

STATE OF RAJASTHAN & OTHERS

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v.

O.P. GUPTA

(Special Leave Petition (Civil) No. 16734 of 2022)

SEPTEMBER 19, 2022

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**[INDIRA BANERJEE AND J.K. MAHESHWARI, JJ.]**

*Service Law: Pension – Respondent was initially appointed in 1967 as Assistant Charge Man in the Rajasthan Agriculture Engineering Board from where his services were transferred to the Rajasthan State Agro Industry Corporation, where he worked till 12<sup>th</sup> April 1977 – Respondent resigned from Rajasthan State Agro Industry Corporation to take up appointment as Assistant Director (Agro-Industries) in the Department of Industries in the State of Rajasthan, after being selected through the RPSC – High Court held that service rendered by respondent/writ petitioner prior to resignation from the Rajasthan State Agro Industry Corporation should be counted for the purpose of pension – Held: There can be no doubt that resignation from service may entail forfeiture of past service – However, sub-rule (2) of r.25 of the Rajasthan Civil Services (Pension) Rules, 1996 carves out an exception – The said sub-rule clarifies that a resignation with proper permission to take up another appointment, whether temporary or permanent, under the Government shall not entail forfeiture of past service – Respondent applied for the post of Assistant Director (Agro-Industries), while he was still in service of the Rajasthan State Agro Industry Corporation, which is also an entity fully controlled by the State of Rajasthan – Respondent having retired after working for about 26 years, the State cannot raise the question of proof of prior permission before resignation, more so when the appointment had been made through the RPSC to a Government post – It is to be presumed that prior permission had been taken unless the contrary could be established by the State – High Court rendered a just decision based on a purposive interpretation of Rule 25(2) of the Rules applied to the admitted facts on record. The interpretation given by the High Court to Rule 25(2) of the Rules is a plausible interpretation.*

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- A *Constitution of India: The State is bound by the fundamental rights of its employees under Arts.14 to 16 of the Constitution of India – It is now well settled that arbitrariness violates the right to equality under Arts.14 to 16 of the Constitution of India.*

- Writ jurisdiction: Relief under Art.226 of the Constitution of India being discretionary, the Courts might in their discretion refuse to entertain the Writ Petition, where there is gross delay on the part of the Writ Petitioner, particularly, where the relief sought would, if granted, unsettle things, which are already settled – In the instant case, although there was a delay of six years in filing the writ petition, however, the laws of limitation do not apply to exercise of jurisdiction under Art.226 of the Constitution of India – Respondent-Writ Petitioner is claiming pension, which is a life long benefit – Denial of pension is a continuing wrong – When financial rules framed by the Government such as Pension Rules are capable of more interpretations than one, the Courts should lean towards that interpretation which goes in favour of the employee.*

#### **Dismissing the Special Leave Petition, the Court**

- HELD: 1.1** There can be no doubt that resignation from service may entail forfeiture of past service. However, sub-rule (2) of Rule 25 of the Rules carves out an exception. The said sub-rule clarifies that a resignation with proper permission to take up another appointment, whether temporary or permanent, under the Government shall not entail forfeiture of past service. The Respondent was selected through the RPSC. He applied for the post of Assistant Director (Agro-Industries), while he was still in service of the Rajasthan State Agro Industry Corporation, which is also an entity fully controlled by the State of Rajasthan. The Respondent having retired after working for about 26 years, the Petitioner - State cannot raise the question of proof of prior permission before resignation, more so when the appointment had been made through the RPSC to a Government post. It is to be deemed that there has been disclosure of past service and the application has been made through proper channel by obtaining the requisite approvals. [Paras 23, 24, 25][328-B-F]

**1.2 It is to be presumed that prior permission had been taken unless the contrary could be established by the State. May be there was a delay of six years in filing the Writ Petition, however, it is well settled that the laws of limitation do not apply to exercise of jurisdiction under Article 226 of the Constitution of India. Relief under Article 226 of the Constitution of India being discretionary, the Courts might in their discretion refuse to entertain the Writ Petition, where there is gross delay on the part of the Writ Petitioner, particularly, where the relief sought would, if granted, unsettle things, which are already settled. In this case, the Respondent-Writ Petitioner is claiming pension, which is a life long benefit. Denial of pension is a continuing wrong. This Court cannot also be oblivious to the difficulties of a retired employee in approaching the Court, which could include financial constraints. It is settled law that when financial rules framed by the Government such as Pension Rules are capable of more interpretations than one, the Courts should lean towards that interpretation which goes in favour of the employee.** [Paras 26, 27, 28][328-F-H; 329-A-B]

