

(2013) 12 DEL CK 0236
In the Delhi High Court
Case No : Writ Petition (C) 5986 of 2000

DR. R.B. Pandey

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 17-12-2013

Acts Referred:

Citation : (2013) 12 DEL CK 0236

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Sanjai Kumar Pathak, Advocate for R-4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J. Mehta, J.—By this writ petition, petitioner prays for joinder of services rendered with previous employer organizations with the services rendered with Lal Bahadur Shastri Rashtriya Sanskrit Vidyapeth, represented by respondent no. 5, for grant of pensionary benefits. The earlier employer organizations of the petitioner were private institutions affiliated to Universities being Seth Niranjana Das Murarka Sanskrit Mahavidyalaya, Patna, Bihar from (10.9.1957 to 08.7.1973), Gorakhnath Sanskrit Vidyapeeth, Gorakhpur, U.P. from (09.7.1973 to 09.9.1976) and Jai Bharat Sadhu Sanskrit Mahavidyalaya, Haridwar, Uttarakhand from (10.9.1976 to 20.8.1979).

2. A reference to the writ petition shows that petitioner except stating the factum of making his various representations has not relied upon any statutory provisions or any circulars and notifications on the basis of which services rendered with earlier employer organizations/private institutions can be clubbed with the services rendered with the respondent no. 5. Once there are no statutory provisions or any circulars/notifications which are relied upon by the petitioner, the petition will lack cause of action for the grant of reliefs.

3. I may refer to the fact that the respondent nos. 4 and 5 in their counter-affidavits have specifically stated that there could be joinder of services only if

the earlier services were pensionable services, and, that the earlier services of the petitioner were not pensionable services for the complete periods for which he worked with the earlier organizations. In fact some employers did not even have PF Schemes.

4. In any case, at best, petitioner can seek benefit of para 6(3)(b)(ii) of Appendix 7 of CCS (Pension) Rules or the circular of the Central Government dated 22.8.1988 which provides for joinder of services of the past employer with the present employer. However, both the circular dated 22.8.1988 as also para 6(3)(b)(ii) of Appendix 7 of CCS (Pension) Rules require that earlier organizations have to be autonomous organizations either of the Central Government or of the State Government. Private colleges/institutions which are affiliated to universities are not governments' autonomous organizations or PSUs falling within the scope of the circular of the Central Government dated 22.8.1988 and para 6(3)(b)(ii) of Appendix 7 of CCS (Pension) Rules. Also, the petitioner, assuming the circular of the Central Government dated 22.8.1988 and para 6(3)(b)(ii) of Appendix 7 of CCS (Pension) Rules applied, had to exercise option within one year of joining the respondent no. 5 and also not claim his provident fund benefits from his erstwhile employers. There are no averments in the writ petition of the action having been exercised within one year or petitioner having not taken provident fund benefits from his earlier employer, which was to be remitted to the respondent no. 5 directly by the earlier employers. I may again state that petitioner admits, as per his pleadings, that with respect to some of his earlier employer organizations, even provident fund benefits were not payable or paid to the petitioner.

5. These aspects of having to compulsorily exercise the option in the one year and PF benefits to be directly remitted by earlier employers to the present employer have been considered by me in the judgment delivered in the case of Prabha Chawla Vs. State of Haryana & Ors. in W.P.(C) No. 13163/2004 decided on 28.11.2013 wherein in the absence of these factors joinder of services were disallowed. This judgment reads as under:-

1. By this writ petition the petitioner who was earlier an employee of the respondent no. 1/State of Haryana, and who was thereafter absorbed permanently by the respondent no. 2/Indira Gandhi National Open University (IGNOU) w.e.f. 23.8.1988, seeks two reliefs in the alternative. First relief which is claimed is that services of the petitioner with the respondent no. 1/State of Haryana should be combined with the services rendered by the petitioner with the respondent no. 2/IGNOU for the purpose of giving petitioner benefit of combined services as per the circular dated 22.8.1988 issued by the State of Haryana. The second relief which is claimed is that though petitioner has been absorbed by the respondent no. 2 w.e.f. 23.8.1988, however petitioner should still get service benefits from respondent no. 1/State of Haryana from 23.8.1988 till 5.1.1993 on the ground that respondent no. 1 has been time and again shifting its stand of changing the dates of the retirement of the petitioner from

1993/1992/1991 and finally as on 22.8.1988.

