(2003) 01 RAJ CK 0067

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4542 of 1992

Vasudeo Pujari APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 10-01-2003

Acts Referred:

Constitution of India, 1950 — Article 39
Rajasthan Co-operative Societies Act, 1965 — Section 74
Rajasthan Service Rules, 1951 — Rule 346, 356, 7(18), 7(7)

Citation : (2003) 4 RLW 2118 : (2003) 3 WLC 543 : (2003) 1 WLN 108

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : M. Mridul and R.N. Upadhyaya, for the Appellant; Rajesh Joshi, for Respondent No. 2, Shakuntala Mehta, for Respondents No. 3 and 4 and Vidhya Boda, Asstt. G.A., for the Respondent

Judgement

Garg, J.—This writ petition under Article 226 of the Constitution of India has been filed by the petitioner on 19.8.1992 against the respondents with the prayer that by an appropriate writ, order or direction, the Judgment and order dated 18.6.1990 (Annex. 17) passed by the respondent No. 1 State of Rajasthan by which the revision petition filed by the petitioner against the recovery of Rs. 39,900/-, was dismissed, be quashed and set aside and further, the petitioner be allowed pay and allowances of the post of Manager (Finance) from 1.11.1985 to 26.5.1987 without deducting the pension etc. etc.

2. The case of the petitioner as put forward by him in this writ petition is as follows :-

The petitioner was working as Accounts Officer in the service of the State of Rajasthan from where he retired on 31.3.1980 and he was paid 75% of his pension by way of provisional pension and this continued to be so till November, 1980.

It was further submitted by the petitioner that while he was working as Accounts

Officer (on extension to assist Shri Ram Slngh, Fact Finding Commission), a resolution was passed by the respondent No. 2 Ganganagar Sahakari Spinning Mills Ltd., Hanumangarh (for short "Spinning Mills") whereby it was resolved that the petitioner, who was then working in the Rajasthan Cana! Project, be appointed as Accounts Officer and for that purpose, necessary sanction might be obtained from the State Government. A copy of the said Resolution dated 12.3.1980 is marked of Annex. 1.

Although the petitioner retired on 31.3.1980, he did not join the office of the respondent No. 2 Spinning Mills and again in pursuance of the above Resolution, a letter dated 4/5th April, 1580 (Annex. 2) was issued to the petitioner, whereby he was informed that appointment of the petitioner on the last pay drawn by him minus pension has been approved by the Board of Directors of the respondent No. 2 Spinning Mills and he was advised to join duties at the earliest and for that purpose, he was also required to complete certain formalities as contained in that letter.

The petitioner did not join in pursuance of that letter Annex. 2 as terms were not settled by the State Government and, therefore, the Managing Director and, therefore, the Managing Director of the respondent No. 2 Spinning Mills vide his letter dated 30.4.1980 (Annex. 3) requested the Registrar, Cooperative Societies (respondent No. 3) that the sanction of the Government was awaited and the work of the respondent No. 2 Spinning Mills was suffering and, therefore, permission might to granted to the respondent No. 2 Spinning Mills to take the petitioner on duty in anticipation of the sanction of the Government and in response to the said letter Annex. 3, the Dy. Registrar vide letter dated 21.5.1980 (Annex. 4) informed the respondent No. 2 Spinning Mills that the matter of appointment of the petitioner in the respondent No. 2 Spinning Mills was under consideration of the State Government and till the orders from the State Government are received, permission was granted to appoint the petitioner. It was also mentioned in that letter that the terms of appointment which will be decided by the State Government, would be made applicable to the petitioner.

It may be stated here that in pursuance of the above assurance, the petitioner joined the services of the respondent No. 2 Spinning Mills on 24.6.1980.

Thereafter, the Managing Director of respondent No. 2 Spinning Mills passed another order on 31.7.1981 by which in pursuance of the Resolution of the Board dated 30.6.1981, the pay of the petitioner was fixed at Rs. 1043/- per month and a copy of the said order dated 31.7.1981 is marked as Annex. 5.

The further case of the petitioner is that thereafter, through Resolution Annex. 6 dated 5.10.1981, it was decided that pay of the petitioner should be determined after taking into consideration the last salary (total emoluments) drawn by him at the time of retirement minus the amount of pension paid to him and, thereafter, 10% indicated therein that the pay shall be determined every month according to above formula.

Thereafter, the petitioner made several representations and thereafter, through order Annex. 10 dated 8.9.1982, the pay of the petitioner was finally fixed and in that order, the pension which was being paid to the petitioner, was deducted.

The further case of the petitioner is that the audit of the respondent No. 2 Spinning Mills was conducted under the provisions of the Rajasthan Cooperative societies Act, 1965 (hereinafter referred to as "the Act of 1965") and audit objections were made in the audit reports for the years 1981-82, 1982-83 and 1983-84 and the main audit objection was that the petitioner should have been paid salary minus pension and paying of salary to the petitioner, as per order Annex. 5 dated 31.7.1981, was wrong and, therefore, ultimately, through Annex. 13 dated 1.9.1987, a recovery of Rs. 39,900/-was ordered to be made against the petitioner.

