

# **SUPREME COURT OF INDIA**

State of Rajasthan

Vs.

C.P.Singh

C.A.No.1195 of 2007

(Anil R.Dave and Shiva Kirti Singh JJ.)

04.04.2014

## **JUDGMENT**

### **SHIVA KIRTI SINGH, J.**

1. State of Rajasthan has preferred this Civil Appeal to assail the judgment and order dated 19.3.2004 in S.B. Civil Second Appeal No.136/1995. By the impugned judgment, the High Court allowed the Second Appeal, set aside the judgment and decree of Trial Court as well as the First Appellate Court and decreed the Suit of Respondent No.1 (Plaintiff) with a finding that Respondent No.1 had been illegally made to superannuate on 19.6.1974 at the age of 55 years, as prescribed under the Rajasthan Service Rules, 1951 (hereinafter referred to as 'the Rules of 1951'). The High Court has also declared that Respondent No.1 (Plaintiff) was entitled to continue in service upto the age of 58 years, i.e., the age of retirement as per the Central Civil Service Regulations (hereinafter referred to as 'the Regulations'). The consequent benefits like pay, increments and other service benefits have also been granted to Respondent No.1 (Plaintiff).

2. The essential facts relevant for deciding the issue raised in this appeal are not in dispute as indicated hereinafter. Respondent No.1 (Plaintiff) was appointed initially in the State of Ajmer and was governed by service conditions in the Regulations. The State of Ajmer was a Centrally Administered Part 'C' State till its integration with the State of Rajasthan w.e.f. 01.11.1956. Respondent No.1 was absorbed in the services of

the State of Rajasthan from that date as Cane Development Assistant. Thus, his service at the time of re- organisation came to be governed generally by Rules of 1951. As provided under these Rules, Respondent No.1 was made to retire on attaining the age of 55 years on 19.6.1974.

3. Respondent No.1 filed Suit No.89/1976 at Jaipur claiming that he was illegally retired at the age of 55 years and also sought a decree that he is entitled to continue in service till 30.6.1977 under the Regulations and was entitled to consequential benefits of pay, increments, seniority, promotions etc. On contest made by the State of Rajasthan, the Suit was dismissed with a finding that the services of Respondent No.1 (Plaintiff) were governed by the Rules of 1951 which prescribed the age of retirement as 55 years.

4. On facts, there was no dispute at any stage of the Suit that Respondent No.1 was entitled to exercise option under Rule 11 of Rajasthan Services (Protection of Service Conditions) Rules, 1957 (hereinafter referred to as 'the Rules of 1957') and he exercised that option and elected to be governed, as regards leave and pension, by the rules applicable to him immediately before the appointed day, i.e., the Regulations in place of the Rules of 1951. The relevant part of Rule 11 is as follows :

“11. Leave and Pension Rules.-As regards leave and pension a Government servant may exercise option of electing either the rules applicable to him immediately before the appointed day or rules incorporated in the Rajasthan Service Rules, 1951. ....”

5. The learned Munsif, however, came to the view that the option given by the Plaintiff related only to leave and pension and not to retirement or age of retirement. He came to such a view because Rule 11 begins with the words – “As regards leave and pension” and omits to mention - “age of retirement”.

6. Respondent No.1's Regular First Appeal No.192/1980 came to be dismissed by the learned District Judge, Jaipur City, Jaipur on 17.12.1994 and the view of the Trial Court was upheld. Second Appeal preferred by Respondent No.1 was, however, allowed by the High Court by the impugned judgment and order dated 19.3.2004.

7. A perusal of the judgment and order under appeal shows that the High Court has

noticed the relevant facts correctly and, on the basis of admitted facts, has decided the question of law in favour of Respondent No.1 by holding that the option in respect of leave and pension exercised by Respondent No.1 (Plaintiff) made the Regulations applicable to his service conditions relating to pension and, therefore, he could not have been retired on the basis of service conditions with regard to pension in the Rules of 1951. The High Court noted that though immediately prior to re-organisation of State of Rajasthan, i.e., 30.10.1956, the age of superannuation under the Regulations was also 55 years but on account of amendment in the year 1962 it had been raised to 58 years and, therefore, in the year 1974 when the State of Rajasthan decided to consider case of Respondent No.1 for retirement he should have been given the benefit of provisions in the Regulations as existing on that date and not provisions in the Rules of 1951.

