

ITEM NO.103

COURT NO.6

SECTION XV

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 3835 OF 2003

RAJASTHAN RAJYA VIDYUT PARASAR.NIGAM LTD

Appellant (s)

VERSUS

BEERBAL DAS SWAMI

Respondent(s)

(With office report)

WITH Civil Appeal NO. 6870 of 2003

(With office report)

Date: 12/10/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.K. SEMA

HON'BLE MR. JUSTICE P.K. BALASUBRAMANYAN

For Appellant(s)

Mr. Sushil Kumar Jain,Adv.

Mr. Puneet Jain, Adv.

Mr. Sarad Singhania, Adv.

For Respondent(s)

Dr. N.M. Ghatate, Sr. Adv.

Mr. S.V. Deshpande,Adv.

Mr. Pramit Saxena, Adv.

Mrs. Anuradha Rustagi, Adv.

Mr. Rishi Matoliya, Adv.

Mr. Kamal Mohan Gupta, Adv.

UPON hearing counsel the Court made the following

O R D E R

The orders of the High Court are set aside. Both the appeals are allowed in terms of the signed order. The writ petition filed by the respondents stand dismissed. The parties are asked to bear their own costs.

Singh)
Master

(Ravi P. Verma)
Court Master

(Anand
Court

[Signed order is placed on the file]

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3835 OF 2003

RAJASTHAN RAJYA VIDYUT PARASAR.
NIGAM. LTD.

APPELLANT(S)

Versus

BEERBAL DAS SWAMI

RESPONDENT(S)

WITH

CIVIL APPEAL NO. 6870/2003

O R D E R

Heard the parties.

Both the appeals raises identical question and they are being disposed of by this common order.

In C.A. NO.3835/2003, the respondent worked as work charge from 01/04/1960 to 31/12/1963. He was confirmed in the post w.e.f. 01/04/1964. The

respondent retired on 30/06/1994 on attaining the age of superannuation. He filed a

Writ Petition No.563/2001 belatedly after a lapse of 7 years. The main grievance

raised in the writ petition by the respondent/writ petitioner was that the services

rendered by him as work charge from 01/04/1960 to 31/12/1963 should be counted

while calculating his pension. His writ petition was allowed by the learned single

Judge and affirmed by the Division Bench, albeit without any application of mind

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and discussing the regulation framed for the purpose.

In C.A. No.6870/2003, the respondent worked as work charge line man

w.e.f. 16/04/1957 to 31/12/1963. He was confirmed on 01/01/1964 and promoted as

Lineman Grade I. Thereafter, by an order dated 18/02/1989, he was further

promoted to Line Inspector. He retired on 28/02/1994 on attaining the age of

superannuation. He has also filed a Writ Petition No.3278/2001 on 05/07/2001

belatedly after a lapse of 7 years with a similar prayer that the period he worked as

work charge from 16/04/1957 to 31/12/1963 be counted towards his pensionary

benefits. His writ petition was dismissed by the learned single Judge. However, in

appeal, the Division Bench upset the order of learned single Judge, albeit without

any reason. Hence, these two appeals are preferred by the appellant-Rajasthan

Rajya Vidyut Parasaran Nigam Ltd.

The appellant-Board, earlier known as Rajasthan State Electricity Board, framed the Employees Pension Regulations, 1988. Clause 3(i) of the said Regulations reads as under:-

"3(i) Employee means any person who is in the service of the Board but does not include daily labour, work-charge or casual employee and persons engaged on retention-cum-fee, part-time or any other basis as Consultant, Adviser or Counsels for legal profession or any other purpose."

It is crystally clear from the Clause 3(i) of the Regulations that the daily labour,

work-charge or casual employee and persons engaged on retention-cum-fee, part-

time or any other basis as Consultant, Adviser or Counsels for legal profession or

any other purpose are excluded from the purview of definition of an employee for

the purpose of reckoning pensionary benefits.

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From the order of the learned single Judge and the Division Bench it

appears that it refers to the earlier judgment in the case of Ismail Khan Vs. State of

Rajasthan & Ors., RLR 1986 24. The counsel for the respondent also contended

that subsequent to the statutory rules framed and referred above, a circular was

issued on 24/07/1997 by the Board on the basis of guidelines issued by the State

Government from time to time which states that the work charged service rendered

by the employees of the Board and Muster Roll Service on daily wages or casual

labourer service shall also be deemed to be qualifying service for the purpose of

calculating the pension. In our view, since the statutory rules are holding the field,

any circular issued dehors the statutory rules will have no application. Secondly,

the said circular was issued after the respondents have retired on attaining the age

of superannuation on 30/06/1994 and 28/02/1994 respectively. The circular, thus,

read has no retrospective application. Therefore, the said circular dated 24/07/1997

cannot come into aid of the respondents.

It is, however, contended by counsel for the respondents that the

respondents are discriminated because persons similarly situated with them have

been granted pensionary benefits for the period they have worked on work-charge

basis. In our view, illegality, if any, committed in respect of others does not create any right on the basis of which a relief can be granted. Illegality cannot be perpetuated. It must be terminated at some level. The fact that persons similarly situated have been granted such benefits would be no ground for allowing the same benefit to the respondents while it is found to be untenable in law and dehors the statutory rules.

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For the reasons afore-stated, the order of the High Court are set aside .

Both the appeals are allowed. The writ petition filed by the respondents stand

dismissed. The parties are asked to bear their own costs.

.....J.

(H.K. SEMA)

New Delhi;

.....J.

October 12, 2006.

(P.K. BALASUBRAMANYAN)