
(1998) 10 AHC CK 0010
In the Allahabad High Court
Case No : C.M.W.P. No. 31525 of 1991

Jai Dutt Brijwasi

APPELLANT

Vs

Director of Education and others

RESPONDENT

Date of Decision : 28-10-1998

Acts Referred:

Constitution of India, 1950 — Article 19(5), 31(1)
Uttar Pradesh Municipal Board Educational Establishment Services Rules, 1954 — Rule 3, 5, 5(2)

Citation : (1998) 4 AWC 356 : (1998) AWC 356

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : T.S. Dabas, for the Appellant; K.R. Singh and S.C., for the Respondent

Judgement

D.K. Seth, J.—The petitioner started his career as a trained teacher in the Nagar Palika Primary School, Railway Bazar, Haldwani, on 3.1.1951. He worked there till 29.8.1960. With effect from 30.8.1960 the petitioner joined the Nagar Palika Junior High School, Rajpura, Haldwani. He continued there till 29.7.1971. In the meantime in 1970, the petitioner acquired the B. Ed. degree. With effect from 30.7.1971 he joined the Nagar Palika Inter College, Kathgodam. He retired from service on 30.6.1988. Upon his retirement, the retirement benefits were allowed to him only for the period from 30.7.1971 till 30.6.1988 during his service in the Nagar Palika Inter College, Kathgodam, as a separate and distinct service ignoring his services between the period 3.1.51 and 29.8.1960 in the Nagar Palika Primary School, Railway Bazar, Haldwani and for the period between 30.8.1960 and 29.7.1971 in the Nagar Palika Junior High School, Rajpura, Haldwani, The Petitioner has claimed retirement benefits in respect of the entire period of his career right from 3.1.1951 till 30.6.1988 by means of this writ petition.

2. Mr. T.S. Dabas, learned counsel for the petitioner contends that there was no break even for a single day in between any of the periods. He further points out

that all these schools were being managed by the same Nagar Palika. In paragraph 4 of the writ petition it has been stated that both Kathgodam and Haldwani were managed by one common Nagar Palika. According to him, the petitioner was a teacher appointed by the Nagar Palika and was so transferred and promoted from one school to other under the said Nagar Palika, and, therefore, his service is continuous without any notional break and therefore the grant of retirement benefit only in respect of his service with the Inter College is wholly arbitrary and illegal. He relies on the provisions of the Rules of the U. P. School and College Teachers Gratuity Fund in order to contend that the petitioner's services in all the three schools are to be treated as continuous service in view of definition of "continuous service" contained in Rule 5 (2) of the said Rules. He then contends that similar benefit is to be made available to the petitioner in respect of other retirement benefits in view of the U. P. State Aided-Educational Institution Employees' Contributory Provident Fund-insurance-Pension Rules. He contends that continuous service has not been defined in the said Rules. In the absence of any such definition, the question is to be interpreted on the basis of the definition meant in the gratuity rules. Inasmuch as there cannot be two approach in respect of payment of retirement in respect of one person treating him to be in continuous service in respect of gratuity and treating differently in respect of pension and other retirement benefits. He also contends that the qualifying service as provided in Rule 19 (b) should be interpreted in commensurate with the definition of continuous service contained in gratuity rules so that both these rules are reconciled and are not in conflict with each other, since both the rules are dealing with the question of retirement benefit in respect of one or the other item. He contends further that as soon these rules have been interpreted, the petitioner though worked under the Municipalities he would no more be governed by the U. P. Municipal Board Educational Establishment Services Rules, 1954 because of a specific provision provided in Gratuity and Pension Rules respectively. He contends further that there being nothing provided in the Municipal Manual with regard to Gratuity and Pension and there being no express provision in the U. P. Municipal Board Education Establishment Services Rules, 1954 there cannot be any conflict between the 1954 Rules and the Gratuity and Pension Rules. The only provision that is included in the Municipal Manual is with regard to the General Provident Fund. There having been provided no provision with regard to the pension and gratuity and nothing having been mentioned in 1954 Rules with regard to pension and gratuity, the rules relating to gratuity and pension shall be applicable. He also relies on a circular dated 4.12.1978 in order to contend that the entire past service is to be taken into account. He relies on the decision in the case of Ramjee Das v. State of U. P. and others (1997) (1) ESC 243 (All), in support of his contention.

