
(2015) 03 SC CK 0135

In the Supreme Court Of India

Case No : C.A. No. 3136 of 2015 (@ SLP(C) No. 3969 of 2013), C.A. Nos. 3137-3164 of 2015 (@ SLP(C) Nos. 13319-13346 of 2014) and C.A. Nos. 3165-3168 of 2015 (@ SLP(C) Nos. 10148-10151 of 2013)

Baburaj and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Extra-Ordinary Pension Rules — Rule 91, Rule 92, Rule 93, Rule 94, Rule 95

Citation : (2015) 5 SCALE 33

Hon'ble Judges : H.L. Dattu, C.J.I.; Arun Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Leave granted in all the Special Leave Petitions. The issue that arises in these appeals is whether a person who has retired from the military service and joined civil service is required to refund the monetary benefits (including bonus and gratuity, if any) from his military service to become eligible for the higher grade of pay in the civil service?

2. Since the issues are identical in all these appeals, for the purpose of convenient disposal, we would only refer to the facts in Baburaj's case (i.e. Civil Appeal @ Special Leave Petition (C) No. 3969 of 2013).

3. The facts of the lead case are: the applicant(s) are ex-servicemen who had completed approximately 17 years of military service. After their discharge from the military service, they had joined the civil services in the Respondent-State as non-gazetted officers, that is, Drivers in the Police Department.

4. The Respondent-State had passed Government Order, G.O. (P) No. 720/86/Fin, dated 23.10.1986, stipulating that in case of ex-servicemen who are discharged from the military services on their own request, their military service shall not be counted for any benefit for civil pension. Later, a circular dated

06.11.1992 was issued by the Respondent-State to the effect that the military service which counts for civil pension would be reckoned as qualifying service for granting higher grades of pay to non-gazetted officers. By a subsequent Government Order, G.O. (P) No. 930/93(2)/Fin, dated 08.12.1993, it was declared that the military service which counts for civil pension would be reckoned for computing the qualifying service for the grant of first higher grade only. The said Government Order was followed by another order, G.O. (P) No. 622/93/Fin., dated 26.11.2003. whereby it was clarified that the aforesaid grant of higher grade pay would only be applicable to non-gazetted and gazetted officers. A further clarification, dated 05.08.2005, was issued to the effect that the military service which counts for civil pension would be taken into account in computing qualifying service for grant of one higher grade pay with effect from 01.03.1992.

5. Based on the aforesaid, after completion of the qualifying service of 13 years in the State civil service, the Appellants were considered eligible for the grant of higher grade of pay scale and consequently, awarded increments by order No. A1/17775, dated 31.08.2005. Thereafter, on 17.06.2006, the Appellants were issued a show cause notice and were informed that in an audit conducted by the Accountant General in the Police Head Quarter certain defects were noticed in the aforesaid grant of higher grade of pay and it was further noticed that the same was not in accordance with the guidelines and thus, the said grant was withdrawn. Further, it was clarified that in terms of Rule 8(c) of Part III of the Kerala Service Rules (for short, "the Rules"), the Appellants are only entitled to obtain higher grade of pay in civil service, if the retirement benefits from military service are refunded by them and thus, the Appellants were directed to either surrender the retirement benefits (including bonus and gratuity, if any) received by them from their military service along with simple interest at 6% per annum from the date of receipt till the date of refund to obtain higher grade pay scale or else the benefit of the higher grade would be withdrawn and appropriate orders would be passed.

6. The Respondent-State, after affording an opportunity to the Appellants for filing their reply to the aforesaid show cause notice, passed an order, dated 12.09.2006, reiterating the view taken under the said notice and being bound by the interpretation accorded to Rule 8(c) of the Rules in the audit objection, has cancelled the grant of higher pay scale to the Appellants.

7. Being aggrieved by the order passed, the Appellants had approached the Writ Court. The Appellants had contended that Rule 8(c) of the Rules relied upon by the Respondent-State to cancel the grant of higher grade of pay is misplaced as the said Rule applies only to the grant of pension and thus, is inapplicable to the case on hand and therefore, the Government Order and Circulars issued by the Respondent-State from time to time giving benefit of higher grade alone are applicable depending upon the number of years of qualifying service and the service rendered by the Appellants in the civil service of Respondent-State.

