Ram Chandra Purohit Vs. State of Rajasthan and anr.

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Court : Rajasthan

Decided On : Aug-19-1974

Reported in : 1974WLN761

Judge : Kan Singh, J.

Appeal No. : S.B. Civil Writ Petition No. 120 of 1969

Appellant : Ram Chandra Purohit

Respondent : State of Rajasthan and anr.

Judgement :

Kan Singh, J.

1. This is a writ petition under Article 226 of the Constitution by one Shri Ram Chandra Purohit who was formerly a member of the Rajasthan Educational Service and came to be absorbed in the University of Rajasthan Service consequent to transfer of certain Government Colleges to the University. The petitioner prays : (1) that the respondents be directed to to pay him compensation pension according to the rules with effect from 10-7-63, (2) in the alternative the respondents be directed to pay pension to the petitioner on attaining the age of 55 years on the basis of the emoluments to be drawn by him during the three years immediately preceding the attainment of the age of 65 years while in the University service, and (3) directing the State to pay the amount of gratuity payable to the

petitioner immediately for being credited to his Provident Fund Account in the University.

2. The petitioner joined the service of the Rajasthan State on 21.3 52 as a Lecturer in Hindi on being selected by the Rajasthan Public Service Commission. His date of birth was 5.6.1923. In April, 1962 the Government decided to transfer three of its Colleges namely, Maharaja's College, Maharani's College and Commerce College, at Jaipur to the University of Rajasthan. The modus operandi for the transfer of the staff was that the teaching staff attached to these Colleges was to be treated on deputation with the University for some time and then the University was to appoint a Selection Committee for the appointment of Professors, Readers and Lecturers in the Univ. The members of the Rajasthan Educational Service fulfilling certain qualifications were to be screened and then selected oh posts under the University. All the posts under the Government on which Professors, Readers and Lecturers were working in these three Colleges were to be taken as abolished and a corresponding number of supernumerary posts for the teaching staff on deputation were to be created. The supernumerary posts too were to come an end as and when the person holding his lien on such post be permanently absorbed in the University service or would be (sic) or ceases to be in service otherwise. The terms of the transfer were settled and option was to of given to the teaching staff employed in these three Colleges whether they would like to remain in Government service or would like to go under the University. The petitioner avers that when his option was invited he opted for the service of the University and. was eventually selected for appointment under the University. The petitioner was substantively appointed in the University as a Lecturer with effect from 19-7-63 and from that date his lien on a Sub-ernunarary post came to an end. The petitioner claims that in terms of the Government order dated 7-7-62 since he had opted for the University service and he having put in more than 10 years' service but less than 25 years' service he was entitled to the payment of proportionate pension from the date he ceased to be in Government service. The petitioner takes the stand that the Government order dated 7-7-62 makes a reference to the Rules (Rajasthan Service Rules) for payment of proportionate pension and accordingly he was entitled to get the proportionate pension with effect from 10.7 63 In the alternative the petitioner contends that even if it is held

that in terms of the Government order dated 7-7-62 he is found entitled to service the pension on his attaining the age of 55 years, the pension should be determined on the basis of the average pay of three years immediately preceding the attainment of the age of 65 years (the notional date of retirement) for purposes of payment of pension and not on the basis of the pay that the petitioner wa3 drawing on 10-7-63 when his lien in Government service came to an end. He further contends that he was entitled to receive the gratuity on his release from Government service and the same should have been credited to the University account.

3. The writ petition has been opposed by the State of Rajasthan. The University of Rajasthan has not chosen to file any reply to the writ petition.

