
(2011) 04 RAJ CK 0090
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2104 of 2003

Kamla Shankar Joshi

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Rajasthan Civil Services (Pension) Rules, 1996 — Rule 20, 21

Citation : (2011) 4 RLW 3572

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Vyas, J.—In this writ petition, the petitioner has prayed for quashing Annex. R/1 dated 10.3.2003, so also, Annex. P/2 dated 25.2.2003, whereby the respondents refused to reckon the period spent by the petitioner for acquiring B.Ed, qualification as well as higher education of M.Sc. (Technical). It is also prayed that the respondents may be directed to compute the period of privilege leave correctly.

2. As per brief facts of the case, the petitioner was initially appointed as Teacher by the respondent Education Department in the year 1969 and, thereafter, a specific order was made on 29.6.1970 appointing the petitioner on the post of Senior Teacher (Physics) in the pay scale of Rs. 225-15-345-20-. 525 with effect from 1.7.1990. Said appointment was made after due selection of the petitioner by the Rajasthan Public Service Commission. It is worthwhile to observe here that the Rajasthan Subordinate Service Rules, 1971 were not in existence at the time of appointment of the petitioner; but, appointment was made by the Selection Committee of the RPSC and, in the appointment order, it was specifically observed that this appointment is on probation of two years and the candidate required to acquire training of open year and his services will be confirmed after acquiring the B.Ed, qualification and upon satisfactory service in the probation period.

3. After appointment, the petitioner was granted permission to acquire the B.Ed, training because it was pre-condition in the appointment order for acquiring the said qualification. The petitioner was admitted in the B.Ed. training course for the session 1971-72 and, after appointment, the petitioner was relieved to acquire the said qualification on 17.7.1971 by the Head Master of Government Upper Secondary School, Chittorgarh, The Director, Primary and Secondary Education, Rajasthan, Bikaner granted permission for acquiring such qualification vide communication dated 11.11.1971. After acquiring the B.Ed, qualification, a confirmation order was issued on 20.1.1978 whereby the services of the petitioner were confirmed.

4. In the writ petition, it is mentioned that the petitioner acquired Degree of Master of Science in Technology after due sanction of leave for acquiring the said qualification by the respondents and his leave was sanctioned in different heads vide Annex. P/8 dated 20.11.1982. it is very unfortunate part of the case that for acquiring the M.Sc. Qualification the petitioner was charge-sheeted alleging that for acquiring M.Sc. qualification the petitioner did not seek permission; and, in the inquiry a penalty of withholding two grade increments with cumulative effect was made against the petitioner vide order dated 20.1.1987.

5. For quashing the punishment order, a suit was filed by the petitioner in the court of Munsiff and Judicial Magistrate, Jaipur. In the said suit, a final judgment was given on 20.9.1990 by the civil Court in whom the order of penalty against the petitioner was set aside. Against said judgment of the civil Court, an appeal was preferred by the respondent department but that appeal was dismissed by the Addl. District Judge, Jaipur City in default. Thereafter, a conscientious decision was taken by the Secretary, Education Department, Jaipur for making compliance of the judgment of the civil Court dated 20.9.1990. In pursuance of the order passed by the Education Secretary on 23.1.1995, the Director, Primary and Secondary Education, Rajasthan, Bikaner passed order on 30.3.1995 whereby order of penalty was revoked.

6. In this case, main grievance of the petitioner is that after retirement from service on 30.11.2002, the retrial benefits of the petitioner were to be made on the basis of calculating entire service period of the petitioner including the period spent by the petitioner for acquiring the B.Ed, and M.Sc. qualifications; but, when the case of the petitioner was prepared by the Education Department and sent to the Pension Department, then, objection was raised by the Pension Department that in the order of granting permission for B.Ed, assertion was to be made by the competent authority that the said period will not be counted for the purpose of qualifying service but it was not incorporated. Likewise, time spent by the petitioner for acquiring M.Sc. (Technical) qualification cannot be counted in view of Rule 20 of the Rajasthan Civil Services (Pension) Rules, 1996, therefore, the pension case may be revised and while deducting the period of leave granted by the Department for acquiring B.Ed, qualification and M.Sc. (Technical) qualification, the matter may be prepared afresh for grant of pension to the

petitioner.

7. The Education Department accepted the objection raised by the Pension Department and informed the petitioner vide communication dated 10.3.2003 that the said period will not be counted for the purpose of pensionary benefits.

8. Learned counsel for the petitioner while challenging the validity of communication dated 10.3.2003 and 25.2.2003 vehemently argued that at the time of issuing appointment order in favour of the petitioner it was specifically mentioned that the petitioner shall acquire B.Ed, qualification within the probation period; meaning thereby, condition was imposed for acquiring B.Ed, qualification in the appointment order itself and, thereafter, permission was granted by the Director for acquiring such qualification, in which, no assertion was made that the said period will not be counted for the purpose of pension, therefore, denial of calculating the said period spent on acquiring B.Ed, qualification is totally unwarranted.

