(2014) 10 RAJ CK 0092

Rajasthan High Court (Jaipur Bench)

Case No: Civil Special Appeal (Writ) No. 339/2013 in Civil Writ Petition No. 15541/2010

L.K. Verma — APPELLANT

Vs

The State of Rajasthan — RESPONDENT

Date of Decision: Oct. 29, 2014

Acts Referred:
Constitution of India, 1950 â€” Article 226

Citation: (2014) 10 RAJ CK 0092

Hon'ble Judges: Sunil Ambwani, Acting C.J.; Veerender Singh Siradhana, J

Bench: Division Bench

Advocate: S.N. Vijayvergiya, Assistant Director, OIC, Advocate for the Respondent

Judgement

Sunil Ambwani, Actg. C.J.

1. We have heard the appellant, appearing in person and Mr. S.N. Vijayvergiya, Assistant Director, OIC, for the respondents.

2. This intra-Court Special Appeal is directed against the judgment of learned Single Judge dated 31.07.2012, by which the writ petition, filed by

the appellant/petitioner challenging the order of fixation of his pension at the time of retirement in the year 1978, was dismissed. The review

petition, filed by the petitioner, was dismissed by learned Single Judge on 18.01.2013.

3. The appellant was initially employed by the erstwhile State of Gwalior. After serving for 32 years and 8 months on various posts, he retired, on

attaining the age of superannuation, on 30.04.1978, while serving as Director, Department of Statistics, by the Ministry of Planning & Statistics, Union of India, replacing the services of the appellant to the State Government of Rajasthan for its disposal with effect from 01.05.1978, as he was

on deputation with the Union of India. His pension was fixed in accordance with the Last Pay Certificate, dated 30.04.1978, issued by the

Accountant-cum-Administrative Officer, National Sample Survey Organization field Operations Division, Department of Statistics, New Delhi. A

Pension Payment Order No. 64896(R) was issued on 30.06.1979, verifying the appellant/petitioner''s retirement from the post of Director,

Department of Economics & Statistics, Government of Rajasthan, with his last pay drawn as Rs. 1900/- with effect from 19.12.1979.

4. On 14.11.2008 i.e. after more than 30 years after issuance of the Pension Payment Order dated 30.06.1979, in which the date of

commencement of the pension was given as 01.05.1978, the appellant/petitioner made a representation to the Director of Pensions, Government

of Rajasthan, for revision of his original pension on account of a mistake in calculating the length of service; adopting the last pay drawn, and

authorizing the payment of arrears resulting from the correction from 01.09.1978. In the representation, the petitioner stated that while searching

for the documents for filing the application for revision of pension of pre-1996 pensioners, who are in receipt of pension less than 50% of the

minimum of revised pay scale in force as on 01.09.1996, and looking into the Pension Payment Order, he found that neither his length of service

has been correctly counted, nor it is based on the last pay drawn, and actually paid to him by the Rajasthan Government, which needs to be

revised first and arrears paid before it can be determined whether it is less than 50% of minimum of pay scale in force as on 01.09.1996.

5. The appellant/petitioner alleged that his initial appointment was from 05.05.1946 in the then Department of Industries & Supplies, Government

of India. Earlier to this, he was appointed in the Post War Reconstruction Department of the Gwalior Government, then an Indian State, and later merged with the Madhya Pradesh State. His past services rendered under the Indian State, which had not become a part "B" State, or under a

part "B" State, by the former State servants, who were permanently absorbed in the Central Government service in the ordinary course, should

have been treated as equivalent to the Government service. His services with the Gwalior Government, as per the appointment letter, should have

been counted from 01.07.1945 to 04.05.1946, prior to his appointment in the Department of Industries & Supplies, Government of India with

effect from 05.05.1946. The appellant/petitioner further submitted in the representation that in Delhi Administration, he served under the Chief

Commissioner, after being selected by the Union Public Service Commission from 01.06.1948 to 10.02.1956, where he was confirmed as

Statistical Officer & Statistics Authority for Delhi. He then served as Head of the Department, Bureau of Economics & Statistics, Delhi State. He

thereafter served in the Government of Rajasthan as Director of Economics & Statistics, after being selected by the Rajasthan Public Service

Commission, from 11.02.1956 to 18.03.1965, and was confirmed on the post of Director with effect from 11.02.1957 with his lien in the post in

Delhi State until his confirmation. The appellant/petitioner thereafter served as an Expert in Industrial Statistics engaged by United Nations, advising

the Government of Tanzania, East Africa from 19.03.1965 to 18.03.1967 on deputation from Government of Rajasthan. For this period, the

pension contribution was paid by him. On his return from deputation, he served as Director of Economics & Statistics in Government of Rajasthan

from 19.03.1967 to 31.08.1973.

