A.P. Srivastava vs Union Of India And Others on 20 September, 1995

Equivalent citations: 1995 SCC (6) 227, JT 1995 (6) 665

Author: Kuldip Singh

Bench: Kuldip Singh

PETITIONER:
A.P. SRIVASTAVA

Vs.

RESPONDENT:
UNION OF INDIA AND OTHERS

DATE OF JUDGMENT20/09/1995

BENCH:
G.B. PATTANAIK (J)
BENCH:
G.B. PATTANAIK (J)
KULDIP SINGH (J)

CITATION:
1995 SCC (6) 227 JT 1995 (6) 665
1995 SCALE (5)450

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T PATNAIK, J.

Special Leave granted.

The short question which arises for consideration is whether an employee who was a temporary government servant looses his right to receive pension when the employer exercises its option and retires the employee after he attain the age of 55 years in accordance with Rule 56 (J)

(ii) of the Fundamental Rules, even though the employee might have completed more than 20 years service?

The appellant joined the services of the Government of India as temporary Lower Division Clerk in the Central Tractor Organisation on 06.10.1955. He was promoted to the post of Upper Division Clerk on probation on 28.12.1962 and having continued for 8 years, he was reverted to the post of temporary Lower Division Clerk on 01.12.1970. Pending initiation of departmental proceeding he was suspended on 01.12.1980. The departmental proceeding was initiated on 10.04.1981. The disciplinary authority finally passed an order of punishment on 01.06.1985. Against the order of punishment an appeal was preferred by the appellant on 19.07.1985 but that appeal had not been forwarded to the appellate authority by the disciplinary authority. As the appeal was not disposed of the appellant approached the Principal Bench of the Central Administrative Tribunal on 15.01.1987. While the aforesaid proceeding was pending before the Tribunal, the Under Secretary in the Ministry of Home Affairs issued an order pre-maturely retiring the appellant under Rule 56 (J) (ii) of the Fundamental Rules on 26.02.1988 making it effective from 01.03.1988. This order was challenged by the appellant again before the Central Administrative Tribunal which was heard on 31.01.1991. On account of difference of opinion between the two Members of the Tribunal the matter was referred to the Chairman under Section 26 of the Administrative Tribunals Act, 1985 who in his turn referred the matter to the Vice-Chairman. The Vice- Chairman gave his opinion that the order of compulsory retirement of a temporary government servant under Rule 56 (J) of the Fundamental Rules is not an order of punishment. He also found that the employee will not be entitled to any pensionary benefit since neither he has retired on reaching the age of superannuation nor he has been declared permanently incapacitated for further Govt. service nor he has sought voluntary retirement after completion of 20 years of service.

In view of the aforesaid opinion the appellant having been deprived of the pensionary benefits, has approached this Court. The learned counsel for the appellant contended that if a temporary government servant who voluntarily retires after completion of 20 years of service would be entitled to the pension, there is no reason to deny the same when the employer compulsorily retires him after the employee has completed 20 years of service. In other words when Rule 56 (J) of the Fundamental Rules confers power on the employer to retire government servant in public interest after giving 3 months notice under the circumstances mentioned therein and Rule 56 (K) similarly entitles a government servant to voluntarily retire after giving 3 months notice, there should not be any different criteria in the matter of award of pension. Learned counsel appearing for the respondents on the other hand contended that in view of the specific provision of the Rules and the Rule being given its literal meaning there is no escape from the conclusion that a temporary government servant will not be entitled to any pension even if he has completed more than 20 years of service when the employer compulsorily retires him in exercise of power under Rule 56 (J) of the Fundamental Rules.

In view of the rival submissions at the bar, the question for consideration is whether there is any rationale behind the rule disentitling pension to a government servant when an order of compulsory retirement is passed in exercise of power under Rule 56 (J) of the Fundamental Rules? As has been noticed earlier after completion of a particular period of service the employer has a right to

compulsorily retire the employee in public interest and similarly the employee has a right to voluntarily retire on giving three months notice. It has been held by this Court time and again that the pension is not a charity or bounty nor it is conditional payment solely dependant on the sweet will of the employer. It is earned for rendering a long service and is often described as deferred portion of payment for past services. It is in fact in the nature of social security plan provided for a superannuated government servant. If a temporary government servant who has rendered 20 years of service, is entitled to pension, if he voluntarily retires, there, is no justification for denying the right to him when he is required to retire by the employer in the public interest. In other words, the condition precedent for being entitled to pension in case of a temporary government servant is rendering of 20 years of service.

In view of the legal position that an order of compulsory retirement is not a punishment and pension is a right of the employee for services rendered, we see no justification for denying such right to a temporary government servant merely on the ground that he was required to retire by the employer in exercise of power under Rule 56 (J) of the Fundamental Rules. In our considered opinion a temporary government servant would be entitled to pension after he has completed more than 20 years of service even if he is required to retire by the employer in exercise of power under Rule 56 (J) of the Fundamental Rules.

The direction of the Tribunal to the contrary therefore is set aside and we hold that the appellant would be entitled to pension as admittedly he has rendered more than 20 years of service. This appeal is accordingly allowed but there would be no order as to costs.