

(2018) 03 RAJ CK 0144
In the Rajasthan High Court
Case No : Civil Writ Petition No. 14328 of 2015

Sudheer Kumar Khanna @APPELLANT@Hash State of Rajasthan & Ors

Date of Decision : 07-03-2018

Acts Referred:

Rajasthan Services (Pension) Rules, 1996 — Rule 3(r), 20, 20(2), 50, 89
Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 — Rule 16

Citation : (2018) 03 RAJ CK 0144

Hon'ble Judges : ARUN BHANSALI, J

Bench : Single Bench

Advocate : Kuldeep Mathur, D.S. Sodha, B.D. Sharma

Final Decision : Allowed

Judgement

This writ petition has been filed by the petitioner aggrieved against order dated 16.10.2015 (Annexure-13) passed by the respondents, whereby the

request made by the petitioner for grant of pensionary benefits has been rejected on the ground that he had not completed 15 years of service with the

respondents and a direction to pay Gratuity, Commutation of Pension, Leave Encashment and other retiral benefits as per Rajasthan Services

(Pension) Rules, 1996 (the Rules of 1996).

The petitioner was appointed on the post of L.D.C. in the Soil Conservation Division of the Agriculture Department. A memorandum of charges dated

18.04.2002 under Rule 16 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 (the Rules of 1958) was served on

the petitioner initially on account of unauthorized leave. After inquiry was conducted, the petitioner was visited with penalty of stoppage of one annual

grade increment with cumulative effect and the period of absence was ordered to be treated as extra ordinary leave (without pay).

Another memorandum dated 29.08.2005 was issued under Rule 16 of the Rules

of 1958 again on account of unauthorized absence. The inquiry pursuant to the said charge-sheet culminated in order dated 25.08.2006 imposing penalty of removal from service.

The petitioner preferred an appeal against the order of removal dated 25.08.2006, which appeal was allowed on 12.06.2008. The order of removal dated 25.08.2006 was quashed and directions were issued to reinstate the petitioner back into the service. The petitioner was reinstated back and the period of absence was treated as extra ordinary leave (without pay) by order dated 13.01.2009. The petitioner on account of illness of his wife and his own sickness sought premature retirement by letter dated 09.09.2008, which application was accepted by order dated 20.01.2009 (Annexre-8) w.e.f. 31.01.2009.

It is claimed that by order dated 09.09.2011 (Annexure-9) the petitioner was granted extra ordinary leave of 1730 days. However, pursuant to the premature retirement granted to the petitioner, when the petitioner sought grant of retiral benefits and the representations were not responded, writ petition being S.B.C.W.P. No. 286/2016 was filed, which was disposed of by order dated 25.03.2015 giving liberty to the petitioner to move an appropriate representation and the respondents were directed to consider and decide the same by way of a speaking order, if the petitioner was found eligible the benefits were ordered to be released forthwith. Pursuant thereto, the order dated 16.10.2015 (Annexure-3) was passed, inter alia, declining the benefit to the petitioner on the ground that he had not completed 15 years of qualifying service.

It is, inter alia, submitted by learned counsel for the petitioner that once the premature retirement of the petitioner was accepted under Rule 50 of the Rules of 1996, the petitioner was entitled for grant of all consequential benefits as the premature retirement can only be granted after completion of the qualifying service and once the premature retirement has been granted, it would be assumed that the petitioner had completed his qualifying service and, therefore, the action of the respondents in denying the retiral benefits cannot be sustained. It was submitted that the petitioner has been denied the benefit of qualifying service based on provisions of Rule 20(2) of the Rules of 1996 requiring that extra ordinary leave can be counted as qualifying service only if taken on medical certificate granted by the authorized

Medical Attendant and it is alleged that the petitioner has not produced any such certificate and, therefore, the extra ordinary leave of 1730 days granted by order dated 09.09.2011 is not being counted towards qualifying service, which action also is contrary to the order dated 05.08.2011 (Annexure-14), whereby, the Dy. Secretary of the Department has already granted the administrative sanction for regularizing the extra ordinary leave of the petitioner and to accept the pension case of the petitioner and, therefore, the action of the respondents in this regard cannot be sustained.

