

Krishna Ram Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Feb-26-2009

Reported in : RLW2009(1)Raj741; 2009(3)WLN70

Judge : Govind Mathur, J.

Appellant : Krishna Ram

Respondent : State of Rajasthan and ors.

Advocate for Pet/Ap. : Shri. P.K. Lohra

Disposition : Petition allowed

Judgement :

Govind Mathur, J.

1. On being appointed-as Constable under an order dated 21.5.1985, passed by the Superintendent of Police, Dungarpur, the petitioner Joined Rajasthan Police on 23.5.1985. He suffered disciplinary action as per provisions of Rule 16 of the Rajasthan Service Rules (Classification, Control & Appeal) Rules, 1958 (hereinafter referred to as 'the Rules of 1958') for the allegation of wilful absence from duties. After receiving report of the inquiry officer, the disciplinary authority by a notice dated 28.6.1993 sought explanation from the petitioner as to why he be not removed from service on being found guilty for remaining absent from duties

willfully. A copy of the inquiry report was also furnished to the petitioner alongwith notice aforesaid. After considering explanation submitted by the petitioner the disciplinary authority vide order dated 6.1.1994 inflicted a penalty of compulsory retirement with proportionate pension and deduction for a sum of Rs. 10/- per month from pension, however, by a corrigendum dt. 30.1.1994 the deduction of Rs. 10/- per month from pension was withdrawn. The appeal preferred; by the petitioner to challenge the order dated 6.1.1994 came to be rejected by the appellate authority i.e. the Deputy Inspector General of Police, Udaipur Range, Udaipur on 25.2.1994. Hence, this petition for writ is preferred.

2. The argument advanced by Shri P.K. Lohra, counsel for the petitioner is that under the Rajasthan Service Rules, 1951 (hereinafter referred to as 'the Rules of 1961') a government servant may receive pension only after completing qualifying service i.e. 20 years in present case and the petitioner, on the day he was subjected to punishment, completed only nine, years of service, as such he was not entitled to receive pension. The penalty of compulsory retirement, therefore, virtually amounts to removal from service.

3. Per contra, it is urged on behalf of the respondents that the disciplinary authority is competent enough to inflict any penalty prescribed under Rule 14 of the Rules of 1958 including the penalty of compulsory retirement with proportionate pension on determination of guilt for a misconduct. Though nothing is said in reply to the writ petition regarding entitlement of the petitioner for pension, however, in view of a reference given in the order impugned relating to Rule 172-A of the Rules of 1951, it is urged by counsel for the respondents that the pension of the petitioner may be determined as per the provisions referred above.

4. It is the position admitted between the parties that after inflicting penalty of compulsory retirement with proportionate pension, no pension is yet released by the respondents to the petitioner. No statutory provision or administrative instruction is brought to my knowledge making entitlement of a government servant facing penalty of compulsory retirement to receive pension, despite lacking qualifying service.

5. Heard counsel for the parties.

6. Can a government servant be subjected to a penalty of compulsory retirement with proportionate pension despite lacking qualifying service necessary for receiving pension, is the issue requires consideration in this petition for writ.

7. Under Rule 14 of the Rules of 1958, four major penalties are prescribed and those are:

(i) reduction to a lower service, grade or post, or to a lower time scale or to lower stage in the time scale or in the case of pension to an amount lower than that due under the rules;

(ii) compulsory retirement on proportionate pension;

(iii) removal from service which shall not be a disqualification for further employment;

(iv) dismissal from service, which shall ordinarily be a disqualification for future employment.

8. Out of four penalties referred above all the penalties except reduction to a lower service, grade or post or to a lower time scale results into termination from service. A government servant in the case of compulsory retirement shall be terminated from service but with pension. In the case of removal the government servant shall be out of employment but without having any disqualification for further employment and in the event of dismissal from service there shall be a disqualification for future employment. The dismissal is having severest consequences whereas the removal is having a consequence severe to compulsory retirement but lesser to penalty of dismissal from service.

9. A person retired compulsorily as penalty shall be entitled for proportionate pension but the Rules of 1958 are not relevant for grant of determination of pension. The entitlement for pension at the relevant time was available under the Rules of 1951, thus, right of the petitioner deserves assessment under the rules aforesaid. Under the Rules of 1951 a superannuation would have been granted to a government servant on retirement as prescribed under Rules 56 and 56-A. The qualifying service for retirement from service voluntarily at the relevant time was of

20 years as per provisions of Rule 44(1) of the Rules of 1951 and 25 years for compulsory retirement (simplicitor). The proportionate pension to the persons having less than qualifying service is admissible in the event of transfer of a State Government employees to central autonomous bodies/statutory bodies and vice-versa or in the eventuality of conversion of government department/ office into a State autonomous body or public sector undertaking. No provision under the Rules of 1951 or otherwise for granting proportionate pension to a person^ lacking qualifying service, except in the two eventualities referred above is brought to my knowledge.