6. The appellant/petitioner was sent on deputation to the Government of India, where he served in the Ministry of Planning, Department of

Statistics, National Sample Survey Organization, as Director, Field Operations Division, New Delhi from 01.09.1973 to 31.08.1978, on a post,

which was provided for selection from IAS Central services and State services. He was initially selected on deputation for a period of two years, which was extended for three years upto 31.08.1978, or the age of superannuation, whichever was earlier. The Government of Rajasthan, on the

request of the Government of India, extended the age of superannuation by four months from 01.04.1978 to 31.08.1978, to coincide with the

tenure of five years, in public interest.

7. In the representation, made by the petitioner for the first time 30 years after issuance of Pension Payment Order dated 30.06.1979, it was

submitted that due to difference of interpretation on the tenure of his deputation after the Government of Rajasthan had extended the age of

superannuation coinciding with the term of tenure as Director, Field Operations Division, as approved by the Appointment Committee of the

Central Cabinet, and the view taken by the then Secretary, holding the additional charge in the Statistics Department, the Appointment Committee

wanted him to complete the tenure upto 31.08.1978. He stated that there was disagreement on the date of appellant/petitioner''s superannuation,

and since there was some litigation pending in the Court, the Chairman of the Governing Council wrote a letter to the then Cabinet Secretary, that it

was at his initiative, and on the advise of Shri Chibbar, that the petitioner approached the Government of Rajasthan, and the Government of

Rajasthan agreed, in good faith, to give him extension of four months. The Cabinet Secretary did not intervene, as the matter was sub-judice, and

thus the only question which remained to be decided by the Government of Rajasthan, was how to treat the period of his absence from duty, when

the matter was sub-judice in Delhi High Court. He submitted that there was no break in his service from 01.07.1945 to 31.08.1978, and thus the

length of his service was 33 years and 8 months.

8. The petitioner was also aggrieved with the treatment of his last pay drawn, on which his pension was fixed. According to the appellant/petitioner,

when he closely looked at his Pension Payment Order, he did not find as to what amount had been taken for calculation of his pension, however there is a statement outside an encircled portion, that his pay was counted as Rs. 1900/- per month upto 31.08.1978, with the remarks that LPC

wanting, the recovery may be made. He submitted that he was never supplied with a copy of the authority letter by the Accountant General. His

last pay drawn was treated as Rs. 1900/- per month, and when it was multiplied by 32 years of service and divided by 80, it gives the basic

pension on 01.09.1978, as Rs. 760/- per month. The date of the order declaring the date of his retirement after completion of his tenure and

granting half pay leave for the period from 01.05.1978 to 31.08.1978, after the Court''s order, was 31.03.1979. The payment made to him for

last four months, immediately before his retirement, was sanctioned by the State of Rajasthan, and that leave encashment should have been taken

into consideration for fixing his pension. According to the appellant/petitioner, the last pay paid to him by the Government of Rajasthan was Rs.

2450/-, on which his pension should have been fixed, and not on Rs. 1900/- per month.

9. The appellant/petitioner submitted reminders to his representation on 16.04.2009, and thereafter on 17.06.2009, which were forwarded by the

Directorate, Pension & Pensioners Welfare Department, to the Secretary, Planning & Statistical Department, Government of Rajasthan. His

representation was rejected by the Government of Rajasthan on 25.03.2010, on the ground that on the advise given by the Finance Department,

contribution to his pension was not received from the Gwalior State to the State Government for the period from 01.07.1945 to 04.05.1946, and

thus the said period cannot be counted for calculating his pension. It was further stated in the impugned order that on superannuation, the last pay

drawn is not treated to be the pay drawn on deputation, but on the post which was to be held by the petitioner, if he was not sent on deputation,

and thus it was not possible to make any amendment in the last pay drawn, which was fixed, according to the service period of the petitioner, 30

years ago.

10. The writ petition was filed by the petitioner on the ground that his actual length of service was not taken into consideration as well as the last

pay drawn, for fixing his pension. The denial of re-fixation of pension, and consequential benefits has resulted into gross injustice with him. So far

as service rendered by the petitioner in Gwalior State from 01.04.1945 to 04.05.1946 is concerned, the pension contribution was to be

automatically allocated to the concerned State, and was not paid. On confirmation with the Delhi Administration, the said period of service was to

be automatically allocated, and thus the said period deserved to be counted for pension. Further, the appellant/petitioner has challenged the order

on the ground that the last pay drawn, ought to have been taken into consideration as Rs. 2475/- (corresponding pay Rs. 37400-76000 with pay

ban of Rs. 12000/-) per month of the post of Director, FOD-NSSO, and not the assumed pay of Rs. 1900/- per month. The State of Rajasthan

has ultimately paid the amount of leave, for the period 01.05.1978 to 31.08.1978, on the last pay drawn at Rs. 2475/- per month.