4. There is no dispute on facts and thus the fate of the writ petition falls to be determined on the construction of the relevant Government orders and the rules which I may read:

5. Annexure-A is the order dated 21-4-62 which sets out the terms of transfer for the Colleges and other incidental matters between the State Government and the University of Rajasthan. In the opening paragraph it is mentioned that the State Government have agreed to transfer the Maharani College for Girls, Maharaja's College and the Commerce College located at Jaipur to the Rajasthan University with effect from the academic session commencing from July, 1962. The University has to reorganise each teaching department faculty-wise though it has agreed to continue the Maharani's College for Girls as a separate unit as a Degree College for girls. Then paragraph-2 of this document sets out how teaching staff is to be screened. Para 3 is not material. Paragraph-4 deals with the setting up of the Selection Committee and the manner in which selection would be made. Paragraph 5 and 6 of this document deal with the benefits admissible to the staff under the Government who are absorbed by the University in its service and I may read these two paragraphs in full:

(5) Persons who have put in 25 years of service or more shall remain on deputation to the University till the date of their superamnuation i.e. 65 years of age. On retirement they shall be granted pension according to the rules prescribed

in R.S.R. Leave salary to the extent of the leave at his credit on the date of deputation will be paid by the Govt. to the University. The University shall pay the pension contribution which will be limited to the amount of Provident Fund Contribution payable by the University on their salary.

(6) Persons, who have put in less than 26 years' service shall be given an option to opt for any of the two following alternatives, namely:

(a) They may be granted proportionate pension and/or gratuity according to rules. The pension will only be allowed to be drawn on their attaining the age 55 years. As for persons who are eligible to gratuity only, their gratuity amount will be credited to their Provident Fund account in the University as opening balance.

OR

(b) The Govt. shall credit to the C.P.F. Account of the Officers with the University as an opening balance on the date from which the persons are transferred to the University an amount equal to 8% of their monthly pay drawn by them from time to time under the Government with simple interest at the rate of 2% p.a.

Paragraph 7 deals with the fixation of pay of persons absorbed by the University, but as there is no dispute regarding the fixation of pay 1 may skip over this paragraph. Paragraph-8 mentions that the persons selected for the University posts will cease to enjoy certain benefits in respect of education and medical facilities admissible to Government servants. Paragraph 9 calls upon the incumbents to send their option by the specified date and this I may read:

(9) I am to request you to kindly send to me by 26th May 1902 your option in the Memo enclosed to this letter to be considered for appointment to any of the posts in the Rajasthan University If you do not exercise your option by the prescribed date, it will be presumed that you are not interested in being considered for any of the posts in the Rajasthan University. It appears that as contemplated by naragraph-9 of Annexure-A, the petitioner has given his option for being absorbed in the University service subject to the terms and conditions as contained in Annexure-A. I may read the relevant portion of Annexure-B:

I have carefully gone through your Memo No. F.2 (10) Aca/ DCE/61, datad 21st of April, 1962. I agree for my name being forwarded to the University of Rajasthan for appointment to posts under that University subject to terms and conditions as contained in your above mentioned Memo. Annexure-C is dated 7.7.62 It is a Government order for placing the services of the officers whost names are shown in the accompanying list on deputation with the University of Rajasthan on the terms and conditions specified therein. In makes mention of the pay, T.A., period of deputation, medical attendance, leave salary contribution, pension contribution and for the terms of absorption, I may read paragraphs 7, 8 and 9 in full:

(7) Persons who have put in 25 years of service or more shall remain on deputation to the University till the date of their superannuation i.e. 55 years of unless they revert earlier from the University to Government On retiremen they shall be granted pension by Government according to the R.S.R. Leave salary to the extent of the leave at the credit of an officer on the date of deputation will be paid by the Government to the University. The University shall pay the pension contribution for the period of remaining on deputation.

(8) Persons, who have put in less than 25 years' service shall be given an option to opt for any of the two following alternatives, namely:

a) They may be granted proportionate pension and/or gratuity according to rules. The pension will only be allowed to be drawn on their attaining the age of 55 years As for persons who are eligible to gratuity only, their gratuity amount will be credited to their Provident Fund account in the University as opening balance, or

b) The Government shall credit to the G.P.F. account of the officers with the University as an opening balance on the date from which the persons are transferred to the University an amount equal to 8% of their monthly pay drawn by them from time to time under the Government with simple interest at the rate of 2% per annum.

