(2009) 12 P&H CK 0045

In the Punjab And Haryana At Chandigarh

Dr. R.S. Mehrotra APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 17-12-2009

Acts Referred:
Kurukshetra University Employees Pension Scheme, 1997 — Rule 4(vii)

Citation : (2010) 157 PLR 470

Hon'ble Judges : Jora Singh, J;Hemant Gupta, J

Bench : Division Bench

Judgement

Hemant Gupta, J.—Challenge in the present writ petition is to Rule 4(vii) of of Kurukshetra University Employees Pension Scheme, 1997 (for short "Pension Scheme") as ultra vires to the extent it limits benefit of past service towards qualifying service for pension and other retiral benefits to the teachers/employee of the University coming from university/Aided Colleges/Autonomous bodies from the State of Haryana and/or Central Government only.

2. The petitioner was initially appointed as Assistant Professor in the Department of Botany, University of Saugar, Madhya Pradesh on 2.3.1964. Subsequently, the petitioner was appointed as Reader in Botany in Kurukshetra University by letter of appointment dated 25.7.1970 after the petitioner applied for the said post through proper channel. The petitioner attained the age of superannuation on 31.1.1997. The petitioner has been granted pensionary benefits for the period from 7.9.1970 to 31.1.1997 i.e. 26 years and 4 months but the benefit of service from 2.3.1964 to 6.9.1970 rendered by the petitioner in the University of Saugar, Madhya Pradesh was not granted for the purpose of pension.

3. Earlier petitioner filed a writ petition before this Court claiming benefit of the said past service for the purposes of pension. During the course of final arguments in that writ petition, a statement was made before this Court that university has sent a proposal to amend the pension scheme by replacing an existing clause. The said writ petition was decided by this Court on 13.7.2009 on the basis of said statement. The said proposed clause has been incorporated in

the pension Regulations subsequently. The amended Clause read as under:

(vii) The grant of benefit of past qualifying service towards pension to the University employees coming from State Govt. or autonomous body (both under the Govt. of Haryana) Central Govt. or Central Autonomous Body and vice-versa will be regulated as per provisions contained in office letter No. 1/2(77)-87-2FR-1I dated 22.8.1988 and No. 1/2(4)-96-2FRII dated 7.1.2002 issued by the Govt. of Haryana, Finance Department or any other instructions issued in this regard by the State Govt. from time to time and adopted by the University.

4. The grievance of the petitioner is that restriction of the benefit of past service towards pension only to those employees who were earlier employees of the Universities or autonomous bodies situated in the State of Haryana or Universities or autonomous bodies of Government of Haryana or Central Government is discriminatory as the employees who have worked for a University recognized by University Grants Commission stand on the same footing as the Universities located in Haryana and are to be treated at par. Therefore, the condition restricting the benefits to the employees of the University or autonomous bodies situated in the State of Haryana or Universities or autonomous bodies of Government of Haryana or Central Government is without any reasonable nexus with the objective to be achieved and thus the said clause is discriminatory.

5. A Full Bench of this Court in K.R. Erry v. The State of Punjab ILR (1967) P&H 278 has held that the pension is not to be treated as a bounty payable on the sweet-will and pleasure of the Government and the right to superannuation pension including its amount is a valuable right vesting in a Government servant. The Supreme Court has approved the aforesaid view taken by this Court in the case reported as Deokinandan Prasad Vs. The State of Bihar and Others, and held that right to receive pension flows to the officer employee not because of the said order but by virtue of the Rules. In D.S. Nakara and Others Vs. Union of India (UOI), pensions to civil employees and the defence personnel as administered in India was held to be a compensation for service rendered in the past. It was found that pension is earned by rendering long and efficient service and, therefore, can be said to be a deferred portion of the compensation for the service rendered. It was held to the following effect:

31. from the discussion three things emerge: (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso so Article 309 and Clause (5) of Article 148 of the Constitution, (ii) that the pension is not an ex gratia payment but it is a payment for the past service rendered; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the hey days of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. ...

6. In view of the aforesaid judgments, there is no difficulty in holding that the pension is not a bounty but is a reward for the past service. But right to receive pension is a creation of Rule. There is no inherent right to receive pension de hors the Rules.

7. In terms of the Pension Scheme, the respondents have taken into consideration the service rendered by the petitioner under Kurukshetra University in the State of Haryana. The petitioner has not been granted the benefit of service rendered under the University of Saugar in the State of Madhya Pradesh. The Pension Scheme does not recognize the service rendered by the employee in any University in another State to be counted for the purpose of pension. The said classification cannot be said to be discriminatory. The employees engaged by the State of Haryana or by the institutions located in the State of Haryana form a distinct class for such services either money is being paid out of the funds of the State or the employee has worked for the people of the State, whereas the petitioner having worked in the University of Saugar has not been paid either by the State of Haryana nor it was the service rendered to the residents of the State of Haryana. Thus, the respondents could frame Pension Scheme restricting payment of pension in the manner contemplated by clause (vii) of the Pension Scheme.

8. Somewhat identical issue came up for consideration before the Hon''ble Supreme Court in case reported as State of Bihar v. S.A. Hassan and Anr. AIR 2002 SC 1258 wherein the benefit of service rendered by the employee in a private college before it was taken over by the Government was declined. The Supreme Court considered Rule 58 of the Bihar Pension Rules framed under proviso to Article 309 of the Constitution of India and held that such service does not qualify for pension as the three conditions i.e., (1) his service must be under Government, (2) the employment must be substantive and permanent, and (3) service must be paid by the Government, are not satisfied. In the present case, the grant of benefit of past service for the purpose of pension to the University employees is restricted to the employees coming from the State Government or Autonomous bodies, both from the Government of Haryana and Central Government. Such condition is in tune with Rule 58 of Bihar Pension Rules considered by the Supreme Court in the aforesaid judgment.

9. Therefore, we are of the opinion that the decision of payment of pensionary benefits to the employees of the State or to the Central Government or autonomous bodies cannot be said to be arbitrary and without any objective to be achieved.

10. The argument that the University of Saugar is a University recognized by the University Grants Commission and, therefore, benefit of service rendered by the petitioner in such recognized University should be counted towards pensionary benefit, is not tenable. The recognition of University of Saugar by the University Grants Commission is for the purposes of degrees conferred by such University as equivalent to the degree conferred by other Universities. Still further, there is

no mandate by the University Grants Commission that the pension is payable to the employees of the Autonomous Universities. In fact, in respect of superannuation benefits, it has been communicated on 24.12.1998 that superannuation benefit may be given as per Central/State Government Rules.

11. In view of the said fact, there is no mandate on behalf of the University Grants Commission to take into consideration the past service rendered by the petitioner to the University of Saugar as the period of qualifying service with the respondents for the purpose of pension.

12. In view of the above, we do not find any merit in the present writ petition. The same is dismissed.

13. Learned Counsel for the petitioner, at this stage, submits that in terms of pensionary regulations, the petitioner is entitled to the benefit of three years service as a Ph.D. degree holder. However, the record does not show that any such claim was earlier made by way of any representation or such claim has been considered by the University. Therefore, it shall be up to the petitioner to make a representation to claim such benefit. The same shall be considered by the University as and when it is submitted in accordance with law.