*N. Suriyakala v. A. Mohandoss and Ors. (2007) 9 SCC 196 : [2007] 2 SCR 419; Citing Bengal Chemical and Pharmaceutical Works Ltd. v. Employees AIR 1959 SC 633 : [1959] 2 Suppl. SCR 136 – relied on.*

#### Case Law Reference

[2007] 2 SCR 419	relied on	Para 29
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[1959] 2 Suppl. SCR 136	relied on	Para 30
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CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 16734 of 2022.

From the Judgment and Orders dated 28.11.2019 of the High Court of Judicature for Rajasthan Bench at Jaipur in D.B. Special Appeal (Writ) No. 443 of 2018.

Dr. Manish Singhvi, Sr. Adv., B. S. Rajesh Agrajit, Arpit Parkash, D. K. Devesh, Advs. for the Petitioners.

Ms. Archana Pathak Dave, Avnish Dave, Ms. Vanya Gupta, Kumar Prashant, Advs. for the Respondent.

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- A      The Judgment of the Court was delivered by  
**INDIRA BANERJEE, J.**
1. Delay Condoned.
2. This Special Leave Petition has been filed challenging the final judgment and order dated 28<sup>th</sup> November 2019, in D.B. Special Appeal Writ No. 443 of 2018 passed by the High Court of Judicature for Rajasthan Bench at Jaipur, whereby the High Court dismissed the Writ Appeal filed by the Petitioners and upheld the judgment of the Single Bench dated 5<sup>th</sup> May 2017 in S.B. Civil Writ Petition No. 5879 of 2009, whereby the Single Judge had allowed the Writ Petition filed by the Respondent.
- C      3. The Respondent was initially appointed as an Assistant Charge Man in the Rajasthan Agriculture Engineering Board, Department of Agriculture, Government of Rajasthan w.e.f. 13<sup>th</sup> January 1967.
- D      4. The Engineering Board was subsequently merged with the Rajasthan State Agro Industry Corporation. Accordingly, the services of the Respondent were transferred to the Rajasthan State Agro Industry Corporation *vide* transfer order dated 8<sup>th</sup> July 1970, on the same pay scale. He worked with Rajasthan State Agro Industry Corporation continuously till 12<sup>th</sup> April 1977.
- E      5. Pursuant to an advertisement dated 16<sup>th</sup> June 1976 issued by the Rajasthan Public Service Commission (hereinafter referred to as “RPSC”), the Respondent applied for the post of Assistant Director (Agro-Industries). The Respondent was selected for the post of Assistant Director (Agro-Industries), Department of Industries, State of Rajasthan.
- F      6. The Respondent was appointed as Assistant Director (Agro-Industries), Department of Industries, State of Rajasthan by an order dated 7<sup>th</sup> April 1977. According to the Respondent, he joined service in the Department of Industries on 16<sup>th</sup> April 1977.
- G      7. The Respondent while serving in the Department of Industries, attained the age of superannuation and retired on 30<sup>th</sup> April 2003 from the post of Additional Director of Industries, Headquarter, Jaipur. However, while counting the length of service of the Respondent for the purpose of calculating pension and other retiral benefits, the Petitioners did not count the tenure from 13<sup>th</sup> January 1967 to 12<sup>th</sup> April 1977 (i.e. the period for which the Respondent worked for the Rajasthan Agriculture Engineering Board and the Rajasthan State Agro Industry Corporation).
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8. The Respondent submitted representations to the Department of Industries requesting that his service tenure from 13<sup>th</sup> January 1967 to 12<sup>th</sup> April 1977 be counted for the purposes of his pension and retiral benefits. However, the request for counting the service tenure from 13<sup>th</sup> January 1967 to 12<sup>th</sup> April 1977, was not granted.

