

State of Rajasthan Vs. Smt. Kamla W/O Late Shri B.S. Mathur

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Court : Rajasthan

Decided On : Jul-02-1991

Reported in : 1991(2)WLN543

Judge : M.B. Sharma and; M.R. Calla, JJ.

Appeal No. : D.B. Special Appeal Nos. 141, 142, 228, 229, 230, 231 of 1990 and 18, 19, 20 and 21 of 1991

Appellant : State of Rajasthan

Respondent : Smt. Kamla W/O Late Shri B.S. Mathur

Disposition : Appeal dismissed

Judgement :

M.R. Calla, J.

1. All these special appeals filed under Section 18 of the Rajasthan High Court Ordinance, 1948 are directed against the common judgment dated 29th September, 1989, whereby 10 writ petitions had been allowed by the learned Single Judge holding the petitioners (respondents herein) to be also entitled to the payment of proportionate pension in accordance with rules in relation to the period covering the period from the date the petitioners ceased to be in Government service and were permanently absorbed in the University till they attained the age

of 55 years. In two out of these ten cases i.e. in the case, of Smt. Kamla wife of late Shri B.S. Mathur, and Smt. Kamla Sharma wife of late Shri K.C. Sharma, they had filed the writ petitions as legal representatives of their husbands who were also the persons belonging to the same category, as the other eight petitioners. The learned Single Judge gave further direction to the State Government to compute the said amount payable to each of the petitioners and pay the same within two months and in case of failure to pay the said amount within the period of two months, interest at the rate of 12% per annum on the said amount.

2. The respondents in these special appeals were employees of the State Government and on transfer of Government colleges to the University, the Government in consultation with the University, considered the question of absorption of the teaching staff working in these institutions in the University service. According to the decision of the State Government, the Director, College Education, Rajasthan addressed the letter dated 21st April, 1962 to the members of the teaching staff in the colleges/educational institutions. In the said letter, it was stated that for recruitment to additional teaching post that were required by the University as a result of transfer/merger of the colleges, the University had agreed to hold screening for the post of Professors, Readers and Lecturers from amongst the Principals of Post-graduate and degree colleges, post-graduate heads of Department and Lectures and the members of the education service and for making selection for the post of Professors and Readers seniority with due regard to merit and suitability will be taken into consideration and the selection to the post of lecturer shall also be made on the same basis. According to this letter, the selection was to be made by a Committee consisting of Vice-Chancellor of the University, Secretary to the Government in the Education Department, Director of College Education, a Professor of the University in the subject concerned, a senior Principal of post-graduate College in the State and expert in the subject to be invited from outside Rajasthan and the Registrar of the University. As per the aforesaid letter dated 21st April, 1962 the teaching staff of the colleges/educational institutions which were transferred to the University by the State Government in 1962 were classified in the following three categories:

1. Persons who had put in 25 years of service or more, on the date of such transfer.

2. persons who had put in less than 25 years of service, but had put in 10 years service on the date of such transfer.

3. Persons who had put in less than 10 years service on the date of such transfer.

3. For the persons falling in the first category i.e. those who had put in 25 years of service or more, it was provided that they would remain on deputation with the University till the date of their superannuation i.e. 55 years of age and, on retirement they would be granted pension according to the rules and leave salary to the extent leave due to their credit with the State Government on the date of deputation would be paid by the Government to the University and the University would pay pension contribution which would be limited to the amount of provident fund contribution payable by the University on their salary. Regarding the persons belonging to the second category i.e. those who had put in less than 25 years service, but had put in more than 10 years of service on the date of such transfer i.e. the persons like the respondents in these appeals, were offered two alternatives as under:

(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.

(b) The Government shall credit to the CPF 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 will simple interest at the rate of 2% PA

4. With regard to the persons belonging to the third category namely those who had put in less than 10 years service, it was provided that they will not be entitled to proportionate pension under the Rules and they will be eligible for gratuity only

and their gratuity amount was to be credited to their provident fund account in the University as opening balance.

5. In these cases, we are concerned with the persons falling in the second category i.e. those who had completed 10 years' of service, or more with the Government, but less than 25 years of service and all those persons had chosen the first alternative namely proportionate pension and gratuity according to the rules. All those persons i.e. respondents herein, filed writ petitions before this Court after attaining the age of 55 years with the prayer that the State of Rajasthan may be directed to pay compensation pension with interest in terms of Rule 215 read with Rule 256, of RSR and all other provisions in that behalf on and from the date their services were transferred to the University. For the reliefs as aforesaid, alternative and allied prayers were also made and all these writ petitions were decided and allowed by the impugned judgment dated 29th September, 1989.

