

(2014) 10 RAJ CK 0116

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 119/2009 in Civil Writ Petition No. 1844/2004 and Civil Special Appeal (Writ) No. 646/2005 in Civil Writ Petition No. 2449/2001

The State of Rajasthan

APPELLANT

Vs

Darbari Lal

RESPONDENT

Date of Decision : 29-10-2014

Acts Referred:

Punjab Reorganisation Act, 1966 — Section 79(5)

Citation : (2014) 10 RAJ CK 0116

Hon'ble Judges : Sunil Ambwani, Acting C.J.; Veerender Singh Siradhana, J

Bench : Division Bench

Advocate : Anurag Sharma, Additional Advocate General, Advocate for the Appellant; Ajay Gupta, Advocate for the Respondent

Judgement

1. We have heard learned counsel appearing for the State of Rajasthan, and learned counsel appearing for the respondents.

2. D.B. Civil Special Appeal (W) No. 199/2009, arises out of a judgment dated 23.09.2008, passed by learned Single Judge, by which he allowed the writ petition in terms of the judgment, passed by a Single Bench of this Court in P.C. Gandhi vs. State of Rajasthan (S.B. Civil Writ Petition No. 620/1993), decided on 04.05.1999, against which the Special Appeal, filed by the State, was dismissed for want of prosecution.

3. It is submitted by learned counsel appearing for the State that there is difference in the facts and applicability of the relevant Rules in the case of P.C. Gandhi vs. State of Rajasthan(supra), in which Shri P.C. Gandhi, serving as a Superintending Engineer on deputation to Bhankhra Beas Management Board (BBMB), attained the age of superannuation on 31.05.1992, and for his fixation of pension, the Rajasthan Service Rules, 1951, were applicable. For the respondents, namely Shri Bhagwan Dutt Gaur (in SAW No. 646/2005), Shri Darbari Lal and Shri Sewa Singh Gulati (in SAW No. 119/2009), who were also

on deputation with BBMB, and retired on 31.03.1999, 31.05.1999 and 31.12.1999 respectively, their cases will be covered by the Rajasthan Pension Rules, 1996, which came into effect on 01.10.1996.

4. Learned counsel appearing for the State of Rajasthan has relied upon Rule 45 of the Rajasthan Pension Rules, 1996, which defines "emoluments". He submits that Note No. 16, appended to Rule 45, provides that pay drawn by a Government servant while on deputation to Government of India/other State Governments shall not be treated as emoluments. In such case the pay which he would have drawn under the Government, had he not been on deputation to Government of India/other State Government, shall alone be treated as emoluments for fixation of pension to be paid to such Government servant.

5. It is submitted that since the respondents retired after enforcement of the Rajasthan Pension Rules, 1996, their pay, last drawn, will be the pay, which they would have received if they were not sent on deputation to BBMB, and that accordingly their pension was fixed. He submits that learned Single Judge has wrongly relied upon the judgment in P.C. Gandhi vs. State of Rajasthan (supra), in which the Rajasthan Service Rules, 1951 were considered for giving relief for fixation of pension on the pay, last drawn by him.

6. Brief facts giving rise to the Special Appeal, are that Shri Bhagwan Dutt Gaur, Shri Darbari Lal, and Shri Sewa Singh Gulati, were appointed in the Irrigation Department, Government of Rajasthan on 17.04.1965, 18.11.1965, 12.01.1970 respectively. They were sent on deputation to BBMB on 06.08.1983, 06.06.1973 and 26.05.1972 respectively. They held the substantive post of Sub Engineer in respect of Shri B.D. Gaur, and Junior Engineer in respect of Shri Darbari Lal and Shri S.S. Gulati, on the date they were sent on deputation. They were promoted as Assistant Engineer in BBMB while on deputation. Their actual date of promotion in the parent department, as Assistant Engineer, was 21.09.1996, 24.10.1998 and 14.02.1978 respectively. Their promotions, while on deputation, were by way of an incentive given to them as they were on deputation. It did not give them any right to hold the post.

