

**(1985) 08 SHI CK 0003**

**In the High Court Of Himachal Pradesh**

**Case No : Civil Writ Petition No. 86 of 1985**

Goverdhan Dass

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

**Date of Decision : 30-08-1985**

**Acts Referred:**

Central Services (Pension) Rules, 1972 — Rule 14

**Citation : (1985) 14 ILR HP 595**

**Hon'ble Judges : P.D. Desai, C.J.;V.P.Gupta, J**

**Bench : Division Bench**

**Advocate : Bhawani Singh, for the Appellant; P.N. Nag, General and P.A. Sharma, Central Government Standing Counsel, for the Respondent**

## **Judgement**

P.D. Desai, C. J.

1. The Petitioner was appointed as Water Canier on and with effect from May 20, 1959, on a fixed salary of Rs. 15 per month in the Border Police, Himachal Pradesh. On and with effect from January 20, 1960, he was appointed temporary as a Water-Carrier in the regular scale of Rs. 30-1-35 and he continued to serve as such till February 18, 1965. On and with effect from June 12, 1965, he was appointed temporarily as Cook in the same scale in the 1st H. P. P. Government of India Armed Police Battalion, which is also called the H.P.P. I India Reserve Battalion (hereinafter referred to as "the Police Battalion"). The Police Battalion, along with four other similar Battalions, was disbanded on and with effect from October 1, 1968. The discharged personnel of the Police Battalion were offered enrolment in the 1st (HP) S.S.B. Battalion, (hereinafter called "the SSB Battalion") on and with effect from the date of its constitution, that is, October 1, 1968. The Petitioner was amongst those who were accordingly offered enrolment and taken over in the SSB Battalion on and with effect from October 1, 1968. The appointment accordingly given to the Petitioner was however, treated as fresh appointment as Constable Cook in the pay scale of Rs. 85-2-95-3-110. The Petitioner served in the said post till July 31, 1978 when he was retired on

superannuation.

2. Upon retirement, the Petitioner was held entitled to Death-cum-Retirement Gratuity amounting to Rs. 1660.20 and Service Gratuity amounting to Rs. 2839.85 (total Rs. 4500.05). However, since his appointment in the SSB Battalion with effect from October 1, 1968 was treated as fresh "appointment and, on that basis, he was not regarded as having put in the qualifying service of ten years on the date of his retirement, he was not found entitled to receive other pensionary benefits. It was found that the previous service rendered by the Petitioner in the Police Battalion could not be taken into consideration for the purposes of computing the qualifying service because it was regarded as "casual/contingent paid service of the State Government" and that the State Government alone was competent to issue orders for allowing the benefit of pension for the said period (vide Annexure R/3). A reference was, therefore, made to the State Government to share the pensionary liability in respect of the period of service rendered in the Police Battalion but the State Government declined on the ground that although the Petitioner had earlier rendered service under the State Government in the Police Battalion, he had ultimately retired from service as a Central Government employee and, under those circumstances, the State Government had no obligation to share the pensionary liability (vide Annexure-R-2).

3. The foregoing narration of facts would show that although the Petitioner has rendered uninterrupted service for a period of about thirteen years from June 12, 1965 till July 31, 1978 and although the qualifying period of service for computing the pensionary benefits, as applicable to him, is ten years, he has been held disentitled to the pensionary benefits, except to the limited extent of Death-cum Retirement Gratuity and Service Gratuity, on account of the pedantic interpretation placed on the relevant rules/instructions and the consequential disowning of the liability by the Union Government as well as by the State Government to bear the financial burden in respect of the pensionary benefits relatable to the period of service rendered by him in the Police Battalion from June 12, 1965 to September 30, 1968.

4. It may be appreciated that the so-called change over in service and resultantly in the masters of the Petitioner is a consequence which is not of his own making. The disbandment of the Police Battalion and the consequential enrolment of the discharged personnel of the said Battalion in the SSB Battalion was the result of a high level policy decision. In the ordinary course, once the policy decision to take over such discharged personnel and to enrol them accordingly was duly taken by the competent authority, it was not just and fair to absorb them as fresh recruits in the SSB Battalion. Even if, for some administrative reasons, it was considered necessary to regard such enrolment as in the capacity of fresh recruits, there was good, weighty and sufficient reason to give to the concerned personnel the benefit of the past services rendered by them in the Police Battalion, atleast for the purposes of pensionary benefits, since no interval of

time had elapsed between the discharge and the fresh enrolment. For the manner in which the Petitioner has been dealt with in regard to his pensionary benefits by the two Governments, he can, with a slight variation to suit the context, echo Wolsey's lament:

Had I served my God as reverently as I did my King, I would not have fallen on these days of penury.

