

PETITIONER:
RATAN LAL BOHRA

Vs.

RESPONDENT:
STATE OF RAJASTHAN & ANOTHER

DATE OF JUDGMENT: 18/03/1996

BENCH:
VENKATASWAMI K. (J)
BENCH:
VENKATASWAMI K. (J)
AHMADI A.M. (CJ)
MANOHAR SUJATA V. (J)

CITATION:
JT 1996 (5) 546 1996 SCALE (3)100

ACT:

HEADNOTE:

JUDGMENT:

W I T H

CIVIL APPEAL No.4805 OF 1996
(Arising out of SLP(C) No. 18337 of 1995

Vijay Singh
V.

State of Rajasthan & Another

W I T H

CIVIL APPEAL NO.4796 OF 1996
(Arising out of SLP (C) No. 18392 of 1995)

Sukhdeo
V.

State of Rajasthan & Another

J U D G M E N T

K. VENKATASWAMI, J.
Leave granted.

A common question of law arises for our decision in all these appeals. When the Special Leave Petitions came up before the Court for hearing, the following common order was passed by this Court on 16.8.95 :

"Issue notice returnable within 6 weeks on the limited question whether the power conferred by Rule 244(2) of the Rajasthan Service Rules was not to be exercised as the policy of the Government in regard to non-gazetted employees, vide Circular dated 22.8.90."

All the three appellants who were working as Patwaris in the Revenue Department of the State of Rajasthan were compulsorily retired under Rule 244(2) of the Rajasthan Service Rules. They challenged the Orders of compulsory retirement before the High Court by raising contentions inter alia before the learned Single Judge as well as before the Division Bench that Rule 244(2) at the relevant point of time could be invoked only in respect of Gazetted Government

Servants and not in respect of Government Servants belonging to Subordinate Services. They were not successful in their attempt. The High Court also rejected other contentions with which we are not concerned. Aggrieved by the order of the High Court the present Appeals are preferred.

The only question that calls for our consideration is whether the invocation of Rule 244(2) of the Rajasthan Service Rules in all these cases for compulsorily retiring the appellants is sustainable.

Rule 244(2) of Rajasthan Service Rules is as under:

"244 (2): The Government may, after giving him at least three month's previous notice in writing require a Government Servant to retire from the service on the date on which he completes 25 years of qualifying service or attains the age of 55 years or on any date thereafter to be specified in the notice;

Provided that a government Servant of class IV can only be required to retire on the date on which he completes 25 years of qualifying service or any date thereafter."

The above Rule empowers the Government to retire both Gazetted and non-Gazetted Government servants. However, the Government of Rajasthan issued guidelines on the subject from time to time and the last one which was referred to before us was issued by the Department of Personnel and Administrative Reforms on 23.4.1990. This Circular gives the modalities and all other details to give effect to the said Rule for compulsory retirement of Government Servants. But for the above said Circular or similar superceded circulars, it would not have been possible for the Government to give effect to Rule 244(2) of Rajasthan Service Rules. For all practical purposes, the Circular was treated as part of the Rule. On 22.8.90, the same Department issued another Circular, the relevant portion of which reads as follows :

"A doubt has been raised by some Appointing Authorities whether the information is to be sent to the DOP in respect of all categories of Govt. Servants or only for the Gazetted Government Servants.

It is clarified again that the information in respect of only Gazetted Government Servants is to be sent to the DOP by the concerned Admn. Secretaries. It is further clarified that at present action under Rule 244 (2) RSR is to be initiated in respect of Gazetted Government Servants only.

It is, therefore, requested that the action taken/progress made in respect of the Gazetted Government Servants may kindly be furnished through Admn. Secretaries to the DOP according to the calendar prescribed by this Department."

(Emphasis supplied)

The question is whether the above extracted portion from the Circular restricts the operation of Rule 244(2) to

Gazetted Government Servants only?

Learned counsel appearing for the appellants placing strong reliance on the above extracted portion from the Circular dated 22.8.90 and in particular on the following sentence "It is further clarified that at present action under Rule 244(2) RSR is to be initiated in respect of Gazetted Government Servants only" argued that the impugned Orders of compulsory retirement are contrary to the Circular dated 22.8.90 which is part of earlier Circular dated 23.4.90, and, therefore, liable to be set aside.

Learned counsel appearing for the respondents, however, submitted that the Circular dated 22.8.90 is only in the nature of clarification and, therefore, cannot override the statutory rule. According to the learned counsel, the High Court was right in taking such a view.

We have noticed earlier that but for the Circular dated 23.4.90 it could not have been possible for the Government to give effect to Rule 244(2) of the Rajasthan Service Rules. The Circular was treated as part of Rule 244 (2). The subsequent Circular dated 22.8.90 appears to be an addition to the Circular dated 23.4.90 and the decision taken in the Circular dated 22.8.90 to initiate, for the present, action under Rule 244 (2) in respect of Gazetted Government Servants only was a policy of the Government and not a mere clarification. A careful reading of all the three paragraphs leaves no doubt that for reasons best known to the Government, they have decided to restrict the operation of Rule '44 (2) in respect of Gazetted Government Servants only. If that be so, the Orders compulsorily retiring the appellants cannot be sustained. The argument that it is only clarificatory, cannot be accepted in view of the clear language employed in the Circular dated 22.8.90 stating that at present action under Rule 244 (2) Rajasthan Service Rule is to be initiated in respect of Gazetted Government Servants only.

In the result, the Appeals succeed and accordingly they are allowed. However, there will be no order as to costs.