
(2015) 07 RAJ CK 0050

In the Rajasthan High Court

Case No : Civil Writ Petition No. 8447 of 2014

Goverdhan Singh Makwana

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 01-07-2015

Acts Referred:

Citation : (2015) 07 RAJ CK 0050

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : Sandeep Shah, for the Appellant; N.K. Mehta, Advocates for the Respondent

Final Decision : Allowed

Judgement

Sandeep Mehta, J.

1. Heard learned counsel for the parties.

2. By way of the instant writ petition, the petitioner has approached this Court praying for the following relief:--

"i) The impugned order dated 02.04.2013 (Annex.6) passed by the second respondent, may kindly be quashed and set aside.

ii) The respondents may be directed to count the entire period of service rendered by the petitioner under the respondent Department and to quantify the service as 32 years instead of 29 years and 24 days while calculating the pension. The revision of pension may kindly be directed to be done in accordance therewith.

iii) The respondent may also be directed to pay interest @ 18% per annum to the petitioner for the delay in revision of pension due to non-counting of additional three years in the qualifying service of the petitioner.

iv) In the alternative, it is prayed that the impugned order dated 05.04.1984

(Annex.2) may kindly be quashed and set aside to the extent it does not specify the fate of 925 days as to whether the same shall be counted for the purpose of calculating the qualifying service or not.

v) Any other appropriate order or direction, which this Hon'ble Court deems fit and proper, may kindly be passed in favour of the petitioner.

vi) Cost of the writ petition may kindly be awarded to the petitioner."

3. Facts in brief are that the petitioner was appointed on the post of Munshi in the pay scale of Rs. 355-17-465-20-580/- on 7.7.1979 under the respondent Public Health and Engineering Department. He was illegally retrenched on 17.4.1980. He raised an industrial dispute and filed a claim petition before the learned Labour Court, Jodhpur. During pendency of the claim petition, the petitioner and the respondent department entered into a compromise in pursuance whereof, a no dispute award was passed by the Labour Court on 4.10.1983. The petitioner has placed on record, the terms of the compromise entered into between the parties. The relevant clauses of the compromise application are quoted herein below for the sake of ready reference:--

4. The petitioner was thereafter taken back on duty and he was granted pay scale in accordance with the compromise vide order dated 26.12.1986. Another order dated 5.4.1984 came to be passed by the Executive Engineer, PHED, Sirohi whereby the services of the petitioner between the period 14.4.1980 to 3.10.1983 were treated as leave without pay. The petitioner was retired from the Government service vide order dated 30.8.2011 and was also issued a P.P.O. The petitioner claims that on going through the P.P.O., he was surprised and shocked to see that the respondent authorities counted his qualifying service to be 29 years and 24 days whereas the petitioner had actually rendered 32 years of service. He submitted numerous request letters to the department for making corrections in his P.P.O. The departmental officials issued UO letters to the higher officials recommending that the petitioner's prayer for counting his qualifying service as 32 years for the purpose of pension was justified. However, finally an order Annex.R/1 dated 10.4.2013 was passed, making a reference to Rule 20(2) of the Rajasthan Civil Services Pension Rules, 1996 and observing that the period during which the petitioner was terminated, was to be excluded from the length of the petitioner's qualifying service for pension and thus, the prayer made by the petitioner to count his pensionable service for 32 years was turned down.

5. Learned counsel for the petitioner vehemently contends that the break in service which was caused in the service tenure of the petitioner was not on account of the petitioner's fault. The departmental officers acted in a high-handed fashion and retrenched the petitioner without any justification. The petitioner raised an industrial dispute and during the pendency of the dispute, the department itself compromised the matter with the petitioner and unequivocally agreed that the petitioner shall be entitled for reinstatement with continuity in service. He contends that the period during which the petitioner was

illegally kept out of service, cannot be excluded from the qualifying service period for the purpose of pension looking to the above circumstances. He, therefore, prays that the writ petition deserves to be accepted.

6. Per contra, learned counsel for the respondents stressed upon the provision of Rule 20(2) of the Pension Rules of 1996 and submits that as the petitioner was not sanctioned extraordinary leave for any of the reasons mentioned in sub-rule (2), he cannot claim that the period of 3 years which was treated as extraordinary leave should be counted as qualifying service for the purpose of pension.

7. Heard and considered the arguments advanced by the learned counsel for the parties and perused the material available on record.

8. The petitioner was retrenched by the departmental officials on 17.4.1980 without any justification. In the industrial dispute instituted at the instance of the petitioner, the respondent authorities filed a compromise application conceding that the petitioner shall be treated reinstated w.e.f. 17.7.1979 with continuity in service. It was further agreed in clause 5 of the compromise application that the petitioner would also be entitled to revision in salary treating him to be in continuous service. In this background when the P.P.O. was issued to the petitioner after his superannuation, there could not have been any justification for the respondents to have deducted the abovementioned 3 years period (which was counted as leave without pay) from the service tenure of the petitioner. Reference to Rule 20(2) while passing the order Annex.R/1 was absolutely unwarranted as the case at hand is not one where the petitioner had gone on leave without permission and was seeking regularization thereof. The petitioner was, as a matter of fact, retrenched without any justification and when the Labour Tribunal was called upon to decide the industrial dispute raised at the instance of the petitioner, the respondent authorities themselves filed a compromise application wherein it was clearly agreed that the petitioner would be entitled to reinstatement with continuity in service. Therefore, the entire service career of the petitioner including the period for which he was kept out of service on account of his retrenchment had to be counted for pensionary benefits. Thus, the petitioner was definitely entitled to have the 3 years gap period counted as qualifying service when the P.P.O. was issued to him.

9. As an upshot of the above discussion, the instant writ petition deserves to be and is hereby allowed. The order Annex.R/1 dated 10.4.2013 rejecting the prayer made by the petitioner for counting the three years gap period in his qualifying service for the purposes of pension is declared to be illegal and is quashed and set aside. The respondents shall issue a fresh P.P.O. to the petitioner treating him to be in continuous service from 17.7.1979 onwards till the date of his superannuation.

10. No order as to costs.