Further, the Appellants had contended that the Government Order, dated 26.11.2003 does not stipulate that refund of retirement benefits from military service was a pre-condition for grant of higher grade and that the words "civil pension" contained therein do not remotely refer to any provision contained in the Rules and thus, the said Rules cannot be read into the said Government Order. The Respondent-State has submitted that the necessity to refer to the word "civil pension" in the said Government Order has to be understood in the sense that the benefit extended thereunder is applicable to the ex-servicemen, only if the conditions envisaged under Rule 8(c) are complied with and thus, by virtue of Rule 8(c) read with the said Government Order, it is clear that conditions under both require to be complied with for entitlement of the benefits extended to the Appellants under the said Government Order.

8. The learned Single Judge has opined that since pension is payable only at the end of one's service, therefore the only intention reflected from Rule 8(c) is that re-employed ex-servicemen, who have not earned a pension for their military service, but have received bonus, gratuity will be entitled to get pension on retirement from State civil services subject to returning the bonus, gratuity already drawn by them from Defence Department and thus, under the said Rule there is no stipulation for compliance to earn a higher grade. Learned Single Judge has further noticed that the said Government Order also does not stipulate either return or refund of all the benefits paid to the Appellants by way of money on their retirement from the military services in order to earn higher grade. Therefore, the learned Judge has concluded that the Rule and the relevant Government Order being pertinent to two different parts of service-pension and grant of higher grade pay, cannot be read in consonance so as to determine grades of higher pay and further that the impugned order stating that the benefits already sanctioned to the Appellants are in violation of the Rules cannot be refunded is bad in law. Therefore, the learned Single Judge allowed the writ petition and quashed the show cause notice and the impugned order therein, declaring that higher grade was rightly granted to the Appellants based on Government Order, dated 26.11.2003 reckoning the past military service of the Appellants as qualifying service for grant of higher grade, by judgment and order dated 30.01.2008.

9. The Respondent-State, aggrieved by the said judgment and order, had carried the matter by way of an appeal before the Division Bench of the High Court. The Division Bench has held that in absence of any stipulation under the said Government Order to require refund of the retirement benefits from the military service as a pre-condition to grant of higher grade of pay, the Respondent-State is also bound to count the military service for the grant of higher grade of pay to the Appellants, by its judgment and order dated 01.03.2010 dismissed the appeal filed by the Respondent-State.

10. Thereafter, a review petition came to be filed by the State, inter alia, bringing to the notice of the Court that Rule 8(c) of the Rules was not taken into

consideration by the Court while disposing of the Writ Appeal. Noticing the aforesaid aspect of the matter, the Division Bench had allowed the review petition and had directed that the Writ Appeal is required to be re-heard.

11. In Review, the High Court has considered the rival submissions of the parties to the lis and held that the conditions which enable an ex-serviceman to earn civil pension under Rule 8(c) apply mutatis mutandis to ex-servicemen, who seek benefit of higher grade as per the relevant Government Order, dated 26.11.2003. The High Court has noticed the word "civil pension" as included in the said Government Order and observed that if the intention of the State Government was to allow the higher grade of pay to the Appellants immediately after acquiring the required number of qualifying service, there was no need to use the word "civil pension" with reference to reckoning the military service. Since, that is not the intention of the Respondent-State, the conscious use of word "civil pension" cannot be ignored and the principles under Rule 8(c) insofar as the pension is concerned would apply equally to calculation of higher grade of pay. Therefore, the High Court by its judgment and order dated 12.09.2012 has allowed the review and set aside the judgment and order passed by the Division Bench.

12. We have heard Shri V. Giri, learned senior counsel for the Appellants and Ms. Bina Madhavan, learned Counsel for the Respondent-State.

