

(1996) 03 AP CK 0005
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 118 of 1996

A. Dayashankar and Others	Vs	APPELLANT
Nizam Sugar Factory Ltd. and Others		RESPONDENT

Date of Decision : 04-03-1996

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 13

Citation : (1996) 2 ALT 311

Hon'ble Judges : P.S. Mishra, C.J.; M.H.S. Ansari, J

Bench : Division Bench

Advocate : V. Viswanadham, for the Appellant; N. Vasudeva Reddy, for Respondent Nos. 1 and 2 and Government Pleader for Irrigation for Respondent Nos. 3 to 5, for the Respondent

Final Decision : Allowed

Judgement

P.S. Mishra, C.J.—Facts are not in dispute and as stated in the oral order of the learned single Judge, they are as follows:

"The brief facts leading to this writ petition may be summarised thus: These five petitioners were appointed under Respondent No. 4 at Nagarjunasagar Dam as Mazdoors and thereafter they were promoted from time to time, and at the particular time, they were working as Turners" with Respondent No. 4. Respondent No. 2 - General Manager, Nizam Sugar Factory, working for Respondent No. 4, is the Unit of Respondent No. 1 i.e., Nizam Sugar Factory Ltd. Since there was some. project work with Respondent No. 2, these five petitioners were sent on deputation for completing that project work; the project work was completed during the year 1976-77. Thereafter, respondent No. 4 decided to retrench the services of the petitioners along with other persons. There was a correspondence between Respondent No. 4 and Respondent No. 1 in regard to surplus persons. It was decided that first respondent would absorb these petitioners. A test was accordingly conducted on 19-2-1975 and these petitioners were absorbed with first respondent-Organisation, vide orders dated 1-6-75,

they joined their duties on 17-6-1975. After their absorption with first respondent, they were treated as fresh appointees and they were also informed that they would be governed likewise. These petitioners then made a reference to the Labour Court under the Industrial Disputes Act. The Labour Court by award, dated 14-9-1983 in I.D. Case No. 133 of 1980 decided the case against these petitioners, and then aggrieved by this award passed by the Labour Court, they filed Writ Petition No. 1822 of 1984 for the issuance of a Writ of Certiorari quashing the impugned award passed by the Labour Court. This writ petition was dismissed on 21-11-1984 and then the petitioners filed Writ Appeal No. 508 of 1985 which was also dismissed on 10-11-1986. Now, the petitioners have filed the instant writ petition for the issuance of a Writ of Mandamus against the respondents, as aforesaid.

The respondents 1 and 2 filed their counter pleading therein that the Labour Court in J.D. No. 133 of 1980 dearily held that the petitioners had voluntarily retired and hence there was no justification for their claim. It was further held that they had also voluntarily accepted fresh employment with the first respondent. It is also pleaded that the orders passed in the former writ petition No. 1822 of 1984 and W.A. No. 504 of 1980 operate as res judicata in the instant writ petition. In view of these pleadings, according to the respondent 1 and 2, the petition is liable to be dismissed with costs.

Respondents Nos. 3 to 5 also filed their counter affidavits denying the averments made by the petitioners in their affidavit"

Learned single Judge, however, has found as follows and ordered accordingly in his judgment:

"Undisputedly, the petitioners were working with the fourth respondent and they were retrenched from that service. The award passed by the Labour Court clearly speaks that the retrenchment was voluntary and the fresh appointment with the first respondent was also accepted voluntarily by the petitioners, Thus, now, this aspect has become final and it cannot be agitated again. The natural corollary is that after accepting the fresh appointment, the previous benefits of service, of petitioners working with respondent No. 4, could not be said to be continued and could not be tagged with this fresh appointment which they have voluntarily accepted, In view of this matter, I find no substance in this writ petition."

2. We do not propose in the instant case to go to many aspects of the matter, as in a similar case the Supreme Court has held the view that the employee shaft be entitled to pro rata pension in respect of the service rendered by him with the Government In Praduman Kumar Jain v. Union of India 1994 (II) LLN 446 the Supreme Court has taken notice of the facts that the appellant had joined the Central Government service as Technical Assistant and after working there for some time joined the Indian Meteorological Department, after being selected through the Union Public Service Commission. He was placed on probation for a period of two years, permitted to cross the first efficiency bar, selected for

appointment as Senior Engineer in the N.T.P.C. and as required, he resigned from the Central Government Service for the purpose of joining the N.T.P.C.- He, however, delayed his joining the N.T.P.C. because his case for confirmation as Assistant Meteorologist was under consideration of Central Government. The N.T.P.C. finally directed him to join on or before a particular date. In the meantime, however, he was promoted as Meteorologist Grade-I in the E.M.D. with effect from 22-9-1986 and posted at Pune. However, in order to pursue his case for confirmation, he decided to forego the promotion. Despite repeated representation, the I.M.D. did not confirm him and as such he submitted his resignation on 21-10-1986 to the LM.D. He was relieved on 30-10-1986 by the I.M.D. and he joined the N.T.P.C. on 31-10-1986. On 11-2-1987 he again represented to the Central Government requesting for the grant of pro rata pension as he has served the Government for twelve years and eight months. The Director General I.M.D., informed the appellant that since the seniority list of the cadre of Assistant Meteorologists has been quashed by the Central Administrative Tribunal, Madras Bench, his case for confirmation will be considered according to rules on the basis of revised seniority list when finalised. Since no decision was taken by the I.M.D. for considerable time, the appellant approached the Tribunal seeking direction that he should be deemed to be a substantive employee of the Central Government within the meaning of Rule 13 of the C.C.S. (Pension) Rules, 1972 and as such, entitled to pension and other terminal benefits under the rules. The Tribunal rejected the prayer. The Supreme Court, however, has held that the appellant had been appointed in substantive capacity against a permanent post of Assistant Meteorologist and is, therefore, entitled to pro rata pension and other terminal benefits in respect of the service rendered by him under the Central Government.

3. If the above principle is applied, it is obvious the appellants before us cannot be denied the pro rata pension for their previous service and other terminal benefits accruing for the said period of service. We accordingly allow the writ appeal and accordingly the writ petition and direct for determination of pro rata pension and other terminal benefits strictly treating the previous service as one completed before the next service has been taken up by the appellants.

4. The appeal is accordingly allowed.