(9) The concessions a paragraph 8 will be available when the officer is permanently absorbed in the University.

6. Rule 214 of the Rajasthan Service Rules classifies pensions as: (a) compensation pension, (b) invalid pensions, (c) superannuation pensions, and (d) retiring pension. Leraned Counsel are agreed that this is not a case of invalid pension, superannuation pension or retiring pension. I may, however, add here that learned Additional Government Advocate in his reply however, took the stand that this was a superannuation pension, but this need not detain me for long as Section 4 in which superannuation pensions are dealt with lays down that a superannuation pension is granted to a Government servant required to retire under Rule 56. Rule 56 clearly lays down that except as otherwise provided in these rules the date of compulsory retirement of a Government servant, other than a Government servant of Class IV, is the date on which he attains the age of 55 years. Therefore, by no stretch of imagination could this be regarded as a superannuation pension. If at all, this could be regarded as a compensation pension and, therefore, I may devote consideration to Rule 215 which I may read:

Rule 215. If a Government servant is selected for discharge owing to the abolition of his permanent post, he shall unless, he is appointed to another post the conditions of which are deemed by the authority competent to discharge him to be at least equal to those of his own, have the option:

(a) of taking any compensation pension or gratuity to which he may be entitled for the service he has already rendered, or,

(b) of accepting another appointment on such pay, as may be offered, and continuing to count his previous service for pension.

As regards the determination of the quantum of pension the relevant rules are Rules 247 and 256 Rule 247 1ays down that the amount of pension that may be granted is determined by length of service as set-forth in Rules 258 and 257. Fract one of a year are not taken into account in the calculation of pension. Rule 256 provides that subject to the rules in this part the amount of superannuation, retiring, invalid and compensation gratuity and the pension admissible to a Government servant is as given in the section.

7. Three questions thus arise for determination out of the rival contentions : (1) whether the pension payable by the Government to the petitioner would be payable on his attaining 55 years of age or from the date of his release from Government service on the termination of his lien, (2) on what basis the pension is payable, whether on the basis of the salary that he was drawing on the date of his release from Government service or on the basis of the salary that he will be drawing at the time he attains the age of 55 years, (3) when would the gratuity, if at all, be payable to him by the Government.

8. RE: 1. The tenure of a Government servant under the Government is contractual-cum-statutory. Government service starts on the basis of a contract of service, be it oral or in writing and then to it are super added certain statutory obligations in terms of the conditions of service made either by the President or the Governor, as the case may be, under Article 309 of the Constitution. It is also a trite principle that this relationship cannot be transferred by the Government to another master. With the change of Masters the contract of service would come to an end. This principle has been in a way given recognition in Rule 141 of the Rajasthan Service Rules which lays down that no Government servant may be transferred to foreign service against his will provided that this rule shall not apply to transfer of a Government servant to the service of a body incorporated or not, which is wholly or substantially owned or controlled by the Government or to the transfer of a Government servant to service paid from a Panchayat Samiti/Zila Parishad Fund constituted under the Rajasthan Panchayat Samiti and Zila Parishads Act, 1059 (Act No. 37 of 1959). There is a further condition indicated in Rule 142 that a transfer to foreign service is not admissible unless: (a) the duties to be performed after the transfer are such as should, for public reasons, be rendered by a Government servant, and (b) the Government servant transferred holds, at the time of transfer, a post paid from the Consolidated Fund, or holds a lien on such post had his lien not been suspended. The transfer of the petitioner to the University service thus could not have been brought abut except with the consent of the petitioner and this is precisely what seems to have happened. There was a proposal by the Government to the petitioner and others like him to give their option whether they would like to be transferred to the University service on terms and conditions embodied in Annexure A. Annexure-C is the actual order

