

PETITIONER:
J&K STATE ROAD TRANSPORT CORPORATION, JAMMU & ANOTHER

Vs.

RESPONDENT:
OM PARKASH & OTHERS

DATE OF JUDGMENT: 06/08/1998

BENCH:
SUJATA V. MANOHAR, S. RAJENDRA BABU

ACT:

HEADNOTE:

JUDGMENT:

WITH
CIVIL APPEAL NOS. 1976-1681 OF 1991
J U D G M E N T

RAJENDRA BABU, J.

The respondents in each of these cases were employees of the appellant No.1 having joined the services of the Jammu & Kashmir Government Transport which was later on designated as the Government Transport. Undertaking and subsequently, the said Undertaking was converted into the Road Transport Corporation (hereinafter referred to as "the Corporation") in terms of Section 3 of the Road Transport Corporation Act (hereinafter referred to as "the Act") and the employees of the Transport Undertaking are stated to have been absorbed in the said Corporation though they were treated to be on deputation with effect from 1.9.1976 in terms of Section 45 of the Act. The State Government by an order made on 27.3.1979 called upon the employees in the Undertaking who are now serving the Corporation to convey their option regarding their services making it clear that the permanent Government servants, quasi-Government servants with 5 years or more such service as on the date of the formation of the Corporation have the option to either retain the pensionary benefits available to them under the Government Rules or to be governed by the Rules of the Road Transport Corporation insofar as it related to the benefits consequent upon retirement. In case they exercise the former option, they would be entitled to receive that pension under the Pension Rules as may be in force in the Government at the time of their retirement from the Corporation. It was further clarified on 29.3.1979 that such of the employees who do not exercise the option as stipulated in the order referred to just now, shall be deemed to have opted for service in the Road Transport Corporation and for retirement benefits the rules of the Road Transport Corporation would be applicable.

The age of retirement was 55 years as provided under the relevant rules either in the Government Civil Service or the rules of the Corporation. Subsequently, the Government amended the rules by a Notification made on 25.1.1987 providing that an employee in service on 1.1.1987 or

appointed on or after that date shall retire on attaining the age of 58 years. The J&K Civil Service Regulations were amended by inserting a proviso in between two existing provisos below Article 124 (1) and in J&K Work Charged Employees Service Rules 1972 by providing a proviso below first paragraph of rule 10. The Corporation also wanted to raise the age of retirement to 58 years and the Government accorded sanction to the same by an order made on 13th October, 1987 in the following terms:-

"8. Raising of the retirement age of the employees of the J&K State Public Sector Undertakings to 58 years with prospective effect subject to the condition that all these employees shall be screened on attaining the age of 55 years and only those of them shall be allowed to continue in service beyond 55 years as will stand the tests of physically fitness and proficiency."

The respondents, however were ordered to have retired with effect from the dates on which they attained the age of 55 years by various orders issued in the month of October, 1987.

The respondents filed writ petitions in the High Court contending that they should not have been retired on attaining the age of 55 years inasmuch as in exercising their option to continue in the service of the Corporation, they have opted for pensionary benefits under the Government rules and not the rules prevalent in the Corporation. Alternatively it was contended that in any event Corporation intended to apply the benefit arising out of the enhancement of the age of retirement in respect of the Government servants to such of the employees in the Corporation who were employees of the Government earlier and they having been continued in service, they should be deemed to have continued in the service of the Corporation until they attained the age of 58 years.

The learned Single Judge of the high Court allowed the writ petitions and quashed the relevant orders made by the Corporation declaring the age of retirement of each of the employee as 55 years. The matter was carried in appeal unsuccessfully the same having been dismissed in limine. It is against these orders these appeals have been preferred before this Court by special leave.

It is urged on behalf of the appellant that the view taken by the High court in interpreting the Government order that the age of retirement is covered in the expression "pensionary benefits" which are protected by the Rules of the Government as made applicable to the Corporation is incorrect. It was also urged on behalf of the appellants that continuation of the respondents in the service of the Corporation should not be treated as extending the age of retirement and this position was made clear as per the Circular issued on 11.3.1987 that the respondents were treated to be serving the Corporation on the basis of re-employment and not by extension of service until they attained the age of 58 years and it was made clear that the respondents had superannuated on attaining the age of 55 years. The respondents fairly contended that the meaning attributed to "pensionary benefits" would include age of superannuation and, therefore, the view of the High Court does not call for any interference.

The respondents submitted that the intention of the

Corporation was clear to apply the relevant. Government rules in respect of the erstwhile Government employees working in the Corporation and who had opted for applicability of the Government rules for their pensionary benefits, the Corporation having understood the relevant Government orders in that sense and respondents having continued in the service, the same should not be disturbed by this Court in exercise of its power under Article 136 of the Constitution of India. Reliance was also placed on the decisions of this Court in B. Prabhakar Rao and Others vs. State of Andhra Pradesh and Others 1985 (Supp) SCC 432 and Collector of Customs and Central Excise and Another vs. Oriental Timber Industries (1985) 3 SCC 85 both in regard to the wavering stand of the Corporation at different stages in not enunciating its clear cut policy and as to the nature of the relief that should be granted in a matter of this nature.

