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STATE OF RAJASTHAN

v.

MANGILAL PINDWAL

JULY 8, 1996

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[S.C. AGRAWAL AND G.T. NANAVATI, JJ.]

Service Law :

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Rajasthan Service Rules, 1951—Compulsory Retirement—Rule 244 (2) as amended by notification dated March 11, 1976—Validity of—Notification substituting sub-rule (2) repealed the provision that was operative during the period from Aug. 19, 1972 to Sep. 1, 1975 and replaced it by another provision—Whether can be held invalid on ground that amendment sought to amend a provision which was not in existence—Held, No—Repeal does not affect previous operation of law which has been repealed during the period it was operative prior to the date of repeal.

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The respondent, employed as an Upper Division Clerk with the Government of Rajasthan, after he completed 25 years of qualifying service, was compulsorily retired by an order dated 31.3.1973 on payment of three months' pay and allowances in lieu of notice. Along with the order passed under sub-rule (2) of Rule 244 of the Rules, a bank draft for a sum of Rs. 1,494 representing three months' pay and allowances was sent to the respondent. The respondent filed a writ petition challenging the order. The petition was allowed by the High Court by an order dated 17.1.1978 on the ground that there was non-compliance with the provisions of sub-rule (2) of Rule 244 of the Rules inasmuch as the amount paid to the respondent towards three months pay and allowances was short by Rs. 120. On 28.1.1978 notification dated 11.3.1976 was published, substituting sub-rule (2) of Rule 244 of the Rules. The amendment which was operative from 19.8.1972 and was to remain in force upto 1.9.1975, the requirement of payment of three months' pay and allowances in lieu of notice at the time of compulsory retirement was dispensed with and it was prescribed that on retirement the Government servant would be entitled to claim three months' pay and allowances in lieu of notice. On special appeal, the Division Bench of the High Court held that the amendment made in the Rules vide notification dated 11.3.1976 was invalid. While dismissing the

appeal, it was held that as a result of the substitution of sub-rule (2) of Rule 244 by notifications dated September 2, 1975 and November 26, 1975, provisions of sub-rule (2) of Rule 244, as applicable during the period from August 19, 1975 till September 1, 1975 stood substituted and, as a result, the said provisions ceased to exist and must be treated to have been obliterated and, therefore, Rule 244(2), as it stood on August 19, 1972, was no longer available for suppression, amendment or substitution on March 11, 1976, since the same stood amended and substituted by new provisions contained in notifications dated September 2, 1975 and November 26, 1975. This appeal had been filed against the decision of the Division Bench.

Disposing of the appeal, this Court

HELD : As a result of repeal of a statute the statute as repealed ceases to exist with effect from the date of such repeal but the repeal does not affect the previous operation of the law which has been repealed during the period it was operative prior to the date of such repeal. The effect of the amendments that were introduced in sub-rule (2) of Rule 244 of the Rajasthan Service Rules vide notifications dated September 2, 1975 and November 26, 1975 whereby the said sub-rule was substituted with effect from September 2, 1975 is that sub-rule (2) which was introduced on August 19, 1972 ceased to exist with effect from September, 2, 1975 but it was operative during the period from August 19, 1972 to September 1, 1975. A rule made in exercise of the power conferred by Article 309 of the Constitution can have retroactive operation. Since sub-rule (2) of Rule 244 of the Rules, as introduced in August, 1972, was operative during the period from August 19, 1972 to September 1, 1975, it could be amended in exercise of the rule making power under Article 309 of the Constitution so as to operate during the period from August 19, 1972 to September 1, 1975. The notification dated March 11, 1976, by substituting sub-rule (2) of Rule 244 of the Rules, repealed the said provision that was operative during the period from August 19, 1972 to September 1, 1975 and replace it by another provision which was to be operative during the said period. The said notification cannot be held to be invalid on the basis that the said amendment sought to amend a provision which was not in existence. [104-E-H, 105-A]

Koteshwar Vittal Kamath v. K. Rangappa, [1969] 3 SCR 40 and *Quadrat Ullah v. Municipal Board, Bareilly*, [1974] 2 SCR 530, referred to.

Craies on Statute Law, 7th Edn.; Sutherland on Statutory Construction,

A Vol. I para 1903, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1340 of 1981.

B From the Judgment and order dated 15.4.80 of the Rajasthan High Court in D.B.C.S.A. No. 17 of 1978.

Aruneshwar Gupta and Manoj K. Das for the Appellant.

The Judgment of the Court was delivered by

C S.C. AGRAWAL, J. The question that falls for consideration in this appeal relates to the validity of the amendment introduced in Rule 244(2) of the Rajasthan Service Rules, 1951 (hereinafter referred to as 'the Rules') by notification dated March 11, 1976. Rule 244(2) makes provision for compulsory retirement of a Government servant.