13. Shri Giri would rely upon Rule 8(c) of Part-III of the Rules and submit that the said Rule only applies for the purpose of granting pension to a civil servant provided he refunds all the monetary benefits that he has received from his military service and the said Rule cannot be resorted to while ascertaining grant of the higher grade pay scale in the civil service for ex-servicemen.

14. Per contra, Ms. Madhavan would submit that apart from Rule 8(c) of the Rules which envisages that a person who has served in the military service, if he has to be eligible for grant of higher grade pay scales, has to necessarily refund the monetary benefits he had obtained in the military service. The learned Counsel has also brought to our notice the Government Order(P) issued by the State Government in No. 764/81 (384) Fin., dated 16.11.1981, Rules 91 to 95 of the Extra-Ordinary Pension Rules and also G.O. dated 26.11.2003.

15. To appreciate the submissions made by the learned Counsel, it is profitable to notice Rule 8(c) of Part-III of the Rules. It is extracted as under:

"Ex-servicemen re-employed in Civil Service shall be allowed to count their Military Service other than War Service in the Armed Forces of India from 1st April 1946 which is non-pensionable under Military Rules but which terminated before a pension has been earned in respect of it for purpose of civil pension, in cases of retirement from Civil Service on or after 14.11.1966;

Provided that the bonus or gratuity, if any, received for the period of Military Service by the person concerned from the Defence Department is refunded to

that Department;

Provided also that the person concerned is not in receipt of any military pension in respect of his Military Service. Breaks between Military Service and Civil Service shall be condoned in accordance with the Government Decision No. 3 above.

The pensionary charges in respect of Military Service other than War Service will be borne by the Government of India on a service share basis in accordance with the normal rules in Appendix IIIB, IV of the Kerala Account Code, Vol. 1".

16. The Government Order, dated 16.11.1981, referred to by the Respondent-State also requires to be noticed. The said order is reproduced as under:

"Counting of War Service and Military Service for higher grade.

GOVERNMENT OF KERALA

Abstract

Public Services-Higher Grade to Non-Gazetted

Officers counting of War Service and Military Service - Orders issued.

G.O. (P)764/81 (384) Fin. Dated, Trivandrum, 16th November, 1981.

Read:- (i) G.O.MS. 439/79/GAD dated 1-8-1979.

(ii) General Education (J) Department's letter No. 67835/J3/75/G, Edn. dated 14-5-1978 addressed to all Regional Deputy Directors and Assistant Educational Officers.

(iii) Lr.No.SB-2/9982/81 dated 25-8-1981 from the Director, Rajya Sainik Board, Trivandrum.

ORDER

In the G.O. read as first paper above, Government issued orders allowing the benefit of a higher grade, with effect from 1-7-1979, to all Non-Gazetted Officers who remain in the entry grade without a promotion in the normal course, on completion of 13 years of service in the entry grade. It has been pointed out that as per the Government letter read as second paper above, war service and military service which count for pension will be reckoned for computing the qualifying service required for the grant of higher grade to teachers and as such it has been represented that war service and military service may also be reckoned for granting higher grade to Non-Gazetted Officers as allowed to teachers. The Director, Rajya Sainik Board, Trivandrum in his letter read as third paper above, has recommended this suggestion.

2. Government have considered the proposal in detail and are pleased to order that war/military service which counts for civil pension will also be reckoned for computing the 13 year qualifying service for the grant of the benefit of higher

grade in respect of Non-Gazetted Officers. Civilian Service under Military will not, however, count for higher grade.

3. These orders will take effect from 1-7-1979.

By order of the Governor, M. George, Joint Secretary (Fin.)" (emphasis supplied)

17. Part III of the Rules relates to the payment of pension in the Respondent-State civil services. Rule 8 therein specifically deals with military service, and the conditions for reckoning of military service to assess civil pension are contemplated under Rule 8(c). Ex-servicemen who are re-employed in civil service, to enable them to earn civil pension after retirement from State service, they have to comply with the conditions contained therein. Rule 8(c) refers to a situation that ex-servicemen should be re-employed in civil service and he must have retired under military service before he earned a pension. It is also subject to two conditions contained under proviso (1) and proviso (2). The first proviso envisages return of bonus or gratuity, if any received for the period of military service rendered by the Ex-servicemen. He has to return the said amount to the Defence Department from where he received bonus or gratuity if he opts to have civil pension on his retirement. The second proviso disentitles a civil servant, who is an ex-serviceman from receiving State pension if he is already receiving military pension. The said Rule 8(c) only talks about civil pension and does not refer to any other stage of civil service rendered by an ex-serviceman.

