

PANCHI DEVI

v.

STATE OF RAJASTHAN & ORS.
(Civil Appeal Nos. 7556-57 of 2008)

DECEMBER 18, 2008

[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

SERVICE LAW:

RAJASTHAN PUBLIC WORKS DEPARTMENT (B & R)
INCLUDING GARDEN IRRIGATION, WATER WORKS AND
AYURVEDIC DEPARTMENT OF WORKCHARGE
EMPLOYEES SERVICE RULES, 1964

r.22A (6) – Family pension – Claimed by wife of a work charge employee after 14 years of his death – Work charge employee died in 1987 – r.22-A providing for pensionary benefits to work charge employee coming into force w.e.f. 17.9.1980 – Liberty to wife of deceased work charge employee to exercise option effective from 1.9.1982 – Rule made prospectively applicable – Held: The question of exercising the right of option under rule 22A would arise only if the employee was eligible therefor on the date of coming into force of the rule – The rule has not been given retrospective effect and, therefore, the question of extending the benefit to those who were not otherwise entitled thereto does not arise.

ADMINISTRATIVE LAW:

Delegated legislation – Held is ordinarily prospective in nature – A right or a liability which was created for the first time, cannot be given a retrospective effect – Furthermore, the intention of the State in giving a prospective effect to r.22A is clear and explicit – Rajasthan Public Works Department (B & R) Including Garden Irrigation, Water Works And Ayurvedic Department of Work charge Employees Service Rules, 1964.

CONSTITUTION OF INDIA, 1950:

- A *Articles 14 and 226 – Held: Article 14 is a positive concept – No relief can be granted to the claimant on the basis of the decision relied on as the same did not lay down correct law – Even otherwise the writ petition as also the review petition were rightly not entertained on the ground of delay and laches on the part of the claimant – Delay/laches.*

B CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7556-7557 of 2008.

C From the final Judgment and Order dated 15.12.1998 and 7.4.2005 of the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in Special Appeal No. 295 of 1997 and D.B. Civil Review Petition No. 43 of 2004 in D.B. Civil Special Appeal No. 295 of 1997.

Nilofar Qureshi, Kiran Kapoor and Vipin Kumar (for Shankar Divate) for the Appellant.

D Milind Kumar and Mukul Kumar (for Aruneshwar Gupta) for the Respondents.

The following Order of the Court was delivered

ORDER

E 1. Leave granted.

F 2. Appellant's husband, who was working as work charge employee in the Public Works Department in the year 1958 and confirmed on the said post vide order dated 22.8.1972 with effect from 31.3.1970, died in the year 1978. Appellant after 14 years of her husband's death claimed family pension of her husband under Rule 22A of the Rajasthan Public Works Department (B&R) including Garden, Irrigation, Water Works and Ayurvedic Department Work Charge Employees Service Rules, 1964 (for short 'the Rules) which came into force with effect from 17.09.1980. Since, no order was passed on her representation, she filed a writ petition bearing No. 6890 of 1992 before the High Court of Rajasthan, Jaipur Bench, Jaipur. A learned Single Judge of the High Court dismissed the said writ petition. Appellant thereafter filed a Special Appeal bearing No. 295 of 1997 before the Division Bench of the High Court.

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By reason of the impugned order dated 15.12.1998, the said Special Appeal has been dismissed, inter alia, on the premise that the appellant had approached the High Court after 14 years of her husband's death and since all the dues admissible to the appellant's husband were duly settled during his life time and the widow of the deceased (appellant herein) received all the dues including gratuity and, thus, the question of her entitlement to family pension does not arise. A B

3. Being aggrieved, the appellant filed a review petition No.43 of 2004 along with an application for condonation of delay. The said review application has also been dismissed on the premise that the application for condonation of delay in filing the review petition has been dismissed. C

4. Learned counsel appearing on behalf of the appellant, however, would draw our attention to the fact that in the case of one Prabhati Devi, whose husband was also working as a work charge employee and did not opt for pension, a learned Single Judge of the same High Court held that the benefit of the said rule can be claimed even by the widows whose husbands died prior to coming into force of the said Rules. Before the said learned Judge, a contention was raised that the sub-rule (6) of Rule 22A having prescribed a date namely 01.09.1982, the same was prospective in nature. The said contention was repelled stating: D E

I am not impressed with the submission of learned Additional Advocate General that the widows of the work charged employees died after September 1, 1982 were only entitled to opt for pension. I do not find any difference between two widows to work charged employees, one who died prior to September 1, 1982 and another who died after the said date. Interpretation of sub rule (6) of Rule 22A, that discriminates between the two widows cannot be accepted. Language of sub rule (6) is very clear and it mandates that with effect from September 1, 1982 the widows of deceased work charged employees who were permanent and eligible for CPF but died without opting for pension, could also exercise option for pension." F G H

A 5. The special appeal filed by the State of Rajasthan
against the order of the learned Single Judge was dismissed
as withdrawn by the High Court on the plea that issue was
settled by another Division Bench of the High Court in D.B.Civil
Special Appeal No.782 of 2002 titled *State of Rajasthan vs.*
B *Girraj*, decided on 03rd January, 2003.

6. The Rajasthan High Court did not declare the said
provision to be *ultra vires*. Prior to insertion of Rule 22A by way
of amendment in the Rules, there was no provision for grant of
pensionary benefits to the employees who retired as work
charge employees. The amendment was made vide notification
C dated September 17, 1980. It was provided by Rule 22 that a
work charge employee having been or on being declared
permanent on completing 10 years service shall have the option
to elect either to continue to contribute towards contributory
provident fund or to opt for pensionary benefits. Sub-clause (iv)
D of the said rule provides that the option shall have to be
exercised in writing within a period of six months from the date
of amended rule came into force from 17.08.1980. Vide
notification dated December 11, 1989 sub-rule (6) was added
in Rule 22 which was made effective from September 1, 1982,
E in terms whereof widows of the work charged employees were
also given the liberty to exercise such option.

7. The State, therefore, had indisputably made the said
rules applicable with a prospective effect i.e. from 1.9.1982. If
that be so, the question of grant of any benefit in favour of the
F appellant herein did not and could not arise as admittedly her
husband died in the year 1978. The question of exercising the
right of option, as provided for, under rule 22A would arise only
if the employees were eligible therefor on the date of coming
into force thereof. It has not been given retrospective effect. As
G no retrospective effect to the rule has been given, the question
of extending the benefit thereto to those who were not
otherwise entitled thereto does not and cannot arise. A
delegated legislation, as is well known, is ordinarily prospective
in nature. A right or a liability which was created for the first time,
cannot be given a retrospective effect. Furthermore, the
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intention of the State in giving a prospective effect to that rule is clear and explicit; the amendment in Rule 22A was also to be effective from 1.9.1982 itself. No relief can be granted to the appellant herein on the basis of the decision in *Prabhati Devi* (supra). The said decision did not lay down the correct law. Article 14 of the Constitution of India has a positive concept. Equality, it is trite; cannot be claimed in illegality. Even otherwise the writ petition as also the review petition have rightly not been entertained on the ground of delay and laches on the part of the appellant. A
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8. For the reasons aforementioned, we are of the opinion that apart from the question of delay, even on merit, the appellant has no case. C

R.P.

Appeal dismissed.