We have given our anxious consideration to the pleadings and the contentions put forth before us. We are afraid that we cannot subscribe to the view expressed by the High Court, while construing the expression 'pensionary benefits'. The said expression should be restricted to mean the amount of pension or other incidental benefits, but should not include the age of retirement. The relevant Government order pursuant to which the respondents became employees of the Corporation makes it very clear that the pensionary benefits available to them under the Government rules could be applicable insofar as it related to the benefits consequent upon their retirement. Pensionary benefit would arise only upon retirement and not before. The age of retirement is determined by a different, rule while the pensionary benefit would arise on retirement and the expression 'pensionary benefit' would, therefore, not determine the age of retirement at all. It is obvious from the reasoning of the High Court that it was also conscious of this aspect as this was spelt out in saying that pensionary benefits would be conferred only after retirement from service in accordance with rules applicable in the case. However, it felt that if the orders of the Government were applied in letter and spirit, then the age of retirement would also be covered by the expression 'pensionary benefits'. Therefore, the view taken by the High Court in this regard cannot be sustained.

We may now deal with another aspect of the matter raised on behalf of the respondents, namely, that respondents have been continued in service even after attaining the age of 55 years and were retired only on attaining the age of 58 years. This contention cannot be supported at all and becomes untenable in view of the fact that the Circular dated 11.3.1987 makes it very clear that the period for which they had worked in the Corporation should be treated as re-employment and raising the age of retirement in the Corporation will be effective only for prospective period and such of those employees who had attained the age of superannuation during that period should be deemed to have superannuated on the date after attaining the age of 55 years. It is true that while the question that the age of retirement in the Corporation should be enhanced to 58 years was under consideration of the Corporation after the Government raised the age of retirement from 55 to 58 years. The Government accorded sanction to the Corporation to raise the age of retirement only with effect from 13.10.1987 and, therefore, such of the employees as had attained 55 years during the interregnum were treated only as case or re-employment. Re-employment in such case should

arise only when employment has ceased and such cessation in the present case had arisen on attaining the age of 55 years. The regulations in the Corporation until their alteration on 13.10.1987 provide for the age of retirement at 55 years and such rules were available in the Civil Service Rules of J&K Government also. Therefore, the respondents could not have continued in service on attaining the age of 55 years and if they had continued in the service of the Corporation, it must be deemed to be taken to be on the basis of re-employment. In the circumstances of the case, we do not think the mere fact that they had been continued in service beyond the age of 55 years will not tantamount to treating them as of regular service and having retired until they attained the age of 58 years. In this view of the matter, we do not find any merit in this contention advanced on behalf of the respondents and it is rejected accordingly.

The decision in B. Prabhakar Rao and Others vs. State of Andhra Pradesh and Others 1985 (Supp) SCC 432 refers to the case of Andhra Pradesh Civil Servants whose age of retirement was originally 55 years. Thereafter it was enhanced to 58 years, further reduced to 55 years and yet again raised to 58 years. When the Government was wavering as to the fixation of age of retirement to 55 and 58 years and was not clear in its policy, certain observations were made by this Court in the aforesaid case but those are not the circumstances obtaining in the present case. It is clear that the age of retirement in the present case had been enhanced from 55 to 58 years, but before the same could be given effect to, the respondents had attained the age of 55 years and therefore, they could not be given the benefit of raising the age of superannuation retrospectively. Hence we do not think that the ratio of the said decision can have any application to the facts arising in the present case.

The reliance placed on Collector of Customs and Central Excise and Another vs. Oriental Timber Industries (1985) 3 SCC 85 is to the fact of grant of nature of relief. In the present case it is submitted that the respondents have all been given the benefit of the orders of the High court and that the respondents are small employees who are not very well-off economically to repay the amounts received by them. We do not think in this case at any rate we should accede to this request because the Corporation was throughout contesting against the position taken by the respondents. Firstly, they made their position very clear in the objections in the writ petition and when the matter was decided against them, challenged the same in appeal and when unsuccessful, approached this Court for appropriate reliefs. During the pendency of these matters on the threat of contempt proceedings, the respondents have availed of the benefits arising under the orders made by the High Court. Therefore, we do not think it proper to mould the relief as applicable to respondents in any manner other than what is natural and probable as arising in the case.

In the result, these appeals are allowed, the order made by the High court in the writ petitions as affirmed by the T.P.A. stands set aside. We direct the dismissal of the writ petitions. However, in the circumstances of the case, there will be no order as to costs.