10. Rule 172-A of the Rules of 1951 provides that 'a government servant compulsorily retired from service as a penalty may be granted by the authority competent to impose such penalty, pension or gratuity or both at a rate not less than two-thirds and not more than full invalid pension or gratuity or both admissible to him on the date of his compulsory retirement'. Rule 172-A certainly empowers competent authority to determine rate and ratio of pension and gratuity, but it nowhere settles entitlement for grant of proportionate pension to a person who has not completed qualifying service.

11. It is stated by counsel for the respondents that the term used 'compulsory retirement with proportionate pension' itself creates a right for pension, thus, a person suffered with the penalty of compulsory retirement is having a right to receive pension in proportion to the service rendered by him, irrespective of fulfilling the condition of completing qualifying service. In my opinion, the preposition forwarded is not correct. The Rules of 1958 essentially relates to regulate discipline in government services and no right for granting pension is created under these Rules. Presently, the State Government servants are having entitlement for receiving pension as per Rajasthan Civil Services (Pension) Rules, 1996 and prior to coming effect of these Rules, the rights for pension were given under the Rules of 1951. The term 'with proportionate pension' is used in the penalty clause to determine pension as per the period of service rendered by the government servant suffered with the penalty of compulsory retirement after completing qualifying service. It is also worthwhile to note that Rule 256-D of the Rules of 1951 was relating to amount of pension to the persons who rendered

service's for 10 years or more and under the Rules of 1996, Rule 54 relates to amount of pension but these are related to the persons retired under those Rules and not for the retirement effected as punishment under the Rules of 1958. A person retired compulsorily as penalty shall not be entitled for pension, meaning thereby such a penalty for such a person shall be nothing but removal from service. Thus, the penalty of compulsory retirement with proportionate pension could have been imposed only upon the government servants having qualifying service, but not upon a person who has not completed qualifying service required to receive pension.

12. In view of the legal position discussed above, the penalty of compulsory retirement was not available to the disciplinary authority to subject the petitioner by the same as he was lacking required qualifying service to receive pension. It is also pertinent to note here that by order dated 6.1.1994 the disciplinary authority while subjecting the petitioner by penalty of compulsory retirement with proportionate pension also ordered for deduction of Rs. 10/- per month from pension, however, the order regarding deduction of Rs. 10/- per month from pension was withdrawn on 30.1.1994. It appears that the disciplinary authority subsequently came to know about non-entitlement of the petitioner for receiving pension, therefore, the deduction of a sum of Rs. 10/- per month from-pension was withdrawn. In the case instant the disciplinary authority after considering explanation submitted in pursuant to the notice to show cause dated 28.6.1993 decided to deal with the petitioner by a penalty lesser to removal and, therefore, the petitioner was subjected to a penalty of compulsory retirement with proportionate pension. While doing so the disciplinary authority failed to understand implication of that penalty for a person like petitioner who was lacking qualifying service. As a matter of fact, the penalty of compulsory retirement in the instant matter is nothing but removal from service and for that the disciplinary authority was never intending. True it is, that the disciplinary authority was intending to penalise the petitioner by a major penalty but not by a severe penalty of removal from service and in such circumstances the only major penalty available was of 'reduction to a lower service, grade or post, or to a lower time scale or to lower stage in the time scale or in the case of pension to an amount lower than that due under the rules'.

13. The petitioner was holding the lowest post i.e. of Constable in Rajasthan Police, thus, his, reduction to a lower service was not available. To execute a major penalty the petitioner could have been reduced to a lower grade. The disciplinary authority in the circumstances mentioned above would have imposed any penalty upon the petitioner except the penalty of removal from service, dismissal from service, compulsory retirement from service and reduction to a lower service. In this background, the penalty of compulsory retirement imposed upon the petitioner under the order impugned dated 6.1.1994 is certainly bad.

14. After reaching at the conclusion as above, I could have remanded the matter to the disciplinary authority for reconsidering the issue regarding imposition of penalty upon the petitioner, however, in view of the fact that this matter relates to the year 1994 and in view of the fact that the disciplinary authority decided to reduce the penalty of removal; the scope available for consideration for a major penalty upon the petitioner is too thin. Thus, I consider it appropriate to modify and substitute penalty in question at this stage itself.

15. Accordingly, this petition for writ is allowed. The order dated 6.1.1994 read with order dated 30.1.1994 passed by the Superintendent of Police, District Chittargarh is hereby quashed to the extent it relates to imposition of penalty of compulsory retirement with proportionate pension upon the petitioner. The order passed by the appellate authority dated 25.2.1994 is also quashed to the extent it relates to affirmation of penalty imposed upon the petitioner under the order dated 6.1.1994 read with order dated 30.1.1994. The penalty of compulsory retirement with proportionate pension imposed upon the petitioner under the order dated 6.1.1994 is ordered to be substituted by penalty of stoppage of three annual grade increments with cumulative effect and forfeiture of pay of the petitioner from 6.1.1994 till date. However, it is made clear that the petitioner shall be entitled for continuity in service, fixation of pay, revision of pay and notional grant of annual grade increments. The petitioner shall also be entitled for all other incidental consequential benefits.

No order to costs.

