

State Vs. Jodh Singh

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Court : Rajasthan

Decided On : Apr-08-1980

Reported in : 1980WLN245

Judge : S.K. Mal Lodha, J.

Appeal No. : S.B. Civil Revision Petition No. 99/80

Appellant : State

Respondent : Jodh Singh

Disposition : Petition dismissed

Judgement :

S.K. Mal Lodha, J.

1. This revision application is directed against the order of the Additional Munsif, Udaipur City (North) dated October 26, 1979,

2. The facts giving rise to this revision lie in a narrow compass. The respondent was compulsorily retired with effect from December 18, 1974, He instituted a suit on February 7, 1978 claiming, inter alia, the relief for that the order of compulsory retirement dated December 18, 1974 may be quashed an illegal During the pendency of the suit, an application was moved on behalf of the defendant-petitioner under O. VII, Rule II (d), C.P.C. A reply was filed contesting the

application on 25 5-79, The learned Additional Munsif, Udaipar City (north) dismissed the application by his order dated October 26, 1979. Feeling aggrieved, the defendant-petitioner (State of Rajasthan) has come up in revision to this Court,

3. I have heard the learned Additional Government Advocate at some length.

4. The only contention raised by the learned Additional Government Advocate is that the suit filed by the respondent for quashing the order of compulsory retirement dated December 18, 1974 in a Civil Court is barred under the provisions of Section 10 of the Rajasthan Civil Service (Service Matters Appellate Tribunal) Act (No. XXXIV of 1976) for short the Act' here-after). Two contentions were raised before the trial court in support of the application: (1) that the matter relating to compulsory retirement is not a service matter within the meaning of Section 2(f) of the Act; and (2) that the provisions of Section 10 of the Act are retrospective and as such, though the respondent was retired with effect from December 18, 1974, still his suit is barred under Section 10 of the Act.

5. 'Service matter' has been defined in Section 2(f) of the Act, The learned Single Judge of this Court in State of Rajasthan v. G.S. Bhandari 1979 (I) SLR 273 observed as under:

It would not be out of place to point out that in our Act also, if the legislature wanted to take out of the jurisdiction of the service Tribunal, the cases of compulsory retirement, it could have done so by an express clause but the same has not been done. The principle of law 'is also well settled that what has not been expressly excluded', cannot be excluded by resort to the principle of interpretation and that, too by implication.

On the basis of this decision, the learned Additional Munsif reached the conclusion that the order of compulsory retirement is a Service matter within the meaning of Section 2(f) of the Act.

6. The important question that I am called upon to determine in this revision is whether the respondent's suit for quashing the order of compulsory retirement is barred & the Civil court cannot entertain, try & decide it The Act came into force

with effect from July 1-1976'. Section 3 thereof deals with constitution and composition of Tribunal. According to Section 3(1), the Government has been empowered, by notification in the official gazette, to constitute from time to time one or more Tribunals as it may consider necessary. Section 4 of the Act provides that the Rajasthan Civil Services Appellate Tribunal shall hear an appeal against the order passed by any officer or authority on any service matter or matters affecting a Government servant in his personal capacity. Section 9 lays down limitation for appeal. It says that no appeal shall lie to the Tribunal after the expiry of sixty days from the date of the order of the Authority. So, according to Section 9, the period of limitation for preferring appeal is sixty days from the date of the order. Here, I may read Section 10 of the Act, which is as under:

10. Jurisdiction of the Civil Court excluded:

No suit or other proceedings shall lie or be instituted in any Civil Court with respect to any matter arising under or provided for by this Act.

According to this Section, no suit or proceeding lies or can be instituted in any civil Court in regard to any matter arising under or provided for by the Act. Then comes Section 11, which lays down special provision in respect of pending cases,

7. From the conspectus of the provisions of the Act, it is clear to my mind that under Section 10 of the Act, jurisdiction of the civil court is excluded with respect to the matters arising under or provided for by the Act. The order of compulsory retirement was made on December 18, 1974. The Act came into force from July 1, 1976. It is, thus, clear that when the order of compulsory retirement was passed, the Rajasthan Civil Service (Service Matters Appellate Tribunal) Act, 1976 was not in existence. The cause of action accrued to the respondent for quashing the order of compulsory retirement on December 18, 1974. The period prescribed for preferring an appeal by the affected party in respect of an order passed by any officer or authority on any service matters under Section 9 of the Act, is sixty days from the date of the order. In these circumstances the question of preferring appeal before the Rajasthan Civil Service Appellate Tribunal against the order of compulsory retirement dated December 18, 1974 within the period of sixty days did not arise. For adjudicating the question whether Section 10 is applicable to the

cases of service matters as defined in Section 2(f) of the Act in regard to which the cause of action has accrued prior to the coming into force of the Act, Section 11 affords useful guide. Section 11 begins with non-obstante clause. According to this Section, all cases in respect of a service matters pending in any Civil Court on the date, on which the Act came into force are to be continued to be heard and decided by the Court as if the Act had not been passed. Having regard to the language used in Section 10, suits and other proceeding with regard to matters arising under or provided for by the Act have only been excluded. The order of compulsory retirement, which was passed on December 18, 1974, cannot be said to be matter arising under or provided for by this Act. The provisions of Section 10 do not have retrospective effect so as to exclude the jurisdiction of the civil court to entertain suits against the order passed by any officer or authority on any service matter or matters effecting a Government servant in respect of which cause of action has arisen prior to the coming into force of the Act. Section 10 is not retrospective and is applicable only in regard to the orders, which are passed by any officer or authority on any service matter/matters mentioned in Section 2(f) of the Act after the coming into force of the Act. In my opinion, the learned Additional Munsif did not exercise his jurisdiction illegally or with material irregularity when held that the suit of the plaintiff-respondent against the order of compulsory retirement dated December 18, 1974 was not barred by Section 0 of the Act. I am of opinion that the suit, which was instituted on February 7, 1976 against the order of compulsory retirement dated December 18, 1974 is maintainable in the civil Court, as no order under the Act or provided for by the Act has been passed after coming into force of the Act on July 1, 1976. The learned Additional Munsif was right in dismissing the petitioner's application under Order VII, Rule 11(d), C.P.C.

8. No ground for Interference is made out in this revision petition.

9. The revision petition is accordingly, dismissed summarily.