

CASE NO.:
Appeal (civil) 2636 of 1999

PETITIONER:
Vithal V Gaitonde

RESPONDENT:
Union of India & Anr.

DATE OF JUDGMENT: 16/12/2003

BENCH:
S. RAJENDRA BABU & RUMA PAL

JUDGMENT:
J U D G M E N T

RAJENDRA BABU, J. :

The appellant before us claims to have been appointed on 11.6.1962 as an Operator [Temporary] in the Government of Goa. The said country became liberated on 19.12.1961 and was annexed to the territory of India. The appellant challenged an order dated 6.10.1993/6.1.1994 by which he was informed that he would attain the age of superannuation on 31.1.1994. He has since retired on 31.1.1994.

The contention put forth by the appellant is that he had been appointed in terms of Article 63 read with Article 26A of the Statute of the Overseas Functionaries and, therefore, his age of retirement should be considered in accordance with clause 430 [Chapter VII] of the ESTATUTO DO FUNCIONALISMO ULTRAMARINO, which fixed the age of retirement as 60 years. The appellant claims that he having been appointed in terms of the Portuguese law, he should be allowed to retire only at the age of 60 years and his representation made to the respondents having been rejected on more than one occasion, he approached the tribunal.

The tribunal did not agree with the appellant that he is governed by the Portuguese Statute of the Overseas Functionaries and he is governed by the Central Government Rules. The respondents contended that the appellant is not an absorbed employee and hence his request to retire him at the age of 60 years would not arise.

The tribunal found that the appellant himself had stated in the application before the tribunal that he had never claimed to be an absorbed employee but that he is entitled to work till the age of 60 years in view of clause 430 of the Portuguese Rules. The tribunal gave a finding on examination of the service record of the appellant that the decision had been taken to attach an Indian pay scale to the post and, therefore, the question of protection of the benefits arising from the E.F.U. Portuguese Rules would not arise at all. It was noticed that immediately after liberation of Goa from the Portuguese Rules, 20.12.1961 all the employees employed from the said date were being governed by

the Government of India as per the regulations and orders issued from time to time which include the policy of retirement of an employee and, therefore, the appellant cannot be isolated from the scheme of things since the appellant is appointed subsequent to the liberation with a specific pay scale. The clear and categorical finding of the tribunal is as follows :

"After the liberation of Goa, all the Government servants thus appointed were being governed by various rules and regulations framed by the Government of India regulating the service conditions of Central Government servants and therefore the applicant cannot take any benefit of the said notification published on 1st November 1962 by virtue of which service privileges were saved. Needless to say that the applicant was not appointed by virtue of the said regulations and thus he cannot claim the benefits of clause 430 dealing with the age of superannuation. Nowhere the service book discloses that the applicant was appointed under clause 430 and at no point of time the applicant had ever raised any objection in this behalf."

The tribunal also considered that the case of the appellant with reference to Petro Cassiano Mendes vs. Union of India in O.A. No.155/93 dated 1.7.1994, which petition was rejected on the basis of laches. On that basis, the tribunal dismissed the claim of the appellant. The review petition preferred against the said order having been unsuccessful, the appellant filed this appeal by special leave.

The contention urged by the appellant is that under Section 5 of the Goa, Daman & Diu Administrative Act, 1962 provides that all previous posts under the Portuguese Administration would continue and Section 4 thereof provides that all laws in force immediately prior to the appointed day in Goa, Daman and Diu or any part thereof shall continue to be in force therein until amended or repealed by a competent legislature or other competent authority. However, what is to be noticed is that the appellant was appointed on 11.6.1962 in the Department of Posts & Telegraphs under the Goa, Daman & Diu [Repeal of Posts and Telegraphs Laws] Regulation, 1962, which came into force on 1.9.1962 and while repealing the various decrees saved the rights, privileges, obligations and liabilities acquired, accrued or incurred under such law. Between the date of liberation of Goa, i.e., 19.12.1961, and 1.9.1962, the Military Government of Goa, Daman & Diu had passed certain orders to the following effect:

"The following powers hereuntofore vested in the erstwhile Secretary-General of Goa in respect of CTT Administration are hereby delegated to the Director of CTT and shall henceforth be exercised by him.

- (1) Temporary appointments, Full powers for staff appointments on daily wages, other than those provisional appointments, whose appointment extension and confirmation was vested in the erstwhile Overseas Minister."

The said orders empowered the Director of CTT to make appointments on daily wages, provisional appointments, extension and confirmation. He had been conferred powers for appointment of staff other than those whose appointment was vested in the erstwhile Overseas Minister. It is in terms of this order that the appellant was appointed on temporary basis and no material was available to show that the Director of CTT did not possess the powers to make appointment to the post of Operator with a particular scale.

Heavy reliance has been placed before us by the learned counsel for the appellant on Sections 6 and 24 of the General Clauses Act, which have no bearing on the question to be decided in the present case. The appellant had retired with effect from 31.01.1994.

Our attention was drawn to the Goa, Daman & Diu [Absorbed Employees] Act, 1965 but the appellant had not been appointed prior to 20.12.1961 and, therefore, the said Act would not be applicable to him. In the Goa, Daman & Diu [Absorbed Employees] Act, 'absorbed employee' has been defined to mean a person, who held the post prior to 20.12.1961 and continued to serve in connection with the administration of the Union territory of Goa, Daman & Diu or in any of the Department of the Central Government while 'absorbed post' is defined to mean a civil service or post which existed under the former Portuguese Administration in Goa, Daman & Diu immediately before 20.12.1961. Section 3 thereto empowers the Central Government to make rules regulating recruitment and conditions of service of absorbed employees. The said Act also empowers the Government to issue orders for removal of difficulty. Since the case of the appellant is that he is not an absorbed employee, we need not examine the scope of the said enactment or the effect of the decision in State of Goa Vs. Yvette Periera [1996 (9) SCC 212]

On 27.8.1962, the Ministry of External Affairs, Government of India conveyed a memorandum to the Ministry of Transport and Communication on the subject of integration of ex-Goa P&T system with that of the Indian Union \026 Continuanace of ex-Goa P&T Staff on their existing terms and conditions of services. It was made clear therein by the order issued by the President of India that pending assessment of the strength of the cadre in each Department of P&T services, all the existing posts on the Goa P&T system shall be deemed to have been created in the respective wing of the P&T Department by the competent authority on the existing terms and conditions, unless in any particular case specified orders are issued abolishing the post or revising the terms and pending further orders, the existing personnel shall be deemed to have been appointed under proper authority, unless in any particular case the services of any person are dispensed with in accordance with the procedure that may be laid down in that regard. Even this order does not come to the aid of the appellant inasmuch as he was not an existing employee from ex-Goa P&T staff. Appellant had been appointed in pursuance of the

order made by the Military Government of Goa, Daman & Diu on temporary basis on a fixed pay scale and he could not make any claim for the benefit of the relevant rules which stood in force prior to the coming into force of the new Rules.

Hence the view taken by the tribunal cannot be interfered with and this appeal, therefore, stands dismissed.

JUDIS