It is submitted that on account of serious illness of petitioner's wife and petitioner's own sickness, the petitioner remained on extra ordinary leave and ultimately sought premature retirement, which though has been granted to the petitioner, however, all the retiral benefits have been denied.

It is submitted that the respondents having granted premature retirement are estopped from claiming that the petitioner had not completed qualifying service and, therefore, the action of the respondents in denying the benefits arising out of grant of premature retirement cannot be sustained and the writ petition deserves to be allowed.

Learned counsel appearing for the respondents vehemently opposed the submissions made by learned counsel for the petitioner. It was submitted that from the material available on record it is apparent that the petitioner has not complied with the requirements of Rule 20(2) of the Rules of 1996 and, therefore, was not entitled for counting of the period of extra ordinary leave towards qualifying service and as his qualifying service falls short, the pension etc. was rightly refused to the petitioner and, therefore, the petition deserves to be dismissed. I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

Rules 3(r) and 50 of the Rules of 1996 read as under:-

Rule 50. Retirement on completion of 15 years' qualifying Service (1) At any time after a Government servant has completed fifteen years

qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service.

(2) The notice of voluntary retirement given under sub rule (1) shall require acceptance by the appointing authority.

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said

notice, the retirement shall automatically become effective from the date of expiry of the said period.â??

â??Rule 3(r) â??qualifying serviceâ?? means service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules;â??

A bare reading of the above provisions reveals that for seeking premature retirement under Rule 50, it is necessary that the Government servant has

completed 15 years of qualifying service and on acceptance of the notice by the appointing authority, the Government servant would retire from

service. The word qualifying service as indicated in Rule 50 has been defined under Rule 3(r), which means service rendered while on duty, which

shall be taken into account for the purpose of pension and gratuity admissible under the Rule.

From the above, it is sine quo non that if an employee applies for grant of premature retirement under Rule 50, it is the duty of the appointing authority

to first get examined whether the person has completed the requisite qualifying service for seeking such a premature retirement and then only grant

such a retirement. Merely because the employee seeks such retirement based on his assumption of having completed qualifying service, the State

cannot grant such retirement.

In the present case, on an application having been moved by the petitioner, order dated 20.01.2009 granting premature retirement was passed, which

reads as under:-

â??dk;kZy; vknsâ??k Jh lq/khj dqekj [kUuk] dfu""B fyfid] dk;kZy; lgk;d funsâ?? kd d`f""k Â¼fo-Â½ ftyk ifj""kn] cwUnh ds }kjk jkT; Isok ls fnukad

31-01-2009 ls LosfPNd Isokfu`fRr pkgus ij jktLFkku flfoy Isok Â¼isaâ??kuÂ½ fu;e 1996 ds mi fu;e 50 Â¼1Â½ esa vafdr izko/kkuksa ds rgr~ Jh

[kUuk dks fnukad 31-01-2009 ls LosfPNd Isok fu`Rr fd;k tkrk gSA jktLFkku flfoy Isok Â¼isaâ??kuÂ½ fu;e 1996 ds fu;e 4 Â¼2Â½ ds vUrxZr

fnuakd 31-01-2009 Jh [kUuk dk vdk;Z fnol gksxkA ;g Hkh izekf.kr fd;k tkrk gS fd Jh lq/khj dqekj [kUuk] dfu""B fyfid ds fo:) jktLFkku flfoy Isok

Â¼oxhZdj.k] fu;a=.k ,oa vihyÂ½ fu;e 1958 ds fu;e 16 o 17 ds vUrxZr dksbZ foHkkxh; tkap izLrkfor @ yfEcr ugha gSA jktLFkku Isok fu;e 250@lh

ds vUrxZr ;g Hkh izekf.kr fd;k tkrk gS fd Jh lq/khj dqekj [kUuk] dfu""B fyfid ds in ij fu;qfDr vodkâ??kdkyhu in ij ugha Fkh vkSj uk gh vius dk;Z ds

vfrfjDr mPp in dk vLFkbbZ dk;Z IEiknu djus gsrq FkhA lgh@& funsâ??kd d`f""k jktÂ' t;iqj â??

