

SUPREME COURT OF INDIA

State of W.B.

Vs.

Dr. Subhash Chandra Pratihar

C.A.No.5521 of 2003

(S. N. Variava and H. K. Sema JJ.)

05.08.2003

JUDGEMENT

H. K. Sema, J.

1. Leave granted.

2. Aggrieved by the judgment of the Division Bench of the High Court dated 14-12-2001 passed in W. P. S. T. No. 861 of 2000, the State has come up in appeal by filing this Special Leave Petition. The respondent, Dr. Subhash Chandra Pratihar, was appointed temporarily as Medical Officer in the cadre of West Bengal Health Services w.e.f. the date he joined the post. The respondent was placed under suspension on 31-3-1995, in contemplation of departmental proceedings. Thereafter, on completion of the enquiry, he was compulsorily retired from service w.e.f. 22-7-1996.

3. The Government of West Bengal framed Rules called the *West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971* (hereinafter referred to as 'Rules') in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, thereby giving weightage of five years to the service qualifying for superannuation for the purpose of computing pensionary benefits. Relevant Rule, for the present purpose, is Rule 27. It is extracted.

"Rule 27. Concession of adding to qualifying service.

An officer appointed to service or post may add to his service qualifying for superannuation (but not for any other class or pension) the actual period not exceeding five years by which his age at the time of recruitment exceeds twenty-five years if the service or post is one-

(a) for which post-graduate research or specialist qualification or experience in scientific, technological or professional field is essential, and

(b) to which candidates of more than twenty-five years of age are normally recruited.

Provided that this concession shall not be admissible to any such officer unless his actual qualifying service at the time he quits Government service is not less than 10 years."

4. Thereafter, by Notification No. 555-F (Pen) dated 29-3-1994, an amendment has been brought out by inserting serial No. 126 in Appendix 5 extending the benefit to Medical Officers (direct recruits in the basic grade), other than specialists, of the West Bengal Service. Subsequent to the amendment, the Government issued Circular dated 30-12-1994 and extended benefit to the Medical Officers (Direct Recruits in the basic grade) of the West Bengal Health Services to add to their qualifying services towards pension the actual period not exceeding 5 years by which the age at the time of direct recruitment exceeds 25 years. The respondent claimed the benefit under Circular dated 30-12-1994. The West Bengal Administrative Tribunal by its order dated 28th July, 2000 dismissed his claim. The High Court, on appeal reversed the decision of the Tribunal and allowed the claim of the respondent by extending the benefit of Circular dated 30-12-1994. The High Court, inter alia, held:

"On a clear reading of the Circular dated 30th December, 1994, it is available that at the beginning the benefit of five years qualifying service in addition to the service actually rendered was extended to Medical Officer who were specialised in their respective fields, but, subsequently this benefit was extended to all members of West Bengal Health Service irrespective of their being appointed as specialists or otherwise."

5. The sole question revolves around for determination is as to whether the respondent, who was compulsorily retired w.e.f. 22-7-1996, is entitled to claim benefit of Rule 27 of the Rules and Circular dated 30-12-1994 giving weightage of five years of service to his qualifying service for superannuation for the purpose of pensionary benefits?

6. The High Court seems to have failed to take notice the condition precedent being required to be fulfilled for availing such benefit in both Rule 27 of the Rules, as noticed above, as well as in Circular dated 30-12-1994. The condition precedent being the officer must complete qualifying service for superannuation for availing the concession. Undisputedly, the respondent, as noticed above, was compulsorily retired w.e.f. 22-7-1996 and he did not fulfil the eligibility criteria of being completing qualifying service for superannuation, on the basis of which alone the concession was extendable.

7. Mr. Nageshwar Rao, learned Senior counsel, appearing for the respondent has brought to our notice an order dated 17-12-1998 containing a list of Govt. Employees (Retired) (Gr. 'A') in which the name of the respondent-Dr. Subash Chandra Pratihari appeared in serial No. 2 and against his name the remarks are 'superannuated on 22-7-96'. Learned counsel, therefore, contended that the document shows that the respondent was retired on superannuation.

Apparently, it is a mistake. Similarly this, by itself, would not alter the factual position of the respondent.

8. In the premises aforesaid, the appeal is allowed. The order of the High Court, under challenge is set aside and the order of the Tribunal is restored.

9. Parties are asked to bear their own costs.

Appeal allowed.