
(2021) 09 UK CK 0053
In the Uttarakhand High Court
Case No : Writ Petition (S/S) No. 21 Of 2011

Jagdish

APPELLANT

Vs

Indian Institute Of Technology Roorkee And Others

RESPONDENT

Date of Decision : 06-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 09 UK CK 0053

Hon'ble Judges : Ravindra Maithani, J

Bench : Single Bench

Advocate : Pankaj Miglani, Vipul Sharma

Final Decision : Allowed

Judgement

Ravindra Maithani, J

1. The instant petition has been filed seeking directions that the respondents be directed to release the pension payable to the petitioner alongwith its' arrear with interest. Petitioner has also sought quashing of an order and a notice, which relate to the subject.

2. It is the case of the petitioner that he was appointed on ad-hoc basis in the Asian African Hostel of University of Roorkee and at different intervals, his pay-scales were revised. The Roorkee University (for short 'the University') was subsequently changed as Indian Institute of Technology, Roorkee (for short 'the IIT') and accordingly the pay-scale of the petitioner was mapped as per the IIT system. The petitioner retired from his services on 14.07.2009 after completing 35 years of service, but, he has not been paid pension.

3. It is the case of the petitioner that a office memorandum dated 01.07.1989 issued by the Government of Uttar Pradesh provided for pension to such temporary employees, who had rendered 10 years or more service. The office memorandum dated 01.07.1989 was made applicable to the employees of the IIT Roorkee by way of office order dated 14.11.1996. The office order dated

14.11.1996 also required that only such employees of the University would be entitled to the benefit of office memorandum dated 01.07.1989, whose name is included in the government order dated 14.03.1978. According to the petitioner, this condition in the office order dated 14.11.1996 is bad in the eye of law because the petitioner was working in the University for more than six years when the government order dated 14.03.1978 was issued and if the petitioner's name was not included in the government order, it was a mistake which was committed by the University; the University had to send the name of those employees, who had worked continuously for three years. Petitioner claims that he cannot be penalized for any illegal action or mistake of the University. When the petitioner made his claim for pension, it was revealed that he is not eligible for pension in view of a notice dated 20-21.07.2004 of the University. Petitioner has impugned the office order dated 14.11.1996 to the extent it imposes the condition of its applicability only to those employees whose name appear in the government order dated 14.03.1978 as well as the notice dated 20-21.07.2004 by which the claim of the petitioner had been denied for pension. Petitioner also seeks directions that his pension alongwith arrears and interest be paid to him.

4. On behalf of the respondents, counter affidavit has been filed. According to the respondents, the petitioner is not entitled to the pension because he was not in the employment of the University. The following points have also been raised in the counter affidavit by the respondents;

(i) Petitioner has not produced any letter of appointment issued by the University to show that he was appointed as an employee in the University.

(ii) As far as the mapping as per the IIT system is concerned, the office memorandum with regard to mapping of the pay-scale of the petitioner with the IIT system was issued by the Chief Warden of the Khosla International Hostel (KIH) and not by the Registrar of the IIT.

(iii) Petitioner was not appointed against any sanctioned post, therefore, the office memorandum dated 01.07.1989 is not applicable to him.

5. In fact, initially, the petitioner did not challenge the office order dated 14.11.1996. The instant petition was once decided by this Court on 22.03.2018 and it was allowed. The order dated 22.03.2018 was challenged by the respondents in Special Appeal No. 292 of 2018 and connected matters ('the Special Appeal'). The Special Appeal was allowed on 03.07.2018 and petitioner was given liberty to move amendment application. It is thereafter, the petitioner, by way of an amendment, sought quashing of office order dated 14.11.1996 to the extent it imposes of the condition of its applicability to only those employees, whose names are included in the government order dated 14.03.1978. In its counter affidavit, the respondents have stated that challenge to the office order 14.11.1996 has been made at a very late stage. It disentitles the plaintiff for the relief.