Â There is no indication of any doubt in the order regarding the qualifying service of the petitioner and the very fact that he was granted premature

retirement, it has to be assumed that the petitioner had completed 15 years of qualifying service as required by Rule 50. Thereafter when the petitioner

sought payment of the terminal benefits based on the fact of his retirement, the same as noticed hereinbefore, were not granted resulting in the

petitioner approaching this Court by way of filing the writ petition.

In the meanwhile, when the objections apparently were raised, on account of grant of extra ordinary leave amounting to 1730 days, by order dated

09.09.2011 i.e. after the retirement of the petitioner on account of order dated 05.08.2011 passed by the Government, applying provisions of Rule

20(2) of the Rules of 1996, the benefits were denied to the petitioner and pursuant to the order passed by the High Court, the following reason was

indicated in the impugned order dated 16.10.2015, rejecting the claim/case of the petitioner:-

â??jktLFkku lsok fu;e&96 Â¼d ,oa [kÂ½ ds vuqlkj ,d jkT; deZpkjh dks vlk/kkj.k vodkâ??k tc Lohd`r fd;k tk ldrk gS] tc vU; izdkj dk vodkâ??k 'ks""k

ugha gks] Lo;a dh izkFkZuk ij] {k; jksx ls ihfM+r gks] 'kjhj ds fdlh vU; Hkkx esa gqbZ risfnd dk mipkj] ,oa Vh-ch- foâ??ks""kK vFkok flfoy ltZu ls

mipkj vFkok dq""B jksx ls ihfM+r gks vFkok jktLFkku isaâ??ku fu;e] 1996 ds fu;e 20Â¼2Â½ ds vuqlkj vlk/kkj.k vodkâ??k dsoy rHkh isaâ??ku

;ksX; fxus tkosaxs] ;fn os izkf/kd`r fpfdRld }kjk iznRr fpfdRIk izek.k i= ds vk/kkj ij Lohd`r fd;k x;k gksA tcfd Jh [kUuk }kjk jkT; ljdkj dks izLrqr

izkFkZuk i= esa Lo;a dks e/kqesg jksxh rFkk iRuh dks fgeksXyksfcu de gksuk crk;k gSA Jh [kUuk }kjk LoSfPNd vuqifLFkfr vof/k Â¼1730 fnolÂ½

ds jktdh;@vf/kd`r fpfdRld }kjk tkjh fpfdRIk izek.k i= izLrqr ugha fd;s x;s gSA vr% vknsâ??k Ã?ekad 3115&20 fnukad 09-09-11 ds }kjk Lohd`r 1730

fnol ds vlk/kkj.k vodkâ??k dks isaâ??ku ;ksX; ugha ekuk tk ldrk gSA Jh [kUuk }kjk izLrqr vH;kosnu ds vuqlkj bUgsa cdk;k osru dk Hkqxrku fd;k tk

pqdk gSA Jh [kUuk ds vH;kosnu ij fu;ekuqlkj fopkj fd;s tkus ij fu.kZ; fy;k x;k] fd Jh [kUuk dh 15 o""kZ dh vgZdkjh lsok iw.kZ ugha gksus ds dkj.k

bUgsa fu;ekuqlkj isaâ??ku ns; ugha gSAâ??

Provisions of Rule 20 of the Rules of 1996 read as under:-

Rule 20. Counting of periods spent on leave

(1) All leave during service for which leave salary is payable shall count as qualifying service.

(2) Extra ordinary leave i.e. leave without pay and allowances, shall count as qualifying service only if taken in any of the circumstances mentioned

below:-

(i) on medical certificate granted by the Authorised Medical Attendant;

(ii) for prosecuting higher scientific and technical studies;

(iii) due to the inability of the Government servant concerned to join or rejoin duty due to civil commotion or a natural calamity.