9. Aggrieved, the Respondent filed S.B. Civil Writ Petition No. 5879 of 2009 before the Single Judge, Rajasthan High Court on or about 20<sup>th</sup> March 2009. The moot point for consideration before the Single Judge was, whether service rendered by the Respondent/Writ Petitioner prior to resignation from the Rajasthan State Agro Industry Corporation, should be counted for the purpose of pension.

10. By a Judgment and Order dated 5<sup>th</sup> May 2017, the Single Bench allowed S.B. Civil Writ Petition No. 5879 of 2009 and held that the service rendered by the Respondent with the Rajasthan Agriculture Engineering Board and the Rajasthan State Agro Industry Corporation, was liable to be counted, while computing pension/other pensionary benefits of the Respondent.

11. The Writ Petition was disposed of with a direction to the Petitioners to count the earlier period of service rendered by the Respondent with the Rajasthan Agriculture Engineering Board and the Rajasthan State Agro Industry Corporation to compute the total pensionable service of the Respondent and release his pension and retiral benefits including arrears of pension with interest @ 9% p.a. within a period of three months from the date of the submission of the certified copy of the order. According to the Respondent, a copy of the judgment and order dated 5<sup>th</sup> May 2017 was submitted to the Petitioners on 15<sup>th</sup> May 2017 by registered post. However, the Petitioners did not comply with the Judgment and order.

12. The Petitioner-State filed an appeal being D.B. Special Appeal Writ No. 443 of 2018 against the judgment and order dated 5<sup>th</sup> May 2017 before the Division Bench. The Respondent filed a Contempt Petition, being S.B. Civil Contempt Petition No. 265 of 2018 alleging non-compliance of the Judgment and order dated 5<sup>th</sup> May 2017 in spite of knowledge thereof. It was submitted that a copy of the judgment and order had been served on the Petitioners on 15<sup>th</sup> May 2017 by registered post.

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- A        13. By an order dated 14<sup>th</sup> March 2018 in S.B. Civil Contempt Petition No. 265 of 2018, the High Court directed the Petitioners to comply with the judgment and order dated 5<sup>th</sup> May 2017 within 15 days, failing which the Additional Chief Secretary, Department of Industries, Government of Rajasthan would have to be present in Court and explain the reasons/circumstances for non-compliance.
- B        14. By the impugned Judgment and Order dated 28<sup>th</sup> November 2019, the Division Bench of the High Court dismissed the Writ Appeal being D. B. Special Appeal Writ No. 443 of 2018 with the following observations:
- C        *“...Admittedly, service of the respondent under the Rajasthan Agriculture Engineering Board was pensionable. As per Rule 25(2) of the Rajasthan Civil Services (Pension) Rules, 1996, resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment whether temporary or permanent, under the Government where service qualifies. Hence, learned Single Judge has rightly held service rendered by the respondent with Rajasthan Agriculture Engineering Board and Rajasthan Agro Industry Corporation was liable to be counted while computing pension/other pensionary benefits of the respondent.”*
- D        15. Rule 25 of the Rajasthan Civil Services (Pension) Rules, 1996 hereinafter referred to as “the Rules” reads as follows:
- “25. Forfeiture of Service on resignation**
- F        (1) *Resignation from a service or a post, entails forfeiture of past service.*
- G        (2) *A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.*
- H        (3) *Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time admissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal*

*condonation to the extent to which the period is not covered by leave due to him.”* A

16. Admittedly, the Respondent was initially appointed as Assistant Charge Man in the Rajasthan Agriculture Engineering Board from where his services were transferred to the Rajasthan State Agro Industry Corporation, where he worked till 12<sup>th</sup> April 1977. Thereafter he was appointed Assistant Director (Agro-Industries) in the Industry Department and submitted his resignation from the Rajasthan State Agro Industry Corporation. Admittedly, the service of the Respondent under the Rajasthan Agriculture Engineering Board and the Rajasthan State Agro Industry Corporation was pensionable, as found by the High Court. B

17. Dr. Manish Singhvi, learned Senior Counsel, appearing on behalf of the Petitioners argued that the High Court had misconstrued Rule 25(2) of the Rules. He argued that resignation entails forfeiture of past service with the Rajasthan State Agro Industry Corporation, for the purpose of pension. C

