
(2001) 12 P&H CK 0107
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 459 of 1989

Karam Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-12-2001

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2003) 133 PLR 425

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : M.S. Kang, for the Appellant; Mukesh Kaushik, for the Respondent

Final Decision : Allowed

Judgement

S.S. Nijjar, J.—Is the petitioner entitled to count the services rendered by him in the Army Education Corps towards pension and other retiral benefits on his retirement from the Kendriya Vidyalas Sangathan (hereinafter referred to as "Sangathan"), is the only question which requires determination in this petition under Articles 226/227 of the Constitution of India.

2. The relevant facts may briefly be noticed.

The petitioner was enrolled in the Army (Army Education Corps) on 16.8.1952. Thereafter, by order dated 25.7.1962, he was selected and appointed as Head Master of the Regiment Children School, Bombay Engineer Group, Kirkee, Poona. In November, 1962, the Government of India approved a scheme for establishment of Central Schools to provide educational facilities for the children of transferable Central Government employees including defence personnel. The implementation of this scheme was announced by the Ministry of Education in 1963 with effect from 1.7.1963. During the academic year 1963-64, 20 regimental schools then functioning at places having large concentration of defence personnel were taken over as "Central Schools" or "Kendriya Vidyalas". The petitioner continued to work in the Central School, Kirkee. The Ministry of

Education advertised some posts of Post Graduate Teachers, and the petitioner submitted an application on 10.2.1964 through proper channel i.e. Officer Commanding, Depot Battalion Bombay Engineers Group and Centre Kirkee Poona. Prior to the submission of the application, the petitioner was interviewed by the Assistant Education Advisor, Ministry of Education Government of India. At the time of interview, the petitioner requested that his service in the army be taken into account for pension purposes. He also made it clear that he would be prepared to seek discharge from the Army only if the Central School Authorities were prepared to absorb him as Post Graduate Teachers on regular basis and also take into account his services in the Army for purposes of pension. The petitioner, recorded the aforesaid condition in the application dated 10.2.1964. The application is attached with the Writ Petition as Annexure P-2. The relevant part of the application is as follows:-

"In this connection I am to state that during the interview with Dr. D.V. Nivathe I had requested him that I am already working as Head Master of Central School, Kirkee as deputed by Officer Commanding, Depot Battalion, Bombay Engineer Group & Centre, Kirkee since 1st August, 1962. I had further requested him that I am prepared to resign from the Army service if the Central School authorities are prepared to absorb me as Post Graduate Teacher (History) in this school on regular basis and also take into account my present service in the Army for pension purposes,"

3. On 20.4.1964, the Chairman School Management Committee informed the petitioner that the Central Schools Unit, Ministry of Education has agreed to absorb him as Post Graduate Teacher (History) on regular basis in the pay scale of Rs. 250-10-290-15-380-EB-15-470 in the school on his being discharged from army education corps. The letter further stated that "further your present service in the Army will also be taken into account for pension purposes". The petitioner received an offer of appointment by letter dated 1.10.1964 (Annexure P-4 with the petition) making a reference to the interview on 15.1.1964 with Dr. D.V. Nivathe, Assistant Education Advisor, Ministry of Education Government of India and the letter dated 20.4.1964. The pay scale of the petitioner was fixed as mentioned in the earlier letter dated 20.4.1964. In paragraphs 3 and 4 it was mentioned as follows:-

"As already intimated in the above quoted letter, your present service in the AEC will also be taken into account for pension purposes and other benefits.

If you accept this offer on the terms mentioned above you may please intimate your acceptance to the undersigned and join your duty in this school within one month, failing which the offer of appointment will be treated as cancelled."

4. Relying on the aforesaid promises at the stage of interview and in the two letters-Annexures P-3 and P-4, the petitioner sought discharge from the Army. He was discharged on 23.10.1964. On the very next day, he submitted his joining report i.e. w.e.f, 24.10.1964. Thereafter the petitioner served the

sangathan without any break or any blemish on his service till superannuation. On 2.8.1965, the petitioner was appointed as Principal of the newly opened Central School at Udhampur. The letter of appointment mentioned that the Chairman School Management Committee Central School Udhampur will be deemed to be the appointing authority of the petitioner. On 15.12.1965, the Sangathan was registered as a Society under the Societies Registration Act (XXI of 1860). The Sangathan is an autonomous body and is primarily aimed to administer and manage the Kendriya Vidyalayas (Central Schools) and to administer the Central Schools Scheme formulated by the Government of India in Ministry of Education and Culture. The Sangathan actually assumed charge of the Kendriya Vidyalayas on 1.4.1966. Although the Kendriya Vidyalaya Sangathan is registered as a Society under the Societies Registration Act, it is in effect completely owned by the Central Government. The Minister/Minister of State or Deputy Minister in the Ministry of Education and Culture in-charge of the Kendriya Vidyalaya scheme is the Chairman of the Sangathan. The Vice-Chairman is an officer of the Ministry of Education and Culture specially nominated by the Government of India. The other members are appointed by the Government of India from amongst senior Officers of the Ministries of Finance, Defence, Works and Housing and Department of Personnel. Distinguished educationists including representatives of the Central Board of Secondary Education, National Council of Educational Research and Training and State Governments are also members of the Sangathan. At the time when the Sangathan took over the Management and Administration of the Kendriya Vidyalayas the petitioner was permanently absorbed as Post Graduate Teacher in the Central School. He had joined the Central School on the promises held out to him as noticed earlier. The petitioner retired from service on 31.3.1987 on completion of 60 years of age.