7. In P.C. Gandhi vs. State of Rajasthan (supra), learned Single Judge of this Court considered the facts and circumstances, which were similar, except the fact that Shri P.C. Gandhi had retired on attaining the age of superannuation on 31.05.1992, prior to the enforcement of the Rajasthan Pension Rules, 1996. The enforcement of the Rules of 1996 would, in our view, not make any difference to the present case, inasmuch as the respondents, in view of the special facts and circumstances, in which they were transferred on sharing basis to the BBMB, will not be treated to be on deputation. The circumstances which led to their transfer to BBMB, has been explained in a letter written by the Secretary of the BBMB, to the Secretary to Government of Rajasthan, Irrigation Department, Jaipur on 26.08.1994, which reads as follows:-

"BHAKRA BEAS MANAGEMENT BOARD

MADHYA MARG 19-B, CHANDIGARH

(PERSONNEL DEPARTMENT)

From

The Secretary,

To

The Secretary to Govt. of Rajasthan,

Irrigation Department,

Rajasthan Secretariat,

Jaipur.

Memo No. 22547/ALO/974

Dated:- 26.08.94

Subject:- S.B. Civil Writ Petition No. 620/1993-P.C.

Gandhi Chief Engineer (Retd.) V/s. State of

Rajasthan and BBMB in the High Court of

Judicature for Rajasthan, Bench at Jaipur.

Sir,

Sh. P.C. Gandhi, Additional Chief Engineer from Rajasthan, was working in BBMB against the share quota post of Rajasthan. He retired from the service of Rajasthan Govt. on attaining the age of superannuation on 31.5.1992. He has preferred a Civil Writ Petition in the Rajasthan High Court at Jaipur claiming that he may be paid (sic).

2. The State of Rajasthan in their written statement, in reply to the Writ Petition of Sh. Gandhi, has stated that the employees of the State of Rajasthan working in BBMB are on foreign service/deputation. This statement is not based on facts and is, therefore, incorrect. The Rajasthan Govt. is a partner to the projects under the control of Bhakra Beas Management Board. The employees are deputed by the State Govt. on transfer basis against its share quota posts and not on deputation basis.

3. The Bhakra Beas Management Board in its 109th meeting held on 29.10.83, while reiterating their earlier decision that the employees drawn from the partner states are not on foreign service/deputation but they are on transfer basis on the same terms & conditions as obtaining in their parent State, decided that no deputation allowance is payable to the employees drawn from the partner States. In view of this no leave salary or pension contribution is paid by the BBMB for operation & maintenance to the respective State Govts. who are providing funds

to the Board in terms of the provisions contained in Section 79(5) of the Punjab RE-organisation Act, 1966.

4. The matter regarding sharing of posts in BBMB came up for discussion in the 117th meeting of the Board held on 22.5.85 wherein the representative of Rajasthan Govt. reiterated its stand for giving share quota posts to Rajasthan in the proportion to their capital outlay on these projects. Pending decision on the issue, because of no consensus among the partner States, the representative of Rajasthan suggested that BBMB should try to fill-up a few more posts by taking officers from Rajasthan. The Rajasthan Govt. in their recent communication have also been asking from BBMB about the share quota posts of Rajasthan, number of employees working in BBMB and the vacancies falling to their share.

5. In view of the position explained above, you are requested to kindly review the stand taken by Rajasthan Govt. before the High Court in order to avoid any complication.

Yours faithfully,

Sd/-

(S.P. SHARMA)

Secretary"

8. The legal position with regard to transfer of the employees from the State of Rajasthan and the State of Punjab & Haryana, was considered and explained by the Court in P.C. Gandhi vs. State of Rajasthan (supra). The relevant portion of the judgment is quoted as below:-

"BBMB was constituted under the Punjab Reorganisation Act, which was a joint venture of State of Rajasthan and State of Punjab & Haryana. It was responsible for the operation and maintenance of the project and Power Houses under its control. The necessary funds including the salaries were provided by the partner States proportionately. The staff on deputation in BBMB was considered as staff on transfer.

.....

