

The State Of Rajasthan And Anr. vs Shri Rajender Singh on 4 May, 1973

Equivalent citations: AIR1973SC2121, 1973LABLC1148, (1973)IILLJ275SC, (1974)3SCC172, 1973(5)UJ744(SC), 1973()WLN490, AIR 1973 SUPREME COURT 2121, 1973 3 SCC 172, 1973 LAB. I. C. 1148, 1973 (1) SCWR 1004, 1973 SCD 632, 1973 2 LABLJ 275, 1973 2 SERVLR 226

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Bench: A. Alagiriswami

JUDGMENT

Palekar, J.

1. This is an appeal by the State of Rajasthan from an Order passed by the High Court of Rajasthan in Civil Writ Petition No. 162 of 1966. By this Order the High Court quashed the order of the State Government dated August 27, 1965 directing the compulsory retirement of the respondent from service with effect from December 2, 1965 on completion of 25 years' qualifying service under Rule 244(2) of the Rajasthan Service Rules, 1951.

2. The respondent had been appointed as a Constable in the State of Ajmer on the 8th November, 1939 in the force then known as his Excellency the Grown Representative's police. On the 1st January, 1947 he was promoted as a Head Constable in that Force. After Independence the Police Force was designated as Central Reserve Police. By an order dated December 25, 1951 the respondent was promoted to the rank of Sub Inspector and was transferred to the Government Railway Police, Ajmer and continued in the said post upto March 16, 1953. Thereafter he was elected for training to the then Ajmer Armed Constabulary which was raised on lines of the Central Reserve Police but he continued to hold his substantive post of Sub-Inspector in the Ajmer Armed Constabulary Force. Later he was asked to officiate in the post upto the year 1956. On reorganization in 1956 Ajmer, which was a part 'C' State, was integrated into the State of Rajasthan. Later he was reverted from his officiating past of Inspector of Police to the post of Sub-Inspector against which order the respondent made representations to the Government. Thereafter, successive departmental enquiries were held against him but by an order dated July 27, 1965 he was granted a selection grade promotion retrospectively with effect from December 26, 1962. On August 27, 1965 he was served with a notice directing his compulsory retirement from December 2, 1965. The respondent was at that time 46 years of age which was not the age of superannuation. The respondent filed the Writ Petition, out of which the present appeal arises, complaining that the Rule for compulsory retirement, namely Rule 244(2) of the Rajasthan Service Rules, 1951, did not apply to him and,

therefore, the termination of his service was unConstitutional. The High Court accepted his contention relying upon a previous decision of that court in Karam Chand Bhandari v. State of Rajasthan D.B. Civil Write Petition No. 355/62 decided on 29-3-1966.

3. It is contended on behalf of the State that the High Court should have held that Rule 244(2) of the Rajasthan Civil Service Rules, 1957 applied to the respondent and, in any case, even under the Central Civil Service Regulations the State Government was entitled to entitle him compulsory on the date aforesaid.

4. The respondent was absorbed in the State Service after the State Reorganization Act, 1956. The question is by what service rules he was governed after his absorption. Ajmer was a part of C State before 1956 and the respondent belonged to that State service. Some vague reference was made to Ajmer State Rules but neither side was able to tell us what those rules are. It appears from the judgment in Karam Chand Bhandari v. State of Rajasthan referred to above that employees similar in position to that of the respondent were governed by the Central Civil Service Regulations. learned Counsel for the State argued on the assumption that these letter rules applied to ex-Ajmer State Officers before they were absorbed in the State of Rajasthan in 1956. At the time of the absorption, there were in existence in the State of Rajasthan rules named Rajasthan Service Rules, 1961. It is obvious that unless the Rajasthan Service Rules, 1961 were made specifically applicable to the respondent he would continue to be governed by the Central Civil Service Regulations. That is clear from Section 115 of the State Reorganisation Act, 1956. Sub-section (7) of that section provides Nothing in this section shall be deemed to affect after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union or any State :

5. Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in Sub-section (1) or Sub-section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government.

6. It will thus be seen that the Rajasthan Service Rules, 1951 did not automatically apply to the respondent. The respondent affirmed that the Central Civil Service Regulations continued to govern his service conditions and it is his contention that under those Regulations there was no power in the State Government to retire him compulsorily. And if the conditions of service applicable immediately before the reorganization were to be varied to his disadvantage, this could be done only with the previous approval of the Central Government. It is not shown to us that any such approval of the Central Government had been obtained. If as the respondent contends, there was no rule under the Central Civil Service regulations which provided for compulsory retirement, his compulsory retirement under the Rajasthan Rules would amount to varying to his disadvantage the conditions of his service and hence the order was invalid. That position is not seriously contested on behalf of the State.

