

State of Rajasthan

Vs

Shiv Lahari Sharma

Civil Appeal No. 4882 of 1991

(L.M. Sharma, J.S. Verma, S.C. Agrawal JJ)

06.12.1991

JUDGEMENT

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S. C. AGRAWAL, J.:-

1. Special leave granted.
2. Heard learned counsel for the appellant. The respondent appeared in person and made his submissions.
3. Shri Shiv Lahari Sharma, the respondent herein, joined as Plant Protection Supervisor in the Agricultural Department of the State of Rajasthan on July 18, 1950. He was appointed in a temporary capacity for a period of three months but he continued on the said post till November 4, 1950 when he was appointed on the post of Food Assistant in the said department after being duly selected by the Public Service Commission. On August 31, 1961, he was selected for appointment to the Rajasthan Administrative Service and while he was thus serving, the State Government, by order dated October 22, 1975, compulsorily retired him from service. The said order of compulsory retirement was passed under sub-rule (2) of R. 244 of Rajasthan Service Rules (hereinafter referred to as 'the Rules') on the basis that the respondent had completed 20 years' qualifying service. At that time, the said rule provided for compulsory retirement of a Government servant on his attaining the age of 50 years or on his completion of 20 years' qualifying service. Subsequently, the rule was amended and instead of 20 years' qualifying service, the requirement of 25 years' qualifying service was substituted. On March 24, 1977, the Government of Rajasthan issued a circular providing for reconsideration of orders of premature retirement passed under R. 244(2). By another order dated April 22, 1977, it was directed that the Government had decided that those Government servants who had been retired on completion of 20 years' qualifying service or more but less than 25 years' qualifying service and had not attained the age of 50 years at the time of their retirement under R. 244(2) shall be taken back in Government service and such orders of retirement issued by authorities competent to retire such Government servants under sub-rule (2) of R. 244 shall be revoked.
4. The respondent submitted a representation claiming that he was entitled to the benefit of the order dated April 22, 1977 for the reason that though he had completed 20 years' qualifying service on October 22, 1975, the date of passing of the order of premature retirement, he had not completed 25 years' qualifying service on the date and the order of compulsory retirement dated October 22, 1975 was therefore liable to be revoked. The said representation made by the respondent on the basis of

the aforesaid order dated April 22, 1977 was rejected by the State Government by order dated September 28, 1977. The respondent filed an appeal (Appeal No. 748/ 77) against the said order before the Rajasthan Civil Services Appellate Tribunal (hereinafter referred to as 'the Tribunal'). The said appeal of the respondent was dismissed by the Tribunal by order dated February 12, 1979 on the view that on the date of the passing of the order of compulsory retirement, the respondent had completed 25 years' qualifying service. The said order of the Tribunal was challenged by the respondent before the Rajasthan High Court by filing a Writ Petition (No. 795 of 1979) which was dismissed by a learned single Judge of the High Court by order dated October 26, 1979. Special Appeal No. 151 of 1979 filed against' the said judgment of the learned single Judge was also dismissed by a Division Bench of the High Court on December 10, 1979. The respondent moved this Court by way of Special Leave Petition (No. 4373 of 1980) against the order of the Division Bench of the High Court but the same was also dismissed on April 28, 1980.

5. It appears that the respondent had also submitted representations for reconsideration of his case on the basis of the circular dated March 24, 1977. The last of such representations dated January 2, 1981 was rejected by order dated April 4, 1981. The respondent filed an appeal (No. 393/1981) before the Tribunal against the said order dated April 4, 1981, which was allowed by the Tribunal by order dated January 22/ 29, 1981 and the order dated April 4, 1981 as well as the order of compulsory retirement dated October 22, 1975, were quashed by the Tribunal and the respondent was directed to be reinstated in service retrospectively with all consequential benefits. The said order of the Tribunal was challenged by the appellant State before the High Court by filing a Writ Petition (No. 1660 of 1982) which was dismissed by a Division Bench of the High Court by order dated February 6, 1991. The present appeal is directed against the said decision of the High Court.