6. It was submitted before the learned Single Judge on behalf of the respondents herein that under sub-para 6 of letter dated 21st April, 1962, they had a right to get proportionate pension according to the Rules in respect of the period covering the date on which they were permanently absorbed in the University and had ceased to be Government servant till they attained the age of 55 years and it was only the payment of the said amount of proportionate pension which had been deferred till the attainment of the age of 55 years and on attaining the age of 55 years, they were entitled to the payment of proportionate pension for the said period. This submission was contested on behalf of the State on the basis that in view of sub-para (a) of para 6 of the letter dated 21st April, 1962, the petitioners having chosen to opt for proportionate pension were only entitled to payment of proportionate pension after their attaining the age of 55 years and they were not entitled to any proportionate pension in respect of the period prior to their attaining the age of 55 years and that the petitioners cannot be permitted to enjoy the double benefit in respect of the period covering the date on which they were permanently absorbed in the University service and ceased to be in Government service till they attained the age of 55 years because during this period they were getting full salary from the University which was directed under the letter dated 21st April, 1962. The learned Single Judge accepted the contention raised on behalf of the petitioners

and held that the petitioners having ceased to be Government servants on their absorption in the University service were entitled to compensation pension on their discharge from the Government service under Rule 215 of the Rules. It was further held that there was no provision denying proportionate pension to the petitioners in respect of the period covering the date on which they ceased to be in Government service and were permanently absorbed in the University and till they attained the age of 55 years.

7. Before us, the impugned judgment dated 29th September, 1989, has been assailed by Shri M.I. Khan, Addl. Advocate General on the basis that the learned Single Judge has wrongly interpreted Rules 215, 343 and 347 of RSR and that the dispute should have been decided by the learned Single Judge in terms of tripartite agreement and the contents of the tripartite agreement would over-ride the RSR and that the Rajasthan Service Rules do not apply in view of the said agreement and that the University fund is also being paid from the consolidated fund and is a part of the consolidated fund and, therefore, the directions for payment of pension for the period when the petitioners were in the regular employment in an autonomous body could not be given. Shri Mridul, Senior Advocate, appearing on behalf of the petitioners i.e. respondents herein, has submitted that the cases have been decided on a correct interpretation of Rules 215, 343 and 347, RSR and he has submitted that in case Rule 215 is read with Rule 343, it will be found that the petitioners were fully entitled to the pension as has been directed by the learned Single Judge. He has submitted that with the cessation of the petitioners from the Government service, they stood discharged from the Government service and the period for which they served in the University till they attained the age of 55 years could be treated as a case of re-employment. The submission of Shri Mridul was that it was only a case of deferred payment in terms of the agreement and the only effect of the agreement is that the pension could not be claimed before attaining the age of 55 years and even in terms of the agreement on which reliance was placed by the Government, the petitioners were entitled to pension for the period commencing from the date they ceased to be in the Government service and were absorbed in the University till attainment of the age of 55 years.

8. We have considered the rival submissions and have gone through the agreement in question as well as the scheme of the relevant rules under the RSR. Rule 215 lays down the conditions for compensation pension and according to these rules, a Government servant 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 which pay, as may be offered, and continuing to count his previous service for pension.

Rule 215 of RSR is reproduced as under:

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 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, the continuing to count his previous service for pension.

9. Rule 256 prescribed scale of pension and according to this rule pension is not permissible till the government servant has put in 10 years' service, in which case, he is entitled to the payment of gratuity only. According to this Rule 256, a government servant who has put in 10 years service or more is entitled to payment of pension according to the formula prescribed therein. Rule 256 is reproduced as under:

256. Scale of pension: Subject to the rules in this part the amount of superannuation, retiring, invalid and compensation gratuity and the pension

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.

13. This condition at the very out-set postulates granting of proportionate pension according to rules, but puts a rider that the pension will only be allowed to be drawn on attaining the age of 55 years. It is, therefore, very clear from the very language employed in this condition that the right to get proportionate pension in accordance with rules has been preserved with the condition that it will be drawn only on attainment of the age of 55 years. In this view of the matter, even if the argument of Shri M.I.Khan is accepted that the agreement should prevail, the agreement itself takes care of the right to receive the payment of proportionate pension in accordance with rules and, therefore, it is wholly misconceived argument to say that RSR does not apply. When the agreement itself ensures the payment of proportionate pension in accordance with the rules, the rules have to be given their full effect subject to the only condition that such pension is to be drawn on attaining the age of 55 years and, therefore, it is correct to say that according to the agreement itself, the entitlement remains intact, but this entitlement cannot be cashed until the attainment of the age of 55 years. Therefore, the agreement only makes it a case of a deferred payment and nothing more than that. The agreement does not take away the right to get the pension in accordance with rules. It only postpones the actual payment until the age of 55 years is attained. The correctness of the aforesaid proposition can be further tested by the later part of condition 6 (a) of the letter dated 21st April, 1962 which takes care of the persons who are eligible to gratuity only and in their case it has been provided that the gratuity amount will be credited to their provident fund amount in the University as opening balance. It is to be agreed on all bands that gratuity as well as the pension are the retiral benefits. In case, the persons who are duly entitled to the retiral benefits of gratuity, are accorded the benefit of earning the interest on this retiral benefits of gratuity for the period they rendered service in the University, how the petitioners (respondents herein) who are entitled to pension as a retiral benefit could be deprived of the benefit of the period for which they served the University after they ceased to be in the government service and the date from which they were absorbed in the University. For the purpose of taking the advantage of retiral benefits the persons entitled for pension and the persons who are entitled to gratuity only, have to be treated at par and for that purpose no differentiation can be made and the persons who have opted for the

