

CASE NO.:
Appeal (civil) 8128 of 2004

PETITIONER:
R.K.AGRawal

RESPONDENT:
STATE OF RAJASTHAN & ANR.

DATE OF JUDGMENT: 31/10/2006

BENCH:
Dr. AR. LAKSHMANAN & TARUN CHATTERJEE

JUDGMENT:
J U D G M E N T
With

CIVIL APPEAL No.8127 of 2004

Dr. AR. Lakshmanan, J.

The State of Rajasthan is the appellant in Civil Appeal No.8127/2004. The said appeal was filed by the State of Rajasthan questioning the validity of the judgment and order dated 30.10.2002 passed by the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur, in D.B. Civil Writ Petition no.540/1999, whereby the writ petition filed by the contesting respondent (R.K. Agrawal) had been allowed and directions had been issued to the State to pay to the respondent pension for the period commencing 26th July, 1979 to 22nd July, 1982. According to the State, the respondent was not serving the State Government during that period and, therefore, he is not entitled for pension for the said period.

The Civil Appeal No.8128 of 2004 was filed by the first respondent in C.A. No.8127/2004 questioning the correctness of the judgment of the High Court insofar as the non-grant of interest to the contesting respondent. According to the first respondent Mr. R.K. Agrawal, the High Court has failed to appreciate that the delay caused by the appellants are more than 20 years in the payment of pension and/or pro-rata benefits to the first respondent was without any fault of the first respondent and as such the first respondent was entitled to interest and damages thereon. The first respondent has claimed 18% interest per annum for the non payment.

This apart, the first respondent herein and the appellant in CA no.8128/2004, in his writ petition before the High Court, has specifically raised in paragraph 7 for the grant of pro-rata pension admissible to him in terms of Rule 158 of the Rajasthan Service Rules and in support of said contention, decision nos.5 & 6 thereunder was relied on for the period rendered by him under the Government of Rajasthan. Our attention was also invited to the relevant part of the governing Decision no.5 and the extract of Decision no.6 for the sake of enabling this Court to correctly appreciate the import and purport thereof. For the sake of convenience, we reproduce relevant portion of the Govt. Order No.F.1(48) F.D. (Rules)/68 dated 10.4.1969, Para 4, Sub Para (iii) A :

"(iii) The Provisions contained in Clause (i) and (ii) above shall not apply to a Government Servant transferred to Public Enterprises under the control of the Govt. of India. He shall, however, on his permanent absorption, be

entitled to:-

A. Pension

(a) Pension and/or Gratuity as admissible under the Rajasthan Service Rules for service rendered by him under the Government at the end of period of five years of his absorption, provided that if the Govt. Servant concerned, attains the age of superannuation, within these five years, he shall be entitled to receive the benefits, from the date of superannuation. He shall not be entitled to family pension under the Chapter XIII, XIII A and XIV of the Rajasthan Service Rules.

(b) In lieu of monthly pension admissible under (a) above the Govt. Servant concerned may opt to receive a lump sum amount worked out with reference to the commutation table obtaining on the date from which the pension will be admissible and payable. The option will be exercised from six months of absorption.

(c) Any further liberalisation of pension rules decided by the Govt. after the permanent absorption of the Govt. Servant under the Public Enterprise would not be extended to him.

(d) In cases where the Govt. Servant at the time of absorption has less than 10 years qualifying service he will only be eligible to proportionable retirement Gratuity based on length of service."

Extract of Decision no.6 was also relied on, which is also reproduced herein.

Extract of Decision No.6:

"As per the order of the FD No.F.1(48) FD (Rules) 68/dated 14.4.70 duly amended, the Pension and Gratuity admissible under clause (iii) of Decision No.5 reproduced above shall be payable to the concerned employee who has been transferred to and absorbed in a Public Enterprise under the Govt. of India after the expiry of two years from such absorption."

According to the first respondent, who is also present in the Court, an argument was advanced before the High Court in terms of Rule 158 of the Rajasthan Service Rules and that the High Court has not rendered any finding on the said contention. Likewise, the High Court has also not considered the relevance of Rules 13, 17 & 18 of the Rajasthan Service Rules, which was specifically raised by the learned counsel appearing for the State of Rajasthan before the High Court. It was submitted that the first respondent herein could not claim the pension for the period in question, namely 26th July, 1979 to 22nd July, 1982 nor this period could be counted for qualifying service because the retaining of the lien is only for the purpose that the incumbent could revert back to the service of Rajasthan Government, had he not been confirmed in the services of International Airport Authority, but that does not entitle him to count this period as qualifying service subsequent to any date beyond 26th July, 1979.

The High Court has also considered two decisions of this Court, one in the case of Welfare Association of Absorbed Central Government Employees in Public Enterprises & Anr. vs. Arvind Verma & Ors., reported in AIR 1998 SC 2862 and another in the matter of P.V. Sundara Rajan & Anr., reported in JT 2000 (5) SC 175. We have carefully perused the above two judgments. In our opinion, both the judgments are not applicable to the facts and circumstances of this case and are

distinguishable on facts and law and wrongly applied by the High Court to the case on hand.

In this Civil Appeal, the State of Rajasthan has also raised several other legal issues in support of their appeal. According to the learned counsel for the State of Rajasthan, the service of a Government Servant shall not qualify unless he is appointed and his duties and pay are regulated by the Government, or under conditions determined by the Government. He has further argued that for the purpose of sub-rule (1) of Rule 13, the expression "service" means service under the Government and paid by that Government from the Consolidated Fund but does not include service in a non-pensionable establishment, work-charged establishment and service in a post paid from contingencies, unless such service is treated as qualifying service by that Government. Though this argument was also raised before the High Court, no specific finding has been rendered by the High Court on this contention also.

We are of the opinion that since several important issues have not been decided by the High Court, we have no other option except to set aside the said judgment of the High Court, impugned in this two appeals, and remit the matter to the High Court for disposal of the same afresh. As rightly pointed out by the appellant in Civil Appeal No.8128/2004, the High Court has not considered the delay of 20 years in giving the pension and pro-rata benefits. If the delay is attributable to the Government, the appellant is always entitled for the interest. We request the High Court to consider this point also with reference to the pleadings raised by the parties to this action. Since the matter is pending before one forum or the other for more than two decades, we request the High Court to dispose of the writ petition by a Division Bench within three months from today. Both parties are at liberty to file additional documents before the High Court.

Both the appeals are disposed of accordingly. No costs.