(2012) 03 AHC CK 0066

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 61974 of 2011

Dr. Amrendra Narain Srivastava APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 01-03-2012

Acts Referred:
Uttar Pradesh Retirement Benefit Rules, 1961 — Rule 3(8)

Citation : (2012) 8 ADJ 376

Hon'ble Judges : Sunil Ambwani, J;Manoj Misra, J

Bench : Division Bench

Advocate : Ajay Shankar and Ashok Khare, for the Appellant; Sanjeev Singh, for the Respondent

Judgement

1. We have heard Shri Ashok Khare, Senior Advocate assisted by Shri Ajay Shankar, learned counsels appearing for the petitioner. Learned Standing Counsel appears for the State respondents. Shri Sanjeev Singh appears for the Zila Parishad, Deoria. The petitioner retired on attaining the age of superannuation on 30.11.2010 as a regularized Medical Officer in the Department of Ayurvedic and Unani Medical Service of the State of U.P.

2. By the impugned dated 20.9.2011, the Additional Director, Treasury and Pension, Gorakhpur Division, Gorakhpur has informed the Regional Ayurvedic and Unani Officer, Deoria that the petitioner is not entitled to pension as his adhoc services were regularised on 16.3.2005. The period of his services beginning from 16.3.2005 to 30.11.2010 for five years, eight months and 14 days are less than ten years of the services, which are required for entitlement to pension.

3. The petitioner was initially appointed on the post of Ayurvedic Medical Officer in Zila Parishad, Deoria on 21.3.1983, on the orders of the District Magistrate/ President of the Zila Parishad on temporary basis in the pay scale of Rs. 570-1100, in anticipation of the approval of the U.P. Public Service Commission. By Government Order dated 8.11.1990, all the non-Government Ayurvedic and Unani Hospitals in the Zila Parishad were provincialised with the conditions in

para-9 that all those doctors, who are eligible for being appointed on the respective posts in the State Government, will have to give their options and from the date of acceptance of the option, the General Provident Fund (Uttar Pradesh) Rules will be applicable to them. For the purposes of pension, only that much period of service will be admissible for calculation of pension for which the previous employer will deposit contribution of pension for pensionary benefits. The entire contribution of pensionary benefit with interest will be deposited in the Account Head "805 Rajya Bhavishya Nidhiyan-Ka-Civil (Ka) Samanya Bhaivishya Nidhi".

4. The petitioner gave an option on 1.2.1991, which was accepted, and he was allowed to serve in the State Government as an adhoc employee until he was regularised alongwith 358 Medical Officers by Government Order dated 16.3.2005. The petitioner''s name was placed in the list at serial No. 263, with his date of joining as 1.2.1991.

5. It is submitted by Shri Ashok Khare, that the contribution of pension and compulsory insurance of the petitioner was deposited by the Additional Executive Officer, Zila Parishad, Deoria in the treasury on 21.5.2011. The treasury receipt alongwith the calculation is annexed to the writ petition at pages 59 and 61 alongwith the covering letter by which the amount of Rs. 19,568/- was deposited on 27.3.1995.

6. It is submitted by Shri Ashok Khare, that under the Uttar Pradesh Retirement Benefits Rules, 1961, the qualifying service, defined in Rule 3(8), means service, which qualifies for pension in accordance with the provisions of Article 368 of the Civil Services Regulations. Rule 3(8) is quoted as below:

Rule 3(8)--"Qualifying service" means service which qualifies for pension in accordance with the provisions of Article 368 of the Civil Services Regulations:

Provided that continuous temporary or officiating service under the Government of Uttar Pradesh followed without interruption by confirmation in the same or any other post except-

(i) periods of temporary or officiating service in a non-pensionable establishment.

(ii) periods of service in a work-charged establishment, and

(iii) periods of service in a post, paid from contingencies, shall also count as qualifying service.

Note-If service rendered in a non-pensionable establishment, work-charged establishment or in a post paid form contingencies falls between two periods of temporary service in a pensionable establishment or between a period of temporary service and permanent service in a pensionable establishment, it will not constitute an interruption of service.

7. Regulation 368 of the Civil Services Regulations, provides that service does not qualify, unless the officer holds a substantive office in a permanent

establishment. Regulations 368 and 369 provides as follows :

368. Service does not qualify unless the officer holds a substantive office on a permanent establishment.

369. An establishment, the duties of which are not continuous but are limited to certain fixed periods in each year, is not a temporary establishment. Service in such an establishment, including the period during which the establishment is not employed qualifies but the concession of counting as service the period during while the establishment is not employed does not apply to an officer who was not on actual duty when the establishment was discharged, after completion of its work, or to an officer who was not on actual duty on the first day on which the establishment was again re-employed.

8. Shri Ashok Khare submits that the petitioner was appointed on substantive basis in a permanent establishment. The nature of his appointment, namely, the adhoc appointment is not of relevance as the period spent by him even on adhoc services, was in substantive office in a permanent establishment, and which ultimately resulted into regularization on 16.3.2005 without any break in service.

9. In the counter-affidavit of Shri Mohan Lal Gupta, Assistant Accountant Officer in the office of Additional Director, Treasury and Pension, Gorakhpur Region, Gorakhpur, it is stated in paragraph-5, that the contribution of pension of the petitioner was not deposited by the Zila Parishad, in the relevant account head as reported by the Regional Ayurvedic and Unani Officer, Basti by his letter dated 6.7.2011; and further the petitioner''s services were regularized on 16.3.2005 in Uttar Pradesh State Medical (Ayurvedic and Unani) Service. Prior to his appointment, he was an adhoc employee, and thus his services, after regularization from 16.3.2005 to 30.11.2010 for a period of five years, eight months and 14 days, do not qualify for pension as minimum qualifying period prescribed for pension is ten years.

10. The petitioner was appointed in temporary capacity in Zila Parishad on 21.3.1983. The non-Government medical hospitals of Zila Parishad were provincialised on 8.11.1990. The petitioner''s option for absorption in the State Ayurvedic and Unani Medical Services was accepted, and that he was taken as a Medical Officer, Ayurvedic and Unani on adhoc basis. There is no denial, that he held a substantive office in a permanent establishment. His services ultimately came to be regularized on 16.3.2005 without any break. At no point of time the petitioner, after his absorption, was not in substantive office, which was not in permanent establishment. His services, therefore, have to be counted with effect from the date of his absorption and the joining in the State Government.

11. The qualifying service, as defined in sub-rule (8) of Rule 3, includes the service, which qualifies for pension in accordance with the provisions of Section 368 of Civil Services Regulation. The petitioner does not fall in any of the exceptions inasmuch as the period of his temporary service was not in a non-pensionable establishment after he was regularized in the State Government.

12. For the aforesaid reasons, we find that the petitioner has rendered qualifying pensionary service with effect from the date of his joining in the State Government on his option, and which shall be treated as service qualifying for pension and for which under the Government Orders, by which the hospitals were provincialised, the contribution of his pension has been deposited by the Zila Parishad.

13. The objection, that the contribution of pension, has not been deposited in the relevant account head, is too technical to be accepted. The amount has been credited to the account of the State Government in the Treasury. It is for the Treasury Officer to appropriate the amount in the correct account head. An error in depositing the amount in the wrong account head cannot be treated to have taken away the right of petitioner to pension based upon his continuance in the State Government beginning from 1991. The writ petition is allowed. The impugned order dated 20.9.2011 is quashed. The petitioner shall be entitled to pension with effect from 1.2.1991, the date on which he joined in the State Government. The State Government will calculate his pension and issue the pension payment order within two months. The entire arrears of pension shall be paid over to him within a period of three months.