

PETITIONER:
T. RAMAKRISHNIAH

Vs.

RESPONDENT:
STATE OF KARNATAKA

DATE OF JUDGMENT 04/05/1990

BENCH:
RAY, B.C. (J)
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RAY, B.C. (J)
KASLIWAL, N.M. (J)

CITATION:
1990 AIR 1673 1990 SCR (3) 207
1990 SCC (3) 619 JT 1990 (2) 582
1990 SCALE (1)86

ACT:

Civil Services: Mysore Civil Services Rules, 1957: Rules 2(2), 95 and 283. Non-official Member of State Sales Tax Appellate Tribunal-Applicability of--Superannuation pension--Entitlement to.

Karnataka Sales Tax Act, 1957/Mysore Sales Tax Rules, 1957: Section 4(2)/Rule 64--Non-official Member of Sales Tax Appellate Tribunal--Whether entitled to superannuation pension--Mysore Civil Services Rules--Applicability of.

HEADNOTE:

The appellant was appointed as a non-official member of the State Sales Tax Appellate Tribunal for a period of two years from 17.7.1958, under sub-section(2) of Section 4 of the Mysore Sales Tax Act, 1957. The appointment was extended from time to time and continued upto 8.2.1972. By a letter dated 8.2.1972, the respondent intimated the appellant that he had been granted 52 days Earned Leave as terminal leave from 9th February, 1972. The appellant represented for grant of superannuation pension. This was rejected by the Government on the ground that he was not eligible for pension.

The appellant's writ petition was dismissed by a single Judge of the High Court who held that rule 64 of the Karnataka Sales Tax Rules, 1957 was applicable to him, and that he was not eligible to claim superannuation pension. This was upheld by the Division Bench.

In the appeal before this Court, on behalf of the appellant it was contended that as a non-official member of the Tribunal, he was a government servant, and as such, like other Government servants, he was entitled to grant of pension in accordance with Mysore Civil Service Rules, that he was retired from service after reaching the age of superannuation, that his appointment was not a contract appointment, that he was paid traveling allowance under the Mysore Civil Service Rules, and that Rule 64(6) of Mysore Sales Tax Rules inserted in 1964, and substituted in 1971, not being in existence at the time of his appointment, could not be made applicable to him as to deprive him of the benefit of superannuation pension as provided in the Mysore Civil Service Rules.

Dismissing the appeal, this Court,

HELD: 1. The terms and conditions of service of the appellant who was appointed as a non-official member in the Karnataka Sales Tax Appellate Tribunal under sub-section (2) of Section 4 of Karnataka Sales Tax Act, 1957 and was given last extension of the period of service under clause (b) of sub-rule (1) of Rule 64 of the Mysore Sales Tax Rules, 1957, will be governed by the Mysore Sales Tax Rules and not by the provisions of Mysore Civil Services Rules. Since sub-rule (6) of rule 64 of Mysore Sales Tax Rules was substituted in place of original subrule (6) before the appellant retired from service on expiry of his period of service, this rule applies to him, and he is not entitled to get any superannuation pension. [211D-E; G]

2.1 Sub-rule (2) of Rule 2 of Mysore Civil Service Rules 1957, clearly says that in cases where special provisions have been made by or under any law for the time being in force, the Mysore Service Rules do not apply. Furthermore, Rule 283 of the said Rules states that a superannuation pension is granted to a Government Servant who is compelled by Rule to retire at a particular age. Rule 95 provides that the date of compulsory retirement of a Government servant is the date on which he attains the age of 55 years, and the Government servant may be retained upto 60 years of age with the sanction of Government, but not after the age of 60 years. [212C; E-F]

2.2 Rule 64(6) of the Mysore Sales Tax Rules, 1957 clearly says that the non-official member of the Sales Tax Tribunal will become ineligible for any pension. Hence, provisions relating to pension as provided in Mysore Civil Service Rules, 1957 will not apply to a non-official member. [212D-E]

2.3 In the instant case, the appellant was appointed as a member of the Tribunal for a period of two years initially, and thereafter his tenure was extended periodically and he left the service as non-official member of the Tribunal after he crossed the age of 61 years. There was no specific order that the appellant was due to retire at the age of 55 years. There is no rule for a non-official member to retire at a particular age. Moreover, the Government sanctioned certain terms and conditions of his appointment. It is periodical and not upto a maximum age, nor it is a whole-time service but a part-time one and the appellant was permitted to take up audit of any person, firm, institution etc. on certain restrictions. A Government servant has to render whole time service. Therefore, the Mysore Civil Service Rules, 1957 do not apply to the

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appellant, and he is not eligible for superannuation pension. [212F-G; 213C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No 10 (N) of 1981.