The Rule inter alia provides that extra ordinary leave i.e. leave without pay and allowances shall count towards qualifying service if taken on medical

certificate granted by the authorized Medical Attendant and it is claimed that as the petitioner did not provide any such medical certificate, the extra

ordinary leave as granted cannot be counted for qualifying services. It would be important to notice that the order dated 09.09.2011 (Annexure-9)

sanctioning the extra ordinary leave is based on the letter of the Government dated 05.10.2011, the said letter reads as under:-

“The undersigned is directed to inform that the Government servant concerned has been granted extra ordinary leave without pay and allowances for a period of 12 months from 01.07.2011 to 30.06.2012 on medical certificate granted by the authorized Medical Attendant. It is noted that the petitioner has not provided any such medical certificate, the extra ordinary leave as granted cannot be counted for qualifying services. It would be important to notice that the order dated 09.09.2011 (Annexure-9)

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case of the petitioner be undertaken.

The very fact that by order dated 05.08.2011 while granting administrative sanction, it was specifically noticed by the Dy. Secretary that on account of

illness of petitioner and his wife, the absence took place and, therefore, he is entitled to grant of extra ordinary leave, the said order, essentially takes

care of the requirement of Rule 20, inasmuch as, once the extra ordinary leave has been granted on the ground of illness of the petitioner and his wife

and which in fact formed the basis for setting aside of the order of dismissal, the respondent authorities apparently were not justified in thereafter

seeking any further certificate etc. pursuant to the requirements of provisions of Rule 20 of the Rules of 1996.

The order dated 16.10.2015 has been passed in a mechanical manner without taking into consideration that the order dated 09.09.2011 was passed

pursuant to the administrative sanction which had taken into consideration the illness of the petitioner and his wife and, therefore, the said order cannot

be sustained.

Besides the above, the issue of estoppel on part of the State also assumes great significance in the present case. Once an application was filed by the

petitioner under Rule 50 seeking premature retirement on the assumption that he had completed 15 years of qualifying service and the respondents

once after examining the requirements of Rule 50 of the Rules of 1996 i.e. 15 yearsâ?? qualifying service as required under the provisions of the

Pension Rules came to a conclusion that he fulfills the requirement of qualifying service and grants premature retirement, the State cannot turn around

and claim that as the petitioner had not completed the qualifying service, he would not be entitled to grant of retiral benefits.

In a given case, the authorities may commit a mistake in granting premature retirement based on wrong assumption of the government employee

having completed 15 yearsâ?? of qualifying service, in that case the State/ appointing authority is not only required to cancel the order of premature

retirement after affording an opportunity of hearing to the government servant, but offer reemployment to the said employee. It cannot simply deny the

benefits of premature retirement so that the employee is left in a no manâ??s land as on the one hand his premature retirement has been accepted

assuming his having completed 15 years of qualifying service and on the other

hand he is denied benefit of premature retirement on account of his having not completed 15 years of qualifying service, which conduct of the State will be not only contradictory but mutually destructive which cannot be permitted.

Admittedly, in the present case, the respondents despite coming to the conclusion that the petitioner had not completed the qualifying service, have chosen not to recall the order dated 20.01.2009 granting premature retirement to the petitioner w.e.f. 31.01.2009 and has simply denied the benefit of pension etc. to the petitioner, which action cannot be sustained. Consequently, the writ petition filed by the petitioner is allowed. The order dated 16.10.2015 (Annexure-13) passed by the respondents denying the pension etc. to the petitioner is quashed and set aside. The respondents are directed to grant all retiral benefits to the petitioner as per the Rules of 1996. The needful be done within a period of three months. The petitioner would also be entitled to interest under Rule 89 of the Rules of 1996 on the delayed payment of retiral benefits @ 9% per annum from the date the retiral benefits became due.