
(2008) 11 RAJ CK 0026
In the Rajasthan High Court

Hanuman Singh Chauhan

APPELLANT

Vs

Chairman Central Social Welfare Board and Another

RESPONDENT

Date of Decision : 19-11-2008

Acts Referred:

Citation : (2009) 2 RLW 1739 : (2009) 7 SLR 183

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—This writ petition has been filed by the petitioner being aggrieved by the action of the respondents in not counting services rendered by him from 5/6/1959 to 11/9/1968 with the respondent No. 3 Rajasthan State Social Welfare Advisory Board, Jaipur.

2. Shri Rajendra Singh Bhadauria, learned Counsel for the petitioner has argued that petitioner served the Rajasthan State Social Welfare Advisory Board, Jaipur for the aforesaid period and thereafter he was selected in the services of the Central Social Welfare Board as a Welfare Officer w.e.f. 12/9/1968. He served the Central Social Welfare Board till 31/10/1994 on which "date he retired on attaining the age of superannuation. Learned Counsel for the petitioner submitted that the Central Board vide memorandum dated 12/5/1994 directed that period of services of the employees who formerly rendered services to the State Social Welfare Board prior to their joining the Central Social Welfare Board, shall be considered for the purpose of pensionary benefits on their furnishing full particulars of service rendered by them previously to the State Social Welfare Board. Petitioner accordingly submitted the requisite papers. Yet, the respondent Central Board arbitrarily declined to count the aforesaid period vide its order dated 8/4/1997 on the premise that as and when the Rajasthan State Social Welfare Board grant approval for extending the pensionary benefits, his case for counting of his service towards pensionary benefits will be considered. Learned Counsel argued that petitioner cannot be blamed if the employees of the

Rajasthan State Social Welfare Board are not granted pension. The petitioner in terms of the memorandum dated 12/5/1994 is entitled to count his services which he rendered to the Rajasthan State Social Welfare Board for the purpose of pensionary benefits. Learned Counsel in this connection relied on the judgment of this Court in *Parivadi v. State of Rajasthan* SBCWP No. 468/1988 decided on 25/3/1992 and also the circular dated 23/9/1999 issued by the State of Rajasthan.

3. Smt. Madhuri Singh, learned Counsel for the respondents No. 2 and 3, the Central Social Welfare Board and Rajasthan State Social Welfare Advisory Board argued that petitioner rendered his services to the respondent No. 2 Central Social Welfare Board as a fresh employee and he retired upon attaining the age of superannuation. The Government of India has issued Circular dated 27/3/1979 to extend the pensionary benefits for past services and accordingly decision was taken by the Executive Committee of the Central Board on 16/12/1993 to count such services but the decision taken by the Executive Committee of the Central Board would be applicable only in terms of the guidelines and the conditions enumerated in the circular of the Government of India dated 27/3/1979. Learned Counsel relied on Annexure.R/1 dated 15/5/1994 annexed with reply filed on behalf of respondent No. 1, on which reliance was also placed by the petitioner, itself is based on the said circular of the Government of India.

4. According to the Government of India circular dated 27/3/1979, the past services of the employees of respondent No. 1-Central Social Welfare Board will be counted for calculation of pensionary benefits whose past services in the State Boards are covered by the pensionary scheme and State Governments are willing to meet pro rata liabilities for the said period. Further, as per the instructions of the Government of India, past services rendered during the period when there were no scheme of C.P.F. or pension in operation in the previous establishment, are not to be counted for the purpose of calculation of qualifying service for pensionary benefits. Reference may be made to the letter dated 11/1/1982 whereby, the State Government declined to give benefit of pension to the employees of the State Board and on that basis, Central Government vide order dated 20/5/1998 refused to count aforesaid period for the purpose of pensionary benefits to the petitioner,

5. Even as per circular dated 23/9/1988 issued by the Government of Rajasthan, it is evident that the Central Government considered all such matters in consultation with the State Government and conveyed its decision vide their letter dated 7/2/1986 that such cases be decided in accordance with the principles laid down in the Department of Personnel & Administrative Reforms O.M. No. 28(10)84-Pension Unit dated 29/8/1984 in pursuance of which, matter was considered by the State Government and the Governor was pleased to decide that the cases of the State Government employees going over to a Central Autonomous body/Statutory Body where pension scheme is in operation or vice-versa, may be regulated as per the provisions contained therein. Relevant part of

the notification dated 23/9/1988 is reproduced hereinbelow:

The Governor has been pleased to order that below item (iv) of Finance Department order of even number dated 23/9/1988, the following new items (v) and (vi) shall be added as follows, namely:

(v) The employees of a Central autonomous body/statutory body or State Government, as the case may be, who have already been sanctioned or have received pro rata retirement benefits or other terminal benefits for their past service will have the option either:

(a) to retain such benefits and in that event their past service will not qualify for pension under the Central autonomous body/Statutory body or the State Government, as the case may be; or

(b) to have the past service counted as qualifying service for pension under the new organisation in which case the pro rata retirement or other terminal benefits, if already received by them will have to be deposited alongwith interest thereon from the date of receipt of these benefits till the date of deposit with the Central autonomous body/statutory body or the State Government, as the case may be, the rate of interest in such cases would be simple interest of 6% per annum. The right to count previous service as qualifying service shall not revive until the whole amount has been refunded. In other cases, where pro rata retirement benefits have already been sanctioned but have not yet become payable the concerned authorities shall cancel the sanction as soon as the individual concerned opts for counting of his previous service for pension and inform the individual in writing about accepting his option and cancellation of the sanction, the option shall be exercised within a period of one year from the date of issue of these orders. If no option is exercised by such employees within the prescribed time limit, they will be deemed to have opted for retention of the benefits already received by them. The option once exercised shall be final.

(vi) Where no terminal benefits for the previous service have been received, the previous service in such cases will be counted as qualifying service for pension only if the previous employer accepts pension liability for the service in accordance with the principles laid down in Finance Department Memorandum of even number dated 23/9/1988. In no case pension contribution/liability shall be accepted from the employee concerned.

6. In the light of the above, there is no manner of doubt about that Central Government and the State Government have adopted the procedure for counting the past service towards pensionary purposes but this is subject to the condition that in the earlier establishment the service should be pensionable and that the earlier establishment should be responsible for taking over the liability of one time payment as pro rata pension. Benefit of pension being not available in the service of the State Board in terms of the circular of the Central Government dated 27/3/1979, action of the respondents in not counting the period w.e.f. 5/6/1959 to 11/9/1968 towards the pensionary benefits cannot be faulted. In

any case, petitioner has been granted pension for the period of service which he rendered to the Central Government.

7. I therefore do not find any merit in this writ petition.

Writ petition is accordingly dismissed, with no order as to costs.