

The State of Rajasthan and Another

Vs

Shri Rajender Singh

Civil Appeal No. 1252 of 1967

(D.G. Palekar, A. Alagiriswami JJ)

04.05.1973

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 of 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 November 8, 1939, in the Force then known as His Excellency the Crown Representative's Police. On January 1, 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 up to March 16, 1953. Thereafter he was selected 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 of Inspector in the said Force and hold the post up to the years 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 post 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 previous decision of that Court in Karma Chand Bhandari v. State of Rajasthan. (D.B. Civil Writ petition No. 355/62, decided on 29-3-1966 (Raj))

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 retire him compulsorily 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 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 (supra), referred to above that employees similar in position to that of the respondent were governed by the Central Civil Service Regulation. Learned counsel for the State argued on the assumption that these latter 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 Service Rules, 1951, were made specifically applicable to the respondent he would continued to be governed by the Central Civil Service Regulations. That is clear from Section 115 of the State Re-organization 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 :

"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."

5. 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 conditioned and it is his contention that under those Regulations there was no power in the State Government 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. If 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 provide for compulsory retirement, his compulsory retirement under the Rajasthan Rules would amount to varying to his disadvantage the condition of his service and hence the order was invalid. That positions is not seriously contested on behalf of the State.

6. A reference was made to Rajasthan Service (Protection of Service Condition) 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 provisions of Section 115 had not been obtained.

7. Therefore, the only question which remains to be considered is whether under 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 349-A, 349-AA, 665-A and 465-AA of the above regulations and his contention was that the respondent could be compulsorily retired in view of Note below Article 465-AA, read with clause (2) of that Article. Article 465-AA reads as follows.

"For officers referred to in Article 349-AA the rule for 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 is required by Government to retire after completing 25 year's qualifying service or more.

Note - Government retains an absolute right to retire any officer after he has 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 to dispense with the further service of the officer."

8. 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 349-AA. That Article is as follows :

"349-AA. Article 349-A 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 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 465-AA ..... replace the rules in Articles 465, 465-A ....."

9. It is clear from the above Article that Article 349-AA excludes certain category of officers to whom normally Article 348-A applied and to this category of officers Article 465-AA applied and to Article 465 and 465-A. The latter two articles applied to the officers described in Article 349-A who had not been excluded therefrom under Article 349-AA.

Article 349-A is as follows :

"(1) The rule in Article ..... 465-A..... 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."

10. Then follows a long list of departments, services and posts to which Article 349-A applied. One of them 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 349-A applied to the appointments in the Police Department by those appointments must be of officers of Indian Police and Deputy Superintendents. Other Police

personnel in the Police Department were not governed by Article 349-A. The respondent though appointed in the police Department did not hold such a post and, therefore, Article 349-A had no application.

12. Therefore, since Article 349-A did not apply to an appointment like that of the respondent, Article 349-AA 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 349-A. The respondent is, therefore, right in contending that Article 349-AA does not apply to him and consequently Article 465-AA 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.

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