

T. Ramakrishniah

Vs

State of Karnataka

Civil Appeal No. 10(N) of 1981

(B. C. Ray, N. M. Kasliwal JJ)

04.05.1990

JUDGMENT

RAY, J. -

1. This appeal by special leave is against the judgment and order dated March 22, 1978 made in Writ Appeal No. 520 of 1975 dismissing the appeal and confirming the judgment and order made in Writ Petition No. 3073 of 1974 on July 18, 1985.
2. The appellant who was a chartered accountant was appointed as a non-official member of the Sales Tax Appellate Tribunal in the State of Karnataka by an Order (No. RD 80 SXE 1958) dated July 16, 1958 for a period of two years from July 17, 1958 under sub-section (2) of Section 4 of the Mysore Sales Tax Act, 1957 (Mysore Act 25 of 1957). By an Order No. RD 17 SXT 58 dated December 12, 1958 issued by the government it has been mentioned that the appellant as member of Sales Tax Appellate Tribunal shall be eligible for Travelling Allowance under the Mysore Civil Service (Classification, Control and Appeals) Rules, 1958 as a government servant in respect of tours undertaken by him in connection with his official duty on the basis of his salary Rs. 1000 per month. Thereafter the appointment was continued from time to time, the last of the period during which the appointment was continued, was by a Notification No. FD 6 CAT 71 dated November 8, 1971 by which his period of service was extended for a period of two months with effect from December 9, 1971. This notification was issued in exercise of powers conferred by clause (b) of sub-rule (1) of Rule 64 of the Mysore Sales Tax Rules, 1957. The respondent by a letter dated February 8, 1972 intimated him that he had been granted 52 days earned leave as terminal leave from February 9, 1972. The appellant made representations to the respondent that he was entitled to superannuation pension, and same be granted to him. The government turned down his request on the ground that he was not eligible for such pension. The appellant, then, moved a Writ Petition No. 3073 of 1974 before the High Court, Karnataka stating that he was granted leave on several occasions in accordance with the Mysore Civil Service Rules and the Accountant General had treated him as a gazetted officer in the service of the State Government and as such as a government servant he may be granted superannuation pension under the Mysore Civil Service Rules. The learned Single Judge held that Rule 64 of the Karnataka Sales Tax Rules, 1957 was applicable to this case and under the said Rules he was not eligible to claim superannuation pension. It was further held that even under the Mysore Civil Service Rules he would not be entitled to claim such a pension. The writ petition was dismissed. The learned Judge, of course, held that the appellant would be entitled to gratuity in terms of Rule 64 and so directed the government to examine the case of the appellant for grant of gratuity under the rule and pass appropriate orders in that regard expeditiously.

3. The appellant feeling aggrieved preferred Writ Appeal No. 520 of 1975 which was dismissed by the High Court and the judgment pronounced in the writ petition was upheld.

4. It is against this judgment and order, this appeal on special leave has been filed.

5. The main plank of the argument of the counsel for the appellant is that the appellant as a member of the Sales Tax Appellate Tribunal was a government servant and as such like other government servants he is entitled to the grant of superannuation pension in accordance with Mysore Civil Service Rules. Several Rules have been referred to in support of his submission that he was retired from service after reaching the age of superannuation. He further submitted that the appointment of appellant was not a contract appointment and so the Mysore Civil Service Rules are applicable to the appellant for payment of superannuation pension.

6. It is not disputed that the appellant was appointed as a non official member of the Karnataka Sales Tax Appellate Tribunal under sub-section (2) of Section 4 of the Mysore Sales Tax Act, 1957. This is evident from the notification dated July 16, 1958 issued by the government appointing the appellant as a member of Sales Tax Appellate Tribunal as well as from Order No. RD 17 SXT 58 dated December 12, 1958. The appointment was continued from time to time and the last extension was given by Order No. FD 6 CAT 71 dated November 8, 1971 made under clause (b) of sub-rule (1) of Rule 64 of the Mysore Sales Tax Rules, 1957. It is relevant to notice in this connection that Rules 63 and 64 were introduced by a Notification No. FD 18 CAT 62 dated January 10/13, 1964. Sub-rule (6) of Rule 64 is quoted below :

"The non-official member shall not be eligible for any pension, gratuity or other remuneration."

7. By further Notification No. FD 614 dated April 7, 1971, a new sub-rule (6) was substituted which was to the following effect :

"(6) The non-official member shall be eligible for gratuity equivalent to one month's pay for each completed year of service including interruption or interruptions, if any, the total duration of which does not exceed 180 days but shall not be eligible for any pension or other remuneration."

