

(2014) 11 TP CK 0036
In the Tripura High Court
Case No : Writ Petition (Civil) 154 of 2009
Bishnupada Roy VsThe State of Tripura

Date of Decision : 11-11-2014

Acts Referred:

Citation : (2015) LabIC 1563

Hon'ble Judges : Deepak Gupta, C.J;S. Talapatra, J

Bench : Division Bench

Advocate : S. Deb, Sr. Advocate and P.K. Pal, Advocate for the Appellant; T. Datta Majumder, G.A, Advocate for the Respondent

Judgement

Deepak Gupta, C.J.—The short question involved in this petition is whether the service rendered by the petitioner on deputation from 30.11.2002 to 30.06.2008 during which period he was on deputation to the District Rural Development Agency (hereinafter referred to "DRDA") should be counted as qualifying service within the meaning of the Central Civil Services Pension Rules, 1972 (hereinafter referred to "Rules").

2. Qualifying service has been defined in Rule 3(q) of the Rules in the following terms:-

"3.(q) "Qualifying Service" means service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules;"

Therefore, service rendered while on duty or otherwise has to be taken into account for grant of pension and gratuities admissible under the Pension Scheme.

3. The main question is whether the service rendered by the petitioner on deputation to the DRDA should be counted towards his qualifying service or not. It has been urged on behalf of the State by Mr. T. Datta Majumder, learned Government Advocate that for the period when the petitioner was on deputation, he was not an employee of the State and all emoluments have been paid by the DRDA and therefore, the contribution of the pension should have come from the DRDA and since contribution of pension has not come, the principal employer is

not liable to pay pension.

4. At this stage, we may make reference to the conditions attached to the order of the deputation, which read as follows:-

"1. DRDA shall allow pay and allowances prevail for DRDA staff during the period of deputation.

2. TA, DA shall be paid as per rate prevail in the DRDA during the period of Deputation.

3. Medical allowed, Medical benefit shall be extended according to DRDA rules for the said purpose during the period of deputation.

4. No L.T.C. benefit shall be extended by DRDA out of DRDA Fund during the period of deputation.

5. No. employer share shall be extended to any staff beneficial schemes during the period of deputation. Any such contribution for who welfare of the staff have to be paid by the parent Department/Organization/institution/Corporation during the period of deputation.

6. DRDA shall not pay other employees benefit during the period of deputation except allowance and Ex-gratia on Durga Puja No. Provision for Die-in-harness, compensation on unforeseen incident etc.

7. DRDA shall not provide any residential accommodation during the period of deputation."

According to these conditions, the DRDA was to pay only the pay and allowances to the persons sent on deputation. TA/DA was to be paid as per the rates prevailed in DRDA and the employers rates were not to apply. Similarly, medical allowances and other medical benefits were to be granted as per DRDA rules. The DRDA was also not responsible to pay any LTC. Clause-5 is very important and provides that the DRDA shall not be responsible to extend any staff beneficial schemes during the period of deputation makes it amply clear that any such contribution for the welfare of the staff have to be paid by the parent Department/Organization/Institution/Corporation during the period of deputation. It is more than amply clear that it is the responsibility of the principal employer to ensure that all contributions for the schemes beneficial to the employees which are not to be paid by the DRDA are paid by the principal employer.

5. An employee cannot be sent on deputation on terms which are less beneficial to him than in his parent department. An employee, who is otherwise entitled to pension cannot be denied pension because he was sent on deputation to some other department where pension is not payable. We, therefore, allow the petition and direct that the period from 30.11.2002 to 30.06.2008 shall be included in the qualifying service for calculating the pension and other retiral benefits of the petitioner. The financial benefits be paid to the petitioner latest by 31st March,

2015, failing which, the employer, respondent No. 3 shall be liable to pay interest @ 12% per annum.