6. Heard learned counsels for the parties and perused the record.

7. Learned counsel for the petitioner would submit that the petitioner was an employee of the University. On 01.03.1978, his pay-scale was revised by the Assistant Registrar, (Administration) of the University. Learned counsel would submit that the petitioner was working in the KIH. The KIH is not separate from the University. The KIH was the part of the University. Every communication was made on the letter head of the University. Though, some of them were signed by the Chief Warden. Learned counsel would submit that it establishes the master-servant relationship between the University and the petitioner.

8. In support of his claim, learned counsel for the petitioner placed reliance on the principles of law, as laid down in the case of G.B. Pant University of Agriculture and Technology, Pantnagar, Nainital Vs. State of Uttar Pradesh and Others, AIR 2000 Supreme Court 2695. In that case, the issue was with regard to status of the employees of a cafeteria in G.B. Pant University of Agriculture and Technology. The Court in that case took note of the fact that the Vice-Chancellor and other senior officers were associated with the activity of the cafeteria and the in-mates of the hostels were not permitted to have food from outside under the regulations. Having considered these and other factors, the Hon'ble Supreme Court in the case of G.B. Pant University (supra) concluded in paragraph 12 of the judgment that the employees of the cafeteria cannot but be termed to be the employees of the University.

9. On this aspect, learned counsel for the respondents would submit that the petitioner is not the employee of the University. Learned counsel for the respondents would submit that KIH is a self-funded body.

Funds of the IIT do not flow in KIH and the funds of KIH do not flow in the IIT. In support of his contention, learned counsel placed reliance on the principles of law, as laid down in the case of Uttar Haryana Bijli Vitran Nigam Ltd. and Others Vs. Surji Devi, (2008) 2 SCC 310, especially paragraph 15, 16 and 18 of it have been referred to. In the case of Uttar Haryana Bijli Vitran Nigam Ltd. (supra), the Hon'ble Supreme Court held that "the scheme relating to grant of family pension was made under a statute.

Furthermore there exists a distinction between a pensionable and non-pensionable establishment."

10. The Court wanted to know as to how can it be said that the KIH was a self-funded body. What was its status? Was it a registered society, any association? How can it be said that KIH was a self-funded body? There is no reply to these queries from the learned counsel for the respondents. The respondents did not file any document to reveal that KIH was self-funded body unconnected with the University. No documents were filed in support of these arguments in the counter affidavit filed by the respondents.

11. On the other hand, the petitioner sought some information under Right to Information and thereafter filed rejoinder affidavit dated 20.08.2011. The

petitioner sought details from the IIT about the objectives of KIH, its rules, provisions, other details as to who looks after the KIH. Whether it is looked after by any association and under whose supervision was it? These questions are annexure-1 to the rejoinder affidavit and the reply which the petitioner received is annexure-2 to the rejoinder affidavit. According to it;-

(i) KIH was constructed in the year 1956. The IIT did not reply as to what was objectives of its establishment. What were its rules and provisions? The IIT replied that information on those aspects is not available.

(ii) The KIH is the property of the IIT, Roorkee and it is maintained by the University officers.

(iii) On point no.3, the IIT replied that the patron of KIH is a professor in the Electrical Engineering Department of the IIT.

12. The reply, which the petitioner got under RTI, was submitted by him and they have not been discredited by the respondents by filing any documents.

13. As stated, the petitioner's pay revision on 01.03.1978 was done by Assistant Registrar, (Administration) of the University. It nowhere mentions that KIH is unconnected with the University. All the communications are on the letter head of the University of Roorkee or the IIT, though, signed by Chief Warden, KIH (annexure-2 and annexure-3 to the writ petition). The petitioner retired on 14.07.2009 and an office memorandum was signed by the patron in chief of KIH, the IIT, Roorkee.

14. In view of the above, this Court is of the view that in fact, petitioner was an employee of the University and subsequently when it was changed into the IIT, the petitioner was in the employment of the IIT.

