
(2023) 01 TEL CK 0024
In the Telangana High Court
Case No : Writ Petition No. 2292 Of 2021

Ch.Eswarachari

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 10-01-2023

Acts Referred:

Constitution Of India, 1950 — Article 14

A.P. Revised Pension Rules, 1980 — Rule 13, 13(a), 13(b), 14, 14(1)

Citation : (2023) 01 TEL CK 0024

Hon'ble Judges : E.V.Venugopal, J

Bench : Single Bench

Advocate : Ravi Kondaveeti

Final Decision : Allowed

Judgement

1 Seeking to declare the Memo No.10846/Endts-1/2020 dated 17.09.2020 issued by the first respondent in rejecting the claim of the petitioner for counting his service from the date of his initial appointment for the purpose of pension and other pensionary benefits as per Rule 13 of the A.P. Revised Pension Rules, 1980 (as adopted by the Telangana Government) the petitioner filed the present writ petition.

2 The learned counsel for the petitioner submits that the petitioner was initially appointed as NMR worker in August, 1978 in the project for construction of model temples which were submerged on construction of Srisailem Dam. After completion of the above project, he was again engaged in Budha Project from 1983 and continued in that project up to August, 1990. On 10.02.1999, the Government issued G.O.Ms.No.249 Revenue (Endowments) Department regularizing the services of the petitioner as Shilpi Work Inspector with effect from 10.02.1999. Thereafter the petitioner made a representation for regularization of his services at least from 01.08.1990, however, the same was rejected vide G.O.Rt.No.1640 dated 30.08.2003. Questioning the said G.O., the petitioner filed O.A.No.8095 of 2008 before the A.P. Administrative Tribunal,

Hyderabad. The said O.A. was allowed by order dated 19.01.2011. The petitioner was promoted as Assistant Stapathi in the year 2005. The petitioner retired from service on 31.08.2016 on attaining of superannuation. The pension of the petitioner was fixed by taking his service with effect from 22.03.1999. Petitioner made a representation on 08.09.2015 requesting to count his service with effect from August, 1978. The petitioner also made a representation to the Minister for Endowments on 12.07.2016, who in turn forwarded the same to the second respondent on 06.08.2016. Since no orders were passed thereon, the petitioner was constrained to file W.P.No.7437 of 2019 and the said writ petition was disposed of on 09.04.2019 with a direction to the respondents to consider the representation of the petitioner dated 08.09.2015 and pass appropriate orders in accordance with law within a period of eight weeks. However, on 06.09.2019, the second respondent issued proceedings rejecting the claim of the petitioner for treating the NMR service as qualifying service for the purpose of pension. Hence the petitioner is constrained to file the present writ petition.

3 On the other hand, the learned counsel for the respondents submitted that the matter was examined and orders were passed vide proceedings dated 06.09.2019 that the matter of treating his NMR services as qualifying services for the purpose of pensionary benefits was already decided by the Hon'ble Court in W.P.No.26665 of 2011 wherein it was held that the regularization shall only be considered from the date on which the regularization is considered by passing appropriate orders. In the case on hand, vide G.O.Rt.No.240, Revenue (Endts-I) Dept., dated 10.02.1999 orders were issued regularising the services of the petitioner in the post of Silpi Draughtsman in terms of G.O.Ms.No.212, Finance & Planning Dept., dated 22.04.1994 and he was absorbed in the post of Silpi Draughtsman from 10.02.1999 and as such, his services were regularized from 10.02.1999 only; therefore, it cannot be regularized from 1978 onwards and hence his request was rejected. It is further submitted that according to Rule 14 of A.P. Revised Pension Rules, 1980, the services of a Government servant shall not qualify unless his duty and pay are regulated by the Government. Since in the present case the services of the petitioner were regulated after regularization vide G.O.Rt.No.240, dated 10.02.1999, in Silpi Draughtsman post sanctioned by the Government, the service rendered by him prior to 1999 cannot be considered as qualifying service for the purpose of pensionary benefits and accordingly prayed to dismiss the writ petition.

