

RAJASTHAN AGRICULTURAL UNIVERSITY

A

v.

RAM KRISHNA VYAS

MAY 4, 1999

[S.S. MOHAMMED QUADRI AND S.N. PHUKAN, JJ.]

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Service Law

University of Udaipur (Sukhadia University) Payment of Gratuity to Employees Rules, 1979—Calculation of Gratuity—Rules of University including dearness allowance and adhoc dearness allowance with basic pay for calculation of gratuity—University denying benefit of Dearness Allowance to Respondent while calculating gratuity—Revision of pay scales and increasing limit of gratuity in accordance with State Government Rules—Whether, amounts to adoption of State Civil Service Rules—Held, No—High Court holding rules of Government employees would not be applicable in case of University employee—Upheld—Rajasthan Civil Services (Revised pay Scales) Rules, 1987.

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Practice and Procedure

Appellant filing documents alongwith written submissions not filed with SLP nor argued orally—Held, point cannot be considered.

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The Respondent who was an employee of the Appellant University retired from service in 1992. Since his provisional pension was subsequently reduced, the respondent filed a Writ Petition before the High Court for a direction to the appellant to finalise the retrial benefits such as pension, gratuity and other retrial dues on the basis of actual last pay drawn, dearness and adhoc dearness allowances. The Respondent contended that the gratuity was calculated only on the basic pay instead of calculating on the pay last drawn including the dearness allowance and *adhoc* dearness allowance. The appellant contended that provisional pension was granted on the basis of undertaking given by the respondent that excess benefits if any would be refunded. The appellant submitted that rules stood amended as per rules of the State Government and as the Government rules define the emoluments as basic pay for the purpose of payment of gratuity no payment of gratuity on dearness allowance can be allowed. The Writ Petition was allowed by

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A Single Judge holding that rules regarding calculation of basic pay in respect of Government employee would not be applicable in case of employee working under the University and therefore, while calculating the gratuity, basic pay alongwith amount of dearness allowance should be taken into consideration. The Writ Appeal by appellant was dismissed by the Division Bench.

B On appeal before this Court, the appellant contended that as the Board of Management of the appellant by resolution No. 31 dated 12.5.1988 which was formally notified on 16.6.1988 had adopted increase in the payment of gratuity as per Rajasthan Government Notification to the employees and the respondent is not entitled to get the benefit of dearness allowance and *ad-hoc* dearness allowance while calculating total emoluments for the purpose of granting gratuity, and that as the pay-scales of the appellant were revised in terms of Rajasthan services (Revised Pay-Scales) Rules, 1987, by an order dated 5.3.1987, the Rajasthan Civil Services Rules shall apply to all employees of the appellant University. In the written submissions the appellant filed a resolution dated 4.12.1987 in which it was resolved that the gratuity rules of Rajasthan State Government Services (second amendment) Rules, 1987 with effect from 1.1.1986 and modified from time to time will be followed by the University till separate service rules are framed.

Dismissing the appeal, the Court

E HELD : 1. The High Court rightly held that under rules of the University while calculating total emoluments of the respondent for the purpose of gratuity not only the basic pay but also the dearness allowance and *ad hoc* dearness allowance have to be taken into consideration. [1997-A-B]

F 2. Though alongwith the order of the appellant dated 16.6.1988 a copy of the Rajasthan Services (second amendment) Rules, 1987 was also extracted, by no stretch of imagination it can be said that by the above order, the University of Udaipur (Sukhadia University) payment of gratuity to employees Rules, 1979, as adopted by the appellant-university, were also amended in respect of other provisions. By that order only maximum limit of gratuity was increased. [1995-F-G]

G 3. The Board of Management by their Resolution and order dated 5.3.1987 only revised the pay-scales of the University employees and did not adopt the Rajasthan Civil Services (Revised Pay Scales) Rules, 1987 in toto. [1996-B]

H 4. The point urged by the appellant in the written arguments was

neither urged at the time of oral arguments nor taken as a ground in the Special Leave Petition. Therefore, the effect of resolution dated 4.12.1987 is not considered, as it was proposed to take away the vested right of respondent which was affirmed by the High Court. [1996-G-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2612 of 1996.