15. Learned counsel for the respondents has raised a preliminary objection to the maintainability of the petition on the ground that in the Special Appeal, the Court had given liberty to the petitioner to challenge the government order dated 14.03.1978, which the petitioner has not done. This argument is not acceptable because in its judgment dated 03.07.2018 passed in the Special Appeal, this Court had noted that "if that be so, the argument of the learned counsel for the appellants that not putting in issue the order dated 14.11.1996 regarding the condition relating to the names figuring in the order dated 14.11.1978, appeals to us as a contention, which may merit acceptance. On this being the situation, Shri Pankaj Miglani, learned counsel for the writ petitioners submits that he may be permitted to amend the writ petitions and challenge the order dated 14.11.1996."

16. What the Court had permitted in the Special Appeal was that the petitioner may challenge the office order dated 14.11.1996. What was required to be put in issue was office order dated 14.11.1996 because it had provided that the benefit of office memorandum dated 01.07.1989 would be provided to only such employees, whose names are included in the government order dated

14.03.1978. In the Special Appeal, it was not directed by the Court that the petitioner may move the amendment to challenge the government order dated 14.03.1978. Therefore, this contention, as raised on behalf of the respondents has no force.

17. Learned counsel for the petitioner would submit that the petitioner has been working in the University since 01.09.1972. The office memorandum dated 01.07.1989 had provided that such temporary government servant would get pension, who had worked continuously for ten years. It is argued that the petitioner had already worked for more than ten years. The office memorandum dated 01.07.1989 was made applicable by the University by way of office order dated 14.11.1996. But, a condition was imposed. According to it, only such employee would be entitled to the benefit of office memorandum dated 01.07.1989, whose name is included in the government order dated 14.03.1978.

18. The government order dated 14.03.1978 had, inter alia, sanctioned various posts on which the employees, whose names were given in the list enclosed with the government order, were working. The petitioner's name is not included in the list. On behalf of the petitioner, it is argued that it is the University to forward the list to the Government, so as to create the post. According to learned counsel for the petitioner, if the name of the petitioner is not included in the list enclosed with government order 14.03.1978, it was the mistake of the University, for which, the petitioner should not be penalized.

19. Learned counsel for the petitioner would submit that the office memorandum dated 01.07.1989 is not applicable to the petitioner because according to him, this government order has to be read alongwith government order dated 22.09.1984 on the subject, which requires that the employees in the University would be entitled for pension only if they are working on the sanctioned posts. It is argued that the petitioner was not working against any sanctioned post. In fact, the copy of government order dated 22.09.1984 has been filed alongwith supplementary counter affidavit as annexure-2 by the respondents.

20. Government order dated 22.09.1984 cannot be read in office memorandum dated 01.07.1989 because the office memorandum dated 01.07.1989 is with regard to the temporary government servants. It does not speak about working against sanctioned post. It is subsequent to in point of time to the government order dated 22.09.1984. This office memorandum dated 01.07.1989 was made applicable in the University by way of office order dated 14.11.1996 and a condition was imposed with regard to inclusion of the name of the employees in government order dated 14.03.1978.

21. The Court requested learned counsel for the respondents to tell as to why the petitioner's name was not included in the government order dated 14.03.1978. Learned counsel for the respondents would submit that it is the State to reply because it was issued by the State. The respondents should have come forward on this point because the State Government cannot give the list of the

employees working in the University and then sanction posts on which they were working unless the University supplies the names. Undoubtedly, it is the University to supply the names to the Government so as to create posts in the establishment and it is only thereafter the Government could have issued any orders.

22. It is categorical case of the petitioner that he had been working in the University for more than three years when the government order dated 14.03.1978 was issued. In such case, it was the respondents to get the name of the petitioner included in the list enclosed with the government order dated 14.03.1978. For this reason, petitioner cannot be denied the benefit of office order dated 14.11.1996. In fact, such employees who were working with the establishment of the University for more than ten years could have been given the benefit. In view of it, the condition of inclusion of the name of the petitioner in the list of the government order dated 14.03.1978 as given in office order dated 14.11.1996 may not be termed as valid condition. Therefore, in the instant case, even though, the petitioner's name is not included in the government order dated 14.03.1978, he is entitled to get the benefit of office memorandum dated 01.07.1989 and since, he was working for more than ten years on that date, he is entitled to the benefits of the office memorandum dated 01.07.1989.