8. On behalf of the Appellants, the simple contention is that the option under Rule 11 of the Rules of 1957 should be confined to the benefits of pension under the Regulations alone and not to the age of retirement. In other words, the age at which Respondent No.1 was to be retired under the Regulations should have been ignored and for this purpose the age of superannuation in the Rules of 1951 alone should have been held to be applicable. In the alternative, it has also been submitted that since the age of superannuation immediately before the re-organisation of State of Rajasthan even under the Regulations was 55 years, Respondent no.1 should not have been allowed benefit of enhanced age of superannuation on account of subsequent amendment in the Regulations made in the year 1962.

9. To the contrary, it has been submitted on behalf of Respondent No.1 that proviso to sub-section (7) of Section 115 of the States Re- organisation Act, 1956 protected the conditions of service applicable immediately before the appointed day and they could not be varied to the disadvantage of Respondent no.1 except with the previous approval of the Central Government. It has further been submitted that Rules of 1957 were framed under Article 309 of the Constitution of India under directions issued by the Central Government under Section 117 of the States Re-organisation Act, 1956 and the option under Rule 11 with regard to leave and pension rules was by way of protecting the conditions of service applicable to Respondent No.1 immediately before the appointed day. Once Respondent No.1 exercised his option and elected to be governed by the Rules regarding pension applicable to him immediately before the appointed day, i.e., the Regulations, the age of retirement prescribed under the

Regulations like other pensionary provisions would continue to govern him as per the Regulations amended from time to time till the age of superannuation as per the Regulations which, since the year 1962 came to be 58 years.

10. On considering the rival submissions, we find merit in the case of Respondent No.1 because the State of Rajasthan itself framed Rules of 1957 and granted wide and comprehensive option to Respondent No.1 to elect either to be governed by the Rules applicable to him immediately before the appointed day or the Rajasthan Service Rules, 1951 in respect of leave and pension. The option was not limited to any specific provision in the Regulations relating to pension or those in the Rajasthan Service Rules, 1951. Since Respondent No.1 opted for the Regulations as a whole, his retirement benefits had to be governed by the provisions contained in the Regulations including the age of retirement as applicable at the relevant date when he could be retired. His other pensionary benefits would also be governed by the provisions of the Regulations including amendments made therein and on this latter aspect there is no dispute.

11. If the submission advanced on behalf of the Appellants is accepted and if it is held that the age of retirement mentioned in the Regulations on 30.10.1956 would govern persons like Respondent No.1 and others governed by the Regulations independently of any option would have different age of retirement after 1962 amendment, would lead to inequity as well as denial of equality amongst persons who are admittedly to be governed by the Regulations. It would be unreasonable to hold that since a class of employees had opted for the Regulations, they would not get the benefit of its amendments and would retire at 55 years whereas another class of employees would have the benefit of retiring at 58 years of age on account of amendment in the year 1962.

12. A careful appraisal of the wordings in Rule 11 of the Rules of 1957 also supports the conclusions indicated above. The option for the rules applicable to the employee immediately before the appointed day does not contain any restriction that the option shall be to such rules excluding the one providing for age of retirement or only as they stood on a particular day. The clause 'immediately before the appointed day' occurring after the clause 'rules applicable to him' clearly relates to the word 'applicable' and it cannot be read to mean the rules as 'existing' before the appointed day. The elected rules cannot be restricted for any good reasons only to the provisions

existing in the past on the appointed day so as to exclude any amendment made in such rules during the service of the concerned employee. In fact, the elected pension rules are to govern the concerned employee in future also. If the Rules of 1951 will apply to the concerned employee who opts for the same along with amendments made in the future, there can be no rationality in the view that the other rules applicable before the appointed day shall apply but without any amendments even when such amendments are made during the service period of the employee opting for the same.

13. The Appellant-State of Rajasthan may be correct in its submission that the proviso to sub-section (7) of Section 115 of the States Re- organisation Act, 1956 does not help Respondent No.1 directly because the age of retirement under the Regulations even before the appointed day was only 55 years and that has not been varied to his disadvantage. However, once the State of Rajasthan, with the previous approval of the Central Government, gave an option to Respondent No.1 not confined to any particular age of retirement but to elect between Regulations and the Rules of 1951, Respondent No.1 cannot be subsequently deprived of the benefits of enhanced age of retirement accruing to him on account of amendments in the Regulations made in the year 1962 when Respondent No.1 was still in service. After that amendment in the Regulations, his retirement age legally became 58 years. As discussed above, there is no good reason to take a view contrary to that of the High Court which has answered the substantial question of law involved in the Second Appeal appropriately and correctly.

14. In the facts of the case, we find no merit in the Civil Appeal and it is accordingly dismissed but without costs.