

State of Punjab and Others

Vs

Manohar Lal Mirchea

Civil Appeal No. 3095 of 1997

(K. Ramaswamy, G. T. Nanavati JJ)

25.04.1997

JUDGMENT

NANAVATI, J. –

1. Leave granted. Heard learned counsel for the appellants. The respondent, though served, has not appeared either in person or through a lawyer.

2. The respondent, who had, by 2-4-1956 seven years' standing at the Bar, joined the Punjab Civil Service (Judicial) on that date. He was subsequently promoted and became a member of the Punjab Superior Judicial Service. He retired as a District and Sessions Judge on 31-12-1984. As he retired as a member of the Punjab Superior Judicial Service, for the purpose of determining his death-cum-retirement benefits the All India Services (Death-cum-Retirement Benefits) Rules, 1958 applied to him. Accordingly his pension was fixed. On 22-2-1990 the State of Punjab amended Rule 16 of the Punjab Superior Judicial Service Rules and made two changes. In respect of death-cum-retirement benefits of the members of that Service the Punjab Civil Service Rules were made applicable instead of the All India Service Rules which were applicable till then. Another change was in respect of direct recruits to the Service. In their case, the actual period of practice at the Bar not exceeding 10 years will have to be added now to his service qualifying for superannuation pension and other retirement benefits. Rules 4.2 of the Punjab Civil Service Rules, Volume II provides that "an officer appointed to a service of post may add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one-fourth of the length of his service or the actual period by which his age at the time of recruitment exceeds twenty-five years or a period of five years, whichever is least, if the service or post is one -

(a) for which the postgraduate research or specialist qualification, or experience in scientific, technological or professional fields is essential, and

#(b) * * *##

3. The said rule has been made applicable to those who are recruited after 26-10-1960. Validity of that rule was challenged before the Punjab and Haryana High Court in Raj Kumar Gupta v. State of Haryana [CWP No. 11756 of 1989] and on 17-9-1991 the High Court declared it as invalid being violative of Article 14 of the Constitution.

4. The appellant, therefore, made a representation sometime thereafter for re-fixation of his pension by giving him benefit of Rule 4.2. It was rejected by the State Government on 9-7-1992 on the ground that the respondent at the time of his retirement was governed by the All India Services

(Death-cum-Retirement Benefits) Rules and not by the Punjab Civil Services Rules, Volume II and, therefore, he was not entitled to claim the benefit of Rule 4.2. It was also rejected on the ground that the amendment of 22-2-1990 made in Rule 16 of the Punjab Superior Judicial Service Rules was only prospective and the benefit of the judgment of the Punjab and Haryana High Court in S.S. Dewan v. State of Punjab [LPA No. 1295 of 1991, dated 28-10-1991] cannot be given as the said decision was under challenge before this Court and operation of the order passed in that case was stayed. The respondent, therefore, filed a writ petition in the Punjab and Haryana High Court. It was allowed, following its judgment in Raj Kumar Gupta v. State of Haryana [CWP No. 11756 of 1989] by holding that fixing 26-10-1960 as the cut-off date was arbitrary. The State has, therefore, filed this appeal.

5. As stated earlier prior to 22-2-1990 members of the Punjab Superior Judicial Service, in respect of their death-cum-retirement benefits were governed by the All India Services (Death-cum-Retirement Benefits) Rules and not by the Punjab Civil Service Rules, Volume II. Though the respondent claimed the benefit of Rule 4.2 of the Punjab Civil Service Rules, Volume II it was really by virtue of the amendment made in Rule 16 of the Punjab Superior Service Rules which made those rules applicable from 22-2-1990. As we have held in State of Punjab v. S.S. Dewan [(1997) 4 SCC 569] that the amendment made in Rule 16 applies only to those who were/are in service and retired/retire after it has come into force, claim made by the respondent has to be regarded as misconceived and without any substance. Therefore, in view of the decision in S.S. Dewan case [(1997) 4 SCC 569] this appeal is allowed. The judgment and order passed by the High Court is set aside and the writ petition filed by the respondent stands dismissed. In view of the facts and circumstances of the case there shall be no order as to costs.