

(2002) 12 RAJ CK 0024

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2901 of 1998

Sunder Das T. Anjani

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 10-12-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2003) 4 WLC 94 : (2003) 3 WLN 230

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Judgement

Shiv Kumar Sharma, J.—The petitioner while serving as Upper Division Clerk in the Board of Revenue was convicted u/s 302 read with 34 IPC by learned Sessions Judge vide judgment dated 29.6.1981 that was ultimately confirmed by the Supreme Court on 22.8.1991. The petitioner on attaining the age of superannuation was retired on 31.10.1987 and till retirement the petitioner remained under suspension and was regularly paid subsistence allowance. After about 10 years of retirement i.e. on 10.9.1997 respondent Board of Revenue passed an order terminating the service of the petitioner retrospectively w.e.f. 29.6.1981.

2. In the instant writ petition the petitioner seeks to quash the said order dated 10.9.1997 with a further prayer to allow him the benefits of pension, gratuity and other retiral benefits.

3. The respondents submitted return to the writ petition stating therein that the services of the petitioner were rightly terminated retrospectively and he was not entitled to retiral benefits.

4. Mr. Ajeet Bhandari, learned counsel for the petitioner, canvassed that the services of petitioner could not have been terminated after ten years of his retirement retrospectively. There is no provision in the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (for short "CCA Rules") to

punish a retired employee. As no order was passed withholding retiral benefits the same could not be withheld. Reliance is placed on R. Jeevaratnam Vs. The State of Madras, The PSEB Patiala v. Gurpal Singh Bhamra, 1989 (4) SLR 19; Punjab State Electricity Board v. Presiding Officer, Labour Court and Anr., 1992 (5) SLR 285 and State of Karnataka v. R.S. Naik, 1983 (3) SLR 285.

5. Per contra, Mr. Manish Bhandari, learned counsel for the respondents urged that the petitioner was involved in a serious misconduct and there was no illegality in passing the impugned order of termination. In view of Rule 169 of Rajasthan Service Rules, the petitioner was not entitled to retiral benefits.

6. I have pondered over the rival submissions and weighed the material on record.

7. Undeniably the respondents did not terminate the service of the petitioner on or before the date of retirement of the petitioner. It is also established from the record that the subsistence allowance was paid to petitioner throughout the period of suspension. It is therefore to be examined as to whether services of a retired employee could be terminated retrospectively.

8. Their Lordships of Supreme Court in R. Jeevaratnam v. State of Madrs, (supra) had indicated as under:

In substance, this order directed that (1) the appellant be dismissed, and (2) the dismissal do operate retrospectively as from 20.5.1949. The two parts of this composite order are separable. The first part of the order operates as a dismissal of the appellant as from 17.10.1950. The invalidity of the second part of the order, assuming this part to be invalid, does not affect the first part of the order. The order of dismissal as from 17.10.1950 is valid and effective. The appellant has been lawfully dismissed, and he is not entitled to claim that he is still in service.

9. The Division Bench of Karnataka High Court in State of Karnataka v. R.S. Naik, (supra) propounded that once the employee is retired, the relationship of master and servant between the State and the employee ceased to exist. The result of the criminal proceedings launched against the employee and pending before the Criminal Court does not alter the status at all. When the employee before retirement was placed under suspension he was to be treated under suspension as on duty regulating the benefits accrued from his service.

10. In PSEB Patiala v. Gurpal Singh Bhamra, (supra) it was held that the order of dismissal cannot be passed with retrospective date. It shall be effective from the date on which it was passed.

11. In Punjab State Electricity Board v. Presiding Officer, Labour Court and Anr., (supra) it was indicated that the dismissal order with retrospective effect cannot stand. The order is effective from the date it is passed.

12. Coming to the facts of the instant case as already noticed that the Board of

Revenue passed an order on 10.9.1997 terminating the services of petitioner w.e.f. 29.6.1981. The said order cannot legally stand. It can only be made effective from the date when it was passed i.e. 10.9.1997.

13. For the reasons aforementioned, I partly allow the writ petition and set aside the impugned order dated 10.9.1997. No direction in respect of retiral benefits can be issued in this writ petition. The petitioner may submit representation in this regard before the competent authority, that shall decide it in accordance with law within one month from the date of its receipt after providing the opportunity of hearing to the petitioner. There shall be no order as to costs.