3. Mr. K.R. Singh, learned standing counsel on the other hand contends that the petitioner cannot claim benefit of his past service since his employment in the Inter College being distinct and separate appointment, Therefore he is entitled to

the service benefit only in respect of his service in the Inter College. He further contends that the petitioner was governed by the 1954 Rules which prescribes that service condition be governed according to the Municipal Manual Volume I. He cannot claim benefit in respect of the pension and gratuity in respect of his past service. According to him his past service was governed by the Basic Education Act. There is no scope for promotion or transfer from the Primary School or the Junior High School to the Inter College. He alternatively argues that even if he is eligible to pension and gratuity under the said rules the same is to be confined only with regard to the services of the petitioner in the Inter College and it cannot extend to his service either in the Junior High School or in the Primary School, According to him, there is no provision by which his past service could be taken into account for the purpose of calculation of retirement benefits.

4. I have heard learned counsel for the parties at length for days together.

5. The facts of the case are not in dispute. Admittedly, the petitioner has joined service in Nagar Palika in 1951 and he continued there till 29.8.1960 and had joined the Junior High School under the same Nagar Palika on 30.8.1960 where he worked till 29.7.1971. After having acquired the B. Ed. degree in 1970, he joined the Inter College on 30.7.1971 and retired therefrom on 30.6.1988. Admittedly both Kathgodam and Haldwani was administrated by a common Nagar Palika. All these three schools were run and managed by the Nagar Palika. All the said schools were Government-aided Schools. This fact has not been disputed by Mr. K.R. Singh, nor any such dispute has been raised in the counter-affidavit. It appears that there was even not a single day's interval in between leaving and the joining of the three schools by the petitioner. Whether there was any provision for transfer or promotion or not is not a question in view of the situation as is emerging from the relevant rules as discussed hereafter. Admittedly, the service between the period 3.1.1951 and 30.6.1988 is continuous--whether in the Primary School or in the Junior High School or in the Inter College.

6. The 1954 Rules provided service in the Educational establishment of the Board which consisted in Rule 3 of Junior High School and Primary Schools. It did not include Inter College. Rule 40 thereof provides that pay, allowances, leave, provident fund, discipline, conduct and other conditions of service of persons appointed to the educational establishment of a Board shall be regulated by the existing rules amended from time to time contained in the Municipal Manual, volume I for other employee of the Board. The Rule 1954 does not provide anything with regard to pension and gratuity. Except in respect of Provident Fund, nothing has been provided therein. These rules does not contain anything with regard to payment of gratuity or grant of pension or other retirement benefits.

7. On the other hand, the Municipal Manual, Volume I in Chapter IX, Part II deals with education relating to municipal expenditure of education and management

schools. It is provided all schools maintained or aided by a Municipal Board must be open to inspection by the Inspector or Assistant Inspector of Schools or other officer specially empowered by the Education Department. In Rule 5, it provides that to enable Government to appreciate the direction and degree of the advance which is being made, the Boards will be required to furnish with their annual reports a statement in the prescribed form showing the expenditure on, and the condition of, all schools maintained from or aided by the Municipal Fund. These rules, however, though had provided for rules regulating appointment, punishment, discipline, conduct, etc. of some officers but it has not dealt with specifically with regard to the employees in the educational establishment under the Board. It also does not provide anything with regard to the gratuity and pension and other retirement benefits except that it deals with the Management of the provident fund and substitution of life insurance scheme for substituting the provident fund.

8. Thus, in view of Rule 40 of the 1954 Rules, there is nothing to fall back on the Municipal Manual Volume I with regard to pension and gratuity of a person retiring from a school maintained by the Municipal Board.

9. Then again 1954 Rules deals with the teacher in the Primary and Junior High School. It does not apply in respect of teacher in the Inter College. In the absence of any specific provision with regard to the service conditions of the teachers in the Inter College in 1954 Rules, the service of the petitioner in the Inter College with effect from 30.7.1971 is, therefore, to be governed by the rules applicable to the Inter College. Mr. K. R. Singh has not been able to point out any other rules by which the petitioner's services would be governed. That apart Rule 40 of 1954 Rules does not deal with gratuity or pension. It only refers to the Provident Fund so far as retirement, benefits are concerned. In the present case, we are not concerned in respect of any other condition of service prior to retirement. We are concerned only with regard to retirement benefits payable to a teacher retiring from an Inter College under the said Board.

10. The fact remains that all the said three schools are Government aided school which fact is not in dispute. The gratuity rules, pension rules of the U. P. School and College Teachers Gratuity Fund came into force with effect from 1.4.1964. Therefore, when the petitioner joined in the Inter College in 1971, this rule was very much in force. Similarly, the pension rules being U. P. State-Aided Educational Institution Employees' Contributory Provident Fund-Insurance-Pension Rules came into force on 1.10.1964. Thus, when the petitioner joined the Inter College, these rules were very much in force. Even if the contention of Mr. K.R. Singh is accepted that the appointment of the petitioner in the Inter College is a separate and distinct appointment, even then there is no doubt that the petitioner would be governed in respect of his service by the Gratuity Rules and Pension Rules respectively as mentioned above.