2. In order to understand and appreciate as to whether petitioner is entitled to the benefits of the circular dated 22.8.1988 the relevant portion of the same needs to be referred to and the same reads as under:-

Counting of service for the purpose of pension of the employees of the State Government and State Autonomous Bodies seeking absorption in Central Autonomous Bodies and Central Government/Central Autonomous Bodies respectively and vice versa.

I am directed to refer to the subject cited above and not state that the Government of Haryana has been considering, in consultation with the Government of India, the question of counting of service, rendered by the State Govt. employees under the State Government before their absorption in the Central Autonomous Bodies and the Service rendered by the employees of the State Autonomous Bodies under the State Autonomous Bodies before their absorption in the Central Government/Central Autonomous Bodies for pensionary benefits and vice-versa. The matter has been considered carefully and the Governor of Haryana is pleased to decide that the cases of State Govt. employees going over to Central Autonomous Bodies and that of the employees of the State Autonomous Bodies moving to Central Govt./Central Autonomous Bodies or vice-versa may be regulated as follows:-

A) In case post/service is pensionable in the new organization.

Where an employee borne on pensionable establishment is allowed to be absorbed in such an organization, the service rendered by him/her shall be allowed to be counted towards pension under the new organization irrespective of the fact whether the employee was temporary or permanent in the old organization. The pensionary benefits, will however, accrue only if the temporary service is followed by confirmation. If he/she retires as a temporary employee in the new organization he/she will get, terminal benefits as are normally available to temporary employees.

The Government/Autonomous Bodies will discharge their pension liability by paying in lump-sum as a one time payment, the prorated pension/service gratuity/terminal gratuity and death cum retirement gratuity for the service upto the date of absorption in autonomous bodies/Governments as the case may be, pro rata pension will be determined with reference to the commutation table in chapter 11 of the Punjab Civil Services Rules Vol-II as amended from time to time.

(ii) An employee with contributory Provident Fund benefits on his/her permanent absorption in the new organisation against a pensionable post/service will have the option either to receive contributory Provident Fund benefits which have accrued to him from the old organization and start his service afresh in the new organization or choose to count service rendered in the old organization as qualifying service for pension in the new organization by foregoing employer's

share of the contributory Provident Fund with interest received from the old organization which will be paid to the latter by the former organization. The option shall be exercised within one year from the date of absorption. If no option is exercised within the stipulated period, the employee shall be deemed to have opted to receive Contributory Provident Fund benefits. The option once exercised shall be final.

3. A reading of the relevant portion of the circular dated 22.8.1988 shows that there can be joinder of services provided three things happen. Firstly, the petitioner shall exercise the option of joinder of services of earlier employer with the later employer within one year of joining of the later employer and which later employer is IGNOU in this case. Petitioner therefore had to exercise the option within one year from 23.8.1988. The second requirement which is required to be fulfilled is that petitioner must not receive the employer's provident fund share from the earlier employer/State of Haryana when the services with such earlier employer comes to an end. Thirdly, the employer's share of the provident funds must be directly paid from the earlier employer to the later employer.

4 In the present case, admittedly the petitioner did not exercise the option within one year from joining the respondent no. 2 that she exercises the option in terms of the circular dated 22.8.1988 and whereby the petitioner informed the respondent nos. 1 and 2 that she was interested in joining her services by not collecting her provident fund benefits from the respondent no. 1/State of Haryana. In fact, at no point of time this option was exercised even for many many years after joining respondent no. 2. Once option is not exercised no rights can flow to the petitioner and it is not permissible in law for the petitioner to argue that she was not aware of the circular dated 22.8.1988. Ignorantia juris non excusat is a well settled principle. It is not the law that unless and until a circular is brought to the notice of the employee such a circular cannot apply to such an employee. If Courts allow such a stand to be accepted, then, there will be no fixed period of limitation for any vested right to arise.