11. In ground "e" in the memo of writ petition, it was stated that the respondents have wrongly treated the petitioner on deputation, whereas he

was not sent on deputation. It was on transfer for appointment to a new tenure post, initially for a period of two years, which was extended for a

further period of three years, for which approval was given with reference to Rule 142 of the Rajasthan Service Rules, 1951 (in short, "the Rules

of 1951"). No rule of deputation was ever applied in the case of the petitioner, and that the word "deputation" is not defined in Section 7 of the

Rules of 1951.

12. In ground "g", it is stated that the last post held by the petitioner for the period from 01.09.1973 till 31.08.1978 was Director, FOD-NSSO,

for which approval was given, with the sanction of the Governor under Rule 144A. For the said period, the appellant/petitioner was given the pay

in the pay scale of Rs. 2000-75-2250/- with dearness allowance and CCA, and further on the basis of the Last Pay Certificate, issued by the

Central Government, the pay for the last day was paid as Rs. 2475/-.

13. Learned Single Judge, after referring to the facts of the case, and the grounds on which the impugned order rejecting the petitioner''s

representation was challenged, found that the grievance of wrong fixation of pension was made after a lapse of 30 years, in between which the

petitioner never protested to the fixation of his pension. He found that the petitioner''s claim for re-determination of his pension, in view of Naresh

Kumar Vs. Department of Atomic Energy and Others, , was not worthy on consideration. In Naresh Kumar vs. Department of Atomic Energy

And Others (supra), the Apex Court upheld the order of the Bombay High Court, in which similar claim with delay of four years, was rejected on

the ground of laches, with the observation that even if an employee makes representation after representation, the delay does not entitle him to

consider his claim. In the present case also, the petitioner sought revision of pension after 32 years, without explaining the delay.

14. Learned Single Judge thereafter, considering the second issue as to on what salary, pension should have been fixed, held that the petitioner was

appointed by transfer on a tenure post, and thus salary which he was receiving at the time of his retirement, should have been taken into

consideration for the purpose of determination of pension. The respondents have considered the last wages which the petitioner would have drawn

in the State services as his lien was maintained. The petitioner was not appointed by transfer, otherwise his pension would have been given by the

last employer. It was held that an employee is entitled to the pensionary benefits of the post, on which his lien is maintained, and not of the post on

which he was sent on deputation. He may be given higher post on deputation, but so long he maintain his lien on the same post in the parent

department, he is permitted to draw the pension of the post, on which he continues his lien in the parent department, failing which discrimination

may be caused. Lastly, learned Single Judge did not accept the plea that the petitioner was appointed by transfer inasmuch as if such a prayer is accepted, then there is no reason for the petitioner to claim pension from the State, rather he should have claimed pension from his last employer.

The writ petition was accordingly dismissed on the ground of laches.

15. The appellant/petitioner was advised, on which he filed a review application, which was dismissed by learned Single Judge on 18.01.2013.

Learned counsel, arguing the review petition, attracted the attention of learned Single Judge by red herring arguments to the merits of the case.

Learned Single Judge, after dismissing the writ petition on gross laches, waylaid into considering the grounds of challenge to the re-determination of

pension on the merits of the matter. He appears to have been swayed by the arguments that the case is covered by the judgment of the Apex

Court in D.S. Nakara and Others Vs. Union of India (UOI), , and proceeded to consider the merits even after referring to the grounds of

unexplained laches, on which he had dismissed the writ petition. He has observed that there is no doubt that memos have been issued pursuant to

the recommendations of the Sixth Pay Commission, to provide pension may not be less than 50% of the current pay/pay band + grade pay of the

last post held by an employee; the memos have to be examined in consonance to the Rules applicable for determination of pension. After referring

to Rule 250-C(B)(2), he held that emoluments of an employee while on foreign service, would be as would have been drawn under Government, if

he had not been sent on deputation, and that the petitioner''s pensionary benefits were calculated accordingly and which are not less than 50%, as

per the Memorandums dated 12.09.2008 and 22.05.2008. Learned Single Judge thereafter considered the arguments that the petitioner had set

up a case for appointment, and not on deputation. The argument was not accepted on the ground that the memorandums issued in the year 2008,

do not cover fixation of pension of the year 1978/1979, and that the memos have to be applied on the salary, on which the petitioner''s pension

was determined at the time of retirement. The review petition, consequently, was not entertained, and was dismissed (rejected).