11. In order to consider the question raised in this case having regard to 1954 Rules, it appears that there being no provision for teachers in the Inter College in

1954 Rules, it is only these rules which would govern the condition of service of the petitioner with regard to his entitlement to the retirement benefits.

12. Pensions are benefits earned by a person on account of his service since rendered, on the assurance by the employer that he would be provided for such benefit at a point of time when he would be unable to provide for himself. Pensions are properties within the meaning of Article 31(1) of the Constitution of India. It is not a bounty. It is a right earned by an employee. Such right cannot be curtailed except by means of express provision provided in the rule itself. The right even if flows from statutory rules, it confers a constitutional right which is fundamental in nature which is even not subject to Article 19(5) of the Constitution to such restriction as have contemplated therein. Therefore, a liberal approach has to be undertaken while interpreting the relevant provisions contained in the pension rules.

13. In the facts and circumstances of the case as admitted by Mr. K.R. Singh, in respect of his service in the Inter College during the period between 1971 and 1988, he would admittedly be governed by these two rules. If these rules are applied in that event of death while in service the gratuity payable in terms of Rule 5, viz., equal to six times of pay last drawn at the time of death while in service provided the incumbent had put in not less than three years continuous service before death. Continuous service has been defined in sub-rule (2) of Rule 5 to mean all whole time service whether temporary, officiating or permanent rendered either in one or more of the State-aided educational institutions on any of the categories mentioned in Rule 3 and includes all period spent on leave on average pay or on medical certificate but it does not include the leave without pay. The continuous has not been defined in the pension rules. On the other hand, it has provided in Rule 19 that service will not count for pension unless the employee holds a substantive post on a permanent establishment. While in clause (b) of Rule 19 of U. P. Contributory Provident Fund Insurance Pension Rules, continuous temporary or officiating service followed without interruption by confirmation in the same or another post shall also count as qualifying service.

14. Thus, we see that pension rules deal with qualifying service which includes continuous temporary or officiating service followed without any interruption in the same or another post. The continuous service of the petitioner was under the Nagar Palika and in aided schools without interruption and was followed by a confirmation in the Inter College at different post from the post which was held by him in the Primary School or in the Junior High School. The forfeiture of past service shall ensure only when the service was terminated on account of fault of the employee. In the present case, there was no termination of service, and, therefore, there was no interruption in between his service even for a single day. Continuous service has not been defined in the said rules. Admittedly, the petitioner was governed by the provisions of the Intermediate Education Act and the regulations framed thereunder while he was in the service in the Inter College. The said 1921 Act and the Regulations contemplated of transfer from

one school to other. In Rule 3 or the pension Rules, it is provided these rules shall apply to a permanent service serving in the State-aided educational institutions of the following categories run either by a Local Body or by a private management and recognised by a competent authority as such for purposes of payment of grant-in-aid ; viz., Primary Schools. Junior High Schools, Higher Secondary Schools, Degree Colleges, Training Colleges. Admittedly the Primary School, Junior High School and the Inter College were all recognised by the competent authority for the purpose of grant of pension. Therefore, the petitioner would have been entitled to the pension in respect of all his three services in the Primary School. Junior High School as well as in the Inter College. Since by reason of 1954 Rules, the services of the Primary and Junior High School would be taken together and during the period when he was serving in the Junior High School, the 1964 Rules having come into force, he was deemed to be governed by the said Rules in the Junior High School for which service in the Primary School was also to be taken into consideration because of Rule 3 of the pension Rules and thus when he is appointed in the Inter College he would be entitled to the benefit of the Pension Rules in the Inter College. Even if the contention of Mr. K.R. Singh is accepted in that event by reason of 1964 Rules he would be entitled to the Pension in respect of his service in the Junior High School as well as in the Inter College separately which is a proposition difficult to accept in view of the condition of his service. Inasmuch as it is inconceivable that the petitioner would be receiving pension separately for his service in the Primary School and for his service in the Junior High School and then for his service in the Inter College. In view of 1964 Rules, he would be entitled to the benefits of continuation of service for the purpose of calculating qualifying service in order to entitle him to the retirement benefits.

15. The improvement of a person and resultant getting of higher post even if not by way of transfer or promotion cannot debar a person from getting continuation of service or recognition of his past service for being counted as qualifying service- Therefore, it would be hindrance on the development of human resources if such an attitude is taken. Inasmuch as no person would then be eager to improve himself. It is a common characteristic of human attitude to get better offer and to improve one's own self. Such an inspired attitude cannot be allowed to be thwarted by reason of an interpretation which wilt discard people to acquire higher qualification and try for better prospect by improving one's own performance by acquiring higher and better qualification.