4 The learned counsel for the petitioner relied on the ratio laid down in the following judgment:

State of Andhra Pradesh rep. by its Secretary, Finance & Planning vs. M. Raja Rao 2017 (3) ALT 128 (D.B.) wherein the erstwhile common High Court of Andhra Pradesh and Telangana held at para Nos.5 and 6 as follows:

From the above reproduced Rules, it is clear that qualifying service of a Government Servant commences from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary

capacity, subject to the exceptions contained in clauses (a) and (b) of Rule 13 of the Rules. A temporary employee shall further satisfy the conditions stipulated in Rule 14 of the Rules for counting his temporary service for pensionary benefits. Under this Rule, unless his duties and pay are regulated by the Government or under the conditions determined by the Government, such service was not qualified for pension. The meaning of the word "service" under sub-rule (1) of Rule 14 of the Rules is explained in sub-rule (2) thereof, as per which the service is under the Government and the salary is paid by the Government from the Consolidated Fund of the State, but the same does not include the service of a non-pensionable establishment, unless such service is treated as qualifying service by the Government.

In the case on hand, it is not in dispute that the duties of respondent No. 1 and his pay were regulated by the Government. Further it is also not in dispute that respondent No. 1 was paid by the Government from the Consolidated Fund of the State and that the post is a pensionable one. Therefore, the Tribunal has rightly come to the conclusion that temporary service of respondent No. 1 shall be counted as qualifying service for the purpose of pension under the abovementioned Rules.

G.Madamma vs. Commissioner, Municipal Corporation, Kurnool District 2021 (5) ALD 36 (AP) (DB) wherein the High Court of Andhra Pradesh held at para No.6 as follows:

The 1980 Rules laid down the provisions for grant of pension including family pension to the employees in the State including those employed by municipality. Rules 13 & 14 of the 1980 Rules defined the nature of service which would be countenanced as 'qualifying service' for the purposes of grant of pension under the said Rules.

Rules 13 and 14 of the 1980 Rules read as follows:

"13. Commencement of qualifying service:- Subject to the provisions of the rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:

Provided that-

(a) in the case of a Government servant in a Class IV service or post who held a lien or a suspended lien on a permanent pensionable post prior to the 17th November, 1960, service rendered before attaining the age of sixteen years shall not count for any purpose; and

(b) in the case of a Government servant not covered by clause (a), service rendered before attaining the age of eighteen years shall not count, except for compensation gratuity.

14. Conditions subject to which service qualified –

(1) The service of a Government servant shall not qualify unless his duties and pay are regulated by the Government, or under conditions determined by the Government.

(2) For the purposes of sub-rule (1), the expression service means service under the Government and paid by the Government from the Consolidated Fund of the State but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by the Government.

From the aforesaid Rules, it appears 'qualifying service' would commence from the date an employee is appointed in a permanent or temporary capacity provided his service conditions and pay are determined by the Government. The Rules do not make a distinction between a permanent or temporary employee. Admittedly, the deceased employee, while working as NMR in Kurnool Municipality, was governed by conditions of service prescribed by the Government and paid from the State exchequer. Even the Municipality accepted this fact and recommended the case of the petitioner observing as follows:

"It is also to state that in APRP 1980 under Rule 14 that the service rendered as fulltime contingent post i.e. preabsorption of all full time contingent employees service is countable as qualifying service for pensionary benefits in relaxation of Article 361 of Civil Service regulations as per G.O. Ms. No. 156/Fin & Pig (FW Pen. 1) Dept. dated 29.04.1983 for pensionary benefits. A copy of the representation submitted by the widow of Ramanjaneyulu, Ex-PH Worker is enclosed here with perusal."

Hence, the employee had a vested right to pension as a contingent employee under the 1980 Rules.

R.Rama Rao vs. Railway Board, New Delhi 2015 (6) ALD 131 (FB) wherein the erstwhile common High Court of Andhra Pradesh and Telangana held at para Nos.19 to 21 as follows:

19. As seen from the provisions of Rules 5, 18, 21(2) and 28(2) of the 1993 Rules, it is clear that temporary servant is placed on par with a regular servant for the purpose of payment of pensionary benefits. As seen from Rule 18, a person who retires from the Railways as a temporary Railway servant and before such retirement, had put in 10 years of service, is entitled to all the benefits as applicable to a regular servant. He is also entitled to voluntary retirement, gratuity, family pension and death benefits. If he does not have the minimum service, he is also entitled to invalid pension. As per Rule 5, a temporary Government servant retrenched or likely to be retrenched, succeeds in securing employment in Railway service is treated as transferred and is entitled to count that service also for computation of qualifying service. In accordance with Rule 21(2), a Railway servant originally belonging to a State Government service, on his permanent transfer to the Railway service, the continuous service rendered under the State Government in an officiating or temporary capacity, if it is followed, without interruption, by substantive appointment or the continuous

service rendered under the State Government in an officiating or temporary capacity shall qualify for computation of qualifying service. According to the provisions of Rule 28, while determining qualifying service, service rendered in a temporary capacity also in the State Government or the Central Government, before appointment in the Railways, counts towards qualifying service.

