

(2016) 05 GAU CK 0083
In the Gauhati High Court
Case No : W.P. (C) No. 87 of 2014

Bidya Chandra Singha

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 31-05-2016

Acts Referred:

Citation : (2016) 4 GauLJ 464 : (2016) 6 GauLR 665 : (2016) 3 GauLT 686

Hon'ble Judges : Mr. Arup Kumar Goswami, J.

Bench : Single Bench

Advocate : Mr. A.M. Borbhuiya, Mr. Z. Hammad and Mrs. F. Begum, Advocates, for the Appellant; Mr. M.K. Misra, Standing Counsel Higher Education, Mr. C. Barua, Accountant General and Mr. B.K. Purkayastha, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

Mr. Arup Kumar Goswami, J. (Oral) - Heard Mr. A.M. Borbhuiya, learned counsel for the petitioner. Also heard Mr. M.K. Misra, learned standing counsel, Higher Education, appearing for the respondent Nos. 1 and 5, Mr. C. Barua, learned standing counsel, Accountant General, Assam, appearing for the respondent Nos. 2 and 3 and Mr. B.K. Purkayastha, learned counsel appearing for the respondent No. 6.

2. By an order dated 8.1.2014, the name of the Director of Pension and Public Grievances, Assam, who was arrayed as respondent No. 4, was struck off.

3. The petitioner was appointed as lecturer in the Department of Manipuri against a non-sanctioned post in Radha Madhab College, Silchar in June, 1981 and he continued as such till 1986. On 10.11.1988, the petitioner was appointed temporarily against a non-sanctioned post at Guru Charan College, Silchar. Subsequently, he was appointed on regular basis as a Lecturer in the Department of Manipuri in the same college against a sanctioned post on 26.7.1993. The petitioner joined the post on 2.8.1993. The petitioner, in the writ petition, has

averred that he retired on 31.12.2004 and thereafter, submitted pension papers. On 19.11.2008, the Senior Accounts Officer of the Office of the Accountant General, Assam issued a letter to the Inspector of Colleges, Office of the Director, Higher Education, Assam expressing his inability to grant pension to the petitioner on the ground that the petitioner served only 9 years 5 months which is 7 months less than the minimum requisite of 10 years service for receiving pension as per Rules.

4. At this stage it will be appropriate to quote the said letter dated 19.11.2008:

" Office of the Accountant General (A&E) Asam,

Beltola Guwahati-29.

No. Pen-2/K-63915/1-11/PC/08/1463

dated 19/11/2008

To

The Inspector of Colleges,

O/o the Director of Higher Education,

Kahilipara, Guwahati-19.

Sub:- Pension Case in r/o Shri Bidya Chandra Singha, Retd. Lecturer.

Sir,

With reference to your letter No.DHE/PEN/2865/2008/3 dated 29/08/08 on the subject cited above, I am to state that as per Service Book & other documents, the appointment of Shri Bidya Chandra Singha, Retd. Lecturer was approved w.e.f. 02-08-1993 and his date of retirement falls on 31.12.2002 according to his date of birth i.e. 01-01-1945. Therefore, his Qualifying Service stands only 09 years and 05 months at the time of his retirement. At least 10 years Qualifying Service is required to get pension as per Rule 108 of A.S.P.R.-1969.

In the above circumstances, no pensionary benefit is admissible to him. As such, all connected Pension papers and Service Book in original in r/o Shri Bidya Chandra Singha, Retd. Lecturer are returned herewith for necessary action at your end.

Moreover, processing of such type of cases should be stopped in the initial stage, so that family of the govt. servant need not deposit 50% of the C.P.F. as it is done in this case.

Enclo:-As stated above

Yours faithfully,

Sd/-

(B. Choudhury)

Sr. Accounts Officer."

5. An affidavit was filed by the Director of Higher Education which is based on the letter dated 19.11.2008 of the Senior Accounts Officer of the Office of the Accountant General, Assam (A&E) and thus contending that as there was short fall of 7 months, the petitioner did not have the minimum qualifying service of 10 years and so, he was not entitled to pension in terms of Rule 108 of the Assam Service (Pension) Rules, 1969 (for short the, 1969 Rules).