As observed in *D.S. Nakara and Others Vs. Union of India (UOI)*, a political society, which has a goal of setting up of a welfare State, would introduce and has, in fact, introduced as a welfare measure, wherein the retiral benefit is grounded on considerations of State obligation to its citizens, who, having rendered service during the useful span of life, must not be left to penury in their old age. Pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that, it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. The constitution having setup the political society which has a welfare socialistic State as its goal and with the obligation created under Articles 39(e), 41 and 43(3) of the Constitution, pension as a retirement benefit is in consonance and in furtherance of the goals of the Constitution. Be it realised that pension is no longer regarded as a bounty, a gratuitous payment depending upon the sweet will or grace of the employer and not claimable as a right. The Pension Rules, in the process of interpretation, must receive liberal interpretation so as to advance the purpose and not to defeat it. This is apart from the legal aspect of the case involving the true and correct interpretation of the relevant rules/instructions which is a matter to which the Court will apply its mind at the appropriate stage. But the Union and State Governments owe a duty to do justice to the Petitioner at their own levels.

5. For the foregoing reasons, it appears to be expedient in the interest of justice to direct the first Respondent (State Government) and the second Respondent (Union of India) to reconsider the case of the Petitioner and to arrive at an equitable decision with regard to the sharing of the liability of the pensionary benefits which are being denied to the Petitioner for no fault of his although he has loyally served his two masters uninterruptedly for a total period of about thirteen years. To initiate the dialogue, the second Respondent will take up the matter afresh with the first Respondent reiterating the stand that in case the State Government is prepared to foot the proportionate liability of pensionary benefits due to the Petitioner for the period during which he rendered service in the Police Battalion, the Union of India will agree to treat the said period as qualifying service for the purposes of admissibility of pensionary benefits and bear the proportionate liability for pension for the period during which the Petitioner rendered service in the SSB Battalion. Upon receipt of such reference the State Government will take an appropriate decision in accordance with law and tempered with equity, justice and good conscience and in light of the

observations made in the course of this order. The exercise of the power to relax the operation of any of the relevant pension rules/instructions may also be considered by the Union and State Governments in view of what can justifiably be regarded as "undue hardship" resulting to the Petitioner on account of a strict adherence to the literal meaning of the words therein used. Regard being had to the subject matter, to the general object of the conferment of the power of relaxation and to the person for whose benefit such power is to be exercised, a more appropriate case for the exercise of such power may be difficult to come across. The decision as directed hereinabove will be taken by the first and the second Respondent on or before July 31, 1985. The decision taken accordingly will be duly placed on the record of the case. The Court would like to observe that since this is a pension case in respect of an employee who has retired as far back as July, 1978, the time limit set up hereinabove should be punctually observed.

6. Adjourned to August 5, 1985.

7. Dasti copy on usual terms.

#### ORDER

8. In pursuance of the interim order made on April 30, 1985, the Union Government and the State Government have both taken an affirmative action in the direction of granting a just relief to the Petitioner. The first Respondent (State of Himachal Pradesh) has agreed to bear the proportionate share of the pensionary benefits accruing in favour of the Petitioner for the period from June 12, 1965 to September 30, 1968. In exercise of the powers conferred by Rule 14 of the Central Services (Pension) Rules, 1972. The decision has been placed on the record of the case by way of an affidavit filed by the Joint Secretary (Home). The second Respondent (Union of India) has passed an order dated August 2, 1985, authorising the counting of the service of the Petitioner rendered under the State Government as qualifying service for the purpose of pensionary benefits as a special case. The order directs that the matter with regard to the sharing of the proportionate liability of the pension by the first Respondent be taken up after finalising the grant of pensionary benefits to the Petitioner. A copy of the order has been placed on the record of the case.

9. It would thus appear that both the Governments have at last done justice to the Petitioner, albeit pursuant to the Court's intervention. The Court places on record its sense of appreciation for the positive response of both the Governments in dealing with the pension case of one of the lowliest amongst the lowly paid employees and trusts that bearing in mind the observations made in the course of the interim order, in future, similar cases will be identically dealt with, much more expeditiously, without driving hapless employees of this category to a protracted litigation to gain a just relief.

10. The writ petition stands disposed of in light of the above orders and developments.