of transfer of the services of the petitioner on deputation. The petitioner had signed the option Annexure-B. Thus, the transfee of the petitioner from Government service to University service was brought about as a result, of a tripartite agreement between the Government, the University and the petitioner. The terms and conditions kid down in Annexure A or Annexure C for that matter are binding on all the parties concerned. There are three groups of civil servants dealt with: the first are those who had were put in 25 years of service or more, the second group is of civil servants who had put in less than 26 years service but more than 10 year service, and the third residuary group is of those who had put in less than 10 years' service under the Government. For those who had put in 25 years of service or more they were to be treated on deputation till they reached their age of perannuation i e. 55 years of age. On retirement they were to be granted pension as prescribed in the Rajasthan Service Rules and other such benefits as may be admissible. The petitioner's case falls in the second group. Therefore, his case will be governed by Clause 6 (a) of Annexure-A or Clause 8 (a) of Annex C. It is clearly provided that the pension will only be allowed to be drawn on attaining the age of 55 years by the incumbent. Learned counsel for the petitioner, however, stresses that the pension that would be admissible to the Government servant being what is described as compensatory pension the same would be admissible on the release of the Government servant. Rule 215 of the Rajasthan Service Rules, which I have quoted above, contemdates that compensation pension is admissible to a Government servant if be is selected for discharge owing to the abolition of his permanent post and unless he is appointed to another post the conditions of which are deemed by the authority competent to discharge him to be equal to those of his own will have the option of taking any compensation pension or gratuity to which he may be entitled for the service he has already rendered. Normally the compensatory pension is admissible on the discharge of a Government servant owing to the abolition of his permanent post. It would not be admissible if he is appointed to another post the conditions of which are considered by the competent authority to be at least equal to those of his own. The abolition of the permanent post was not brought about in the normal way, but it was consequent to the transfer of the entire establishment of the three Colleges to the University. This was a peculiar feature of the change and was ultimately made the subject matter of an agreement between the parties concerned In such a case, therefore, the matter would be governed by the agreement and not by Rule 215 in its strict letter. Therefore, I am of the opinion that the pension would be admissible to the petitioner only when he attains the age of 55 years. Learned counsel for the petitioner placed before me a contingency in which such a pension or any other benefit may not be admissible at all. He gave an example of a Government servant dying before his attaining the age of 55 years and then no pensionary benefits would be available to his dependents. Therefore, argued, learned counsel, such a construction should not be placed on the terms of the agree rent or Rule 215 of the Rajasthan Service Rules. In my view, since the meaning of the terms of the Agreement embodied in Annexure--A or Annexure--C for that matter is clear, there is no room for any laboured construction and the terms shall be taken in their natural sense. Apart from this, it may lead to one thing that between the release of the petitioner from Government service and on his attaining 55 years of age he would be getting both pension as well as contributory benefits from the Univ during the same period. I do not think it was the intention of the parties to confer such double benefits on a civil servant merely because the entire establishment was being transferred from the Government to the University.

9. RE : 2. The petitioner ceased to be in Government service with effect from 10-7-63. The liability of the Government was to pay him such benefits as he had earned on the basis of the service he had already put in under the Government. The compensatory pension in terms of Rule 215 of the Rajasthan Service Rules would have been payable on the basis of the salary that the petitioner was getting at the time of his release from Govt. service. It is on account of the specific provision in the agreement between the parties that the payment of pension is deferred, to obviate the possibility of the Government servant who thereafter becomes the servant of the University getting the double benefit during the same period. Therefore, there is no room nor holding that the petitioner should get pension from the Government on the basis of the salary that he would be getting at the time he attains the age of 55 years. Learned counsel for the petitioner relied on Appendix XIII to the Rajasthan Service Rules and in particular to what is mentioned in sub-para 4 It, inter ails, lays down that the liability of a Government servant to pay contributions to the Lending Government ceases when a Government servant is