From the Judgment and Order dated 22nd March, 1978 of the Karnataka High Court in Writ Appeal No. 520 of 1975.

R.B. Datar, K.R. Nagaraja and R.S. Hegde for the Appellant.

M. Veerappa for the Respondent.

The Judgment of the Court was delivered by

RAY, J. This appeal by special leave is against the judgment and order dated 22nd March, 1978 made in Writ Appeal No. 520 of 1975 dismissing the appeal and confirming the judgment and order made in Writ Petition No. 3073 of

1974 on 18.7.1985.

The appellant who was a chartered accountant was appointed as a non-official member of the Sales Tax Appellate Tribunal, in the State of Karnataka by an order (No. RD 80 SXE 1958) dated 16th July, 1958 for a period of two years from 17th July 1958 under subsection (2) of Section 4 of the Mysore Sales Tax Act, 1957 (Mysore Act No. 25 of 1957). By an order No. RD 17 SXT 58 dated 12th December, 1958 issued by the Government it has been mentioned that the appellant as member of Sales Tax Tribunal shall be eligible for Travels Allowance under the Mysore Civil Service (Classification, Control and Appeals) Rules 1958 as a government servant in respect of tours undertaken by him in connection with his official duty on the basis of his salary Rs. 1,000 per month. Thereafter the appointment was continued from time to time, the last of the period during which the appointment was continued, was by a notification No. FD 6 CAT 71 dated 8th November 1971 by which his period of service was extended for a period of two months with effect from 9.12.1971. This notification was issued in exercise of powers conferred by clause (b) of sub-rule 1 of Rule 64 of the Mysore Sales Tax Rule, 1957. The respondent by a letter dated 8.2.1972 intimated him that he had been granted 52 days earned leave as terminal leave from 9th February, 1972. The appellant made representations to the respondent that he was entitled to superannuation pension, and same be granted to him. The Government turned down his request on the ground that he was not eligible for such pension. The appellant, then, moved a writ petition No. 3073

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of 1974 before the High Court, Karnataka stating that he was granted leave on several occasions in accordance with the Mysore Civil Service Rules and the Accountant General had treated him as a gazetted officer in the service of the State Government and as such as a Government servant he may be granted superannuation pension under the Mysore Civil Service Rules. The learned Single Judge held that Rule 64 of the Karnataka Sales Tax Rules, 1957 was applicable to this case and under the said Rules he was not eligible to claim superannuation pension. It was further held that even under the Mysore Civil Service Rules he would not be entitled to claim such a pension. The writ petition was dismissed. The learned Judge, of course, held that the appellant would be entitled to gratuity in terms of Rule 64 and so directed the Government to examine the case of the appellant for grant of gratuity under the rule and pass appropriate orders in that regard expeditiously.

The appellant feeling aggrieved preferred Writ Appeal No. 520 of 1975 which was dismissed by the High Court and the judgment pronounced in the writ petition was upheld.

It is against this judgment and order, this appeal on special leave has been filed.

The main plank of the argument of the counsel for the appellant is that the appellant as a member of the Sales Tax Tribunal was a government servant and as such like other government servants he is entitled to the grant of superannuation pension in accordance with Mysore Civil Service Rules. Several Rules have been referred to in support of his submission that he was retired from service after reaching the age of superannuation. He further submitted that the appointment of appellant was not a contract appointment and so the Mysore Civil Service Rules are applicable to the appellant for payment of superannuation pension.

It is not disputed that the appellant was appointed as a nonofficial member of the Karnataka Sales Tax Appellate

Tribunal under sub-section (2) of Section 4 of the Mysore Sales' Tax Act, 1957. This is evident from the notification dated 16.7.1958 issued by the Government appointing the appellant as a member of Sales Tax Tribunal as well as from Order No. RD 17 SXT 58 dated 12th December 1958. The appointment was continued from time to time and the last extension was given by Order No. FD 6 CAT 71 dated 8th November, 1971 made under clause (b) of sub-rule (1) of Rule 64 of the Mysore Sales Tax

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Rules, 1957. It is relevant to notice in this connection that Rules 63 and 64 were introduced by a notification No. FD 18 CAT 62 dated 10/13th January, 1964. Sub-rule (6) of Rule 64 is quoted below:

"The non-official member shall not be eligible for any pension, gratuity or other remuneration."

By further notification No. FD 614 dated 7th April, 1971, a new Sub-rule (6) was substituted which was to the following effect:

"(6) The non-official member shall be eligible for gratuity equivalent to one month's pay for each completed year of service including interruption or interruptions, if any, the total duration of which does not exceed 180 days but shall not be eligible for any pension or other remuneration."