23. An argument has been advanced on behalf of the respondents that since petitioner has already opted for contributory provident fund (CPF) and had taken the funds, he is not entitled for pension. But, on behalf of the petitioner, it is argued that in many cases, in which, the employees who had already contributed in CPF and received the fund were sanctioned pension by the IIT after those employees returned the funds, which they had received under CPF. Learned counsel for the respondents would submit that those cases were different and status of such employees was different. The status may be different, but, this fact is not denied that despite some of the employees having received funds under CPF scheme, they were granted pensions after asking them to return the funds which they had received. Therefore, the argument which is made on behalf of the respondents on this count does not merit acceptance.

24. Learned counsel for the respondents would also argue that the writ petition is bad for the reasons of delay and laches. It is argued that the petitioner retired from service on 14.07.2009, but, challenge to office order dated 14.11.1996 has been sought that too after amending the petition long thereafter. In support of his contention, learned counsel has placed reliance on the principles of law, as laid down in the case of Karnataka Power Corpn. Ltd. and Another Vs. K. Thangappan and Another, (2006) 4 SCC 322. In this case, the Hon'ble Supreme Court, inter alia, observed as hereunder;

"6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the

applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in *Durga Prasad v. Chief Controller of Imports and Exports* (1969) 1 SCC 185 : AIR 1970 SC 769 Of course, the discretion has to be exercised judicially and reasonably."

25. On the other hand, learned counsel for the petitioner would submit that every amendment would relate to the date of filing of petition. Even if the office order dated 14.11.1996 was challenged after seeking amendment in the petition, it relates back to the date of filing of the petition.

26. On the question of delay and laches in similar matters, the Hon'ble Supreme Court in the case of *Union of India and others Vs. Tarsem Singh*, (2008) 8 SCC 648, observed as hereunder;

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/ limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/ successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition".

(emphasis supplied)

27. In the case of *Asger Ibrahim Amin Vs. Life Insurance Corporation of India*, MANU SC 1144/2015, the Hon'ble Supreme Court concurred with the view as expressed in the case of *Tarsem Singh* (supra), and the Court observed that "we respectfully concur with these observations which if extrapolated or applied to the factual matrix of the present case would have the effect of restricting the claim for pension, if otherwise sustainable in law, to three years previous to when it was raised in a judicial forum. Such claims recur month to month and would not stand extinguished on the application of the laws of prescription,

merely because the legal remedy pertaining to the time barred part of it has become unavailable. This is too well entrenched in our jurisprudence, foreclosing any fresh consideration."

28. Instant is the case for pension, which is absolutely a recurring claim and denial of it is a recurring wrong. Delay has nothing to do with it. Of course, the arrears may be restricted to the period of three years immediately before filing the writ petition.

29. Accordingly, this Court is of the view that instant writ petition deserves to be allowed.

30. The writ petition is allowed.

31. The condition as imposed in the office order dated 14.11.1996 issued by the University is quashed to the extent it imposes a condition of its applicability only to those employees whose name appeared in the government order dated 14.03.1978.

32. The notice dated 20-21.07.2004 issued by KIH of the IIT is also quashed to the extent it denies pension to the petitioner.

33. The petitioner is entitled for pension.

34. The respondent no.1 is directed to pay the pension to the petitioner. If required, the respondent no.1 may direct the petitioner to deposit the amount, which he had received under the contributory Provident Fund Scheme.

35. Petitioner is entitled to arrears of pension for a period of three years prior to filing of the writ petition. It shall be paid to the petitioner within a period of three months, without any interest.