

Dayal Saran Sanan

Vs

Union of India and Others

Civil Appeal No. 517 of 1970

(O. Chinnappa Reddy, P. N. Shinghal JJ)

16.01.1980

JUDGMENT

CHINNAPPA REDDY, J. –

1. The appellant was working as Superintendent in the Military Engineering Services at Chandigarh. On November 16, 1964, he made a complaint addressing a letter to the Engineer-in-Chief, Army Headquarters, New Delhi, that a certain contractor who was given the work of construction of roads at Lalru was not doing the job according to specifications but instead of action being taken against him the matter was being hushed up. On December 24, 1964, the Chief Engineer, Western Command, Simla passed an order transferring the appellant from CWE Chandigarh to CE, Delhi and Rajasthan Zone, Delhi Cantt. The order was required to be complied forthwith. On January 8, 1965, the appellant submitted a representation to the Chief Engineer requesting the cancellation of the order of transfer as he had two daughter studying at Chandigarh, one in a college and the other in a school. On February 6, 1965 he sought a personal interview and followed it up with further representations on February 19, 1965 and February 23, 1965. In the letter dated February 23, 1965, he mentioned that if it was no possible for him to be retained at Chandigarh he might be granted leave preparatory to retirement. Meanwhile on February 13, 1965, the Chief Engineer, North Western Zone addressed a communication to the Chief Engineer, Western Command, that the appellant had been "struck off the strength", that the appellant's action showed indiscipline and that it should be reflected "in his report". On June 10, 1965, the appellant wrote to the Chief Engineer, Delhi and Rajasthan Zone that he was not willing to accept any 'movement order' and that he had applied for leave preparatory to retirement as his circumstances did not permit him to continue in service any further. On September 16, 1965 the Chief Engineer, Western Command informed the Engineer-in-Chief that disciplinary action should be initiated against the appellant. On January 29, 1966, the Chief Engineer, Delhi and Rajasthan Zone, wrote to the appellant informing him that under Article 189 of the Civil Services Regulations he no longer had any lien on his appointment and advising him, in his own interest, to resume duty by February 15, at least. To this the appellant sent a reply on March 1, 1966, stating that as a consequence of his letter dated June 10, 1965, he must be considered to have retired on October 9, 1965. Apparently the appellant was construing his letter dated June 10, 1965 as notice to the government of his desire to retire from service and, further, he was also under the impression that four months notice was necessary. Thereafter on May 30, 1966, the Chief Engineer, Western Command, addressed a communication to the Chief Engineer, Delhi and Rajasthan Zone, paragraph 4 of which is important and is as follows :

Since Shri Dayal Saran attained the age of superannuation on May 14, 1966, it is no use to pursue the disciplinary aspect of the case any more. We should, however, be informed that since he ceased to hold any lien on his permanent appointment in terms of Article 189, Civil Services Regulations

he is not entitled to any pension under the rules. The formation concerned should be directed to publish the event of his having lost the lien on the permanent appointment in his Part II orders.

There were then several letters from the appellant demanding payment of pension and gratuity. On November 22, 1966 the Chief Engineer, Western Command, wrote to the Engineer-in-chief, Army Headquarters, New Delhi, communicating his decision on the representation of the appellant. After narrating the events it was finally said :

It will be realised from the foregoing that Shri Dayal Saran did not retire from service after giving due notice to the Deptt. but on the other hand failed to join his new appointment within his joining time in spite of reminders. He thus ceased to have a lien on any appointment in terms in Article 189 CSR.

The appellant thereupon filed a write petition in the High Court of Punjab and Haryana praying for a direction that the arrears of salary, pension and the gratuity due to him should be paid. A learned Single Judge of the High Court dismissed the writ petition holding that the failure of the appellant to resume duty resulted in loss of lien under Article 189 of the Civil Services Regulations and led to the further consequence that there was a break in service within meaning of article 420, entailing forfeiture of his past service. It was, therefore, held that the appellant was not entitled to any relief. An appeal under Clause 10 of the Letters Patent having been summarily rejected by a Division Bench of the High Court, the appellant has preferred this appeal by special leave of this Court.