6. An affidavit-in-opposition was filed by the respondent Nos. 2 and 3 reiterating the stand taken in the letter dated 19.11.2008 and also taking a stand that responsibility for declaration of past temporary service rendered prior to regularisation to treat the same as qualifying service under the Proviso of Rule 31 of the 1969 Rules lies with the Governor.

7. The respondent No. 6 in his affidavit stated that the petitioner retired from service on 31.12.2004 on completion of 60 years of age.

8. An additional affidavit was filed by the respondent Nos. 2 and 3 on 15.3.2016. It will be appropriate to quote para 4 of the said affidavit:

"That, as per the submission made by the Petitioner in the Writ Petition, the Petitioner was initially appointed as a "Lecturer" in Manipuri subject at Radha Madhab College, Silchar in June 1981 against a non-sanctioned post and continued his service till August 1986.

Later, the Petitioner was appointed temporarily on 10.11.1998, against a non-sanctioned post at Guru Charan College, Silchar and subsequently, being fresh appointment on regular basis against an additional post sanctioned by the Departmental Authority vide Approval order dated 29.5.1993, where the Petitioner started formal service and joined as a fresh recruitment on 2.8.1993.

Prior to enactment of the Assam College Employees (Provincialisation) Act 2005, the College employees were governed by the provision of Assam Non-Government Management Rule 2001 as amended and Assam Aided College Employees Rules 1960, where the retirement age of College employees was 60 years. By virtue of Petitioner's date of birth 1.1.1945, the petitioner was allowed to retire then on 31.12.2004 (AN), on attainment of 60 years of retirement age, where pensionary benefit at all, was not admissible, since the service of the Petitioner was not under Government.

According to Government of Assam, O.M. dated 6.8.2007, it is clearly evident that the Government of Assam enacted the Assam College Employees (Provincialisation) Act, 2005, by Notification in the Official Gazette vide No. LOL.112/2005/157 dated 22.12.2005. As per Article 8 of the said Act, those employees who retired/died, as the case may be, prior to 1.1.2005 shall be extended only Superannuation Pension or the Family Pension, as may be

applicable under the existing Rules of the Government. Further, as per Article 9 of the said Act, provincialized College employees shall be on superannuation on attaining such age, on which the Government servant similarly situated superannuates.

As per the provisions contained in the Government of Assam, O.M. dated 25.1.2005, the age of superannuation/retirement of State Government employees prior to January 2005 was 58 years and by virtue of the same, date of superannuation in the case of Petitioner has been treated as 31.12.2002 (AN), being Date of Birth of the Petitioner is 1.1.1945. The Petitioner's retirement age cannot be treated as 60 years, after coming into force of the discussed Assam College Employees (Provincialization) Act 2005 since it violates the provisions contained in Article 9 of the discussed Act. Similarly situated Assam State Government servant, whose date of birth falls on 1.1.1945, being superannuation age of 58 years, is also due to retire on 31.12.2002 (AN). As such, the date of retirement, in the case of Petitioner, has been treated rightly as 31.12.2002(AN) and by dint of that, the Petitioner had rendered a regular service of 9 years 5 months 0 days from 2.8.1993 to 31.12.2002(AN), which does not qualify for pension.

(Emphasis supplied by Court).

After coming into force of the Assam College Employees (Provincialization) Act 2005, the entitlement of pensionary benefits are regulated by the Rule provisions contained under the Assam Service (Pension) Rules 1969 and as per Rule 108 and Rule 110 of the Assam Service (Pension) Rules 1969, a minimum service of 10 years with service confirmation, is required for entitlement of pension. Elaborately, it is stated herein that if a retired official renders a minimum service of 20 years, then his or her service is deemed to have confirmed and is automatically entitled for pension even if his or her service is not declared as confirmed. But in the case of minimum service of 10 years, service confirmation is mandatory for entitlement of pension to the Assam State Government retired official. The Petitioner could not render the required regular service of 10 years, for entitlement of pension and as the qualifying service is shortfall by 7 months, pension in the case of Petitioner is not admissible under the aforesaid Rules."