(ii) Petitioner is also not entitled to the benefit of the circular dated 22.8.1988 even because the second and third requirements of the circular dated 22.8.1988 do not stand complied with i.e. petitioner has directly received the provident fund benefits from the respondent no. 1/State of Haryana and the employer's share of the provident funds for the services rendered by the petitioner with the respondent no. 1 were not transferred to the respondent no. 2 and have not been transferred till date. Therefore once neither of the three requirements of the circular dated 22.8.1988 stand satisfied by the petitioner I fail to understand that how the petitioner can claim joinder of two services for grant of pension on the basis of one joint period by joinder of services rendered both with the respondent no. 1 and respondent no. 2. In fact by having utilized the provident fund benefits from respondent no. 1, petitioner is in fact stopped from claiming joinder of services.

5. I have recently in the case of Prof. R. Chandra Vs. GNCT of Delhi and Ors. in W.P.(C) No. 916/2011 decided on 12.9.2013 had an occasion to consider a similar issue in terms of para 6(3)(b)(ii) of Appendix 7 of CCS (Pension) Rules, and which circular is nearly identical to the circular dated 22.8.1988 in the present case. In the said case on account of the fact that employer preferred to directly receive the employer's share of provident fund benefits from the earlier employer directly into the employee's account and utilized the same, instead the employer's share of provident fund being directly transferred to the second employer, consequently the benefit of joinder of services for pension was denied. The relevant paras of this judgment are paras 1 to 3, 5 and 7 and the same read as under:-

1. By this writ petition, petitioner seeks direction for quashing of the order dated 31.12.2008 passed by the respondent no. 2. The impugned order dated 31.12.2008 has the effect that the petitioner's earlier services with Regional Engineering College, Kurukshetra, Haryana (in short "REC, Kurukshetra") has not been joined with the service rendered by the petitioner thereafter with respondent no. 2 for calculating the pension of the petitioner payable to the petitioner by the respondent no. 2.

2. The facts of the case are that petitioner joined the REC, Kurukshetra on 3.8.1970 and served there till 23.6.1982. The petitioner was appointed to the post of Assistant Professor in the respondent no. 2 on 24.6.1982. Petitioner claims that this earlier service rendered with the REC, Kurukshetra be added to the service rendered by the petitioner with the respondent no. 2 from 24.6.1982 for the purpose of calculating his pension.

3. The admitted relevant rule applicable for joining of services for grant of pension is Para 6(3)(b)(ii) of Appendix 7 of CCS (Pension) Rules and the same reads as under:-

An employee of an Autonomous Body on permanent absorption under the Central Government will have the option either to receive CPF benefits which have accrued to him from the Autonomous Body and start his service afresh in Government or choose to count service rendered in that Body as qualifying service for pension in Government by forgoing employer's share of CPF contribution with interest thereon, which will be paid to the concerned Government Department by the Autonomous Body. The option shall be exercised within one year from the date of absorption. If no option is exercised within stipulated period, employee shall be deemed to have option to receive CPF benefits. The option once exercised shall be final.

5. In my opinion, in the facts of the present case, it cannot be said that petitioner has acted in accordance with and complied with the relevant Para 6(3)(b)(ii) of Appendix 7 of CCS (Pension) Rules inasmuch as, for acting in terms of this relevant provision it was necessary that petitioner should not have got credited to his account and taken benefit of CPF amount from the earlier

