

Before : G. R. Majithia, J.

JUGAL KISHORE AND OTHERS,—Petitioners.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 8688 of 1989.

4th September, 1990

Punjab Civil Services Rules, Vol. II—Rl. 14.30, Chapter XIV—Pensionary benefits—Policy decision taken in 1983 granting pension to employees not confirmed against permanent pensionable posts and retiring on or after November 1, 1955—Transfer of petitioners to non-pensionable posts in 1980—Denial of pensionary benefits on ground of non-exercise of option under Rl. 14.30 but giving benefits under the Scheme coming into force on November 30, 1983—Rl. 14.30, however, applicable only in case of transfer to pensionable service—Taking November 30, 1983 as retirement date and denial of such benefits under Rl. 14.30 held arbitrary, discriminatory and irrational.

Held. that all those employees who retired from the service of Punjab Roadways irrespective of their date of retirement will be entitled to the pensionary benefits.

(Para 4)

Held. that Rule 14.30 of the Punjab Civil Services Rules is inapplicable to the instant case as under this Rule a subscriber contributing to the Fund on transfer to a pensionable service has to opt within three months of the date of the order of transfer for pension. Further, on the date when the services of the petitioners were transferred to the Municipal Corporation, Amritsar, the scheme under which the pension had been allowed had not come into operation. The scheme became applicable only with effect from November 30, 1983 and the pensionary benefits were only available to those employees who had retired on or after November 30, 1983. This date has already been struck down as arbitrary and discriminatory. Consequently, the question to exercise the option as envisaged by subrule 2 of Rule 14.30 of the Punjab Civil Services Rules, Volume II was inapplicable.

(Para 4)

Civil Writ Petition under Articles 226/227 of the Constitution of India praying that:-

(i) complete records of the case be summoned;

Jugal Kishore and others v. The State of Punjab and others
(G. R. Majithia, J.)

-
- (ii) a writ in the nature of Certiorari or any other appropriate writ, order or Direction quashing the order dated 31st May, 1989, Annexure P/7 by which respondent No. 3 has rejected the case of the petitioner for the grant of pension, be issued;
 - (iii) an appropriate writ, Order or Direction directing the respondents to release the pension and gratuity in favour of the petitioners in terms of Government Policy dated 25th November, 1983, Annexure P/2, be issued;
 - (iv) this Hon'ble Court may also grant consequential benefits as deemed fit and just in the peculiar circumstances of the case;
 - (v) condition regarding filing of certified copies of the Annexures may kindly be dispensed with;
 - (vi) condition regarding service of advance notice of the writ petition may kindly be dispensed with;
 - (vii) costs of the petition be also awarded to the petitioners.

P. S. Patwalia, Advocate and A. K. Kanwar, Advocate, for the Petitioners.

Nemo, for the Respondents.

JUDGMENT

G. R. Majithia, J.

(1) The petitioners have sought a mandate from this Court to the respondents to grant them pensionary benefits and also a writ of *Certiorari* to quash the order dated May 31, 1989,—*vide* which their representation for grant of pensionary benefits was rejected by respondent No. 3.

(2) The facts:—

The petitioners were the employees of the Punjab Roadways. They were transferred to the Municipal Corporation, Amritsar on January 1, 1980. On November 29, 1983 a policy decision was taken by respondent No. 1 to grant pension to the employees of Punjab Roadways who were not confirmed against permanent pensionable posts on November 1, 1955. While announcing the grant of pension to the employees of the Punjab Roadways, respondent No. 1 had put a condition that the benefit will be granted to those employees

who had retired on and after that date. The petitioners moved this Court for a direction to respondent No. 1 to grant them the pensionary benefits. This Court did not express any opinion on merits and directed the petitioners to file a representation to respondent No. 2 for the said relief. The petitioners filed the representation which was rejected *vide* order dated May 31, 1989.

(3) Written statements had been filed on behalf of the respondents. Respondent No. 1 & 3 justified the impugned order on the ground that the petitioners had not exercised their option as enjoined by Rule 14.30 of the Punjab Civil Services Rules Volume II on their transfer to non-pensionable posts in the Municipal Corporation, Amritsar.