D The respondent was employed as an Upper Division Clerk with the Government of Rajasthan. After he had completed 25 years of qualifying service he was compulsorily retired by order of the Collector, Ajmer dated March 31, 1973 on payment of three months' pay and allowances in lieu of notice. The said order was passed under sub-rule (2) of Rule 244 of the Rules. Along with the order of compulsory retirement a bank draft for a sum of Rs. 1,494 representing three months pay and allowances was sent to the respondent. The respondent filed a writ petition in the Rajasthan High Court challenging the said order of compulsory retirement. The said writ petition was allowed by the learned Single Judge of the High Court

E by order dated January 17, 1978 on the ground that there was non-compliance with the provisions of sub-rule (2) of Rule 244 of the Rules inasmuch as the amount paid to the respondent towards three months pay and allowances along with the order of compulsory retirement was short by Rs. 120. On January 28, 1978 notification dated March 11, 1976 was published in the Rajasthan Gazette. By the said notification sub-rule (2) of Rule 244 of the rules was substituted. The said amendment was operative

F from August 19, 1972 and was to remain in force up to September 1, 1975. Under the amended provision the requirement of payment of three months' pay and allowances in lieu of notice at the time of compulsory retirement was dispensed with and it was prescribed that on retirement the

G Government servant would be entitled to claim three months' pay and

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allowances in lieu of notice. In the special appeal filed by the appellant State against the judgment of the learned Single Judge reliance was placed by the appellant on the said amendment in Rule 244(2) and it was urged that in view of the said amendment it was not pre-requisite that the payment of three months' pay and allowances in lieu of notice should have accompanied the order of compulsory retirement and that the order of compulsory retirement could not be invalidated if a shorter amount was paid or no payment at all was made at the time of service of the order of compulsory retirement upon the concerned Government servant. The said contention was negated and the special appeal was dismissed by the Division Bench of the High Court by the impugned judgment dated April 15, 1980 on the view that the amendment made in the Rules vide notification dated March 11, 1976 was invalid. Hence this appeal. While granting special leave by order dated April 14, 1981, this Court imposed the condition that "whatever be the decision of this Court it shall not effect the respondent and the High Court's decision in his favour shall remain undisturbed."

On March 31, 1973, the date of the passing of the order of compulsory retirement, sub-rule (2) of Rule 244 of the Rules provided as under :

"(2) The Government, may, after giving at least three months' previous notice in writing or by payment of three months' pay and allowances in lieu of such notice require a Government servant to retire from the service on the date on which he completes 25 years of qualifying service or on any date thereafter."

The said provision was introduced vide notification dated August 19, 1972.

By notification dated September 2, 1975, sub-rule (2) of Rule 244 of the Rules was substituted by the following provision :

"(2) The Government, may, after giving at least three months' previous notice in writing or by payment of three months' pay and allowances in lieu of such notice require a Government servant to retire from the service on the date on which he completes 20 years of qualifying service or the date on which he attains the age of 50 years whichever is earlier, or on any date thereafter."

By a subsequent notification dated November 26, 1975, Rule 244 of

A the Rules was substituted with effect from September 2, 1975. Sub-rule (2) of Rule 244, thus substituted, read as follows :

B "(2) (i) The Government, may, after giving at least three months, previous notice in writing require a Government servant to retire from the service on the date on which he completes 20 years of qualifying service or the date on which attains the age of 50 years whichever is earlier, or on any date thereafter :

C Provided that such Government servant may be retired from service forthwith, and on such retirement the Government servant shall be entitled to claim three months pay and allowances in lieu of notice.

D "(ii) The Government may publish the order of such retirement in Rajasthan Rajpatra, and the Government servant shall be deemed to have retired on such publication, if he has not been served with the retirement order earlier."

E The Rajasthan Service (Amendment) Rule, 1976 made by the Governor under notification dated March 11, 1976, were published in the Rajasthan Gazette dated January 28, 1978. The said Rules were brought into force with effect from August 19, 1972 and were to remain in force up to September 1, 1975. By the said Rules sub-rule (2) of Rule 244 was substituted by the following provision :

F "(2) The Government, may, after giving at least three months' previous notice in writing require a Government servant to retire from the service on the date on which he completes 25 years of qualifying service or on any date thereafter :

G Provided that such Government servant may be retired from service forthwith, and on such retirement the Government servant shall be entitled to claim three months pay and allowances in lieu of notice."