16. Then again his services were utilised by the Nagar Palika for better and higher performance from time to time and now after having utilised him as such his past service cannot be overlooked or ignored altogether. Therefore, qualifying service and continuous service having been not defined in the pension rules, we have no alternative but to rely upon the definition of continuous service provided in the gratuity rules. The said proposition is in furtherance of the object of the pension rules as is apparent from the fact that in case an employee dies before retirement having placed in similar circumstances as that of the petitioner he

would have been entitled to gratuity treating the entire period as continuous service in all the three schools. Whereas, if he retires, while the question of pension would be counted, he would be deprived of his earlier two services. Such a proposition appears to be wholly unreasonable, unjust and irrational. There cannot be two standard for two kinds of benefit made available by the two rules. Service having not been defined in the pension rules, the qualifying service cannot be interpreted to mean a segregate meaning as has been sought to be imported by Mr. Singh. Qualifying service is to be interpreted to mean the entire past service without interruption even though in different schools subject to the provisions contained in Rule 19 of the Pension Rules as provided therein. Total service defined in sub-rule (3) of Rule 19 means total service reckoning from the date of commencement of service qualifying for pension and includes period of leave referred to above. Sub-rule (6), Rule 19 of the Pension Rules provides that in case the question is not covered by these rules, qualifying service shall be determined by Government and its decision shall be final. Since nothing has been provided to mean that service would be only in an aided school or in an Inter College exclusively particularly in view of Rule (3) which includes service of all categories of schools, therefore, the expression commencement of service while defining total service in sub-rule (3) of Rule 19 would mean service in any of the category of the school mentioned in Rule 3.

17. This interpretation is to be gathered from the entire scheme of rules as discussed above which find support from the interpretation accepted by the Government which is apparent from the Government order dated 22.11.1966 which reads as follows :

"1. With reference to your Letter No. F/1916/X-10 (106/66-67) dated 22, 1966 on the subject notice above, I am directed to say that Rule No. 34 of the triple benefit scheme can be involved only in matters not specifically provided for in the rules of the scheme. The case of Sri Dixit involves the question of delimitation of qualifying service, specific provision in respect of which have already been made in 19 of the scheme and as such this case is to be decided under sub-rule (6) of the Rule 19 and not under Rule 34. This point may kindly be noted for pension sanctioning authorities under the scheme for guidance and compliance in future.

2. I am further to say that the issue involved in the case of Sri Dixit has been carefully considered by Government and it has been decided that the resignation of an employee of an institution for taking up appointment in another institution shall not be construed as involving forfeiture of his past qualifying services for purposes of pension. The period of services rendered by Shri Dixit at N.R.E.C. College, Khurja, should accordingly be treated as qualifying for pension, although he had resigned from the institution for taking up appointment at another college.

3. The above decision of Government may kindly be brought to the notice of pension sanctioning authorities for their information and guidance."

It shows that the interpretation given in the said Government Order in respect of a particular person is to be followed in all cases as mentioned in paragraph 3 thereof. This Government Order seems to be followed and a fresh circular was issued on 4.12.1978 to all the. Regional Deputy Directors of Education. U. P. and District Inspector of Schools. U. P. providing that if a teacher in order to avail of better prospect by resigning from one school and joining another school, in that event, the period of service in the earlier school should be reckoned for the purpose of grant of pension as qualifying service in terms of Government Order dated 22.11.1966.

18. Thus, the Government cannot take a different stand in the case of the petitioner after having issued the clarifications in the said Government Order dated 22.11.1966 and 4.12.1978 respectively.

19. In the case of Ramjee Das (supra), this Court had held that even the service as clerk in different schools or colleges were to be reckoned for the purpose of qualifying service in respect of a teacher of an Inter College. Even the period of service in private school run by Nagar Palika was also directed to be reckoned as qualifying service in the said judgment.

20. In view of the discussion made above, I do not find any reason to disagree with the view taken by this Court in the said case and I respectfully agree with the view taken by this Court in the case of Ramjee Das (supra).

21. For all these reasons, the writ petition is allowed. The respondents are directed to be reckoned the entire period of service of the petitioner in the Primary School, as well as in the Junior High School as qualifying service for the benefit of grant of pension to the petitioner on account of his retirement from the Inter College. In case the retiral benefit or pension has been paid to the petitioner in respect of his service in the Inter College, in that event, the same should be reconsidered and recalculated in the light of the observation made in this judgment and the pension and retirement benefit payable to the petitioner should be- revised accordingly as is admissible in the light of the observation made above and the arrears and current pension on account of such revision should be made available to the petitioner within a period of six months from the date a copy of this order is produced before the concerned respondent.

22. However, there will be no order as to cost.