pension and who are entitled to pension because they have put in service of ten years or more cannot be treated at a lower pedestal in comparison to those who had not completed the requisite number of years of qualifying service so as to entitle for pension and who had only gained eligibility for gratuity because they had put in less than 10 years service. In this view of the matter, no such construction of the terms of agreement and the rules can be countenanced which would lead to discrimination as neither the equals can be treated in an unequal manner nor the unequals can be treated in an equal manner and the holders of the benefits of two different retiral benefits cannot be subjected to differential treatment in the matter of the advantage arising out of the retiral benefits.

14. So far as the scope of Rule 343 is concerned, it deals with the situation where the government servant is re-employed and in that case, he may retain his pension in addition to his pay. Once a person ceases to be in the Government service, it is a case of discharge from the Government service and thereafter when he served the University because of his absorption it is a case of re-employment. Rule 343 is reproduced as under:

343-Reemployment after compensation Pension:

(a) a Government servant who has obtained a compensation pension, if re-employed, may retain his pension in addition to his pay, provided if he is re-employed in a post paid from the consolidated fund, the pension shall remain wholly or partly in abeyance if the sum of the pension or the initial pay on re-employment exceeds his substantive pay at the time of his discharge i.e., a government servant can draw so much of pension only as will make his initial pay plus pension equal to his substantive pay at the time of discharge. Once the amount of his pension has been fixed in conformity with the above condition the officer shall be entitled to seek the benefits of increments in his new scale or promotion to another scale or post without a further corresponding deduction in pension, nor shall the amount of pension so fixed be varied during leave. In the case, however, of a pensioner re-employed in either a permanent or a temporary appointment, for bonafide temporary duty lasting for not more than a year, Government or, in cases where the pension does not exceed Rs. 60/- a month the

officer who controls the establishment on which the pensioner is to be employed, may allow the pension to be drawn in whole or in part even though sum total of pay and pension exceeds his substantive pay at the time of his discharge.

(b) If his re-employment is in qualifying service he may either retain his pension (subject to the proviso above stated, in which case his former service will not count for the future pension or ceased to withdraw any part of his pension and count his previous service. Pension immediately drawn need not be refunded.

15. In this regard, Shri Mridul has placed reliance on State of Mysore v. H.Pappanna : (1970)11LLJ683SC and, we may appropriately quote the relevant portion from this judgment contained in paras 7 and 8:

7. There can be no dispute-as indeed the learned Solicitor-General was constrained to admit-that the respondent and others who had filed writ petitions in the High Court challenging the notification ceased to hold the civil posts which they held under the State of Mysore at the time when the notification was issued if it was to have full force and effect. Whether the prospects of the respondent were or not to be prejudicially affected if he was to become an employee of the University is not in point.

8. We are not here concerned with the question as to whether for all practical purposes the respondent was not to be a loser as a result of the transfer. Evidently the respondent held the view that as a civil servant of the State of Mysore the prospects of promotion to higher posts with better scales of pay were greater in the service of the State with its manifold activities in various departments. For better or for worse, the notification resulted in extinction of his status as a civil servant.

16. It is, therefore, clearly discernible that with the cessation of the Government service, the petitioners stood removed/discharged from the Government service and the learned Single Judge has rightly held that for the purpose of payment of pension for the period when they served the University from the date of their absorption in the University till they attained the age of 55 years has to be considered in the light of Rule 343, RSR. Accordingly, the right of the petitioners to

receive pension under Rule 215 of the Rules is not affected by virtue of their re-employment on permanent absorption in the University service and the tripartite agreement on which reliance has been placed by Shri M.I. Khan does not impinge upon the petitioner's right to receive the pension in accordance with the rules and, we are of the considered opinion that this right remains untrammelled. Moreover, it is the trite law that the provisions regarding the pension should receive a liberal construction and in the case at hand we find that in fact, there is no provision denying the proportionate pension to the petitioners in respect of the period covering the date they ceased to be the Government servants and were permanently absorbed in the University and till they attained the age of 55 years. Therefore, it is reasonable to construe sub-para (a) of para 6 of the letter dated 21st April, 1962 read with the scheme of the Rules, as discussed hereinabove, that the entitlement for payment of proportionate pension has been kept intact except for the case of del erred payment to be drawn on attaining the age of 55 years and the agreement read with the scheme of the rules cannot be construed as completely denying the proportionate pension to the petitioners in respect of the period covering the date they ceased to be the Government servants on their permanent absorption in the University till they attained the age of 55 years.

17. The net result of the aforesaid adjudication is that we do not find any error of fact or law or any other infirmity in the judgment of the learned Single Judge so as to interfere with the same. Accordingly, we do not find any force in these special appeals and the same are here by dismissed with no order as to costs.