(4) The decision of the respondent refusing to grant pensionary benefits to the petitioners is arbitrary and unjustified. Respondent No. 1 took a policy decision on November 29, 1983 conceding pensionary benefits to the employees of the Punjab Roadways who were not confirmed against permanent pensionable posts on November 1, 1955 but became entitled to benefits under Punjab Contributory Provident Fund Scheme as contained in Chapter XIV of the Punjab Civil Services Rules Volume II. It was provided in the scheme that all those employees retiring on or after November 30, 1983 will be entitled to pensionary benefits admissible under the Punjab Civil Services Rules Volume II. My esteemed brother M. R. Agnihotri, J. while deciding Civil Writ Petition No. 473 of 1987 in which almost identical question arose for determination held that there was no rational basis for taking November 30, 1983 as the material date for grant of pension and the prescription of such an artificial date is, on the face of it, arbitrary and discriminatory. It was struck down being violative of the rule of law laid down by the apex Court in *D. S. Nakara and others v. Union of India*, A.I.R. 1983 Supreme Court 130. The resultant effect will be that all those employees who retired from the service of Punjab Roadways irrespective of their date of retirement will be entitled to the pensionary benefits. The provisions of Rule 14.30 of the Punjab Civil Services Rules Volume II read as under:—

“14.30 (1) If a subscriber is permanently transferred to pensionable service he shall, at his option, be entitled—

(a) to continue to subscribe to the Fund, in which case he shall not be entitled to any pension; or

Jugal Kishore and others v. The State of Punjab and others
(G. R. Majithia, J.)

- (b) to earn pension in respect of such pensionable service; in which case, with effect from the date of his permanent transfer—
- (i) he shall cease to subscribe to the Fund;
 - (ii) the amount of contributions by the Government with interest thereon, standing, to his credit in the Fund shall be repaid to Government.
 - (iii) the amount of subscription together with interest thereon standing to his credit in the Fund shall be transferred to his credit in the General Provident Fund, to which thereafter he shall or may subscribe in accordance with the rule of that Fund; and
 - (iv) he shall be entitled to count towards pension such part of the period during which he subscribed to the Fund as Government may determine.”
- (2) A subscriber shall communicate his option under clause (I) by letter to the Accounts Officer within three months of the date of the order transferring him permanently to pensionable service; and if the communication is not received in the office of the Accounts Officer within that period, the subscriber shall be deemed to have exercised his option in the manner referred to in sub-clause (a) of that clause.”

Under clause (2) of the Rule, a subscriber contributing to the Fund on transfer to a pensionable service has to opt within three months of the date of the order of transfer for pension. If he does not exercise option, he will only be entitled to the benefit of clause (I) of Rule 14.30 of Punjab Civil Services Rules Volume II. This rule is inapplicable to the instant case. On the date when the services of the petitioners were transferred to the Municipal Corporation, Amritsar, the scheme under which the pension had been allowed had not come into operation. The scheme became applicable only with effect from November 30, 1983 and the pensionary benefits were only available to those employees who had retired on or after

November 30, 1983. This date has already been struck down by me in the earlier part of the judgment. Consequently, the question to exercise the option as envisaged by sub rule 2 of Rule 14.30 of the Punjab Civil Services Rules Volume II was inapplicable. In an identical matter on C.W.P. No. 473 of 1987 this Court has already granted pensionary benefits to the employees similarly situated. There are no distinguishable features in this case. Relying upon the ratio of judgment in C.W.P. No. 473 of 1987 supra, I direct the respondents to release the pensionary benefits to the petitioners under the rule within three months from the date of receipt of the copy of this judgment. The impugned order dated May 31, 1989 is accordingly quashed.

R.N.R.

Before : R. S. Mongia, J.

BALWANT SINGH AND OTHERS,—Petitioners.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 7928 of 1989.

5th September, 1990.

Punjab Electrical Inspectorate State Service (Class II) Rules, 1979—Rls. 8 & 9, App. 'B'—Indian Electricity Act, 1910—Ss. 36, 36-A & 37—Indian Electricity Rules, 1956—Rls. 2(w), 4, 4-A & 4-B—Direct recruitment—Claim for conformance with amended rules—PPSC advertising posts of Asstt. Electrical Inspectors requiring qualifications therefor as per 1979 Rules—1956 Rules as amended prescribing qualifications for posts of Electrical Inspectors different from that for Asstt. Electrical Inspectors—Held, amended rules are not applicable to Asstt. Electrical Inspectors—However, if State Government appoints Electrical Inspectors or Asstt. Electrical Inspectors to exercise powers under the Indian Electricity Act, then qualifications prescribed under 1956 Rules would apply to such appointment.

Held, that the requirement of the qualifications under the 1956 Rules of the Electrical Inspector or Assistant Electrical Inspector is only for those Electrical Inspectors or Assistant Electrical Inspectors who are appointed or nominated under S. 36 of the Indian Electricity Act, 1910 and are required to perform functions under this Act. As and when the present Assistant Electrical