

PETITIONER:
STATE OF U.P & ANR.

Vs.

RESPONDENT:
ROADWAYS MINISTERIAL STAFF ASSOCIATION U.P. & ANR.

DATE OF JUDGMENT: 08/05/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
FAIZAN UDDIN (J)
G.B. PATTANAIAK (J)

CITATION:
JT 1996 (6) 208 1996 SCALE (5)18

ACT:

HEADNOTE:

JUDGMENT:
THE 8TH DAY OF MAY, 1996

Present:
Hon'ble Mr. Justice K. Ramaswamy
Hon'ble Mr. Justice Faizan Uddin
Hon'ble Mr. Justice G.B.Pattanaik
K.S.Chauhan and R.B.Misra, Advs. for the appellants
Aseem Mehrotra and A.P.Medh, Advs. for the Respondents

O R D E R

The following Order of the Court was delivered:
State of U.P.& Anr.

V.
Roadways Ministerial Staff Association
U.P.& Anr.

O R D E R

Leave granted.

We have heard counsel on both sides.

The respondent-Association filed writ Petition No.3273/82 in the High Court of Allahabad, Lucknow Bench seeking to declare Rule 9(II) of the U.P. State Roadways Organization (Abolition of Posts & Absorption of Employees) Rules, 1982 made in exercise of the power under Article 309 of the Constitution (for short, the 'Rules'), as ultra vires and also for issue of a mandamus restraining the appellants from changing their status of Government servants as the Corporation employees. The Division Bench in the impugned order held as under:

"In view of what has been stated above, part of Rule 8 is valid and the absorption rules of the employees are perfectly valid. The writ petition to the above extent deserves to be dismissed and regarding pensionary benefits it is allowed. A direction is issued to the opposite parties to opt those

options who were sent on deputation vide G.O. dated 7.6.1972 as amended by G.O. dated 5.7.1972 to the Corporation notwithstanding the fact that they have not attained the age of superannuation and on the date of absorption they will still continue in service, they will be entitled to all pensionary benefits and for that purpose they will be treated in Government service. But for the above relief, the writ petitions are hereby dismissed and interim order, if any stands discharged. However, there will be no order as to costs."

The question, therefore, is: whether the view taken by the High Court is correct in law? It is not in dispute that the members of the respondent Association had their status as Government employees but they had come on deputation to the Corporation. Rule 4(1) of the Rules envisages as under:

"4(1) An employee of the U.P. State Roadways Organization, who was placed on deputation with the Corporation and who does not wish to be absorbed in the service of the Corporation shall, within 3 months from the notification of these Rules in the Gazette, intimate the Secretary to Government in the Transport Department that he does not wish to be so absorbed."

Rule 5 envisages as under:

"The relevant posts in the U.P. State Roadways Organization shall stand abolished,

(i) Where the employee is deemed to have opted for absorption in the service of the Corporation, in accordance with sub-rule (2) of rule 4, from the date of expiry of three months from the date of notification of these rules;

(ii) Where the employee intimates the Government his option for being not absorbed in the service of the Corporation from the date on which the period of notice, as provided in rule 6, expires or, as the case may be, when the services stand terminated or dispensed with the accordance with the said rule."

Rule 8 envisages as under:

"On the absorption of an employee in the service of the Corporation, the following consequences in regard to his services under the Government shall follow:-

(i) Leave account of the employee shall be transferred to the Corporation and the Corporation shall not be entitled to receive any contribution or compensation on

this account from the Government.

(ii) Government shall bear the liability for pension, (which does not include family pension) and for gratuity, (if admissible to an employee), in proportion to the qualifying service in the Government rendered by an employee before the date of his being placed on deputation with the Corporation, the entire liability for family pension shall be borne by the Corporation.

(iii) In respect of an employee who did not hold any pensionable post but was a member of an Employee's Provident Fund Scheme, the liability for contribution required to be made by an employer, for the period prior to 1.6.1972, shall be that of the Government and with effect from 1.6.1972, it shall be that of the Corporation.

(iv) An employee shall, from the date of his absorption, cease to subscribe to his General Provident Fund account, if any, under the State Government and the amount to his credit in the fund, together with interest thereon, according to rules, till the month preceding the date of transfer of his account shall be transferred to his new account to be opened under the Corporation."

A bare reading of these Rules clearly indicates that a Government employee who was sent on deputation and who does not wish to be absorbed in the service of the Corporation was required to intimate within three months from the notification of these Rules to the Government in the Transport Department that he does not wish to be so absorbed in the Corporation. If he fails to avail of that remedy, the Rules envisage that he shall be deemed to be absorbed as a Corporation employee. Admittedly, none of the persons had exercised the option. As a result, by operation of Rule 5, the employee is deemed to have opted for absorption in the service of the Corporation, in accordance with sub-rule (2) of rule 14 from the date of expiry of three months from the date of the notification of the Rules. The consequence envisaged in Rule 8(ii) is that the Government shall bear the liability for pension which does not include family pension and for gratuity, if admissible to an employee, in proportion to the extent of the period of service with the Government rendered by an employee before the date of his being placed on deputation with the Corporation. The entire Liability for the family pension shall be borne by the Corporation. It would thus be clear that the three months' cut off period given under the Rules from the date of the publication of the Rules is the appropriate and reasonable cut off period. Any employee who failed to avail of the same, by giving notice to the Secretary in Transport Department that he did not wish to be absorbed as Corporation employee, must be deemed to be an employee of the Corporation. Corporation, therefore, is liable to bear

the liability of a deemed employee from the date mentioned in Rule 8(ii) read with Rule 4(2) and Rule 5 thereof. Resultantly, such employees are not entitled to count the period from the date of the deputation till date of absorption to be the Government employee for computation of the pensionary benefits in their favour.

The appeal is accordingly allowed and the writ petition stands dismissed. But in the circumstances without costs.

JUDIS