18. The Government Order, dated 26.11.2003, extracted above talks of conditions for grant of higher grade of pay to the ex-servicemen employed in civil services. It contemplates that military service which counts for pension will be reckoned for computing the qualifying service required for the grant of higher grade to non-gazetted officers. This Government Order particularly mentions that military service which counts for civil pension will also be reckoned for computing the 13 year qualifying service for the grant of the benefit of higher grade in respect of non-gazetted officers and thus confers such benefit on to the Appellants. It does not mention any conditions for such benefit and also lacks reference, explicit or implicit, to any condition which may require to be fulfilled before availing the benefits granted thereunder.

19. We ought to be mindful of the nature and the context of benefits envisaged under the Government Order and the Rule to understand the ambit of their operation. While the higher grade is sanctioned during the service of an employee, pension is payable to him at the end of his service. A conjoint reading of Rule 8(c) of Part-III of the Rules and also the said Government Order makes it clear that Rule 8(c) would apply only for quantification of the pensionary benefits payable to a civil servant after he retires, on attaining the age of superannuation in the civil service. Rule 8(c) contemplates that if an ex-serviceman desires to avail the civil pension, he has to necessarily refund the monetary benefit that he has received from his military service. The said rule does not speak of its application for granting of the higher grade in the civil service. Thus, by omission

to extend its application as qualification for eligibility to higher grade of pay, the Respondent-State has restricted its applicability to only pensionary benefits.

20. In spite of expression "Military Service which counts for civil pension", in the absence of condition to refund the terminal benefits drawn by them under the Government Order to secure grant of higher grade, no such compliance can be read into the said Government Order or be insisted upon the Appellants. At this juncture, the reason behind inclusion of condition for refund of benefits derived from military service to earn civil pension envisaged at Rule 8(c) would be clear, that is, the principle that no person shall avail benefit of life-long retirement benefits from two services under the State or Union.

21. Therefore, what can be deduced from the above discussion is that the Government Order and the Rule 8(c) of the Rules operate in different fields, that is, grant of higher grade of pay and grant of pensionary benefits. While Rule 8(c) applies to computation of pension on retirement from civil services in the State and does not bar grant of an appropriate higher grade of pay to a re-employed ex-serviceman in civil services, the Government Order operates with respect to grant of higher grade of pay alone and does not contemplate conditions for grant of pension. Thus in principle the said Rule postulates that an employee, being an ex-serviceman, should not avail the benefit of pension from both the military and the civil services. The Government Order does not overlap on the domains of principles embodied in the said Rule and thus cannot be read with the Rule to erroneously conclude that unless the retiral benefits from military service are refunded to the Respondent-State, the military service of such ex-servicemen would not be considered as qualifying for grant of higher grade. The stipulations contained in Rule 8(c) cannot be read with the eligibility conditions for grant of higher grade of pay in the absence of any specific incorporation in the Government Order.

22. In our view, the learned Judges of the Division Bench of the High Court were incorrect in applying Rule 8(c) of the Rules to deny the benefit of the higher grade to the Appellants-herein.

23. In the result, we allow the appeal, set aside the impugned judgment(s) and order(s) passed by the High Court and restore the order(s) passed by the learned Single Judge. C.A. Nos. 3137-3164/2015 @ S.L.P. (C) Nos. 13319-13346/2014 and C.A. Nos. 3165-3168/2015 @ S.L.P. (C) Nos. 10148-10151/2013: In view of the order passed in Civil Appeal @ S.L.P. (C) No. 3969 of 2013, these appeals are also disposed of in the same terms, conditions, observations and directions. Ordered accordingly.