9. It appears from the aforesaid paragraph that prior to enactment of the Assam College Employees (Provincialization) Act, 2005, (for short the, 2005 Act) the college employees were governed by the provisions of Assam Non-Government Management Rule 2001, as amended and Assam Aided College Employees Rules, 1960 (for short, "1960 Rules") where the retirement age of college employees was fixed at 60 years. It is stated that by virtue of petitioner's date of birth being 1.1.1945, he was allowed to retire on 31.12.2004 on attaining 60 years. It is stated that Section 8 of the 2005 Act provides that employees who retired/died, as the case may be, prior to 1.1.2005 shall be granted only superannuation pension or family pension as may be applicable under existing Government Rule and Section 9 provides that provincialised college employees shall go on

superannuation on attaining such age at which a Government servant similarly situated superannuates. Prior to January 2005 retirement age of Government servants was 58 years and therefore, the date of superannuation of the petitioner was treated to be 31.12.2002, the date of birth of the petitioner being 1.1.1945.

10. Mr. Borbhuiya submits that even before affidavits were exchanged, the petitioner had, based on an erroneous understanding of the letter dated 19.11.2008 (Annexure-6 of the writ petition), filed an additional affidavit, more or less admitting that the date of retirement of the petitioner would be 31.12.2002. He submits that such affidavit on the face of the materials on record produced by the respondents may not be decisive to conclude that the petitioner deemed to have retired on 31.12.2002 though actually he worked up to 31.12.2004 and retired on that date. He has submitted that there is no dispute that the petitioner actually retired on 31.12.2004 and if that is taken into account, the petitioner had the requisite qualifying service of more than 10 years and thus, the petitioner will be entitled to pension. It is submitted by him that the petitioner had paid 50% of the contributory provident fund in order to get pension. It is pointed out that when the petitioner had actually rendered service up to 31.12.2004, the action taken by the Accountant General to take away two years of valuable service rendered by the petitioner to bring in parity with the retirement age of the Government servants in terms of Rule 9 of the 2005 Act is wholly misconceived. The petitioner is entitled to pension, he having completed 10 years of qualified service and there will be no requirement to take recourse to Rule 31 of the aforesaid 1969 Rules, he submits.

11. Mr. C. Barua, abiding by the stand taken in the affidavits, has strenuously argued that the petitioner could not reap benefits both ways. He has submitted that prior to coming into force of the 2005 Act, the petitioner would not have been entitled to pension. He would have been entitled to pension under the 2005 Act if he had rendered the minimum qualifying service of 10 years. Under the 2005 Act, the petitioner is to retire at the age of 58 years and even though the petitioner continued in service till 31.12.2004, for getting pensionary benefits the service rendered till 31.12.2004 cannot be reckoned. In that view of the matter, there is short fall of 7 months. He, however, submits that there is a benevolent proviso under Rule 31 of the 1969 Rules which can be resorted to for meeting the qualified service.

12. The stand taken by Mr. Barua is echoed by Mr. Misra.

13. Mr. Purkayastha has, however, submitted that the petitioner is entitled to pension as he had completed 10 years of qualified service.

14. I have considered the submission of the learned counsel for the parties and have perused the materials on record.

15. At the outset, it is to be noted that the petitioner's regular service began on 2.8.1993. At the time of his retirement, the petitioner was not entitled to

pension. It is also not in dispute that Guru Charan College in which the petitioner served is an aided college and the 1960 Rules were applicable to the petitioner. Rule 11 of 1960 Rules provides that an employee of an aided college shall retire on attaining the age of 60 years. It is on the basis of the said Rule, the petitioner superannuated on 31.12.2004.

16. Sections 8 and 9 of the 2005 Act are quoted here in below for better appreciation:

"8. Employees who retired/died, as the case may be, prior to 1st January, 2005 shall be given only superannuation pension or the family pension, as may be applicable under the existing pension Rules of the Government. They shall not be entitled to any other pensionary benefits :

Provided that the payment of such superannuation or family pension, as the case may be, are subject to refund of the Government's share of their Contributory Provident Fund within six months from the date of coming into force of this Act:

Provided further that if the Government's share of Contributory Provident Fund is not refunded in respect of a retired/deceased employee within the aforesaid stipulated period no superannuation pension or family pension shall be admissible in respect of such employee.

