

(2016) 07 PAT CK 0052

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 21710 of 2014

Dr. Mrs. Mridula Sinha

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 28-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 PLJR 760

Hon'ble Judges : Mr. Hemant Gupta and Mr. Ahsanuddin Amanullah, JJ.

Bench : Division Bench

Advocate : Mr. P.N. Sahi, Sr. Advocate. Mr. M.P. Dixit, Mr. S.K. Dixit and Mr. Sanjay Kumar Chaubey, Advocates, for the Petitioner; Mr. S.D. Sanjay, A.S.G, for the Respondents

Final Decision : Allowed

Judgement

Mr. Hemant Gupta, J. (C.A.V.) - This order shall dispose of the three writ applications bearing C.W.J.C. No. 21710 of 2014; C.W.J.C. No. 21880 of 2014 and C.W.J.C. No. 352 of 2015 filed by the present petitioner each arising out of separate Original Application filed by her. Since the issues are integrated, therefore, all the three writ applications are taken up together for final hearing.

(i) The petitioner in O.A. No. 875 of 2012 sought quashing of the order dated 28th of September, 2012 and the order dated 25th of July, 2011 seeking pay protection while fixing her pay on her permanent absorption in Central Government Health Scheme (hereinafter referred to as "CGHS").

(ii) In O.A. No. 905 of 2012, apart from seeking quashing of the same order dated 28th of September, 2012, the petitioner has sought benefit of previous service and seniority prior to her absorption in CGHS.

(iii) The third O.A. bearing No. 907 of 2012 is to challenge the decision of the respondents to treat the petitioner under the New Pension Scheme instead of treating her under Old Pension Scheme i.e. CCS [Pension] Rules, 1972.

2. The brief facts out of which the present writ applications arise are that the petitioner was working as Senior Medical Officer in Central Coal Fields Limited (CCL). She came on deputation under CGHS vide order dated 29th of June, 2001 in the pay-scale of Rs. 10,000-15,200 plus NPA and usual allowances as may be admissible to Central Government servants from time to time. In respect to the option as to whether the petitioner would like to withdraw the salary of the parent organization or under the Central Government, the petitioner opted to draw her salary as per her parent organization plus deputation allowance. The petitioner continued on deputation. On 19th of August, 2003, she was appointed on the post of Senior Medical Officer in the Central Health Service on deputation basis for a period of three years i.e. with effect from afternoon of 20th of January, 2003. She also got extension up to 19th of January, 2011. The petitioner was permanently absorbed against the post of Senior Medical Officer on 10th of March, 2010 in the pay-scale of Rs. 15600-39000/- plus Grade Pay of Rs. 6600/-.

3. The grievance of the petitioner is that she was drawing pay at the rate of Rs. 45250/- plus other benefits prior to her absorption but after her absorption she has been treated as a direct recruit in the grade of Senior Medical Officer which is illegal and arbitrary. The assertion of the petitioner is that she was getting higher pay prior to her permanent absorption. Therefore, her pay has to be protected; she is entitled to seniority from the date of her joining in the parent department and that she cannot be treated as new entrant to be governed by New Pension Rules.

4. In the counter affidavit, the factum of deputation of the petitioner and her absorption is not in dispute. However, it is stated that as per Department of Personnel and Administrative Reforms Circular OM dated 21st of February, 1983, when a Government servant drawing emoluments in the ex cadre post on the basis of his Grade Pay plus Deputation Allowance is absorbed in another Government department in public interest then his/her pay on such absorption should be fixed in the relevant scale of pay as if the person concerned has elected to draw pay in the scale of pay from the date of his/her initial appointment on deputation. According to the respondents, her pay thus fixed may not be more than the pay plus Deputation Allowance drawn immediately before permanent absorption but she may not be entitled to any arrears. There is a reference to another circular dated 16th of July, 2003 and 18th of December, 2009 which contemplate that difference between the pay so fixed and pay plus Deputation Allowance drawn prior to absorption may be allowed as a personal pay. It is also pointed out that the pay scale of SMO in the Coal India Limited and of Central Health Service were different, the same being Rs. 29100-54500 (pre revised Rs. 13750-350-18700) in the CCL and Rs. 15600-39100 plus Grade Pay Rs. 6600/- (pre revised Rs. 10,000-325-15200/-) in Central Health Service.

5. The learned Tribunal considered the letter of absorption dated 10th of March, 2010 to hold that she is to be treated as a new entrant and she has to be guided

by new pension scheme applicable to the Central Government Employee as are appointed after 1st of January, 2004. It was also observed that her entry in CGHS is a lateral entry which jeopardizes the prospect of promotion of direct entrants of doctors in the lower cadres. Consequently, all the three Original Applications were dismissed.