20. Thus, a cumulative reading of these provisions would make it clear that a temporary servant, even without being appointed permanently, is entitled to get all the benefits payable to a permanent servant and the temporary service rendered outside the Railway service also counts towards qualifying service.

21. In the above background, the provisions of Rule 20 need to be analyzed. According to this Rule, qualifying service of a Railway servant commences from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. The only requirement is such a temporary appointment should be continuous and without interruption followed by substantive appointment. The definition of a 'Railway servant' as provided in Rule 3 (23) also covers the temporary service rendered. The definition only excludes a person in casual service or a person lent from other services. Thus, the temporary service rendered by a temporary Railway servant, if it is followed by permanent appointment, and if there was no interruption between the temporary service and the permanent appointment, the entire temporary service qualifies as service for computation of pensionary benefits. The various provisions of the Rules discussed above make this very clear.

Union of India vs. Rakesh Kumar (2017) 13 SCC 388 wherein the Hon'ble Apex Court held at para No.53.3 as follows:

53.3. Those casual workers who are appointed to any post either substantively or in officiating or in temporary capacity are entitled to reckon the entire period from date of taking charge to such post as per Rule 20 of Rules, 1993.

Vasant Gangaramsa Chandan vs. State of Maharashtra (1996) 10 SCC 148 wherein the Hon'ble Apex Court held at para No.5 as follows:

5. A reading clearly indicates that the qualifying service is from the date he takes charge of the post to which he was first appointed or from the date the employer started deduction of provident fund from the employee, whichever is later. Pension is not a bounty of the State. It is earned by the employee for service rendered to fall back, after retirement. It is a right attached to the office and cannot be arbitrarily denied. Therefore, we read down the rule. We hold that reading the rule which is "later" must be read to whichever is "earlier". If so read, the rule is valid. Otherwise, it would be arbitrary offending Article 14 of the Constitution.....

Yashwant Hari Katakhar vs. Union of India (1996) 7 SCC 113 wherein the Hon'ble Apex Court held at para No.3 as follows:

3.The appellant having served the Government for almost two decades it

would be unfair to treat him temporary/quasi-permanent. Keeping in view the facts and circumstances of this case we hold that the appellant shall be deemed to have become permanent after he served the Government for such a long period. The services of the appellant shall be treated to be in permanent capacity and he shall be entitled to the pensionary benefits. We allow the appeal, set aside the judgment of the Tribunal and direct the respondents to treat the appellant as having been retired from service on' March 7, 1980 after serving the Government for 18½ years (more than 10 years as permanent service) and as such his case for grant of pension be finalised within six months from the receipt of this order. The appellant shall be entitled to all the arrears of pension from the date of retirement. No costs.

5 From Rules 13 and 14 of the Pension Rules, 1980, it is clear that qualifying service of a Government servant commences from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity, subject to the exceptions contained in clauses (a) and (b) of Rule 13 of the Rules. The temporary employee shall further satisfy the conditions stipulated in Rule 14 of the Rules for counting his temporary services for pensionary benefits. Under this Rule 14, unless his duties and pay are regulated by the Government or under the conditions determined by the Government, such service was not qualified for pension. The meaning of the word 'service' under sub-rule (1) of Rule 14 of the Rules is explained in sub-rule (2) thereof, as per which the service is under the Government and the salary is paid by the Government from the consolidated Fund of the State, but the same does not include the service of a non-pensionable establishment, unless such service is treated as qualifying service by the Government.

6 In the case on hand, the petitioner contended that his service conditions, including his pay along with other employees of Endowments Department are being regulated by the Government. The payment of the consolidated pay during the temporary service was made from the funds allocated by the Government only. This contention was not denied by the respondents. It is also not in dispute that the petitioner was paid by the Government from the consolidated fund and that the post is a pensionable one.

7 For the above mentioned reason and having regard to the principle enunciated in the cases cited supra, I find force in the contention of the petitioner.

8 Accordingly, the writ petition is allowed, the Memo No.10846/Endts-1/2020 dated 17.09.2020 issued by the first respondent in rejecting the claim of the petitioner for counting his service from the date of his initial appointment for the purpose of pension and other pensionary benefits, is hereby set aside. The respondents are directed to take into account the service of the petitioner from the date of his initial appointment i.e. August, 1978 for the purpose of computation of pensionary benefits. No order as to costs.

9 Miscellaneous petitions if any pending in this writ petition shall stand closed.