employer- REC, Kurukshetra. Admittedly, the petitioner received the CPF amount of Rs. 32,012/- from the REC, Kurukshetra and which therefore is in violation of the relevant provision because para 6(3)(b)(ii) of Appendix 7 of CCS (Pension) Rules requires that the person who leaves an earlier organization before joining the Central Government should not receive CPF amount from his earlier employer and the said CPF amount must be directly paid by the autonomous organization to the Central Government. Since in the present case, petitioner has received the amount from the earlier employer towards CPF contribution, thereafter, merely because the amount is sought to be deposited with the Central Government will not mean that the action of the petitioner is in terms of Para 6(3)(b)(ii) of Appendix 7 of CCS (Pension) Rules and thus this aspect itself in my opinion disentitles the petitioner to claim benefit of Para 6(3)(b)(ii) of Appendix 7 of CCS (Pension) Rules. It is important to note that petitioner after all has enjoyed the benefit of receiving the CPF amount from the Regional Engineering College, Kurukshetra, Haryana till 16.7.1997 when the amount was deposited with the respondent no. 2. This period would be probably of 15 years because petitioner left REC, Kurukshetra in 1982 in around when he would have received the CPF amount and it is only in 1997 that the amount was deposited with respondent no. 2.

7. Therefore, even independently of any other arguments, which have been urged by the petitioner, the very fact that petitioner received from his erstwhile employer the CPF contribution in violation of Para 6(3)(b)(ii), the same will disentitle the petitioner to join his past services of REC, Kurukshetra with the services rendered with the Central Government.

6. Therefore I hold that petitioner is not entitled to join her services rendered with the respondent no. 1 with the respondent no. 2 for calculating the pension by joinder of two services inasmuch as none of the three essential requirements of the circular dated 22.8.1988 stand complied with by the petitioner.

7. So far as the second argument which is urged on behalf of the petitioner that petitioner should get service benefits from respondent no. 1 upto 5.1.1993, and petitioner should be taken by the respondent no. 1 as having taken pre-mature retirement not on 22.8.1988 but on 5.1.1993 is concerned, this argument when examined even at the first blush would show that if accepted it will result in the absurd proposition that for one period of service petitioner will get two service benefits from two employers i.e. one from one employer/respondent no. 1 and once again for the same period from another employer i.e. respondent no. 2. I may note that averments in the writ petition show change of dates of retirement of the petitioner with the respondent no. 1, only because the same was done in favour of the petitioner and to benefit the petitioner because if petitioner would have been allowed to retire from respondent no. 1 in the year 1993 there was a non-qualifying pension period from 1989 to 1993, and which would have caused loss to the petitioner in case the petitioner would have been allowed to retire by the respondent no. 1 from 5.1.1993. In fact therefore petitioner is benefited by

petitioner not been given the disadvantage of non-qualifying service with the respondent no. 1 and/or respondent no. 2 from the years 1989 to 1993 and which would have been the consequence in case petitioner is allowed to retire from the respondent no. 1 from 5.1.1993 inasmuch as petitioner did not serve the respondent no. 1 from 1989 to 1993, and which period of services were rendered by the petitioner to the respondent no. 2.

8. Finally, I may note that it is the undisputed position before me that petitioner accepted the finality of her being absorbed by respondent no. 2/IGNOU w.e.f. 23.8.1988, and if that be so, the petitioner will have to be treated as employee of IGNOU w.e.f. 23.8.1988 and after 23.8.1988 petitioner cannot be treated as an employee of the respondent no. 1, much less for seeking any service benefits from the respondent no. 1. Also, inasmuch as petitioner was not the employee of the respondent no. 1/State of Haryana after 23.8.1988, petitioner would not have contributed any amount to the respondent no. 1 for provident fund or under any other heads to the respondent no. 1, and therefore, there is no question of petitioner claiming any service benefits from the respondent no. 1 after 23.8.1988 till 5.1.1993. In fact, in my opinion, petitioner is estopped from claiming the amounts from the respondent no. 1 once the finality of her being absorbed as an employee of the respondent no. 2 is accepted w.e.f. 23.8.1988.

9. In view of the above, there is no merit in the petition, and the same is therefore dismissed, leaving the parties to bear their own costs.

6. In view of the above discussion, there cannot be joinder of services rendered by the petitioner with his earlier employer organizations, and, therefore, no relief can be granted to the petitioner. The writ petition is accordingly dismissed. Parties are left to bear their own costs.

After the judgment was dictated, Mr. Kunal Kohli, Advocate appears for the petitioner and he has been apprised of the above judgment.