9. With regard to acquiring M.Sc. qualification, it is submitted that as per Rule 21 if the leave is granted to the petitioner for acquiring technical qualification, then, the respondents cannot refuse to calculate the said period for the purpose of pensionary benefits, therefore, the petitioner is entitled for calculating the period in which he acquired B.Ed, qualification and M.Sc. (Technical qualification for the purpose of pension. With regard to not calculating the period of privilege leave correctly, it is submitted that the respondents have failed to consider the entire facts of the case in right perspective, therefore, the petitioner is entitled to the relief prayed for in this writ petition.

10. Per contra, learned counsel appearing on behalf of the State vehemently argued that as per Rules 20 and 21 of the Rules of 1996, the period consumed for acquiring B.Ed, and M.Sc. (Technical) cannot be taken into account for the purpose of pension. The pension Department has rightly raised the objection that as per the rules the said period cannot be counted for the purpose of qualifying service for pension, in this view of the matter, it is submitted that this writ petition may be dismissed.

11. I have considered the rival submissions made by both the parties.

12. In this case, main grievance of the petitioner is that denial of calculating the period spent by the petitioner for acquiring B.Ed, and M.Sc. (Technical) is totally contrary to rules so also, permission was granted by the Director, Primary and Secondary Education as per terms of the appointment order, then, there is no question of refusing to calculate the said period for the purpose of qualifying service for pension. In my opinion, there is strength in the argument of learned counsel for the petitioner because upon perusal of the initial appointment order it is abundantly clear that the petitioner was found suitable for selection and it is mentioned in the appointment order that the petitioner shall acquire B.Ed, qualification within the period of probation. Further, it is specifically mentioned in the appointment order dated 01.07.1970 that confirmation in the service shall be

made Upon acquiring the B.Ed. Admittedly, the petitioner was granted permission to acquire B.Ed, qualification which is evident from Annex.5, which reads as under:

Sanction is hereby accorded to the grant of 285 days Leave without pay w.e.f. 19.7.71 to 29.4.1972 to Shri Kamla Shankar Joshi S.T. Physics, Govt. Higher Secondary School, Chittorgarh for undergoing B.Ed. Training with permission to avail 18.7.71 prefix and suffix 30.9.71 as recommended by the Headmaster.

13. It is true that it is nowhere mentioned in the order that the said period will not be counted for the purpose of pension but order was made that leave is hereby granted without pay. However, according to Rule 20, assertion was to be made by the Director specifically and it has not been incorporated in the order made in the year 1971, therefore, at this stage, the objection of the Pension Department that competent authority has failed to observe in the order that the said period will not be counted is wrong. Therefore, in my considered opinion, no such objection can be raised by the Pension Department for denial of calculating the period spent by the petitioner for acquiring B.Ed, solely on the ground that mistake was committed by the Director while granting permission for acquiring B.Ed. qualification. In this view of the matter, the respondents are under obligation to calculate the period spent by petitioner on acquiring the B.Ed. qualification as per appointment order for the purpose of qualifying service for pension.

14. For the next prayer of the petitioner that though the petitioner acquired M.Sc. (Technical) qualification without any permission but, for the said period, a specific order was made by the Joint Director, Primary and Secondary Education on 20.11.1982, whereby, leave was sanction for such period and in that order no such assertion was made that the period of leave sanctioned will not be counted for the purpose of reckoning pension. Therefore, there is no order for denial of the period in which the petitioner acquired the M.Sc. (Technical) qualification. Further, in the absence of any order, the respondents cannot deny the period spent for acquiring, M.Sc. (Technical) qualification.

15. The case of the petitioner is that for acquiring the aforesaid qualification without permission, the petitioner was charge-sheeted and, in the inquiry, punishment was imposed of withholding two grade increments with cumulative effect. However, the said order was set aside by the civil Court and appeal filed against the judgment of the civil Court by the respondent department was also dismissed and penalty was revoked on 30.3.1995 in compliance of the adjudication made by the civil Court, then, it can be said that no ground is left with the respondents not to calculate the period spent for acquiring M.Sc. (Technical) qualification after sanctioning leave for the said period.

16. I have perused Rules 20 and 21 of the Rajasthan Civil Services (Pension) Rules, 1996. According to Rules 20 and 21 also the objection raised by the Pension Department is not sustainable. It is very strange that the Pension

Department has raised unseemly objection for not calculating the period in which the petitioner acquired higher qualification. It is not the case of the petitioner that the petitioner acquired another job but the petitioner has utilized the expertise for efficient and satisfactory service as Teacher. Therefore, instead of appreciating the action of the petitioner, the Pension Department has passed order for depriving the petitioner from right to have the period reckoned for the purpose of pensionary benefits. Such type of objection is not required to be made at the time of granting pension to the teacher.

17. In this view of the matter, on the basis of the above discussion, this writ petition is allowed. The respondents are directed to calculate the period spent by the petitioner for acquiring B.Ed. and M.Sc. (Technical) qualifications while in service. The respondents are further directed to correctly calculate privilege leave while finalizing the pension case of the petitioner. Said exercise shall be completed within a period of three months from the date of receipt of certified copy of this order and necessary orders for grant of pension shall be made within the aforesaid period.