6. Learned counsel for the petitioner refers to Office Memorandum dated 10th of March, 2010 whereby the petitioner was absorbed in the Central Health Service. The relevant conditions reads as under :-

"(XI)(i) She will be treated as direct recruit in the grade of Senior Medical Officer.

(ii) The condition stipulated in para 10.1 and 10.2 of the Department of Personnel & Training's OM No. AB 14017/71/1989-Estt. (RR) dated 03.10.1989 shall be strictly complied with.

(iii) The seniority will be further subject to the condition as laid down in paragraph 11.2 of Department of Personnel & Training's OM No. AB. 14017/71/1989-Estt. (RR) dated 03.10.1989 and will also be subject to the orders to be issued by the Government in consultation with the UPSC on the basis of the Supreme Court's judgment of December 1999 in the case between Delhi Police Personnel on deputation v. Union of India."

7. Learned counsel for the petitioner referred to Clause 11.2 of the Office Memorandum dated 3rd of October, 1989 and pointed out that the said circular has been examined by the Hon"ble Supreme Court in the case between Delhi Police Personnel as referred to in the said circular which judgment has since been reported as Sub-Inspector Rooplal and another v. Lt. Governor through Chief Secretary, Delhi and others, (2000) 1 SCC 644. The Court was examining circular dated 29.05.1986, which has the similar conditions as are couched in the circular dated 3.10.1989. The Court held that the petitioners therein are entitled to count the service rendered by them in the post of Sub-Inspector in BSF for the purpose of seniority in the cadre of Sub-Inspector (Executive) in the Delhi Police interpreting Clause 11.2 of the Circular dated 3rd of October, 1989. The Court held to the following effect :-

"The use of the words "whichever is later" negatives the right which was otherwise sought to be conferred under the previous paragraph of clause (iv) of the memorandum. We are unable to see the logic behind this. The use of the words "whichever is later" being unreasonable, it offends Article 14 of the Constitution. It is also argued on behalf of the appellants that this memorandum is further violative of Articles 14 and 16 of the Constitution inasmuch as it arbitrarily takes away the service rendered by the deputationist when he is absorbed in the Delhi Police which right of a civil servant cannot be taken away without the authority of law. We have noticed earlier that the petitioners, who are the appellants in the civil appeals, were regularly appointed as Sub-Inspectors in BSF on the date of their deputation. We have also accepted the fact that the post of Sub-Inspector held by them in BSF is equivalent to the post of

Sub-Inspector (Executive) in the Delhi Police to which they stood deputed. That being the case, in view of the judgment in the case of R.S. Makashi (1982) 1 SCC 379, Wing Commander J. Kumar (1982) 2 SCC 116 and Madhavan (1987) 4 SCC 566 it is clear that they are entitled to count the service rendered by them in the post of Sub-Inspector in BSF for the purpose of seniority in the cadre of Sub-Inspector (Executive) in the Delhi Police. Therefore, such a right of the appellant-petitioners could not have been taken away in the garb of an office memorandum which is impugned in the above writ petition."

8. Learned counsel for the petitioner also pointed out that relying upon the aforesaid judgment; the Delhi Bench of the Tribunal in the matter of Dr. Snehal Bhawe held that the deputationists are to be given seniority taking into full account equivalent service in the parent department. The writ application filed by the Central Government against the order of the Tribunal stands dismissed by Delhi High Court on 22nd of July, 2010. The Delhi High Court concluded as under :-

"34. From the afore-noted decisions, the legal principle which can be deduced is : (i) where one of the sources of appointment to a post in a cadre is deputation, service rendered by a deputationist on an equivalent post in his parent department shall be taken into consideration while computing his period of service in the deputed post for the purposes of determination of his seniority and eligibility for promotion in the transferred department; (ii) in cases where deputation is not the source of appointment in a cadre under the recruitment rules and a deputationist is absorbed in the transferred department by the government in exercise of its residuary powers, whether service rendered by a deputationist in his parent department shall be taken into consideration while computing his period of service in deputed post for the purposes of determination of his seniority and eligibility for promotion in transferred department would be dependent upon terms and conditions of deputation or absorption of deputationists in transferred department."

9. It may be indicated that order of appointment considered in Dr. Snehal Bhawe's case has verbatim same language as in the letter of absorption of the petitioner dated 10.03.2010. Such facts were not brought to the notice of the Tribunal. In view of the aforesaid judgments, the petitioner would be entitled to be absorbed from the date she came on deputation on substantive basis with effect from 20th of January, 2003 vide order dated 19th of August, 2003. Consequently, she would be entitled to pay protection from the said date as also seniority in the CGHS. Since her date of appointment is prior 1.1.2004, she would be guided by the old pension scheme as well.

10. The writ applications are allowed in the above terms.

Ahsanuddin Amanullah, J.—I agree.