From the Judgment and Order dated 12.9.95 of the Rajasthan High Court in S.A. No. 572 of 1995.

Altaf Ahmed, Additional Solicitor General, A.P. Dhamija, Sushil Kr. Jain, A. Misra, Pradeep Aggarwal and Umesh Bohre for the Appellant.

Pallav Shishodia for A.P. Medh for the Respondents.

The Judgment of the Court was delivered by

S.N. PHUKAN, J. This appeal is directed against the judgment and order of the Division Bench of the Rajasthan High Court at Jodhpur dated 12.09.95 passed in Special Appeal No. 572 of 1995. By the impugned judgment the Division Bench dismissed the special appeal filed by the present appellant namely Rajasthan Agricultural University constituted by Rajasthan Agricultural University, Bikaner Act, 1987. Initially by an Act Udaipur University was constituted which was renamed as Mohanlal Sukhadia University. Later Mohanlal Sukhadia University was bifurcated and present appellant university was founded by an Act of Legislature.

The respondent herein was an employee of the appellant university and retired from service on superannuation on 9th December, 1992. He was granted provisional pension which was subsequently reduced. Another grievance of the respondent was that the gratuity was calculated only on the basic pay instead of calculating on the pay last drawn including the dearness allowance and adhoc dearness allowance in accordance with the provisions of relevant rules. The respondent, therefore, prayed that an appropriate writ/direction be issued directing the appellant - university to finalise the retiral benefits such as pension, gratuity and other retiral dues on the basis of actual last pay drawn, dearness and *ad hoc* dearness allowances.

In the counter filed before the High Court by the present appellant - university the actual date of retirement was disputed and according to the

A appellant, the respondent herein actually retired on 30th November, 1992. Regarding provisional pension it was urged before the High Court that provisional pension was granted on the basis of undertaking given by the respondent that excess benefits, if any, would be refunded. It was also urged that provisional pension was found to be more than what was due. Regarding rules of the university the plea taken before the High Court was that rules stood amended as per rules of the State Government and as the Government rules define the emoluments as basic pay for the purpose of payment of gratuity, no payment of gratuity on dearness allowance can be allowed. Various other pleas had been taken and it is not necessary to state at this stage and we shall deal with those submissions at the appropriate stage, if necessary.

The learned Single Judge in Writ Petition No. 3242 of 1993 by order dated 09.03.1995 inter alia was of the view that the rules regarding the calculation of basic pay in respect of Government employee would not be applicable in case of employee working under the university and therefore, for the purpose of calculation of gratuity of the respondent who was an employee of university, rules of the university shall have to be taken into consideration. It was directed that in terms of the rules of the university while working out gratuity of the respondent apart from the basic pay, amount of dearness allowance and ad-hoc dearness allowance should be counted.

Being aggrieved appeal was filed before the Division Bench which was dismissed as stated above.

We have heard Mr. Altaf Ahmed, learned Addl. Solicitor General for the appellant and Mr. Pallav Shishodia, learned counsel for the respondent. We may state here that after the argument was over written submissions were filed on behalf of both the parties.

To appreciate the contentions raised before us, we may quote below relevant portions of rules etc. The notes 1 and 2 of rule 11 of the University of Udaipur (Sukhadia University) Payment Of Gratuity to Employees Rules, 1979 run as follows:-

"1. In the case of an University employee retiring on or after 31.3.1986. the term emolument wherever it occurs under these rules shall mean the emoluments which he was drawing immediately before retirement or on death from the service and include the following for purpose of calculation:-

a/ Pay as defined in Rule 7(24) of RSR b/ the amount of dearness allowance, and c/ the amount of ad hoc dearness allowance as amended from time to time. A

