
(2009) 11 KAR CK 0069
In the Karnataka High Court
Case No : Writ Petition No. 30606 of 2009

Ekantha Reddy G.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 26-11-2009

Acts Referred:

Citation : (2010) ILR (Kar) 1136 : (2010) 1 KCCR 336

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : Basavaraj R. Bannur, for Bannur Associates, for the Appellant; M.C. Nagashree, for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy, J.—The petitioner's appointment as a Lecturer in the 4th respondent Aided Institution, with effect from 16.12.1981, was approved from the said date by order dt. 7.8.1982 of the third respondent, while, the 5th respondent college was admitted to grant-in-aid by order dt. 11.2.1987, of the 2nd respondent with effect from 16.7.1986. The petitioner having rendered total service of 26 years 15vdays, retired on 31.12.2007, on attaining the age of superannuation. The respondent Nos. 3 to 5, It is alleged, reckoned 21 years 5 months 16 days as total service rendered by the petitioner, denying 4 years and 5 months of service when the 4th respondent institution was not admitted to grant-in-aid, to determine the quantum of pensionary benefits which the petitioner was entitled, on retirement, by order dated 22.03.2008, Annexure-"L". Hence this Writ Petition for the following reliefs:

a) Issue a writ of certiorari quashing the order dated 22-2-2008 vide Annexure ?"L", bearing No. PV 4/07-08/P04-38775/R3/1643 passed by the respondent No. 6 in so far as excluding the period of service rendered from 16-12-1981 to 16-7-1986 from treating it as qualifying service for the purpose of fixing the pensionary benefits of the petitioner;

b) Issue a writ of mandamus directing the respondents 1 to 5 to pay to the petitioner pension calculated on the basis of qualifying service counted from his initial appointment i.e., 16-12-1981 on the basis of actual emoluments drawn by him including increments and promotions for non-grant period and permit him to commute 1/3 of the pension and grant consequential benefits including payment of arrears of pension, with interest at the rate of 18% per annum from the date of respective amounts became due until date of payment;

c) Issue any other such benefits as this Hon"ble Court may deem fit and proper under the circumstances of the case, in the interest of justice and equity.

2. Learned Counsel for the petitioner contends that the qualifying service to determine pensionary benefits includes the period of service rendered by the petitioner from 16.12.1981 to 16.07.1986, when the institution was not admitted to grant-in-aid. Learned Counsel places reliance upon the decision of a learned Single Judge in the case of V.T.S. Jeyabal and Ors. v. State of Karnataka Annexure - "M" in W.P. No. 19431/2005 and connected petitions, D.D. 13.10.2006, answering in the affirmative, the question as to whether the employees of aided institutions were entitled to pensionary benefits by reckoning the total period of service to include the period when the institution was not admitted to aid. Learned Counsel points out to the order dated 3.11.2009 in W.A. No. 450/2007 filed by the State, whence the Division Bench dismissed the Appeal and affirmed the order of the learned Single Judge.

3. Learned Counsel for the State and its authorities - respondents does not dispute the said legal position, but, contends that there is a delay of 1 year 6 months in preferring the Writ Petition calling in question the order impugned.

4. Having heard the Learned Counsel for the parties, perused the pleadings and examined the order impugned, the decision in V.T.S. Jeyabal's case applies on all its fours entitling the petitioner to reckoning of total period of service as including the period when the institution was not admitted to grant-in-aid.

5. The observations of the Apex Court in State of Karnataka and Ors. v. N. Parameshwarappa and Ors. 2003 (1) SLR 251, in the circumstances is apposite.

8. xxx At the same time, we do not find any reasonable justification to confine the relief to only such of the teachers who approached the Court and having regard to the fact that relief related to the revision of scales of pay, everyone of that class of teachers who approached would be entitled to the benefit, notwithstanding that they have not approached the Court. xxx

6. The delay of 1 1/2 years in filing the Writ Petition cannot disentitle the petitioner to a determination of the correct pensionary benefits in accordance with law. However, keeping in mind the fact that there is a delay in preferring the Writ Petition, the petitioner is disentitled to interest on arrears of pensionary benefits.

In the result, the petition is allowed.

- (i) The order dt. 22.2.2008, Annexure -"L" of the 5th respondent insofar as it relates to fixing the pay for pensionary benefits by reckoning the petitioner's total qualifying service as 21 years 5 months and 16 days, is quashed.
- (ii) The respondents are directed to verify and reckon the total period of service rendered by the petitioner, including the period when the institution was not admitted to grant-in-aid, and if the petitioner served the institution during that period, as the total qualifying service of the petitioner.
- (iii) Recalculate the pension and pay the arrears of pension, in any event within a period of 2 months from the date of receipt of a certified copy of this order.
- (iv) The claim for interest on the arrears of pension is rejected.