H The learned Judges of the High Court have held that as a result of the substitution of sub-rule (2) of Rule 244 by notifications dated September 2, 1975 and November 26, 1975, provisions of sub-rule (2) of Rule 244, as applicable during the period from August 19, 1972 till September 1, 1975, stood substituted and, as a result, the said provisions ceased to exist

and must be treated to have been obliterated and, therefore, Rule 244(2), as it stood on August 19, 1972, was no longer available for supersession, amendment or substitution on March 11, 1976, since the same stood amended and substituted by new provisions contained in notifications dated September 2, 1975 and November 26, 1975. The High Court has placed reliance on the following passages from Craies on Statute Law and Sutherland on Statutory Construction :

"When an Act of Parliament is repealed," said Lord Tenterden in *Surtees v. Ellison*, "it must be considered (except as to transactions past and closed) as if it had never existed. That is the general rule." Tindal C.J. stated the exception more widely. He said : "The effect of repealing a statute is to obliterate it as completely from the records of the Parliament as if it had never been passed; and it must be considered as a law that never existed except for the purpose of those action which were commenced, prosecuted and concluded whilst it was an existing law."

(*Craies on Statute Law*, 7th Edn. pp. 411-412)

"Since an amendatory act alters, modifies, or adds to a prior statute, all courts hold that a repealed act cannot be amended, that is, no court will give effect to a repealed law because the legislature attempted to amend it."

(*Sutherland on Statutory Construction*, Vol. I para 1903, pp. 328-329)

As pointed out by this Court, the process of a substitution of statutory provision consists of two steps; first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place. (See : *Koteshwar Vittal kamath v. K. Rangappa*, [1969] 3 SCR 40, at p. 48. In other words, the substitution of a provision results in repeal of the earlier provision and its replacement by the new provision. As regards repeal of a statute the law is thus stated in *Sutherland on Statutory Construction* :

"The effect of the repeal of a statute where neither a saving clause nor a general saving statute exists to prescribed the governing rule for the effect of the repeal, is to destroy the effectiveness of the repealed act *in futuro* and to divest the right to proceed under the

A statute, which, except as to proceedings past and closed, is considered as if it had never existed."

(Vol. I, para 2042, pp. 522-523)

Similarly in Crawford's Interpretation of Laws it has been said :

B "Effect of Repeal, Generally. - In the first place; an outright repeal will destroy the effectiveness of the repealed act *in futuro* and operate to destroy inchoate rights dependent on it, as a general rule. In many cases, however, where statutes are repealed, they continue to be the law of the period during which they were in force with reference to numerous matters." (pp. 640-641)

The observations of Lord Tenterden and Tindal C.J. referred in the abovementioned passages in Craies on Statute law also indicate that the principle that on repeal a statute is obliterated is subject to exception that it exists in respect of transactions past and closed. To the same effect is the law laid down by this Court. (See : *Qudrat Ullah v. Municipal Board, Bareilly*, [1974] 2 SCR 530, at p. 539)

This means that as a result of repeal of a statute the statute as repealed ceases to exist with effect from the date of such repeal but the repeal does not affect the previous operation of the law which has been repealed during the period it was operative prior to the date of such repeal. The effect of the amendments that were introduced in sub-rule (2) of Rule 244 of the Rules vide notifications dated September 2, 1975 and November 26, 1975 whereby the said sub-rule was substituted with effect from September 2, 1975 is that sub-rule (2) which was introduced on August 19, 1972 ceased to exist with effect from September 2, 1975 but it was operative during the period from August 19, 1972 to September 1, 1975. It is settled law that a rule made in exercise of the power conferred by Article 309 of the Constitution can have retroactive operation. Since sub-rule (2) of Rule 244 of the Rules, as introduced in August, 1972, was operative during the period from August 19, 1972 to September 1, 1975, it could be amended in exercise of the rule making power under Article 309 of the Constitution so as to operate during the period from August 19, 1972 to September 1, 1975. The notification dated March 11, 1976, by substituting sub-rule (2) of Rule 244 of the Rules, repealed the said provision that was operative during the period from August 19, 1972 to September 1, 1975 and replaced

it by another provision which was to be operative during the said period. The said notification cannot be held to be invalid on the basis that the said amendment sought to amend a provision which was not in existence. The Statement of Law in Sutherland on Statutory Construction, on which reliance was placed by the learned Judges of the High Court, that a repealed law cannot be amended has no application in the present case.

For the reasons aforesaid, the judgment of the High Court dated April 15, 1980, in so far as it holds that the amendment made in Rule 244(2) of the Rules vide notification dated March 11, 1976, is invalid, cannot be upheld and is set aside. The setting aside of the judgment of the High Court in this regard would not, however, affect the respondent and the decision of the High Court in his favour shall remain undisturbed. The appeal is disposed of accordingly. No order as to costs.

R.A.

Appeal disposed of.