It may be stated here that through order Annex. 14 dated 4.11.1988, the recovery of the above amount from the petitioner was stayed.

The further case of the petitioner is that the Joint Registrar, Cooperative Societies, Bikaner Zone, Bikaner (respondent No. 4) registered a case u/s 74 of the Act of 1965 against the petitioner for recovery of the above amount and in this respect, a notice Annex. 15 dated 20.5.1992 was issued by the respondent No. 4 Joint Registrar against the petitioner and, thereafter, the petitioner filed a revision petition before the respondent No. 1 State of Rajasthan through Annex. 16 and that revision petition was dismissed by the respondent No. 1 State of Rajasthan through judgment and order dated 18.6.1990 (Annex. 17). Hence, this writ petition with the prayers as stated above.

In this writ petition, the following three submissions have been raised by the learned counsel for the petitioner :-

(i) That since the petitioner, after having been retired from Government service, was appointed as Accounts Officer in the office of the respondent No. 2 Spinning Mills and his pay and allowances were fixed through order Annex. 5 to the tune of Rs. 1043/- per month, therefore, question of deduction of any amount of pension out of the pay, does not arise and, therefore, the recovery ordered to be made against the petitioner through Annex. 13 dated 1.9.1987, on the basis of audit objections, was ex-facie illegal, invalid and violative of Articles 14 and 16 of the Constitution of India and thus, the same cannot be sustained and consequently, impugned notice dated 20.5.1992 (Annex. 15) and judgment and order dated 18.6.1990 (Annex. 17) also cannot be sustained.

(ii) That non-payment of the emoluments of the post of Accounts Officer to the petitioner as such is against the principles of equal pay for equal work and thus, violative of Article 39(d) of the Constitution of India and thus, the petitioner should have been paid the same salary which was being paid to the regularly appointed Accounts Officer.

(iii) That while fixing salary of the petitioner, the amount of pension paid to him was not open to be deducted. Submission in this behalf was made in terms of Rule 346 of the RSR which is reproduced hereunder :-

"346. Re-employment after superannuation or retiring pension.- A Government servant who is in receipt of a Superannuation or Retiring Pension shall not be re-employed or continued to be employed in service paid from the consolidated fund or from a Local Fund, except on public grounds. Section to re-employment or extension of the term of employment may be given as follows :-

(i) By the Government when pensioner served before retirement in a gazetted appointment.

(ii) By any authority subordinate to Government to whom the Government may delegate its powers under this Rule in respect of pensioners re-employed in establishments under the control of such authority."

This Rule makes reference of "Consolidated Fund" and to "Local Fund" which are respectively defined in Rule 7(7) and 7(18)(a) & (b) which read as under :-

"7(7) Consolidated Fund- means Consolidated Fund established under Article 266 of the Constitution.

7(18) Local Fund- means (a) Revenues administered by bodies which by law or rule having the force of law come under the control of Government, whether in regard to proceedings generally or to specific matter such as the sanctioning of their budgets, sanction to the creation, or filling up of particular posts or the enactment of leave, pension similar rules; and

(b) the revenues of any body which may be specially notified by Governor as such."

Article 266 of the Constitution of India reads as follows :-

"266. Consolidated Funds and public accounts of India and of the States. -(1) Subject to the provisions of Article 267 and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the Government of India, ail loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of India", and all revenues received by the Government of a State, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of the India", and all revenues received by the Government of a State, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of the

State."

(2) All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or the public account of the State, as the case may be.

(3) No moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution."

Thus, in view of the above, it was submitted that since the pay was not being paid to the petitioner either out of Consolidated Fund as defined in Rule 7(7) read with Article 266 nor was it being given from Local Fund, therefore, Rule 346 was not attracted in the case and consequently retiring pension could not be deducted from the pay of the petitioner and in deducting the same, clear error has taken place.

A reply to the writ petition was filed by the respondents and it was contended by them that the appointment of the petitioner was not covered by the definition of commercial employment and for re-appointment, after retirement, the permission under Rule 356 of the Rajasthan Service Rules was not necessary and, thus, the petitioner was accordingly, informed through Annex. R/1 dated 20.6.1980.

So far as the recovery of amount is concerned, it was submitted by the respondents that as the same was made on the basis of the audit reports, therefore, the petitioner has got no right to challenge the same. Hence, the writ petition filed by the petitioner be dismissed.

3. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and gone through the materials available on record.

4. There is no dispute on the point that the petitioner, after retirement from Government service, was re-employed as Accounts Officer by the respondent No. 2 Spinning Mills and he worked on that post for the period from 24,6.1980 to 26.5.1987.