Thus the appellant was appointed as a non-official member in the Karnataka Sales Tax Appellate Tribunal under sub-section (2) of Section 4 of Karnataka Sales Tax Act, 1957 and the last extension of the period of his service was given by Government under clause (b) of sub-rule (1) of Rule 64 of the Mysore Sales Tax Rules, 1957. The terms and conditions of his service will be governed by the Mysore Sales Tax Rules and not by the provisions of Mysore Civil Services Rules and it cannot be contended by the appellant that Rule 64(6) of the said Mysore Sales Tax Rule, 1957 was not applicable to him. So the appellant is not eligible for superannuation pension after his relinquishment of the post of non-official member of Sales Tax Tribunal on expiry of the period of his service.

It has been further urged that Rule 64(6) of Mysore Sales Tax Rules was inserted in 1964 and sub-rule (6) of Rule 64 was substituted on 7th April, 1971. This rule not being in existence at the time the appellant was appointed as a member of the said Tribunal, the same cannot be made applicable to the appellant and thereby he could not be deprived of the benefit of superannuation pension as provided in Mysore Civil Service Rules. This contention is per se without any substance in as much as before the retirement of the appellant from service due to expiry of his period of service the said provisions of sub-rule (6) of rule 64 of Mysore Sales Tax Rules was substituted in place of original sub-rule 6 of Rule 64 and as such this rule applies to the appellant and he is not entitled to get any superannuation pension. The High Court has tightly held that according to Rule 64(6) the appellant could not claim pensionary benefit.

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The appellant next submitted that he became a Government servant on being appointed as a non-official member of the Sales Tax Appellate Tribunal and he was paid traveling allowance according to Mysore Civil Service Rules, 1957 and so he is entitled to pension as provided in the said Rules. As stated hereinbefore that the appellant was appointed as a Member of the said Tribunal by the respondent State under Section 4(2) of the Sales Tax Act and though initially appointed for a period of two years in 1958, his service was extended periodically till February, 1972 under clause (b)

of sub-rule (1) of Rule 64 of the Mysore Sales Tax Rules, 1957 by the Government of Mysore. Therefore, the foremost question is whether in such circumstances the Mysore Civil Service Rules apply to him. It is apropos to refer in this connection sub-rule (2) of Rule 2 of Mysore Civil Service Rules, which specially provided that the said Rules shall not apply to persons for whose appointment and other matters, special provisions are made by or under any law for the time being in force or in any contract in regard to the matters covered by such law or such contract. This Rule clearly says that in cases where special provisions have been made by or under any law for the time being in force, the Mysore Service Rules will not apply. In the instant case, Rule 64(6) of the Mysore Sales Tax Rules, 1957 clearly says that the non-official member of the Sales Tax Tribunal will become ineligible for any pension, and as such provisions relating to pension as provided in Mysore Civil Service Rules, 1957 will not apply. Furthermore, Rule 283 of the said Rules states that a superannuation pension is granted to a Government Servant who is compelled by Rule to retire at a particular age. Rule 95 provides that the date of compulsory retirement of a Government servant is the date on which he attains the age of 55 years. It further provides that the Government servant may be retained upto 60 years of age with the sanction of Government. He must not be retained after the age of 60 years. There is no rule under which a non-official member is to retire on attaining a particular age. The appellant was appointed as a member of the Tribunal for a period of two years initially and thereafter his tenure was extended periodically and he left the service as non-official member of the Tribunal after he crossed the age of 61 years. There was no specific order that the appellant was due to retire at the age of 55 years. There is no rule for a non-official member to retire at a particular age. Moreover by order No FD 1 CAT 69 dated January 28, 1970 the Government sanctioned certain terms and conditions of his appointment. the condition Nos. 2 and 5 are as hereunder:

"(2) The terms of appointment shall be one year with effect from 9th December, 1969.

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(5) He is permitted to take up the audit of accounts of any person, institution, firm or body of persons without prejudice to his official duties as a Member of the Tribunal and the person, institution, firm or body of persons concerned is not and is not likely to be liable to Sales Tax, Agricultural Income Tax or Entertainment Tax."

The appointment of the appellant is periodical and not upto a maximum age nor it is a whole-time service but a part-time one and the appellant was permitted to take up audit of any person, firm, institution etc. on certain restrictions. A Government servant has to render whole time service. Therefore, considering all these aspects it has been found by the High Court that the Mysore Civil Service Rules, 1957 do not apply to the appellant and as such he is not eligible for superannuation pension. We do not find any infirmity in the judgment of the High Court which is unexceptionable-

We, therefore, uphold the judgment of the High Court, dismiss the appeal without any order as to costs.

N.P.V.

Appeal dismissed.

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JUDIS