(1993) 05 CAL CK 0013

In the Calcutta High Court

Case No : C.O. No. 10524 (W) of 1991

Dhirendra Nath Sarkar and Others APPELLANT

Vs

State of West Bengal and Others RESPONDENT

Date of Decision : 07-05-1993

Acts Referred:
Constitution of India, 1950 — Article 14, 16, 226, 307

Citation : (1994) 1 CALLT 28

Hon'ble Judges : Gitesh Ranjan Bhattacharjee, J

Bench : Single Bench

Advocate : Sadek Hossain, for the Appellant;Dilip Kr. De and Prafulla Kr. Ghosh, for the Respondent

Judgement

Gitesh Ranjan Bhattacharjee, J.—The petitioners were working as Tahshildars under the Government of West Bengal on fixed monthly remuneration basis with commission on collection. They were appointed Tahasildars in and after 1955. Thereafter, in 1984, they were all absorbed in the posts of Bhumi Sahayak under the integrated set up of the Land Reforms under the Government of West Bengal. They all have since retired from the Government service as Bhumi Sahayaks. They now claim pensionary and other retirement benefits. But, the respondent Government of West Bengal is not giving them the benefit on the ground that they are not entitled to pension because they have not rendered requisite length of qualifying service in the post of Bhumi Sahayak. The petitioners want that their past services as Tahasildars be counted for the purpose of reckoning qualifying service for pension for the last posts they held as Bhumi Sahayaks. Under Rule 15 of the West Bengal Land Management Manual, 1977, the Tahsildars were part time Government servants. The learned Advocate for the respondent Stated relies on this Rule in support of his argument that the petitioners who were only part time Government Servants while working as Tahsildars cannot claim their service in that post to be taken into consideration for computing the period of qualifying service.

2. I am unable, however, to agree with this submission. A part-time Government Servant is also a Government Servant pro tanto. In this connection, the learned Advocate for respondent State attracts my attention to Rules 17 and 18 of the West Bengal Service (Death-cum-Retirement Benefit) Rules, 1971. Rule 17 states that subject to the provisions of the Rules, the qualifying service of a Government Servant shall commence from the date, he takes charge of the Office to which he is first appointed either substantively or in an officiating or temporary capacity. Rule 18 provides that service of an Officer does not qualify for Pension unless it conforms to- certain conditions, namely, that the service must be under Government and the employment must be substantive and permanent or of permanent status or quasi permanent and the service must be paid by the Government. It is not the contention of the State respondent that the incumbents of the posts of Bhumi Sahayak are not at all entitled to pensionary benefits. What the contention of the learned Advocate for the State respondent is, is that the incumbents concerned must have served in the posts of Bhumi Sahayak for the period of ''qualifying service'' and any service rendered by them in their erstwhile capacity as Tahasildar shall not be counted for the purpose of computing the period of qualifying service.

3. In this connection, it is to be mentioned that it is the submission of the learned Advocate for the petitioners that the Tahsildars were entitled to serve upto 58 years of age and they could also be given an extension of service for two years more, that is, upto 60 years of age. But, after their absorption in the posts of Bhumi Sahayak, they have to retire after attaining 58 years and so, virtually, their length of service has been reduced by two years by reason of their absorption on the posts of Bhumi Sahayak. It is also significant to note in this connection that the petitioners'' appointment to the posts of Bhumi Sahayak was by way of absorption which itself shows that their past service was in the contemplation of the Government when formulating the policy of appointing the Tahsildars to the posts of Bhumi Sahayak. It may also be mentioned here that the posts of Tahsildar were abolished with the creation of the new posts of Bhumi Sahayak. The Government of West Bengal, Board of Revenue, by Memo No. 9059(16) TDR/3184 dated September 12, 1984 enumerated and formulated the background, the principle and the policies of absorption of the Tahsildars in the posts of Bhumi Sahayak. One of the conditions of such absorption was that the Tahsildars would surrender the State''s share with interest thereon in their Contributory Provident Fund and their own share in the Contributory Provident Fund would be transferred to General Provident Fund to be opened on such absorption. In this connection, we may take note of the principle operating behind Rule 22 of the West Bengal Service (Death-cum- Retirement Benefit) Rules, 1971, which provides inter alia that the period of temporary or officiating service in an Establishment wherein Contributory Provident Fund benefits are allowed shall not count towards qualifying service unless the Government contribution including interest is refunded in full to Government.

4. This Rule gives out the clue as to why one of the terms of absorption was that

the incumbent concerned would have to surrender the State''s share of contribution in the Contributory Provident Fund as well as the interest accrued thereon, which was understandably quite a handsome amount in respect of each of the incumbents, who served nearly twenty years as Tahsildars before their absorption as Bhumi Sahayaks. It cannot be construed that the Government in offering the term of surrender of the State''s share of Contributory Provident Fund with interest was purporting to exercise forfeiture of major share of the incumbents'' accumulation in Provident Fund Accounts. Such forfeiture would have been highly arbitrary and, for that ground itself, it would not have been sustained. As a matter of fact, however, the move of the Government in that direction was not by way of forfeiture but by way of an adjustment under a ''give and take'' policy. This term of surrender of the State''s share of Contributory Provident Fund and interest thereon itself carries with it an implead assurance that in lieu thereof their past services will be counted towards the period of qualifying service for pensionary benefits. It also cannot be construed that the State Government by taking advantage of its dominating position was dictating an inequitable term to the Tahsildars while absorbing them in the newly created posts of Bhumi Sahayak in the form of asking them to surrender major portion of their accumulated Provident Fund Accounts as a consideration of securing the appointment to a Public Office. Such construction will attribute a motive to the State Government, which will be against public policy and, therefore, no such construction is warranted.

5. Having regard to the facts and circumstances of the case, the only sensible construction which is consistent with public policy and with the supposed reasonableness and non-arbitrariness of Government dealings is that while asking the Tahsildars to surrender major portion of their contributory Provident Fund accumulation, the Government was guided by the consideration and contemplation that their past service as Tahsildars would be reckoned towards qualifying service. I, therefore, come to the conclusion that the petitioners are, in, all fairness, entitled to pensionary benefits in their posts of Bhumi Sahayak and, for that purpose, their continuous and uninterrupted past service in the posts of Tahsildars must be taken into consideration for reckoning the period of qualifying service. The benefit of past service in reckoning the qualifying service has also been granted to the Bhumi Sahayaks by another learned Single Judge in Matter No. 837 of 1987 by order dated September 4, 1987, a copy of which is annexed as Annexure ''F'' to the Supplementary Affidavit affirmed on April 8, 1992 on behalf of the petitioners. The writ petition is, accordingly, allowed and the respondents are directed to give pensionary and retirement benefits to the petitioners as may be admissible by treating their past continuous service as Tahsildars as part of the qualifying service. Such benefits will be given within six months from date.

6. This order mutatis mutandis will govern the other two civil orders, namely, CO. 4197(W) of 1993 and CO. 2314(W) of 1992 and by the above order, all the three Civil Orders are disposed of.