5. There is also no dispute on the point that when the petitioner joined the office of the respondent No. 2 Spinning Mills, after retirement from Government service, the terms and conditions of re-employment were not finally settled, but later on, the same were settled by the respondents through order Annex. 5 dated 31.7.1981, on the basis of the Resolution of the Board dated 30.6.1981 by which a consolidated salary of Rs. 1043/- per month was allowed to be paid to the petitioner. But, the terms and conditions were not finally settled by the State Government when the order Annex. 5 dated 31.7.1981 was passed by the respondent No. 2 Spinning Mills.

6. There is also no dispute on the point that through order Annex. 10 dated

8.9.1982, the terms and conditions about the salary of the petitioner were settled by which the salary of the petitioner was fixed by minusing the pension.

7. There is also no dispute on the point that later on, audit objections were made about the salary which was fixed by the respondents through order Annex. 5 dated 31.7.1981.

8. There is also no dispute on the point that on the basis of the audit objections, through Annex. 13 dated 1.9.1987, a recovery of amount of Rs. 39,900/- was ordered to be made from the petitioner.

9. There is also no dispute on the point that through Annex. 14 dated 4.11.1988, the recovery of the amount against the petitioner was stayed by the respondents.

10. There is also no dispute on the point that a notice Annex. 15 dated 20.5.1992 for recovery of the amount was also given to the petitioner and, thereafter, the petitioner filed a revision petition through Annex. 16 before the respondent No. 1 State of Rajasthan and the same was dismissed by the respondent No. 1 State of Rajasthan through judgment and order dated 18.6.1990 (Annex. 17).

Point No. 1

11. So far as the point of recovery is concerned, a perusal of order Annex. 5 dated 31.7.1981 reveals that the Board of Directors of the respondent No. 2 Spinning Mills in its meeting held on 30.6.1981 decided that the petitioner be paid consolidated salary of Rs. 1043/- per month and when this being the position, since the petitioner was re-employed, after retirement from Government service, therefore, if any recovery is made on the ground that pension should have been deducted, that order cannot be justified because of the simple reason that when the Board has decided that a consolidated sum of Rs. 1043/- per month be paid to the petitioner, that should have been paid tp the petitioner because in the order Annex. 5 allowing a consolidated sum of Rs. 1043/- per month to the petitioner, there was no mention of any other benefit including deduction of amount of pension also which was being paid to the petitioner on his retirement from Government service. If a retired employee is re- employed on a consolidated salary, that salary should be paid to him.

12. Thus, the order Annex. 13 dated 1.9.1987 passed by the respondent No. 2 Spinning Mills by which the recovery of Rs. 39,900/- was ordered to be made against the petitioner cannot be sustained and consequently, the notice Annex. 15 dated 20.5.1992 for recovery issued against the petitioner by the respondent No. 4 Joint Registrar and the judgment and order dated 18.6.1990 (Annex. 17) passed by the respondent No. 1 State of Rajasthan cannot also be sustained and liable to be quashed and set aside and to that extent, the writ petition deserves to be allowed.

Points No. 2 and 3

13. The points No. 2 and 3 are being decided together as both of them are inter-related with each other.

14. So far as the argument of the petitioner that the amount of pension should have not been deducted while making his re- employment, is concerned, in my considered opinion, the same does not carry any weight in view of the order Annex. 5 dated 31.7.1981.

15. It may be stated here that if the concerned authorities while making re-employment makes a condition pension is minus, that order does not become ex-facie illegal or arbitrary. From this point of view also, the argument that the petitioner should have been paid the same salary as was being paid to the regularly recruited Accounts Officer, cannot be accepted because he was a retired employee.

16. The Government has the power to keep the pension in abeyance of a Government servant, who has been re-employed. Since in the present case, the pension of the petitioner was more than Rs. 500/- and if a condition of minus pension in respect of emoluments payable to him was made by the respondents, that condition cannot be said to be illegal or arbitrary or against the provisions of the Constitution of India.

17. Therefore, the submission that the petitioner was entitled to the same salary which he was getting on the date of retirement from Government service, on the basis of principle of equal pay for equal work, cannot be accepted as that principle cannot be made applicable in the case of retired employee when re-employed. It is made clear that a retired employee, on re-employment, stands on a different footing from a regular employee in respect of emoluments.

18. In view of the above, the authorities cited by the learned counsel for the petitioner in his written submissions would not be helpful to the petitioner so far as the disposal of the present writ petition is concerned and the arguments No. 2 and 3 stand rejected.

For the reasons stated above, this writ petition filed by the petitioner is partly allowed in the manner that the order Annex. 13 dated 1.9.1987 passed by the respondent No. 2 Spinning Mills by which the recovery of Rs. 39,900/- was ordered to be made against the petitioner is quashed and set aside and consequently, the notice Annex. 15 dated 20.5.1992 for recovery issued against the petitioner by the respondent No. 4 Joint Registrar and the judgment and order dated 18.6.1990 (Annex. 17) passed by the respondent No. 1 State of Rajas-than are also quashed and set aside. The other prayers are rejected.

No order as to costs.

