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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.663/89.

Date of Judgement : 12-11-93.

R.Govinda Rao

.. Applicant

Vs.

1. Union of India, Rep. by
Secy., to Govt. of India,
Min. of Water Resources,
Risi Marg, New Delhi.
 2. Secy., to Govt. of India,
Min. of Personnel, Public
Grievances & Pensions,
Dept. of Pensions, New Delhi.
 3. The Chairman,
Central Water Commission,
Seva Bhavan, R.K.Puram,
New Delhi-110066.
 4. The Superintending Engineer,
Central Water Commission,
Chirag Ali Lane,
Hyderabad-500001.
 5. The Director,
Central Water Commission,
Eastern Rivers Division,
Plot No.628, Shahid Nagar,
Bhubaneswar-751007.
- .. Respondents

Counsel for the Applicant :: Shri V.Venkateswara Rao

Counsel for the Respondents:: Shri N.R.Devaraj, Sr. CGSC

CORAM:

Hon'ble Shri A.B.Gorthi : Member(A)

Hon'ble Shri T.Chandrasekhara Reddy : Member(J)

J u d g e m e n t

[As per Hon'ble Shri A.B.Gorthi : Member(A)]

In this application, the legal validity of Rule 26(1) of the C.C.S.(Pension) Rules, 1972 (Pension Rules for short) is under challenge on the ground that it is arbitrary and hence unconstitutional.

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2. The Applicant while serving in the Central Water Commission as Research Assistant applied for study leave of five years to go abroad for higher studies. His request for leave was rejected as, under the relevant rules, it was not permissible. The Applicant then resigned from service and his resignation was accepted w.e.f. 15.4.80. By that time he had rendered about 14 years of service in the Central Water Commission, but he was informed that he was not entitled to any retiral benefits such as such as pension, gratuity etc., in view of Rule 26(1) of the Pension Rules (reproduced below).

"*26. Forfeiture of service on resignation

(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service."

*Substituted by G.I., M.F., Notification No.F.6(12)-E.V(A) 72 dated the 7th April, 1977.

3. Applying the above rule, the Respondents held that the Applicant having resigned from service forfeited his past service and hence would not be eligible for any pension or gratuity which is payable on the basis of past service.

4. We have heard learned counsel for both the parties. Shri V.Venkateswara Rao, learned counsel for the Applicant has asserted that pension is not a bounty payable on the sweet will and pleasure of the Government and that on the other hand a right to pension is a valuable right vesting in a Govt. servant. In this context he has placed reliance on Deokinandan Prasad Vs. State of Bihar & Ors. 1971(1) SLR Vol.5 P.175. In that case it was observed, inter alia as under:-

"32. The question whether the pension granted to a public servant is property attracting Art.31(1) came up for consideration before the Punjab High Court in Bhagwant Singh Vs. Union of India (*). It was held that such a right

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(*) Bhagwant Singh Vs. Union of India AIR 1962 Punjab 503.

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constitutes "property" and any interference shall be a breach of Article 31(1) of the Constitution. It was further held that the State cannot by an executive order curtail or abolish altogether the right of the public servant to receive pension. This decision was given by a learned Single Judge. This decision was taken up in Letters Patent Appeal by the Union of India. The Letters Patent Bench in its decision in Union of India Vs. Bhagwant Singh (*) approved the decision of the learned Single Judge. The Letters Patent Bench held that the pension granted to a public servant on his retirement is "property" within the meaning of Article 31(1) of the Constitution and he could be deprived of the same only by an authority of law and that pension does not cease to be property on the mere denial or cancellation of it. It was further held that the character of pension as "property" cannot possibly undergo such mutation at the whim of a particular person or authority."

5. The same view was reiterated in D.S. Nakara & Ors. Vs. Union of India, 1983(2) SLR 246. Relevant portion of the judgement is reproduced below:-

"31. From the discussion three things emerge:
(i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Article 309 and clause(5) of Article 148 of the Constitution; (ii) that the pension is not an ex-gratia payment but it is a payment for the past service rendered; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the hey day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch."

6. In the light of the aforesaid well settled legal position, learned counsel for the Applicant asserted that deprivation of pension to a person who resigns from service is discriminatory and violative of Article 14 of the Constitution of India. According to the Applicant's counsel the service of a Govt. servant is liable to termination either on account of retirement or resignation. It will be discriminatory if Govt. employees who resign from service

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(*) Union of India Vs. Bhagwant Singh ILR 1965 Punjab 1.

