



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 20043/2017

Ramesh Kumar S/o Ganeshi Lal, aged about 61 yrs, R/o Outside
Delhi Gate, Longiya Hospital, Ajmer

----Petitioner

Versus

1. State Of Rajasthan Through Its Secretary, Department Of
Local Self, State Secretariat, Bhagwan Das Road, Jaipur.
2. Director, Local Bodies, Government Of Rajasthan, Jaipur.
3. Municipal Corporation, Ajmer Through Its Commissioner,
Ajmer.

----Respondents

For Petitioner(s) : Mr. Sunil Samdharia

For Respondent(s) : Mr. B.K. Sharma

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Order

19/10/2023

1. By way of filing this petition, the petitioner has challenged validity of the impugned order dated 18.09.2017 passed by the Municipal Corporation, Ajmer (for short 'the Corporation') by which the Corporation has denied to make payment of pension and gratuity to the petitioner.

2. Counsel submits that the petitioner was appointed on the post of Driver on 14.11.1982 but his services were terminated by the respondents in the year 1985 and thereafter, the petitioner raised an industrial dispute before the Labour Court and finally an award was passed in his favour on 13.04.1994, by which his termination order was quashed and set aside and direction was issued to the respondents to reinstate him back with continuity in



service. Counsel submits that the award dated 13.04.1994 was assailed by the respondents before this Court by way of filing writ petition No. 5525/1994. However, the said petition was dismissed by this Court vide order dated 31.10.1994. Counsel submits that the respondents submitted D.B. Civil Special Appeal (W) No. 398/1995 and the same was partly allowed vide order dated 23.12.1999 and the Division Bench restricted the back wages from the date of appointment. Counsel submits that in compliance of the directions issued by the Division Bench, the petitioner was reinstated back in service vide order dated 08.02.2001 w.e.f. 13.04.1994. Counsel submits that after 5 years of reinstatement of the petitioner, he was granted regular pay-scale of 3050-75-3959-80-4590 vide order dated 19.01.2006. However, the said order was withdrawn on 05.07.2006. Counsel submits that the petitioner challenged the same before this Court by way of filing S.B. Civil Writ Petition No. 7071/2006 and the petition was allowed by this Court vide order dated 16.12.2008. Finally, the respondents restored the order dated 19.01.2006 vide order dated 13.01.2016. Counsel submits that after rendering qualifying service, the petitioner stood retired on 31.12.2016, after attaining the age of superannuation. Counsel submits that in spite of passing of a considerable time till date neither pension nor any amount towards gratuity has been paid to him by the respondents without any justified reason. Counsel submits that under these circumstances, the respondents be directed to release due pension and gratuity amount to the petitioner forthwith without any further delay.





3. Per contra, counsel for the respondents opposed the arguments raised by the counsel for the petitioner and submitted that the petitioner is not entitled to get any amount of gratuity and a decision has been taken by the authorities to refund the amount deducted towards New Pension Scheme to the petitioner. Counsel submitted that notices were issued to the petitioner to submit his option whether he is ready to opt the benefit of New Pension Scheme. Counsel submitted that in spite of issuing two notices in this regard in the year 2017 till date, no reply has been filed by the petitioner. Counsel submitted that under these circumstances, the petitioner is not entitled to get any pension and gratuity. Hence, interference of this Court is not warranted.

4. Heard and considered the submissions made at Bar and perused the material available on the record.

5. This fact is not in dispute that the petitioner is appointed on the post of Driver on 14.11.1982 and his services were terminated by the respondents in the year 1985 and, thereafter, the Labour Court quashed the order of termination vide order dated 13.04.1994 with specific directions to the respondents to reinstate him back with continuity in service. This fact is also not in dispute that the award passed by the Labour Court was assailed by the respondents before this Court by way of filing a writ petition, however, the same was dismissed by this Court vide order dated 31.10.1994 against which the respondents preferred D.B. Special Appeal (W) before the Division Bench of this Court, which was partly allowed vide order dated 23.12.1999 and the direction, issued by the Labour Court with regard to the grant of back wages with effect from the date of award, was quashed and set aside.





This fact is also not in dispute that thereafter, the petitioner was reinstated back in service vide order dated 08.02.2001 w.e.f. 13.04.1994 and he was granted regular pay-scale of Rs.3050-75-3959-80-4590 vide order dated 19.01.2006. However, the said order was recalled by the respondents on 05.07.2006. the petitioner assailed the said order before this court by way of filing Civil Writ Petition No. 7071/2006 and the said petition was allowed by this Court vide order dated 16.12.2008 and thereafter, the respondents restored the order dated 19.01.2006, meaning thereby, the petitioner was treated as regular employee of the respondent-Corporation under the regular pay-scale. After rendering the qualifying service, the petitioner stood retired on 31.12.2016, after attaining the age of superannuation. When retiral dues were not extended to the petitioner including the pension and gratuity, the petitioner has left with no other option except to approach this Court by way of filing the instant petition under Article 226 of the Constitution of India. During, the pendency of this petition, the respondents issued notices to the petitioner on 28.12.2017 directing him to submit his option whether he is ready to receive the pension as per the New Pension Scheme or not. This Court failed to understand that under which provision, the respondents are seeking such option from the petitioner, when the petitioner was appointed way back in the year 1982 and was a part of the Old Pension Scheme. Hence, under these circumstances, the action of the respondents of withholding the pension and gratuity amount of the petitioner is highly unjustified, arbitrary and illegal. The petitioner is entitled to get gratuity and pension, as per the provisions of Old Pension Scheme





with interest @ 9% per annum in terms of the Rule 89 of the Rajasthan Civil Services (Pension) Rules, 1996.

6. In view of the above, the instant writ petition stands allowed with direction to the respondents to release the pension and gratuity amount of the petitioner forthwith without any further delay with interest @ 9% p.a. from the date the payment of the same became due till the date of its actual payment.

7. It goes without saying that the needful exercise would be done by the respondents within a period of three months from the date of receipt of certified copy of this order.

8. Stay application and all application(s) (pending, if any) also stand disposed of.

(ANOOP KUMAR DHAND),J

MR/219