(2014) 07 P&H CK 0574

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 21736 of 2010

Kendriya Vidyalaya Sangathan APPELLANT

Vs

Kishan Chand RESPONDENT

Date of Decision : 21-07-2014

Acts Referred:

Citation : (2015) 177 PLR 211

Hon'ble Judges : Hemant Gupta, J;Fateh Deep Singh, J

Bench : Division Bench

Advocate : Aman Chaudhary, Advocate for the Appellant; V.K. Shukla and D.R. Sharma, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—Challenge in the present writ petition is to an order passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter to be referred as ''the Tribunal'') on 02.08.2010 (Annexure P-5) whereby an Original Application filed by respondent No. 1 (hereinafter to be referred as ''the applicant'') was allowed and the respondents in Original Application were directed to consider/examine the applicant''s entitlement for pension.

2. The facts which are not in dispute are that Navodaya Vidyalaya Samiti (NVS) and Kendriya Vidyalaya Sangathan (KVS) both are the Societies registered under the Societies Registration Act, 1860 under the aegis of Ministry of Human Resources and Development, Government of India. The applicant was a Post Graduate Teacher (Physics) with NVS w.e.f. 31.12.1990 to 02.09.1993. On 03.09.1993, the applicant joined as Principal under KVS. He attained the age of superannuation on 31.10.2000.

3. The claim of the applicant before the Tribunal was that the services rendered by him with NVS should be counted for the payment of pension and death-cum-retirement gratuity. The Tribunal directed that such service be counted for pensionary benefits while declining the benefit of payment of gratuity for the

period he rendered services with NVS.

4. Earlier the applicant approached the Tribunal, when the Department of Personnel & Pensioner Welfare, Government of India was directed to clarify the anomaly arising out of instructions dated 19.02.2003. In terms of such direction, an order was passed on 15/18.02.2008 that the applicant is not entitled to death-cum-retirement gratuity, as he left NVS w.e.f. 02.09.1993, whereas the scheme of Gratuity was enforced on 13.07.2007. It was held that entitlement of pension would be counted as on 02.09.1993, when he took deemed retirement from NVS.

5. The claim of the applicant revolves around the Circular issued by the Department of Personnel & Pensioner Welfare on 19.02.2003, a copy of which has been attached as Annexure A-11. The relevant extract from such Circular reads as under:

G.I., Dept. of P. & P.W., O.M. No. 28/19/2002-P&PW(B) dated 19.02.2003

Mobility of Personnel between Central Government Department and Autonomous Bodies-Counting of past service for pension.

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2. The matter has been considered and the President has been pleased to decide that in the cases of mobility of personnel with proper consent from Autonomous Bodies governed by CPF Scheme to Government Department or another Autonomous Body, the parent Autonomous Body will be required to discharge pensionary/terminal liability, for the purpose of counting of past service as under:

In the case of mobility of personnel from Autonomous Bodies where CPF scheme is in operation to other similar Autonomous Bodies, besides transferring CPF to new Autonomous Body, previous Autonomous Body will be required to discharge pro rata DCRG liability to new body.

In the case of mobility of personnel from Autonomous Bodies where CPF Scheme is in operation to Government Departments or Autonomous Bodies where pension scheme is in operation, the previous body will be required to transfer employer''s share of CPF contribution plus pro rata DCRG liability to new Department or body.

3. Para 3(b) of the DP & AR''s O.M. No. 28/10/84-PU dated 29.08.1984 as amended from time to time, may be treated as amended to the extent indicated in this office Memorandum. All other conditions laid down in the above order will remain unaltered.

4. These orders will be application in the cases of mobility of personnel with effect from 01.01.1986 and parent Autonomous Body will be required to transfer DCRG liability for the entire period of service rendered by the employee in that body, alongwith employer''s share of CPF contribution.

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6. It is also not disputed that as an employee of NVS, the applicant was subscribing to Contributory Provident Fund and had he superannuated from NVS, he would be entitled to DCRG. In terms of the directions of the Tribunal under challenge, the period of services rendered by the applicant with NVS has been counted towards pension after the CPF amount standing to the credit of the applicant was transferred to KVS. Though the petitioner is disputing such finding, but we find that there is no illegality in the order passed. The Circular dated 19.02.2003 is clear that if the personnel from an Autonomous Body, where CPF Scheme is in operation, the previous Body i.e. NVS will be required to transfer employer''s share of CPF contribution to make the employee eligible for pension. The previous employer is also to transfer pro-rata death-cum-retirement gratuity to new Department or body. The said transfer enables the Organization from which the applicant retired to pay the death-cum-retirement gratuity and also to count pension for the period the applicant worked with the previous employer. In terms of the directions, the CPF contribution has been rightly transferred and has been taken into consideration for determining the pension after taken into consideration the period spent by the applicant with NVS. It is not disputed that the pension after considering the period from 31.12.1990 to 31.10.2000 has been disbursed to the applicant after the CPF amount was transferred to KVS.

7. However, in respect of gratuity, we find that the decision of the Government of India dated 31.12.2007 that the applicant will not be entitled to gratuity for the reason that he took deemed retirement on 02.09.1993, whereas death-cum-retirement gratuity scheme has been made applicable to the employees of NVS from 13.07.1997 is not tenable in law. The normal date of superannuation in the case of applicant was 31.10.2000 i.e. the age of superannuation in KVS as well. The death-cum-retirement gratuity scheme was extended to the employees of NVS on 13.07.1997. In other words, had the applicant continued to work for NVS, he would have been entitled to gratuity on the date of his superannuation. Mere fact that he is deemed to have resigned on 02.09.1993 will not lead to denial of death-cum-retirement gratuity for the period he served for NVS. In fact, the Circular dated 19.02.2003 contemplates that pro-rata death-cum-retirement gratuity liability will be transferred to the new Department. Meaning thereby, that for the period, the applicant has worked with NVS, the pro-rata death-cum-retirement gratuity will be transferred to KVS, so that the said benefit is also payable to the applicant.

8. In view of the above, while dismissing the writ petition, we hold that the applicant is entitled to death-cum-retirement gratuity from 31.12.1990 till 31.10.2000. However, the NVS shall transfer pro-rata liability of death-cum-retirement gratuity to the KVS. The needful be done within three months from the date of receipt of the order.