

State of Madhya Pradesh and Another

Vs

Col. Lal Rampal Singh

Civil Appeal No. 736 of 1963

(A. K. Sarkar, M. Hidayatullah, Raghuvar Dayal, R. S. Bachawat, J. R. Mudholkar JJ)

07.10.1965

JUDGMENT

SARKAR, J. –

This is the third case in the series and it arises out of a petition for a writ of certiorari moved in the High Court of Madhya Pradesh to quash certain orders reducing the pension granted to the respondent Col. Lal Rampal Singh by an order of the Ruler of Rewa before that State had merged in the United State of Vindhya Pradesh. The High Court of Madhya Pradesh took the same view as in the Nagod case (Civil Appeal No. 738 of 1963) in which judgment has been delivered earlier in the day. The subsequent fortunes of the United State have been described in that judgment. Here also the question is whether the order of the Ruler of Rewa was law.

The respondent held various in the Government of Rewa. By an order made on April 3, 1948 and published in an extraordinary issue of the Rewa Raj Gazette the Ruler stated that "Col. Lal Rampal Sing entered State service on 21st November, 1922 and he is now anxious to retire. I find that he has put in a service of more than 25 years up to date, and such, he is allowed to retire on a full pension of Rs. 350 per month of his last grade, as a special case with effect from the date of this order, and he so-called breaks in his service, if there be any, are hereby condoned."

The respondent in his petition state that in Rewa the Ruler had made a set of rules which was called "Rewa State Pension and Gratuity Rules" for grant of pension to Rewa State Civil Servants. He however added that the Ruler was not bound by those Rules as he was a sovereign Ruler. It seems to us quite clear from the terms of the order that the Ruler purported to act under the Rewa State Rules. This appears from the reference in the order to "full pension," condonation of the "breaks in his service" and "special case." This also appears from the fact that the Order granted the respondent certain advance increments which could only have been done to justify the full pensions of Rs. 350 per month under the Rules. Obviously, under the Rules the respondent have been entitled to a smaller pension in view of the breaks and if the increments had not been granted. The Ruler was not, therefore, acting in the exercise of his sovereign power and in disregard of the Rules; on the contrary, he was purporting to act in terms of the Rules. That being so, it has to be held that the Order of April 3, 1948 is not a law but an executive order passed in terms of the Rules. It is open to the succeeding Government to set aside that order by another executive order. What appropriate order can be passed by the Government of India is not a question that arises at the present moment. The respondent's rights under the Rewa State Rules, accepting it as a law binding on the Indian Union, are not in the least affected. He is, however, not entitled to any right except those the Rules justify. The first contention of the respondent, therefore, that the order of April 3, 1948 is a law which can only be altered by another law duly passed by the Union or other competent legislature

must fail.

Another point raised was that if the order was not a law, it was a grant and that as the Indian Union had paid the respondent in terms of the order up to March 27, 1953, it must be deemed to have accepted that grant and it cannot now deprive the respondent of his right of property under the grant. It seems to us that this contention is ill-founded. What the Ruler did by his order of April 3, 1948 does not have been to make a grant but to have passed an order purporting to act under the Rules. If that order was not justified by the Rules, it was illegal and is liable to be set aside by another order duly made under them. Pension is furthermore normally always a matter of grace when there is no law governing. It is implicit in the grant of a pension that it may be subsequently reviewed. Therefore the grant of the pension—assuming that to be the correct view to take—must always have been subject to alteration. The succeeding State was hence competent to review the order even if it had paid the pension for sometime in terms of it.

In the result, in our view, the appeal must be allowed and we order accordingly. There will be no order for costs.

Appeal allowed.

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