8. Thus the appellant was appointed as a non-official member in the Karnataka Sales Tax Appellate Tribunal under sub-section (2) of Section 4 of Karnataka Sales Tax Act, 1957 and the last extension of the period of his service was given by government under clause (b) of sub-rule (1) of Rule 64 of the Mysore Sales Tax Rules, 1957. The terms and conditions of his service will be governed by the Mysore Sales Tax Rules and not by the provisions of Mysore Civil Services Rules and it cannot be contended by the appellant that Rule 64(6) of the said Mysore Sales Tax Rules, 1957 was not applicable to him. So the appellant is not eligible for superannuation pension after his relinquishment of the post of non-official member of Sales Tax Appellate Tribunal on expiry of the period of his service.

9. It has been further urged that Rule 64(6) of Mysore Sales Tax Rules was inserted in 1964 and sub-rule (6) of Rule 64 was substituted on April 7, 1971. This rule not being in existence at the time the appellant was appointed as a member of the said Tribunal, the same cannot be made applicable to the appellant and thereby he could not be deprived of the benefit of superannuation pension as provided in Mysore Civil Service Rules. This contention is per se without any substance inasmuch

as before the retirement of the appellant from service due to expiry of his period of service the said provisions of sub-rule (6) of Rule 64 of Mysore Sales Tax Rules was substituted in place of original sub-rule (6) of Rule 64 and as such this rule applies to the appellant and he is not entitled to get any superannuation pension. The High Court has rightly held that according to Rule 64(6) the appellant could not claim pensionary benefit.

10. The appellant next submitted that he became a government servant on being appointed as a non-official member of Sales Tax Appellate Tribunal and he was paid travelling allowance according to Mysore Civil Service Rules, 1957 and so he is entitled to pension as provided in the said Rules. As stated hereinbefore that the appellant was appointed as a member of the said Tribunal by the respondent State under Section 4(2) of the Sales Tax Act and though initially appointed for a period of two years in 1958, his service was extended periodically till February 1972 under clause (b) of sub-rule (1) of Rule 64 of the Mysore Sales Tax Rules, 1957 by the Government of Mysore. Therefore, the foremost question is whether in such circumstances the Mysore Civil Service Rules apply to him. It is apropos to refer in this connection to sub-rule (2) of Rule 2 of Mysore Civil Service Rules, which specially provides that the said Rules shall not apply to persons for whose appointment and other matters, special provisions are made by or under any law for the time being in force or in any contract in regard to the matters covered by such law or contract. This rule clearly says that in cases where special provisions have been made by of under any law for the time being in force, the Mysore Service Rules will not apply. In the instant case, Rule 64(6) of the Mysore Sales Tax Rules, 1957 clearly says that the non-official member of Sales Tax Appellate Tribunal will become ineligible for any pension, and such a provisions relating to pension as provided in Mysore Civil Service Rules, 1957 will not apply. Furthermore, Rule 283 of the said Rules states that a superannuation pension is granted to a government servant who is compelled by rule to retire at a particular age. Rule 95 provides that the date of compulsory retirement of a government servant is the date on which he attains the age of 55 years. It further provides that the government servant may be retained up to 60 years of age with the sanction of government. He must not be retained after the age of 60 years. There is no rule under which a non-official member is to retire on attaining a particular age. The appellant was appointed as a member of the Tribunal for a period of two years initially and thereafter his tenure was extended periodically and he left the service as non-official member of the Tribunal after he crossed the age of 61 years. There was no specific order that the appellant was due to retire at the age of 55 years. There is no rule for a non-official member to retire at a particular age. Moreover by order No. FD 1 CAT 69 dated January 28, 1970 the government sanctioned certain terms and conditions of his appointment. The condition Nos. 2 and 5 are as hereunder :

"(2) The terms of appointment shall be one year with effect from December 9, 1969.

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(5) He is permitted to take up the audit of accounts of any person, institution, firm or body or persons without prejudice to his official duties as a member of the Tribunal and the person, institution, firm or body or persons concerned is not and is not likely to be liable to sales tax, agricultural income tax or entertainment tax."

11. The appointment of the appellant is periodical and not up to a maximum age nor it is a wholetime service but a parttime one and the appellant was permitted to take up audit of any person, firm, institution etc. on certain restrictions. A government servant has to render wholetime service. Therefore, considering all these aspects it has been found by the High Court that the Mysore Civil

Service Rules, 1957 do not apply to the appellant and as such he is not eligible for superannuation pension. We do not find any infirmity in the judgment of the High Court which is unexceptionable.

12. We, therefore, uphold the judgment of the High Court, dismiss the appeal without any order as to costs.

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