2. Shri R. K. Garg, learned counsel for the appellant, very rightly in our opinion gave up the claim for arrears of salary and confined his submission to the claim for pension and gratuity. He submitted that the worst that could be said against the appellant was that he absented himself from duty without leave. A disciplinary proceeding could have been initiated and he could have been punished but not such thing was done. There was never any enquiry and there was no order, passed after notice to him, visiting him with the penalty of forfeiture of past service. He submitted that there was no provision in the Civil Services Regulations which enabled the government to withhold his pension and gratuity without taking disciplinary action against him. The learned counsel for the respondents relied on Articles 189 and 420 of the Civil Services Regulations in support of the action withholding pension and gratuity to the appellant. Articles 189, 420, 458, 352 and 353 are relevant and they are as follows :

189. An officer who does not join his new appointment within his joining time is entitled to no allowances after the end of his joining time, and after a week ceases to have a lien on any appointment. But if the authority making the appointment considers that his default was due to circumstances beyond his control, it may exempt him from the loss of his appointment.

420. An interruption in the service of an officer entails forfeiture of his past service, except in the following cases :

(a) Authorised leave of absence.

(b) Unauthorised absence in continuation of authorised leave of absence so long as as the office of the absence is not substantively filled, the past service of the absentee is forfeited.

(c) Suspension where it is immediately followed by reinstatement, whether to the

same or a different office, or where the officer dies or is permitted to retire or is retired while under suspension.

(d) Abolition of office or loss of appointment owing to reduction of establishment.

(e) Transfer to non-qualifying service in an establishment under government control. The transfer must be made by competent authority; an officer who voluntarily resigns qualifying service cannot claim the benefit of this exception. Transfer to a grant-in-aid school entails forfeiture (but see Example (c) of Article 386).

(f) Transfer to service on the household establishment of the Viceroy.

(g) Time occupied in transit from one appointment to another, provided that the officer is transferred under the orders of competent authority, or if he is a non-gazetted officer, with the consent of the head of his old office.

458. A superannuation pension is granted to an officer in superior service entitled or compelled, by rule, to retire at a particular age.

352. In the following cases no claim to pension is and admitted :-

(a) When an officer is appointed for a limited time only, or for a specified duty, on the completion of which he is to be discharged.

(b) When a person is employed temporarily on monthly wages without specified limit of time or duty; but a month's notice of discharge should be given to such a person, and his wages must be paid for any period by which such notice falls short of a month.

(c) When a person's whole time not retained for the public service, but he is merely paid for work done for the State.

(d) When a public servant holds some other pensionable office he earns no pension in respect of an office of the kind mentioned.

(e) When an officer serves under a covenant which contains no stipulation regarding pension, unless the Government of India specially authorises an officer to count such service towards pension.

353. No pension may be granted to an officer dismissed or removed for misconduct, insolvency or inefficiency; but to officers so dismissed or removed compassionate allowances may be granted when they are deserving of special consideration provided that the allowances granted to any officer shall not exceed two thirds of the pension which would have been admissible to him if he had retired on medical certificate.

Provided further that no allowances shall be granted to an officer under the rule-making control of the Secretary of State for India in Council without his sanction.

In our view neither the loss of lien contemplated by Article 189 nor the forfeiture of past service

contemplated by Article 420 has anything to do with the withholding of pension and gratuity. We do not want to express any opinion on the question whether Article 189 of the Civil Services Regulations is inconsistent with the provision of Article 311(2) of the Constitution. For the purposes of the present case it is sufficient to say that it has not relevance on the question of grant or withholding of pension. Again we think that whatever relevance forfeiture of past service under Article 420 of the Civil Services Regulations may have in connection with matters relating to advancement in service etc. It was no bearing on the question of the grant or the withholding of pension. We do not also think that an order of forfeiture of past service can be made without observing the principles of natural justice. Admittedly, disciplinary action was not taken against the appellant in connection with his absence from duty without leave. Nor was any notice given to the appellant that his past service was proposed to be forfeited under Article 420 of the Civil Services Regulations, and the explanation sought. We may mention here that there was no reference the Article 420 either in the letters dated January 29, 1966, May 30, 1966, and November 22, 1966 or in written statement filed in the High Court. Reliance was placed in these documents entirely upon Article 189 and as we have said it has no bearing on the question of grant or withholding of pension. We consider that the respondents were not entitled to withhold the pension of the appellant unless the facts fell within the provisions of Article 352 and 353 of the Civil Services Regulations. It was not suggested by the learned counsel for the respondents that the case fell within either of these articles. The appellant was holding the post of Superintendent substantively and Article 352 had not application whatsoever nor was the appellant dismissed or removed for misconduct, insolvency or inefficiency so as to attract Article 353. We, therefore, hold that the appellant was entitled to be paid his pension and gratuity on the basis of his service up a February 12, 1965. Let direction issue accordingly. The appeal is allowed with costs in these terms.

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