

STATE OF WEST BENGAL AND ORS.

v.

ANAL KUMAR GHOSH AND ORS.

FEBRUARY 28, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

*Service law—West Bengal Service Rules Part-I—Rule 76—Govt. Memorandum No. 10606-F dated September 25, 1978—West Bengal (Revision of Pay and Allowances) Rules, 1981—Compulsory Retirement—Government employees who are in Group ‘C’ service prior to introduction of 1981 Rules—Not entitled to the benefit of being retained in service upto the age of 60 years.*

The respondents were initially appointed as Peons in the Excise Department of the West Bengal Government in the year 1970. Consequent to the revision of scale of pay, the Government by its Memorandum dated September 25, 1978 while classifying all the employees as Group ‘A’ to ‘D’ enumerated that those employees drawing the pay or scale of pay with a maximum of Rs. 500 but above Rs. 230 would be Group ‘C’ employees. The respondents opted for the above conditions. Consequently, they were drawing a scale of pay above Rs. 230. The respondents were served with a notice of retirement at the age of superannuation of 58 years, which they challenged as invalid and illegal alleging that by operation of para 2 of the Memo of the Governor issued on 19.2.1985, they were entitled to be retained in service upto the age of 60/65 years, as the case might be under Rule 76 of the West Bengal Service Rules Part-I. Their Writ Petition was allowed and the notices were quashed.

In this Court, the appellants contended that by operation of the conditions imposed while effecting revision of scale of pay in 1971, as opted by the respondents, they ceased to be in Group ‘D’ service w.e.f. 1971. It was alleged that the clarification issued by the Governor in the 1985 Memo was not applicable in this case as it would apply only to such of the employees in group ‘D’ service who continued to be so on the date the West Bengal (Revision of Pay and Allowances) Rules, 1981, came into force. The respondents not continuing as Group ‘D’ service from 1971 were not entitled to the benefit of the Memo.

A The respondents sought to draw a distinction between scale of pay and the pay and stated that as on April 1971 and after the 1981 revision they drew their pay below Rs. 230 therefore, they were entitled to be retained in service till the age 60.

B Allowing the appeal, this Court

C HELD: The respondents opted to be in Group 'C' employees in 1971 as they were in the scale of pay above Rs. 230. Thus in 1971 they were in Group 'C' service for the purpose of compulsory retirement. In 1981 they were no longer in Group 'D' service so as to entitle them to remain in service till they attained the age of 60 years. The benefit given only to the employees who were continuing as Group 'D' employees on the day 1981 Revised Pay Scales Rules 1981 had come into force. Such employees in Group 'D' who did not cross over by promotion to Group 'C' service, though were drawing higher scale of pay were entitled to the benefit of 60 years rule. The respondents did not belong to that limited class. Therefore, they were not entitled for the benefit of 1981 Rules or the Amendment Rules or the Governor's Memo. [394-F-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4404-4405 of 1995.

E From the Judgment and Order dated 5.2.93 & 1.8.94 of the Calcutta High Court in F.M.A.T. No. 425/92 & 683 of 1994.

F N.S. Hegde, M.P. Verma, Dillip Sinha, J.R. Das, Ms. Dipti Chowdhary, Amarendra Nath Dawn and A. Bhattacharjee for the Appellants.

L.C. Behari, Parijat Sinha, B.D. Ahmed, Ms. Suchandra Mukherjee for Lawyers Associated for the Respondents.

The following Order of the Court was delivered :

G Leave granted.

H Admittedly, the respondents were initially appointed as Peons in the Excise Department of the West Bengal Government. Thereafter, their posts were converted into Excise Constables and they continued as Excise Constables. In the year 1970, consequent to the revision of scale of pay,

the Government by its Memorandum No. 10606-F dated September 25, 1978, while classifying all the employees as Groups 'A' to 'D', have enumerated in respect of Group 'C' that those employees drawing the pay or a scale of pay with a maximum of Rs. 500 but above Rs. 230 would be Group 'C' employees. The options have been called for from them including the respondents and they had opted for the above conditions. Consequently, they were drawing a scale of pay above Rs. 230. When the respondents reached the age of superannuation of 58 years, notice of retirement was given to them. On receipt thereof, they approached the High Court of Calcutta under Article 226 of the Constitution. Learned Single Judge and the Division Bench, on appeal, held that by operation of para 2 of the Memo. of the Governor issued on February 19, 1985, they are entitled to be retained in service upto the age of 60/65 years, as the case may be under Rule 76 of the West Bengal Service Rules Part-I and that, therefore, the notice on retirement was invalid and illegal. They were quashed.