2. For the persons retiring prior to 31.03.1986, the word 'emoluments' wherever it occurs means emoluments which an employee was receiving immediately before the date of his release from University service on superannuation or retirement after extension in service or termination or death and includes:- B

a/ Basic pay in the time scale; b/ Personal Pay which is granted in lieu of loss of substantive pay; c/ Special pay attached to a post; and d/ Dearness pay, if any." C

We extract Annexure-C to the writ petition:-

"Minutes of the fourth meeting of the Boards of Management of the Rajasthan Agricultural University, Bikaner held on May 20, 1980 at 11.30 A.M. at the Krishi Vigan Kendra Peschwal Farm, Bikaner. xxx xxx D

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RAJAU/BOM-4/88-2/47

Considered adoption of Statutes of Sukhadia University, Udaipur for RAJAU till new Statutes of the Sukhadia University, Udaipur be adopted till the Statutes for RAJAU are framed and....." E

We extract Annexure-B to the writ petition:

"Sukhadia University: Udaipur No.F/Rules/PPS-87/87-II/430 dated 5.3.87. F

ORDER

In pursuance of Board of Management Resolution No.15 dated 21.2.87 the Vice Chancellor is pleased to revise the existing Pay Scales of University employees in accordance with Rajasthan Civil Services(Revised Pay Scale) Rules,1987 published in Rajasthan Raj-Patra, Spl. Bulletin, Part-IV Sub-div. I dated 2.2.87. These revised pay scales would be applicable to the employees from 1.9.86. The revised pay scales would not be applicable to the employees getting U.G.C. pay scales....." G

We extract Annexure-A to the writ petition: H

A “Finance 9Gr.2) Department Notification: No.F1(68) FD(Gr.2)/86 Jaipur dt.2.2.87 Sub: Rajasthan Service Rules:

.....These rules may be called the Rajasthan Service (Amendment) Rules, 1987.

B They shall be deemed to have come into force with effect from 1.9.86.

In the said rules-

7(24). Pay - means the amount drawn monthly by a Government servant as - (i) the pay other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre, and (ii) special pay and personal pay, and (iii) any other emoluments which may be specially classed as pay by the Governor.”

D We extract Annexure-G to the writ petition:

“Rajasthan Agriculture University: Bikaner. No.FII(3)/RAJAU/C/88/31/39-78 dt.16.06.88

Office Order

E Sub: Payment of Gratuity to employees rules, 1970.

In pursuance of the Finance Committee resolution No. 4 dated 20.5.88 and duly approved by the Board of Management on 20.5.88, the Vice Chancellor is pleased to order that the Government of Rajasthan Finance (Gr.2) Department Notification No.F. 1 (29) FD (Gr.2) 87-I dated 20.10.87 regarding raising the maximum limit of death-cum-retirement it Gratuity from Rs. 50,000 to Rs.75,000 may be made applicable to University employees from 1.9.1986 as per Govt. order referred above.”

G There is no dispute at the bar regarding position of the rules and the resolution etc. extracted above.

The short question to be decided in the present appeal is whether while calculating the total emoluments of the respondent for the purpose of gratuity in addition to pay as defined in Rule 7(24) of the Rajasthan Service Rules, dearness allowance and ad hoc dearness allowance which the respondent H was drawing at the time of the retirement, have to be added or not?

The University being a body corporate having perpetual succession has got a separate legal entity and as such rules framed by the government shall not be applicable unless specifically adopted by the University in accordance with the provisions of the Act by which the University was constituted. A

From the resolution of the meeting of the Board of Management of the appellatant-university dated 20th May, 1980 we find that the appellatant-university adopted the statutes of the Sukhadia University therefore, the University of Udaipur(Sukhadia University) Payment of Gratuity to Employees Rules, 1979 are applicable to employees of the appellatant-university. As respondent retired from service after 31.3.1986, note (1) to the rule 11 is applicable. Therefore, while calculating the emoluments for the purpose of payment of gratuity the three clauses namely: (a), (b) and (c) of the said note (1) have to be applied. Thus, the total emoluments for the purpose of gratuity of the respondent would include (1) pay as defined in rule 7(24) of the Rajasthan Services Rules, (2) amount of dearness allowance and (3) amount of ad hoc dearness allowance as amended from time to time. B C D