7. A reference was made to Rajasthan Service Protection of Service Conditions) Rules, 1957. But apparently these rules which merely deal with the scales of pay, dearness allowance and leave and pension rules, though issued by the Central Government, do not contain any provision with regard

to compulsory retirement. Therefore, the respondent is right in his submission that the necessary approval under the provisions of Section 115 had not been obtained.

8. Therefore, the only question which remains to be considered is whether under the Central Civil Service Regulations the respondent could be compulsorily retired before the date of his superannuation. No specific rule was brought to our notice which authorised such action. Mr. Jain for the State, however, invited our attention to Articles 349A, 349AA, 465A and 465AA of the above regulations and his contention was that the respondent could be compulsorily retired in view of Note below Article 465AA read with Clause (2) of that Article. Article 465AA reads as follows :

For officers referred to in Article 349AA the rule for the grant of retiring pension is as follows :-

(1) An officer is entitled, on his resignation being accepted, to a retiring pension after completing qualifying service of not less than 30 years.

(2) A retiring pension is also granted to an officer who is required by Government to retire after completing 25 years qualifying service or more.

Note :-Government retains an absolute right to retire any officer after he was completed 25 year's qualifying service without giving any reasons, and no claim to special compensation on this account will be entertained. This right will not be exercised except when it is in the public interest in dispenche with the further service of the officer.

9. If this article applied to the respondent, it is possible to argue for the State that it had the authority to retire him compulsorily after completion of 25 years of qualifying service. But as the Article itself shows it applied to officers referred to in Article 349AA. That Article is as follows :-

349AA. Article 349A does not apply to an officer (1) who entered Government service on or after the 1st October, 1938 or (2) who having entered such service before that date, did not hold a lien on a permanent pensionable post before that date or (3) who is transferred on or after the 1st October, 1938 permanently from service under a State Government or a Local Fund administered by Government to service under the President and did not hold a lien or a suspended lien on a permanent pensionable post under the State Government or the Local Fund before that date.

In the case of such officers the rules in Article 465AA... replace the rules in Articles 465, 465A....

It is clear from the above Article that Article 349AA excludes certain category officers to whom normally Article 349A applied and to this category of officers Article 465AA applied and not Article 465 and 465A. The latter two Articles applied to the officers described in Article 349A who had not been excluded therefrom under Article 349AA.

10. Article 349A is as follows :

(1) The rule in Article...465A...applies to officers (other than Military Officers and member of the Indian Civil Service) appointed substantively to the service or the appointments specified below who :-

(a) joined these appointments after 29th August, 1919, or

(b) were in service on the 29th August, 1919 but have definitely elected in writing with the permission of Government to come under them.

Then follows a long list of departments, services and posts to which Article 349A applied. One of these is the Police Department and the entry is as follows :

The Police Department - Officers of Indian Police, and Deputy Superintendents.

11. The above will show that Article 349A applied to the appointments in the Police Department but those appointments must be of officers of Indian Police and Deputy Superintendents. Other Police personnel in the Police Department were not governed by Article 349A. The respondent though appointed in the Police Department did not hold such a post and, therefore, Article 349A had no application.

12. Therefore, since Article 349A did not apply to an appointment like that of the respondent, Article 349A. A also did not apply to him because for the application of the latter Article it is essential that the officer must belong to a service or hold a post specifically mentioned in Article 349A. The respondent is, therefore, right in contending that Article 349AA does not apply to him and consequently Article 465AA also.

13. We thus come to the conclusion that there is no Article in the Central Civil Service Regulations providing for the compulsory retirement of a person like the respondent which would only mean that he shall retire on reaching the age of superannuation. It is not the case that the respondent who was 46 years old at the time of the order had reached the age of superannuation. To apply to him the Rajasthan Civil Service Rules, 1951 for the purpose of compulsory retirement would amount to varying his condition of service to his disadvantage and since there was no previous approval of the Central Government, the order of the State Government must be held to be bad. The High Court was, therefore, right in allowing the respondent's petition and the present appeal fails.

14. The appeal is dismissed with costs.