6. As noticed earlier, the State Government had issued two orders, one dated March 24, 1977 and the other dated April 22, 1977 relating to persons who had been prematurely retired in exercise of powers conferred by subrule (2) of R. 244 of the Rules. The order dated March 24, 1977 made provision for reconsideration of the cases of persons who had been prematurely retired under the said rule. The order dated April 22, 1977 provided for revocation of the order of premature retirement .in respect of employees who had completed 20 years' qualifying service but had not completed 25 years' qualifying service and had not attained the age of 50 years on the date of the passing of the order of premature retirement. In the earlier proceedings which culminated in the dismissal of the special leave petition of the respondent by this Court, the respondent had invoked the protection of the order dated April 22, 1977 on the ground that on the date of the passing of the order of premature retirement, he had not completed 25 years' qualifying service and he had not attained the age of 50 years. The said claim of the respondent was negatived on the view that on the date of passing of the order of premature retirement he had completed 25 years' qualifying service.

7. This second round of litigation relates to the reconsideration of the case of the respondent on the basis of the circular of the State Government dated March 24, 1977. By the said circular, it was directed as under:

1) The memorandum dated July 9, 1976 whereby the provision for reconsideration by Review Committee of the cases of employees who had been prematurely retired under R. 244(2) of the Rules was revoked, had been withdrawn by memorandum dated March 10, 1977, and as a result the employees who had been compulsorily retired after June 24, 1976 could submit representation for consideration of the Review Committee.

2) Matters in which there was miscarriage of justice on account of misuse of powers could be brought to the notice of the Chief Secretary who would enquire into the same.

3) The Chief Secretary would, however, enquire into only in those matters where the retired employee or a recognised association of concerned employees has made a complaint that on account of misuse of powers by officers actuated by malice or with the intention to punish there has been serious miscarriage of justice or there has been gross violation of the prescribed procedure, provided that such matters were submitted in the Department by May 31, 1977.

8. It would thus appear that the circular dated March 24, 1977 postulated reconsideration of orders of premature retirement passed in certain circumstances only. The respondent could avail benefit of the aforesaid circular dated March 23, 1977, only if he could bring his case within the four corners of the conditions for reconsideration prescribed therein. The scope of enquiry before the Tribunal was to examine whether the respondent fulfilled the said conditions and whether in spite of fulfilling those conditions he was erroneously denied relief by the authorities.

9. A perusal of the order of the Tribunal dated January 22/29, 1982, shows that the Tribunal, has not applied its mind to the conditions laid down in the circular dated March 23, 1977 and has approached the matter as if it was an appeal against the order of compulsory retirement dated October 22, 1975. In our opinion, the Tribunal was in error in adopting this approach. Dealing with the appeal against the order dated April 4, 1981 rejecting the respondent's representation, the Tribunal should have examined whether the compulsory retirement of the respondent suffers from any of the infirmities referred to in the circular dated March 24, 1977 and it required reconsideration in view of the said circular. The Tribunal has failed to do so. With respect, the High Court also, while upholding the order of the Tribunal has failed to consider the limitations that have been placed in the circular dated March 24, 1977 in the matter of reconsideration of the orders of the premature retirement. The order of the Tribunal as well as that of the High Court have, therefore, to be set aside and the matter has to be remitted to the Tribunal for reconsideration in the light of the requirements laid down in the circular dated March 24, 1977.

10. The appeal is accordingly allowed. The order dated January 22/29, 1982 passed by the Rajasthan Civil Service Appellate Tribunal in Appeal No. 393/1981 as well as the order dated February 6, 1991 of the Rajasthan High Court in Writ Petition No. 1660 of 1982 are set aside and the matter is remitted to the Tribunal for reconsideration of the appeal of the respondent. There will be no orders as to costs. Appeal dismissed.

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