According to Mr. Ahmed, learned Addl. Solicitor General for the appellatant-university, as the Board of Management of the appellatant-university by Resolution No. 31 dated 12.5.1988 had adopted increase in the payment of gratuity to the employees and the respondent is not entitled to get the benefit of dearness allowance and adhoc dearness allowance while calculating total emoluments for the purpose of granting gratuity. This resolution was formally notified by the order dated 16.6.88 which was extracted above. E

On basis of the above order dated 16.6.88 we have no hesitation to hold that only maximum limit of the amount of gratuity was raised from Rs. 50,000 to Rs. 75,000 w.e.f 01.09.1986. F

Though along with the order of the appellatant- university dated 16.6.88 a copy of the Rajasthan Services (second amendment) Rules, 1987 was also extracted, by no stress of imagination it can be said that by the above order, the University of Udaipur(Sukhadia University) Payment of Gratuity to Employees Rules, 1979, as adopted by the appellatant-university, were also amended in respect of other provisions. By that order only limit of gratuity was increased. G

Mr. Ahmed has further contended that as the pay-scales of the appellatant-university were revised in terms of Rajasthan Services (revised pay-scales) H

- A Rules, 1987 by an order dated 05.03.1987 as extracted above, Rajasthan Civil Services Rules shall apply to all employees of the appellant-university.

Reading of the above order dated 05.03.87 makes it clear that the Board of Management by Resolution dated 21.02.1987 only revised the pay-scales of the university employees and did not adopt the Rajasthan Civil Services(revised pay-scales) Rules, 1987 in toto.

- B As stated above after the conclusions of oral arguments, written submissions on behalf of both the parties were filed. Along with written submissions explanatory note and resolution of the Board of Management dated 4.12.87 have been annexed. By this resolution of the Board of Management it was resolved by the Board that the gratuity rules of Rajasthan State Government Services (second amendment) Rules, 1987 with effect from 1.1.86 and modified from time to time will be followed by the university till separate service rules are framed.

- C We quote below a paragraph from the explanatory note submitted to the Board:

D “The Rajasthan Agricultural University has also adopted the Revised Pay Scales, 1987 effective from 1.9.86 for its employees and also adopted the revised gratuity Rules in which the amendment has been raised from Rs. 50,000/- to 75,000/- vide order dated 16.6.88, and the payment of gratuity is also being made accordingly to the amended rules. But one retired employees Sh. R.K. Vyas, Lab Assistant has challenged these rules in High Court. The Hon’ble High Court in its judgment dated 9.3.95 held that RAU has not adopted GOR Gratuity Rules in its entity in replacement of M.L.S. University, Udaipur gratuity rules-70. In view of this, calculation for the purpose of gratuity shall be governed by notes contained in Rule 11 of M.L.S. University Gratuity Rules. Thus gratuity shall be calculated on the basis of Pay+D.A.+Adhoc D.A.”

- E In the written argument, it has been stated that in view of the above resolution of the Board, the respondent is not entitled to get the relief claimed. This point was neither urged before us at the time of arguments and nor taken as a ground in the special leave petition. Therefore, we are not inclined to consider the effect of resolution as it was proposed to take away the vested right of respondent which was affirmed by the High Court.

- F For the reasons stated above, we hold that the High Court rightly held

that under rules of the University while calculating total emoluments of the respondent for the purpose of gratuity not only the basic pay but also the dearness allowance and *ad hoc* dearness allowance have to be taken into consideration. A

The present appeal has no merit and accordingly it is dismissed. Considering the facts and circumstances of the case parties are directed to bear their own costs. B

V.M.

Appeals dismissed.