

CASE NO.:
Appeal (civil) 5367 of 2007

PETITIONER:
Union of India & Ors.

RESPONDENT:
Amar Singh

DATE OF JUDGMENT: 23/11/2007

BENCH:
Tarun Chatterjee & P. Sathasivam

JUDGMENT:
JUDGMENT
(Arising out of SLP (C) No. 1082 OF 2005)
P. Sathasivam, J.

1) Leave granted.
2) Challenge in this appeal is by the Union of India and its functionaries to the judgment dated 27.09.2004 rendered by a learned Single Judge of the High Court of Punjab and Haryana at Chandigarh holding that the services of the respondent-herein are governed by the Central Reserve Police Force Act, 1949 (in short 'the Act') and Rule 24 of the Central Civil Services (Pension) Rules, 1972 does not govern the service conditions is without jurisdiction.

3) The factual position in a nutshell is as follows:-
The respondent herein was enrolled as Constable in the Central Reserve Police Force on 28.02.1968. At the time of enrolment, he had submitted a certificate regarding his qualification. After completion of 29 years and 7 months of service, in order to verify the service rendered by him to determine the qualifying service with regard to pension, it has been observed by the Pay and Accounts Office that his date of birth has been amended in the School Leaving Certificate without any authority. Therefore, the Pay and Accounts Office directed OC Gurgaon to verify the authenticity of the School Leaving Certificate and intimate the actual date of birth in respect of the respondent herein from the School Authorities. The School Authorities, vide their letter No.E-2/638 dated 26.08.1996 and letter dated 05.03.1997, confirmed that the School Leaving Certificate is fictitious and bogus and not issued by them. On the basis of the report received from the School Authorities, a departmental enquiry was ordered against the respondent herein. Consequently, on 05.05.1997, Shri Puran Singh Asst. Commandant was appointed as Enquiry Officer to enquire into the charges. On completion of the enquiry, the Enquiry Officer submitted his report and found that the articles of charges framed against the delinquent were substantiated vide prosecution as well as defence evidence cited as proof and it was established that the School Leaving Certificate submitted by him at the time of enrolment was fake which was also confirmed by the concerned school. A copy of the Enquiry Report was provided to the respondent herein asking for his representation if any, within a period of 15 days, but he did not submit anything new for consideration.

After the charges leveled against the respondent herein having been proved beyond doubt, he was found guilty under Section 11(1) of the Act read with Rule 27 of the CRPF Rules, 1955, on 20.09.1997 and was removed from

service.

Aggrieved by the dismissal order, on 01.02.2000, the respondent herein filed a civil suit in the Court of Civil Judge (Sr. Division), Narnaul, inter alia, praying that the order of dismissal was bad and without jurisdiction and that he may be granted pensionary and retrial benefits.

The learned Civil Judge, on 22.10.2002, decreed the suit of the respondent herein holding that the dismissal order was passed as per law but he was entitled to pension, gratuity, provident fund etc. Aggrieved by the said judgment, the appellants herein filed Civil Appeal No. 418 of 2002 in the District Court, Narnaul praying for setting aside the same. The learned District Court, vide order dated 28.02.2004, dismissed the appeal of the appellants-herein by holding that the decision of the trial court was correct and based on proper appreciation of evidence and proper application of law and came to the conclusion that in view of the provisions of Section 2 of CCS (Pension) Rules 1972, Rule 24 of the said Rules would not be applicable to the respondent herein who is governed by the provisions of the CRPF Act, 1949. Aggrieved by the same, the appellants herein moved R.S.A. No. 3891 of 2004 before the High Court of Punjab and Haryana at Chandigarh. A learned Single Judge of the High Court, by order dated 27.09.2004, dismissed the appeal of the appellants herein holding that there was no infirmity in the order of the courts below and held that the services of the respondent was governed by the provisions of the Act and the provisions of Rule 24 of the Central Civil Services Rules does not govern the service conditions of the respondent herein. Questioning the order of the learned Single Judge of the High Court, the appellants have filed the above appeal by way of special leave.

4) We have heard Ms. Binu Tamta, learned counsel, appearing for the appellants and Ms. Shweta Kapoor, learned counsel, appearing for the respondent.

5) Ms. Binu Tamta, learned counsel appearing for the Union of India by drawing our attention to the relevant provisions of the Central Reserve Police Force Act, 1949, the Central Reserve Police Force Rules, 1955 and the CCS (Pension) Rules, 1972 submitted that the High Court committed an error in concluding that Rule 24 of the CCS (Pension) Rules would not be applicable to the respondent herein and in the absence of any provision in the CRPF Rules that provide for forfeiture of past service in case of dismissal or removal from service, the appellant was entitled to pensionary benefits after dismissal from service. On the other hand, Ms. Shweta Kapoor, learned counsel appearing for the respondent, submitted that in the absence of specific provision either in the Act or Rules governing Central Reserve Police Force, the Courts below including the High Court were right in rejecting the stand of Central Reserve Police Force. She also contended that in view of the fact that no specific order forfeiting the past service in the order of dismissal from service, the authorities were not entitled to forfeit pension or other benefits.

6) We have carefully considered the rival submissions with reference to the pleadings and also perused the annexures and records filed along with this appeal.

7) Before answering the above question, it is relevant to refer to the impugned order passed by the learned Single Judge of the Punjab and Haryana High Court which reads as under:-

\023Services of the respondent in the present case are governed by Central Reserve Police Force Act, 1949. Rule 24

of the Central Civil Services (Pension) Rules, 1972 does not govern the service conditions of the respondent.

