(15)DTE/E/20820 dt. 22.10.1961, which is extracted as follows:

"Forwarded to the Special Officer, University of Jodhpur for favourable consideration. The appellant is efficient, hard working and reliable and capable to hold responsible post."

10. In the letter of resignation, it has been clearly stated that he was given appointment in pursuance of the recommendation made by the Director, Technical Education. The requirement of Sub-clause (b) of Rule 208 is that the resignation for taking up another appointment must be with proper permission. Such a permission can be by a specific order or implied. In the instant case, the question of proper permission has to be gathered from the circumstances of the case. It is evident that the third respondent submitted an application through proper channel. The Head of Department not only forwarded the application but also made a recommendation for favourable consideration. Thus in the facts of the case, the implied permission as required by Sub-clause (b) of Rule 208 can be conveniently gathered.

11. It is well established that pension is not a bounty. It is a statutory right. It is held by the Apex Court in *Chairman, Railway Board v. C.R. Rangadhamiah* (5), that the pension, for all intent and purport, is a deferred salary. It is paid when a person completes the qualifying service without any blemish in his career. In *Garment Cleaning Works v. Workmen* (6) & *Remington Rand of India Limited v. Workmen* (7), the retirement or resignation are held to be almost synonyms by the Apex Court.

12. In *Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd.* (8), the employee

left the services of the Company by resigning his post after rendering services for more than 29 years. He was denied pension on the ground that he did not retire from service but he left the services by resignation. The Apex Court held that the termination of service was on account of resignation of the employee being accepted by the employee. Thus, for the purpose of pension, he will be deemed to have retired from service of the employer. The relevant para from the judgment is extracted as follows:-

"The termination of service was thus on account of resignation of the plaintiff being accepted by the respondent. The plaintiff has, within the meaning of the expression, thus retired from service of the respondent and he is qualified for payment of gratuity in terms of Rule 6."

13. In *J.K. Cotton Spinning & Weaving Mills Company Ltd. v. State of U.P.* (9), it was held:-

"The meaning of term 'resign' as found in the Shorter Oxford Dictionary includes 'retirement'. Therefore, when an employee voluntarily tenders his resignation it is an act by which he voluntarily gives up his job. We are, therefore, of the opinion that such a situation would be covered by the expression 'voluntary retirement', within the meaning of Clause (i) of Section 2(s) of the State Act. In *Santosh Gupta case*, Chinnappa Reddy, J. observed as under: (SCC P. 342, para 5)

"Voluntary retrenchment of a workman or the retrenchment of the workman on reaching the age of superannuation can hardly be described as termination, by the employer of the service of a workman."

(Here the word "retrenchment" has reference to "retirement")

The above observation clearly supports the view which commends itself to us."

14. The question posed in the instant appeal is answered by a Division Bench of the Delhi High Court in *Ashwani Kumar Sharma v. Oriental Bank of Commerce* in favour of the employee. Hon'ble S.B. Sinha, C.J. as his lordship then was (now Judge of the Supreme Court), has crystalized the position of law in this regard in para 30 and 35 as follows:-

"30. Payment of pension depends upon completion of qualifying service. A person who completes the qualifying service is entitled to pension. Whether the relationship of employer and employee comes to an end by way of resignation or comes to an end by way of resignation or voluntary retirement in a given situation may not matter so as to enable the employer to deprive the employee from the benefit of a beneficial scheme. It may be one thing to say that a scheme for payment of pension having been introduced at a stage when the concerned employee has retired, would not be entitled to the benefit therefore but it is another thing to say that although he, at all relevant times, was in service, he would be deprived thereof only because he has either resigned or

retired voluntarily. Resignation and voluntary retirement stand on slightly different footing but, the effect and substance thereof is not of much significance. It may be true that an offer of voluntary retirement may be accepted or may not be accepted but such is an case of resignation also particularly when the concerned employee is faced with departmental proceedings. The employer, having accepted the resignation, even upon waiver of the notice period, cannot be permitted to turn round and contend that he was not entitled to the pensionary benefit. The respondents, as noticed from the factual backdrop of the case, themselves processed the matter for grant of pension.

35....Upon resignation, the entire service period is lost. Such a concept that a person gets the benefits of the entire service period for all intent and purport, would be unconstitutional. If in case of a contributory provident fund scheme, he would have been entitled to the benefit of the contribution made by the employer, we do not find any reason as to why in a case where the pension scheme is in force, he would be deprived therefrom. A statute, and in particular, subordinate legislation must be read reasonably."

15. Thus, the scheme of the Rule 208 of the RSR is that a person who has resigned from service on account of misconduct, insolvency, inefficiency not due to age or failure to pass a prescribed examination, his past service shall stand forfeited and he will not be entitled to pension. But in a case where an employee resigns to take up another appointment with the permission by the competent authority directly or impliedly, it will not be treated as a resignation of public service. In the instant case, the third respondent submitted resignation for taking up another appointment on the post of U.D.C. offered to him on an application duly forwarded by the Head of the Department. Thus there was an implied permission of the Head of Department, thus, we are of the view that the learned Single Judge rightly concluded that under Rule 208(b) of the RSR, the resignation submitted by the third respondent cannot be treated as a resignation and, therefore, the third respondent's case must be considered to be a case of retirement from service on 16.11.1962.

16. In view of the aforesaid discussion, we find no merit in the Special Appeal and the same stands dismissed.

No order as to costs.