Age of superannuation

9. The provincialised employees shall go on superannuation on attaining such age at which a Government servant similarly situated superannuates."

17. A perusal of the aforesaid Section 8 would go to show that an employee who retired prior to 1.1.2005 shall be given only superannuation pension or family pension as may be applicable under the existing pension rules of the Government and they shall be entitled to no other pensionary benefits. It is also clear from the second proviso to Section 8 that if the Government's share of Contributory Provident Fund is not refunded in respect of a retired/deceased employee within a period of six months, no superannuation pension or family pension shall be admissible in respect of such employee. It is admitted position that the petitioner had deposited the government's share of contributory provident fund.

18. The Act of 2005 came into force on 23.12.2005. There is an Office Memorandum dated 25.1.2005 (Annexure-B to the additional affidavit filed by the respondent Nos. 2 and 3) raising the age of State Government employees from 58 years to 59 years with effect from 1.1.2005. The Memorandum goes to show that the said Memorandum will be applicable to all State Government employees who are about to retire after 1.1.2005 and those employees who retired on 31.12.2004 on superannuation will not be entitled to get the benefit.

19. Rule 108 (b) of 1969 Rules provides that after service of not less than 10 years, a pension not exceeding the amount mentioned therein will be paid and that is what is construed to be minimum qualifying service for entitlement of

pension.

20. Rule 31 of the 1969 Rules provides that service of officer does not qualify for pension unless it conforms to the following three conditions:

Firstly, the service must be under Government;

Secondly, the employment must be substantive and permanent;

Thirdly, the service must be paid by Government:

The proviso to Rule 31 empowers the Governor, even though either or both of conditions 1 and 2 above are not fulfilled -

(i) to declare that any specified kind of service rendered in a non-gazetted capacity shall qualify for pension, and

(ii) in individual cases and subject to such conditions as he may think fit to impose in each case, allow service rendered by an officer to be counted for pension.

21. Pension is neither a bounty nor a matter of grace. It is a payment for the past services rendered. It is a social welfare measure for rendering socio economic justice to those who in their hey days of their life toiled for the employer on an assurance that they would not be left in the lurch in their old age.

22. The petitioner may have conceded in the additional affidavit that going by the stand taken in the letter dated 19.11.2008 he was to retire on 31.12.2002. Factually, in conformity with the 1960 Rules, he retired at the age of 60 years on 31.12.2004. The Court will not bind the petitioner for making that statement. A Court is more concerned in doing justice and admission made by the petitioner, touching upon legal interpretation of his date of retirement on a mistaken notion of law, cannot be the basis for adjudication.

23. The admitted position as has emerged from the discussion made above is that undoubtedly the petitioner had rendered service legally from 2.8.1993 to 31.12.2004. On the misconceived notion, in order to apply the provisions of 2005 Act, two years of service rendered by the petitioner had been curved out by the Accountant General thereby reducing the qualifying service rendered by the petitioner. Such action of the authorities is antagonistic to law and strikes a body blow on the concept of Article 14 of the Constitution of India. The authorities could not have deducted two years of service actually rendered by the petitioner for the purpose of reckoning qualifying service purportedly in compliance of Section 9 of the 2005 Act to bring down the age of retirement to 58 years to make it at par with the Government servants. In the understanding of the Court no such idea can be imbibed or read into in Section 9 of the Act of 2005.

24. When the period of 2.8.1993 to 31.12.2004 is taken, the petitioner had rendered service for more than 10 years and therefore, a detailed analysis of what was the age of retirement of the Government servants in the year 2005 for

the purpose of adjudication of this writ petition is not called for.

25. Taking that view, I am of the considered opinion that the petitioner had the requisite minimum qualified service so as to make him eligible for grant of pension.

26. Accordingly, the respondents are directed to finalise the pension case of the petitioner within a period of three months from the date of receipt of the certified copy of this order. The petitioner may obtain a certified copy of this order and place the same before the respondent authorities for doing the needful in terms of this order.

27. The prayer made by Mr. Borbhuiya for grant of interest, however, is not favourably considered because the petitioner had chosen to approach this Court after six years from the date of the letter dated 9.11.2008.

28. The writ petition stands partly allowed. No cost.