5. The petitioner made a number of representations to the Sangathan for counting the army service for purposes of benefit. By letter dated 2.4.1986, the petitioner was informed that his request cannot be accepted under the rules. The petitioner made another representation in December, 1986. By letter dated 4.2.1987, the petitioner was informed by the Sangathan to approach the Ministry of Defence for recognition of his past service for the purposes of pensionary benefits. The Sangathan was prepared to grant the benefit of Army service for retirement benefit provided lump sum amount is paid by the Union of India on pro rata basis.

6. In reply to this, the Government of India Ministry of Defence informed the petitioner that the Government of India has no objection to counting of Army Service for the purpose of pensionary benefits from Kendriya Vidyalayas so far as the question of pro-rata pensionary liability in respect of service is concerned, the request was declined because the petitioner was discharged from the Army service at his own request and he was not paid any pensionary benefit for this service. Thereafter, the petitioner again made a detailed representation to the Ministry of Personnel and Public Grievance and Pension Department of

Administrative Reforms. This representation was forwarded to the Ministry of Human Resource Development (Department of Education). It was further sent to the Commissioner, Kendriya Vidyalayas, New Delhi on 13.7,1987, Till filing of the writ petition the petitioner had not received any reply. The aforesaid facts have not been denied by the respondents in the written statement. It is, however, stated that the Ministry of Defence has to pay the prorata pensionary liability, in case the service of the petitioner in the Army is to be counted in the Sangathan for pensionary benefits. Since, according to the respondents, the request of the petitioner has been denied by the Ministry of Defence in its letter dated 26.5,1987, no benefit of the Army service can be given to the petitioner. Mr. Kang appearing for the petitioner has submitted that throughout the petitioner had been in the service of Union of India. Firstly, he was serving in the Army. Thereafter, he was serving in the Regimental Schools teaching the children of Army Officer. He continued working in the Central School till they were taken over by the Sangathan. Therefore, the respondents are wholly unjustified in not counting the service rendered in the Army for the purposes of pension. Furthermore, the petitioner had made it clear that he will join the Kendriya Vidyalayas, only if the service rendered by him in the Army is counted for pensionary benefits. The petitioner sought discharge from the Army on the express promises held out by the respondents. As a result, he was not paid any pension for the Army service by the Ministry of Defence. According to the learned counsel, the petitioner has changed his position to his detriment on the basis of the promises made by the respondents and sought voluntary discharge from the Army which rendered him ineligible for any pensionary benefits. Therefore, the respondents cannot now be permitted to say that the service will not be counted because the Ministry of Defence is not prepared to share the burden of the pension pro rata.

7. I have considered the submissions made by the learned counsel for the parties. There is much merit in the submission made by Mr. Kang. A perusal of the application form submitted by the petitioner makes it clear that he had offered his candidature on the condition that his service in the Army will be counted for pension purposes. The petitioner reiterated this offer at the interview with Dr. D.V.Nivathe on 15.1.1964. This condition is accepted by the respondents in the letter dated 20.8.1964. It is formally incorporated in the letter of appointment as condition No. 3 which has been reproduced above. On the basis of the aforesaid fact, this Court has no hesitation in holding that counting of the Army service for retiral benefits was a condition of service of the petitioner. This condition of service cannot now be permitted to be obliterated with retrospective effect. The accrued rights of the petitioner, on the basis of the letter of appointment cannot be permitted to be taken away. The action of the respondents in not counting the Army service on the ground that the Ministry of Defence is not prepared to make pro rata contribution is wholly arbitrary and violative of Article 14 of the Constitution of India.

8. Consequently, it is held that the petitioner is entitled to count the service

rendered in the Army for the purposes of pension and retiral benefits. The Writ Petition is allowed. The respondents are directed to fix the pension of the petitioner by adding the period spent by the petitioner in Army service prior to joining the Kendriya Vidyalayas on 24.10.1964. The petitioner shall be paid the refixed pension from the date of super annuation till payment after deducting any pension that may have been already paid to him. The arrears on account of refixed pension shall be paid with interest at the rate of 12 per cent per annum from the date of superannuation till payment of the refixed pension. Let the arrears accruing to the petitioner on account of the refixed pension be paid within a period of three months of the receipt of a copy of this order, No costs.