Learned counsel for the appellants could not point out to me as to under which rule or section, forfeiture of past service of the respondent can be done in case of dismissal.

No substantial question of law involves in this appeal.

I do not find any infirmity in the judgment dated 28.02.2004 of the Additional District Judge, Narnaul.

Dismissed.\024

It is clear that the learned Judge after finding that Rule 24 of the CCS (Pension) Rules does not govern the service conditions of the respondent and finding no substantial question of law dismissed the second appeal in limine.

8) After going through the relevant provisions as pointed out by learned counsel for the Union of India, we are unable to accept the conclusion arrived at by the High Court for the following reasons:

9) It is not in dispute that the provisions of Central Reserve Police Force Act, 1949 and Central Reserve Police Force Rules, 1955 are applicable to the respondent herein. By virtue of Section 18 of the Act, the Central Government framed the Central Reserve Police Force Rules, 1955. Among the Rules, we are concerned with Chapter VIII and, more importantly, Rule 42 which speaks about pensions and gratuities for service in the Force. Rule 42 reads as follows:

\02342. Pension.- (a) Pensions and gratuities for service in the Force shall be regulated according to the provisions contained in Chapters XV to XXI and XLVII and XLVIII of the Civil Service Regulation as may be amended from time to time and the new Pension Rules promulgated in the Government of India in the Ministry of Finance Memorandum No. F.3(1)E(Spl)/47, dated the 17th April, 1950 as may be amended from time to time.

(b) Pensions and gratuities to enrolled followers for service in the Force shall be governed by provisions contained in the Central (Class IV) Services (Gratuity, Pension and Retirement) Rule, 1936 and the New Pension Rules published in the Government of India in the Ministry of Finance Memorandum No.F3(1)E(Spl)/47, dated the 17th April, 1950, as may be amended from time to time.\024

The above referred provision makes it clear that even for the personnel/force in Central Reserve Police Force, Civil Service Regulations or Pension Rules are applicable. In fact, except Rule 42 clarifying that in respect of pensions and gratuities for persons in the Force, certain provisions of civil service regulations and pension Rules promulgated Ministry of Finance, Government of India are applicable no other provision speaks about the same. Rule 24 of the CCS (Pension) Rules reads as under:-

\02324. Forfeiture of service on dismissal or removal.-

Dismissal or removal of a Government servant from a service or post entails forfeiture of his past service.

It is seen that the above provision particularly Rule 42 of the Central Reserve Police Force Rules, 1955 has not been brought to the notice of the High Court. Inasmuch as the High Court has dismissed the second appeal only on this ground, in view of the present position as rightly pointed out by learned counsel for the appellants, it is but proper to remit the matter to the High Court to consider the claim of both parties on merits.

10) Learned counsel for the Union of India placed reliance on two recent judgments of this Court, namely, Union of India and Others vs. Ghulam Mohd. Bhat, (2005) 13 SCC 228 and Ram Saran vs. IG of Police, CRPF

and Others, (2006) 2 SCC 541 and submitted that the right of pension and monetary benefits can be given only if the appointment was valid and legal. According to her, in view of the conclusion of the Courts below (trial and lower appellate Court) and in the light of the fact that the respondent who entered service by producing false educational certificate, does not deserve any sympathy or indulgence or equity from this Court. Equally learned counsel appearing for the respondent, placing reliance on the decisions of this Court in Shri Krishnan vs. The Kurukshetra University, Kurukshetra, (1976) 1 SCC 311 and Major G.S. Sodhi vs. Union of India, (1991) 2 SCC 371 submitted that irrespective of the order of dismissal/removal the respondent is entitled to pension and gratuity for the past service rendered by him. In view of our conclusion to remit the matter to the High Court, we are not expressing any opinion on merits. However, we reiterate that a person who seeks equity must come with clean hands. We also reiterate that equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false certificate by playing a fraud.

11) Learned counsel for the respondent by drawing our attention to Rule 14 of the Central Reserve Police Rules submitted that it is incumbent on the part of the authorities to verify as soon as he is enrolled in the Force and they are not permitted to do the same after 29 years and 7 months of service. The said Rule reads thus:

\02314. Verification.- (a) As soon as a man is enrolled, his character, antecedents, connections and age shall be verified in accordance with the procedure prescribed by the Central Government from time to time. The Verification Roll shall be sent to the District Magistrate or Deputy Commissioner of the District of which the recruit is a resident.\024

A reading of the said Rule clearly stipulates that after enrolment in the Force, his \021character\022, \021antecedents\022, \021connections\022 and \021age\022 shall be verified in accordance with the procedure prescribed. In other words, the said Rule enables the authorities concerned to verify the particulars with regard to the same as soon as the person concerned has been inducted into the Force. It is not stated anywhere about \023false\024 or \023fake certificate\024 of education is to be verified immediately as stated in sub-clause (a) of Rule 14. On the other hand, it is the responsibility of the person who seeks employment to place authenticated certificate about his educational qualification and community etc.

12) In view of our conclusion and of the fact that the High Court has wrongly concluded that CCS (Pension) Rules are not applicable and in the light of the fact that no discussion on merits of the case, we set aside the impugned order of the High Court and remit the same to the High Court for fresh disposal. Inasmuch as the High Court dismissed the RSA in limine and in the light of the legal position as pointed out above, the High Court is requested to decide the issue after affording opportunity to both parties. As observed earlier, both parties are free to put-forth their respective claim/stand before the High Court by placing all the relevant materials which support their case and it is for the High Court to consider the same expeditiously.

14) Civil Appeal is allowed to this extent as indicated above. No costs.