18. The Respondent resigned from Rajasthan State Agro Industry Corporation to take up appointment as Assistant Director (Agro-Industries) in the Department of Industries in the State of Rajasthan, after being selected through the RPSC. D

19. The Division Bench and the Single Bench of the High Court have concurred. The effective and concurrent factual finding of the Division Bench and the Single Bench of the High Court, that the Respondent had resigned with proper permission to take up another appointment, under the Government, for which he was qualified, does not call for interference under Article 136 of the Constitution of India. E

20. Dr. Singhvi, emphatically argued that : F

- i. the Writ Petition was filed by the Respondent after six years.
- ii. the Respondent was appointed to a higher post in the Industry Department. As such his past employment was inconsequential.
- iii. There was no proof of prior permission before resignation from Rajasthan State Agro Industry Corporation.

21. Dr. Singhvi submitted that the appointment was a fresh appointment for which past service was inconsequential. Dr. Singhvi, G H

- A emphatically argued that, in service jurisprudence, resignation necessarily leads to cessation from service and entails forfeiture of past service. The stand taken by the State is arbitrary, unreasonable and misconceived.

22. The State is bound by the fundamental rights of its employees under Articles 14 to 16 of the Constitution of India. It is now well settled

- B that arbitrariness violates the right to equality under Articles 14 to 16 of the Constitution of India.

23. There can be no doubt that resignation from service may entail forfeiture of past service. However, sub-rule (2) of Rule 25 of the Rules carves out an exception. The said sub-rule clarifies that a resignation

- C with proper permission to take up another appointment, whether temporary or permanent, under the Government shall not entail forfeiture of past service.

24. At the cost of repetition, it is reiterated that the Respondent was selected through the RPSC. He applied for the post of Assistant

- D Director (Agro-Industries), while he was still in service of the Rajasthan State Agro Industry Corporation, which is also an entity fully controlled by the State of Rajasthan.

25. The Respondent having retired after working for about 26 years, the Petitioner - State cannot raise the question of proof of prior

- E permission before resignation, more so when the appointment had been made through the RPSC to a Government post. It is to be deemed that there has been disclosure of past service and the application has been made through proper channel by obtaining the requisite approvals.

- F 26. It is to be presumed that prior permission had been taken unless the contrary could be established by the State. May be there was

a delay of six years in filing the Writ Petition, however, it is well settled that the laws of limitation do not apply to exercise of jurisdiction under Article 226 of the Constitution of India. Relief under Article 226 of the Constitution of India being discretionary, the Courts might in their discretion refuse to entertain the Writ Petition, where there is gross delay

- G on the part of the Writ Petitioner, particularly, where the relief sought would, if granted, unsettle things, which are already settled.

27. In this case, the Respondent-Writ Petitioner is claiming pension, which is a life long benefit. Denial of pension is a continuing wrong.

This Court cannot also be oblivious to the difficulties of a retired employee H in approaching the Court, which could include financial constraints.

28. It is settled law that when financial rules framed by the Government such as Pension Rules are capable of more interpretations than one, the Courts should lean towards that interpretation which goes in favour of the employee. A

29. Ms. Archana Pathak Dave, counsel appearing on behalf of the Respondent argued that Article 136 of the Constitution of India does not create a regular forum of Appeal. It is only a residual provision which enables this Court to interfere with the judgment and order of any Court or Tribunal in India, in its discretion, as observed by this Court in *N. Suriyakala v. A. Mohandoss and Ors.*<sup>1</sup>. B

30. Citing *Bengal Chemical and Pharmaceutical Works Ltd. v. Employees*<sup>2</sup>, Ms. Dave argued that since power under Article 136 of the Constitution of India was discretionary, this Court is not bound to set aside an order under Article 136, even if it was not in conformity with law. C

31. The High Court has rendered a just decision based on a purposive interpretation of Rule 25(2) of the Rules applied to the admitted facts on record. The interpretation given by the High Court to Rule 25(2) of the Rules is a plausible interpretation. D

32. We, therefore, find no grounds to interfere with the impugned judgment and order passed by the High Court. E

33. The Special Leave Petition is, accordingly, dismissed.

Devika Gujral

SLP dismissed.

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<sup>1</sup> (2007) 9 SCC 196

<sup>2</sup> AIR 1959 SC 633 (at 635)