(2010) 05 DEL CK 0117

In the Delhi High Court

Case No : Writ Petition (C) 2442 of 2003

Joginder Singh Verma APPELLANT

Vs

Haryana Power Generation Corporation Ltd. and Others RESPONDENT

Date of Decision : 04-05-2010

Acts Referred:

Citation : (2010) 05 DEL CK 0117

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Fanish K. Jain, for the Appellant; Umang Shankar, for Respondents 1 to 4 and Sujata Kashyap, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—The petitioner seeks mandamus commanding his ex-employer ex-employer Haryana Power Generation Corporation Ltd. (earlier known as Haryana State Electricity Board) to transfer his GPF amount to his present employer namely respondent No. 5 Directorate of Training & Technical Education, Government of India and further direction to the ex-employer to discharge their pension liability qua the petitioner.

2. The petitioner joined the services of ex-employer on 22nd September, 1989. On 25th February, 1997, the Union Public Service Commission (UPSC) issued an advertisement inviting applications for the post of Workshop Superintendent (Mechanical Engineering) in the Directorate of Training & Technical Education, Delhi. The petitioner submitted his application through proper channel i.e. through the ex-employer. The ex-employer forwarded the application of the petitioner to the Secretary, UPSC. It is not in dispute that the same was with the approval of the ex-employer. The petitioner was selected and on 20th August, 1998 offered the post of Workshop Superintendent. The petitioner submitted an application to the ex-employer, requesting to be relieved from service so as to enable him to join his new employer i.e. respondent No. 5 Directorate of Training & Technical Education. An order dated 25th August, 1998 was issued by the ex-

employer relieving the petitioner on his selection to the post of Workshop Superintendent with the new employer. The petitioner was so relieved and joined his new employer on 28th August, 1998 without any break.

3. The ex-employer however vide its letter dated 21st December, 1998 asked the petitioner to submit his resignation and deposit one month?s salary. The petitioner in compliance of the said request of the ex-employer submitted his resignation and also deposited one month?s salary. The said resignation was accepted by the ex-employer.

4. The Panchkula unit of the ex-employer, where the petitioner was earlier working also wrote to the Head Office of the ex-employer for transfer of the service book, GPF amount and other amounts of the petitioner to the new employer of the petitioner. However, the said transfer was not affected and ultimately the present petition was filed.

5. The new employer of the petitioner has in its counter affidavit stated that the case of the petitioner for counting of past services in ex-employer was taken up and vide office letter dated 22nd May, 2002, the ex-employer was requested for payment of their contribution towards pensionary benefits accruing to the petitioner and for transferring the provident fund of the petitioner. It is further stated in the said counter affidavit that a memo was also issued to the ex-employer for transfer of the provident fund and service book of the petitioner to the new-employer but the same was not effected inspite of the repeated reminders. The new employer has confirmed that it has till date not received any contribution towards leave, pension, etc. of the petitioner from the ex-employer.

6. The ex-employer has also filed a counter affidavit; without controverting the facts, reliance is placed on Rule 4.19 of the Punjab Civil Services Rules which provide for forfeiture of past services and pension in the event of resignation from service, dismissal or removal for anti-social activities, misconduct, insolvency, inefficiency etc. The counsel for the ex-employer has in the arguments also merely contended that since the petitioner has resigned from the services, the ex-employer is not liable for transferring the service book or any other amounts of the petitioner to the new employer. It is further contended that the petitioner?s contribution towards GPF was tendered to the petitioner which the petitioner refused to accept.

7. The counsel for the petitioner on the other hand relies on office Memorandum dated 11th February, 1988 issued by the Ministry of Personnel, Government of India; Clause 9 thereof provides that in case where the government servant applies for posts in some other department through proper channel and if on such selection is asked to resign the previous post for administrative reasons, the benefit of past service, if otherwise admissible under the Rules, may be given for the purpose of benefit of pay to the new post treating the resignation as a technical formality. He contends that for the reasoning in the said memorandum, the resignation sought from the petitioner and submitted by the petitioner ought

to be regarded as a technical formality and on the basis of Rule 4.19 (supra), the provident fund and other benefits of the petitioner cannot be forfeited.

8. The counsel for the new employer has fairly contended that the new employer is not opposing the writ petition and is willing to comply with the demand of the petitioner, subject to the ex-employer cooperating. The counsel has also drawn attention to Sub-clause (b) of Rule 4.19 (supra) which provides that where the resignation is tendered with prior permission for another appointment, the same is not a resignation to which Rule 4.19 (supra) applies.

9. In the present case, the ex-employer inspite of the requests of the petitioner maintained a sphinx like quietus. Neither did it give any reason for not complying with the request nor complied with the same. The petitioner was thus compelled to approach this Court. The present writ petition has been contested on the ground of the petitioner having resigned from service. The counsel for the ex-employer has been unable to explain as to why the case of the petitioner would not be covered in Sub-clause (b) (supra) of Rule 4.19. From the said Sub-clause as well as the Office Memorandum dated 11th February, 1988 (supra), it appears that wherever the resignation is for technical purpose, the same is not to be treated as a resignation leading to forfeiture of benefits. In the present case, it is not disputed that the application of the petitioner in pursuance to the advertisement for posts in the new employer was forwarded by the ex-employer and the appointment of the petitioner with the new employer was with the consent and knowledge of the ex-employer. The ex-employer in fact relieved the petitioner from his duties and asked for the resignation after several months as an afterthought. Such resignation can be nothing but a technicality and cannot lead to forfeiture of the benefits of the petitioner. The ex-employer by its such conduct has not only harassed the petitioner but also caused monetary loss to the petitioner and for which it is liable to compensate the petitioner.

10. The writ petition is hence allowed. The ex-employer (Haryana Power Generation Corporation Ltd.) is directed to transfer the GPF amount of the petitioner to the respondent No. 5 (Directorate of Training & Technical Education, Government of India) and/or its Trust. The HPGCL is also directed to discharge its pension liability to the petitioner. It is further clarified that the petitioner shall be entitled to interest on amounts either at the rate payable on such amounts under the Rules, if any, for the period of the delay occasioned by HPGCL and if no such rate of interest is provided, at the rate of 9% per annum. The order be complied with within six weeks of today. The petitioner is also awarded costs of Rs. 20,000/- of this petition against the HPGCL. The costs be also paid within six weeks of today.