Feeling aggrieved, the present appeals were filed. Shri Santosh Hedge, learned senior counsel for the appellant, contended that by operation of the conditions imposed while effecting revision of scale of pay in 1971, as opted by the respondents, they ceased to be in Group 'D' service with effect from 1971. Therefore, they cannot fall back upon the clarification issued by the Governor in the aforesaid 1985 Memo. It would apply only to such of the employees in group 'D' service and continued to be so on the date, the West Bengal (Revision of Pay and Allowances) Rules, 1981, came into force. The respondents are not continuing as Group 'D' service from 1971 and are not entitled to the benefit of the above Memo. We find force in the contention. Learned counsel for the respondents has sought to justify the order on the ground that there is a distinction between scale of pay and the pay. As on April 1, 1971, the respondents were drawing their pay below Rs. 230 and that, therefore, they continued to draw even after 1981 revision of scale of pay and, therefore, they are entitled to be retained in service till the completion of the age of 60 years. We find no force in the contention. It is seen that Chapter X of the West Bengal Service Rules (Part-I) provides with the heading "Compulsory retirement": Rule 76(a) says that Except as otherwise provided in these Rules a Government employee shall retire from service ..... compulsorily w.e.f. the afternoon of the first day of the month in which he attained the age of 58 years. The proviso and other notes are not relevant for the purpose of this case.

- A Rule 76 provides that subject to the provisions of sub-rule (b) a Government employee in Group 'D' service would ordinarily be retained by the appointing authority to retire from service w.e.f. the afternoon of the last day of the month of which he attains the age of 60 years .... Note 2 says that a Government employee who, consequent upon the introduction of the West Bengal Services (Revision of Pay and Allowances) Rules, 1981 have become Group 'C' employees although prior to such revision of pay scale they were in Group 'D' may be treated as belonging to Group 'D' employees for the purpose of age of retirement who had retained in service upto the age of 65 years or 62 years, in accordance with the provisions of sub-rule (a) or sub-rule (b) of this Rule. For all other purposes as for example disciplinary matters such Government employees shall howsoever be treated as belonging to Group 'C'.

- A reading of these rules vis-a-vis the memo of the Governor relied on by the respondents and accepted by the High Court, would clearly show that the Government employees who are in Group 'C' service prior to the introduction of the West Bengal Revision of Pay and Allowances Rule, 1981 alone are entitled to the benefit of being retained in service upto the age of 60 years, reason is obvious. Rules 50 and 75 clearly enumerates that the Government servants in Group 'A' to 'C' shall be required to "compulsorily retire on attaining the age of 58 years on the last day of the month in which they attained the age of 58 years." As seen in the year 1971 the respondents were in the scale of pay above Rs. 230. Consequently they opted to be in Group 'C' employees in 1971. When they ceased to be in Group 'D' Government employees and entered into Group 'C' service in 1971 then they continued to remain in Group 'C' service for the purpose of compulsory retirement. They cannot fall back upon the Note 2 or the Governor's memo in that behalf since as in 1981 they were no longer in Group 'D' service so as to entitle them to remain in service till they attained the age of 60 years. It is also further to be noted that the benefit given only to the employees who are continuing in Group 'D' employees on the day 1981 revised pay scales Rules had come into force. Such employees in Group 'D' but did not cross over by promotion to Group 'C' service, though were drawing higher scale of pay are entitled to the benefit of 60 years rule ..... The respondents do not belong to that limited class. Therefore, they are not entitled for the benefit of 1981 Rules or the Amendment Rules or the Governor's Memo. The High Court did not advert to these rules but only to the Governor's 1971 or 1981 memo. The appeals are accordingly

allowed. It is now stated that the respondents retired from service. Therefore, their pension shall be computed on the basis of the pay they have last drawn on attaining the age of 58 years and the computation and payment shall be made within a period of 3 months from the date of receipt of this order. The pensionary benefit shall accordingly be released to them within the aforesaid period. The appeal is accordingly allowed with the above directions without costs. It is clarified that if the respondents really had worked till the attained the age of 60 years, it is needless to mention that the Government may not recover the pay already paid except any lawful deductions like lands etc.

A.G.

Appeal allowed.