permanently transferred to the former, but the Lending Government shall remain responsible for the pensionary charges of the Government servant in respect of the service rendered under it prior to the permanent transfer including the period of service and leave for which contributions have been, recovered This liability shall be discharged by paying a proportionate pension when it is sanctioned, the allocation being made on the basis of the length of service and the rules laid down in Section IV of Appendix 3. being followed mutates mutandis. Learned counsel takes the position that when the petitioner was permanently transferred to the University service with effect from 10-7-63, the State Government became liable to pay the proprtionate pension to the petitioner and since the pension is to be payable on his attaining the age of 35 years, the same should be paid on the oasis of the salary that the petitioner would be getting at the age of 55 years which will be the date of his notional retirement from Government service I have considered this contention, but I regret I am unable to accept it. The liability to pay compensatory pension arose when the service of the petitioner under the Government came to an end with effect from 10-7-63, but by virtue of a special provision in the agreement the: pension would be payable only on the attainment of the age of 55 years. Here again, it involves the consideration that whereas the petitioner would be rendering service under the University and not under the Government and would be getting benefits of increments and promotion, if be is so able to have a promotion in the meantime, the Government would be liable to pay pension on the basis of the increased pay at the age of 55 years. I do not think this was the intention of the parties. Therefore, I am unable to hold that the pension would be payable to the petitioner on the basis of the salary that he would be getting from the University at the age of 55 years.

10. RE : 3. To my mind, in terms of Annexure-A as well as Annexure C, the Government are obliged to transfer the petitioner's gratuity to the University, and the gratuity that the petitioner had earned under the Government will be credited to his P. F. account in the University as an opening balance Learned Additional Government Advocate took thy stand that gratuity would not be payable at all to the Government servants who had put in 10 years' service or more. He referred me to Rule 255 of the Raj. Service Rules, but having tead it, he abandoned this argument. He then took another point that the term ''pension' as defined in the

Rajasthan Service Rules includes gratuity and, therefore, when pension is made payable on attaining 55 years of age the gratuity too would be payable on his attaining 55 years of age as death euro-retirement gratuity. Rule 7 (25) of the Rajasthan Service Rules defines the term 'Pension'. Rule 7 starts with the clause that 'unless there be something repugnant in the subject or context the terms defined in this Chapter are used in the rules in the sense here explained. The term 'pension' is denned as follows:

Pensior.- Except when the term 'Pension' is used in contradistinction to gratuity and/or death-cum-retirement gratuity, pension includes gratuity and/or death-cum-retirement gratuity.

In the present case Clause 6 (a) of the agreement uses the word 'gratuity' along with the word 'pension' & there is the conjunction 'and' between them. This means that a Government servant is entitled to proportionate pension and or gratuity according to the rules In other words, if pension & gratuity are both admissible then the Government fervent will get both but if gratuity or pension alone are admissible then he will be getting pension or gratuity, as the case may be. Here is a case where pension & gratuity are both payable to the government servant. Whereas regarding the pension it is said that the same will be allowed to be drawn at the attainment of the age of 55 years, nothing is said about the gratuity. Here the word 'pension' and the word 'gratuity' are used in contradistinction & not in the same sense. The meaning of the word 'Pension' as given in Rule 7(25) of the Rajasthan Service Rules is controlled by the context of the agreement as embodied in Annexure-A or Annexure-C for that matter. Gratuity is payable to a Government servant on his retirement which means his actual release from service. Ass I have already observed, normally pension was payable to the petitioner on his release from Government service, but it is by virtue of the special provision in the agreement that the pension would be payable only on his attaining the age of 55 years. In other words, whereas there is a limitation placed on the payment of pension, there is no such limitation regarding the payment of gratuity and, therefore, according to the Rules the normal rule should prevail namely, that the gratuity would be payable when the Government servant is released from the Government service. Here, it will not be a case of the petitioner having double benefit during the same period.

11. In the result, therefore, I allow the writ petition in part & order that the State Government shall transfer the amount of gratuity payable to the petitioner to the University of Rajasthan to be credited to his Provident Fund account in the University. In all other respects the writ petition is dismissed. The parties are left to bear their own costs.