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are disallowed pension on the ground that by their act of resignation they forfeit their past service for the purpose of pensionary benefits. Even in the case of employees who resign from service some are discriminated vis-a-vis the others. In support of his contention, the learned counsel for the Applicant drew our attention to Rule 37 of the Pension Rules under which a Govt. servant who is permitted to be absorbed in a service or post in or under a corporation or company wholly or substantially owned or controlled by the Government shall be deemed to have retired from service from the date of such absorption and he would be eligible to receive retirement benefits in accordance with the orders of the Central Government applicable to him. In other words, a person who resigns from Govt. service for the purpose of joining a public sector undertaking shall be deemed to have retired from Govt. service and his past service is reckoned for the purpose of calculating his pensionary benefits. On the other hand, a person who resigns from service for personal reasons such as for going abroad for further studies, ~~he~~ is denied the pensionary benefits. Another instance of discrimination is that under Rule 41 of the Pension Rules even a dismissed or removed Govt. servant could be considered for the grant of compassionate allowance not exceeding two-thirds of pension or gratuity which would have been admissible to him if he had retired instead of being dismissed or removed.

7. There should be no difficulty in coming to the conclusion that Govt. employees who resign from service form a separate class and they cannot compare themselves with those who retire from service, for the purpose of claiming equal pensionary benefits. It is well settled that what Article 14 forbids

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is class legislation but not reasonable classification for the purpose of pension. In order to pass the test of permissible classification, two conditions must be fulfilled viz:

- (1) That the classification must be founded on an intelligible differentia which distinguishes persons or things that are both together, from those that are left out of the group; and
- (2) That the differentia must have a rational relation to the object sought to be achieved by the statute in question.

8. Once we are satisfied that it is reasonable to classify the Govt. servants who resign from service as a separate class, distinguishable from those who ^{have} served their full tenure superannuate from their service, the next question that comes up for consideration is whether such classification has any rational relation to the object sought to be achieved. A careful examination of Rule 26(1) of the Pension Rules indicates that the Government thereby intends to discourage Govt. servants from resigning from service or post. It would certainly not be in the interest of Government if after due selection and employment Govt. servants are allowed to resign from service at will and with impunity. It would, therefore, ~~not~~ be either improper nor illegal to statutorily lay down that in the case of Govt. servants who resign from service their past service would be forfeited. In this context we may refer to in Re Special Courts Bill (1979) 2 SCR 476 wherein the principle of classification was restated as under:-

"4. The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that

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the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject matter of the legislation their position is substantially the same.

6. The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experiences. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.
7. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the Act."

In view of the aforestated we find that classifying Govt. employees who resign from service as a separate class for the purpose of denying them the pensionary benefits is neither arbitrary nor unreasonable nor artificial. It is a classification founded on ~~/~~ intelligible differentia and the differentia has a rational relation to the object of discouraging Govt. servants to resign from service at any time they choose.

9. Learned Counsel for the Applicant further contended that Rule 26(1) of the Pension Rules is repugnant to Sections 11 and 14 of the Pension Act, 1871. Section 11 is reproduced below:-

"11. Exemption of pension from attachment.—No pension granted or continued by Government on political consideration, or on account of past services or present infirmities or as a compassionate allowance, and no money due or to become due on account of any such pension or allowance, shall be liable to seizure, attachment or sequestration by process of any Court at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such Court.

This section applies also to pensions granted or continued after the separation of Burma from India, by the Govt. of Burm-

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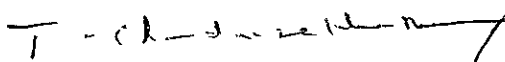
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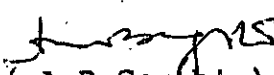
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10. From Section 11 of the Pension Act, 1871 the Applicant's counsel contends that it provides for pension on account of past service and that the same cannot be denied under the authority of the Pension Rules. We cannot accept this contention for two reasons. Firstly, Section 11 of the Pension Act, 1871 relates to exemption of pension from attachment and does not lay down any statutory provision that pension must be granted in respect of any and every past service rendered by a Govt. employee. Secondly, the Pension Rules are rules made under the proviso to Article 309 of the Constitution of India and are not rules made under the power vested in Section 14 of the Pension Act, 1871.

11. For the reasons aforesated, we cannot accept the contention of the learned counsel for the Applicant that Rule 26(1) of the Pension Rules is in any manner either violative of Article 14 of the Constitution or repugnant to any of the provisions in the Pension Act, 1871.

12. The Applicant who is expected to be aware of the rule position voluntarily offered his resignation for the purpose of going abroad for higher studies. Consequently, if the Respondents had applied Rule 26(1) of the Pension Rules to his case and denied him pension by ignoring his past service of about 14 years, it cannot be said that any illegality or irregularity has been committed. We thus find no merit in this application which is hereby dismissed. No order as to costs.


(T.Chandrasekhara Reddy)
Member(J).


(A.B.Gorthi)
Member(A).

Dated: 12 Nov., 1993.

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Deputy Registrar