It is further submitted that vide Annexure-12, the BBMB had also written a letter to the Chief Engineer, Irrigation Department wherein it had already been conveyed to the Pension Department that the petitioner was treated on transfer and not on deputation. The petitioner also attack the order being discriminatory by saying that one D.C. Jain of Rajasthan Commercial Taxes Services who was functioning as Member, Rajasthan Sales Tax Tribunal on the date of retirement was given the post retiral benefits on the basis of emoluments drawn by him as Member of the said Tribunal vide Annexure-15 and similarly one H.S. Choudhary who was functioning as Chairman and Administrator Rajasthan Canal Project, was given all retiral benefits on the basis of emoluments drawn by him on the said post.

.....

The Division Bench judgment in the case of Nirmal Singh was challenged before the Supreme Court by the State of Punjab wherein the Hon"ble Supreme Court affirmed the order of the High Court by holding that the employees of the State of Punjab who had been transferred to BBMB and who ultimately retired from Board while serving the Board will be governed by the impugned orders of the High Court and will have to be paid pension according to the last pay drawn by them at the time of the retirement from the Board. The Hon"ble Supreme Court in Special Leave Appeal (Civil) No. 10098/97 had observed as under:-

It becomes clear that those erstwhile employees of the State of Punjab who had on the appointed date i.e. 1.11.1996 stood statutorily transferred to the Bhakra Beas Management Board (herein after referred to as the Board") and who ultimately, retired from the Board while serving in the Board will be governed by the impugned orders of the High Court and will have to be paid pension according to the last pay drawn by them at the time of the retirement from the Board. We make it clear that we confirm the decision of the High Court only to the aforesaid extent and as category of cases the special leave petitions are dismissed.

We make it clear that the learned counsel for the petitioners had made a clear statement that on 1.11.1996 all the respondents were statutorily transferred to the Board and have retired from the Board. The decision of the High Court in their favour is being confirmed on that basis. The pension dues of the respondent as per the scheme of the Act will have to be paid by the State of Punjab and not by the Board which is merely a disbursing agency.

(Photo-stat copies of the judgment of Punjab High Court and Supreme Court are placed on record)

In view of the above decision, the writ petition is allowed with the direction that the retiral benefits of the petitioner shall be recomputed on the basis of last pay drawn in BBMB and the difference of amount so calculated should be disbursed to the petitioner within a period of four months from the date of receipt of the copy of the judgment. No order as to costs."

9. From the aforesaid facts and circumstances, which have been referred to in the letter of the Secretary, BBMB, as well as in the judgment in P.C. Gandhi vs. State of Rajasthan"s case (supra), it would be clear that the respondents were not sent on deputation to BBMB, and that is why they were not repatriated even after the maximum period of deputation of five years, provided under the Rajasthan Service Rules, 1951. They were also not paid the deputation allowances. They were all along treated as transferred employees on the post reserved on sharing basis on the capital outlay of the State of Rajasthan in BBMB, as officers of the Irrigation Department.

10. The Supreme Court in Special Leave to Appeal (Civil) No. 10098/2007, in a

judgment arising from the High Court of Punjab & Haryana, has also explained the position, with regard to transfer of the employees of the Punjab Government to BBMB. The same principle will apply to the instant case, as the employees serving in the Irrigation Department of the State of Rajasthan, were transferred on the same terms and conditions, in the proportion of capital outlay of the State of Rajasthan in BBMB.

11. On the aforesaid facts, we do not find that the distinction drawn by learned counsel appearing for the State of Rajasthan, on the basis of Rule 45 of the Rajasthan Pension Rules, 1996, has any application to the facts of the case.

12. On the above discussion, we do not find that learned Single Judge committed any error of law in following the judgment in P.C. Gandhi vs. State of Rajasthan's case (supra), and in allowing the same relief to the respondents.

13. Both the Special Appeals are dismissed, with the observation that pension in respect of the respondents in these Special Appeals will be redetermined on the last pay drawn by them in BBMB on the date of their superannuation, when they were serving in BBMB, and considering the circumstances in which the State Government had unnecessarily dragged the respondents into litigation, we direct that entire arrears, on such redetermination, will be paid to the respondents with interest @ 12% per annum, within a period of three months from the date of service of the judgment on the respondents.

14. Both the Special Appeals are, accordingly, dismissed with costs with the aforesaid observations.

15. A copy of the judgment will be placed in the connected file.