16. The appellant/petitioner before us, claims that he is 92 years old. On 10.09.2014, the Advocates were abstaining from work, and thus

considering his age and tenacity, we allowed him to argue at length, in which he referred to almost all the documents beginning from the period

when he was appointed, upto the date when he retired on attaining the age of superannuation. During the course of arguments, he referred to the

orders of his appointment in Gwalior State; his appointment in the Department of Industries & Supplies, Government of India, dated 23.04.1946;

the orders by which he was appointed after being selected by the Union Public Service Commission on the post of Statistical Officer and Statistics

Authority for Delhi Administration; his appointment in the Department of Economics & Statistics, Government of Rajasthan from 11.02.1956, after

his selection by the Rajasthan Public Service Commission; his posting as an Expert with United Nations in Tanzania, and thereafter to the Director

of Economics & Statistics, Government of Rajasthan, on his return from deputation. He also referred to the orders, by which he was serving as

Director, Field Operations Division, National Sample Survey Organization, New Delhi on deputation, the post held by the officers of IAS, and the

orders by which the Government of Rajasthan had extended his age of superannuation. The appellant/petitioner however has not annexed, nor has

referred to the details of the litigation, which were pending, and on account of which, required clarification was not given for the date of his

superannuation. The appellant/petitioner has also made reference to demonstrate that his last pay paid by the Government of Rajasthan, was Rs.

2450/-, on which his pension was to be fixed, and not Rs. 1900/- per month.

17. We are not persuaded to go into the merits of the matter inasmuch as the appellant/petitioner has not explained the long delay of more than

three decades, after which he made a representation for re-determination of his pension. Admittedly, the appellant/petitioner superannuated in the

year 1978. He made his first representation for revision of his pension on the ground that on 14.11.2008, when he started searching for the documents for filing the application for revision of pension of pre-1996 pensioners, he discovered the mistake in fixation of his pension. There is no

explanation whatsoever for the long delay of about 30 years, in which the appellant, as a retired person, had not raised any dispute regarding date

of his superannuation, and the last pay drawn by him. It was by way of courtesy to the pensioner that the department had communicated him the

reasons, on which it was not inclined to revise the pension, namely that his contribution for the period he had served under the Gwalior State, was

not received, and further that he has been paid the pension on the pay last drawn on the post, on which he had held his lien, and not on the post

which was held by him on deputation. These reasons however would not give the appellant/petitioner, a fresh period of limitation, within which he

could have challenged the Pension Payment Order, issued in the year 1979.

18. In Naresh Kumar vs. Department of Atomic Energy And Others (supra), the Supreme Court held in paragraphs 14 and 15 as follows:-

14. In the writ petition before the High Court, the appellant had prayed for a direction to the respondents to accept his option for combined

service pension. Even the Circular issued on 27-1-2003 (Annexure P-7) clearly stated that in case of reemployment of the military pensioner in

civil service, the pensionary benefits for the second spell of service shall not be subject to any limitation as per the provisions of Rule 18(3) of the

Rules. In other words, it is not relatable to the service rendered in DAE vis-a-vis combining the same with the Corporation service. The relief

claimed even in the present petition thus, is misconceived and cannot be granted on the facts of the case.

15. Merely because the case of the appellant was forwarded by the Department vide its Letter dated 27-1-2007 for favourable consideration,

would not vest any right in the petitioner and can hardly be of any material consequence. If an employee keeps making representation after

representation which are consistently rejected then the appellant cannot be claim any relief on that ground. We are unable to find any merit in the contention raised before us and we are also of the view that the High Court was not in error while dismissing the writ petition even on the ground of

unexplained delay and laches. The representation of the appellant was rejected as back in the year 1999 and for the reasons best known to the

appellant he did not challenge the same before the court of competent jurisdiction.

19. The law of limitation is not applicable to the proceedings in a writ jurisdiction, however the Courts have imposed a restriction on the exercise of

its extraordinary powers under Article 226 of the Constitution of India, in refraining to entertain claims in service matters, which are stale, for which

the claimants have kept quiet for a long period of time. The law of repose does not permit the writ Courts to examine the prayers of the writ of

certiorari, in respect of the orders, which were passed long ago, and for which, no steps were taken by the claimant to seek redressal in Courts of

law. The Court cannot examine the matters on merits, if the claimant has, by his conduct, acquiesced to the claim, however good a ground may be

to seek a writ of certiorari. The extraordinary powers of the writ Court are reserved only for those who are vigilant for their cause.

20. For the aforesaid reasons, the Special Appeal is dismissed.