(2015) 07 TP CK 0070

In the Tripura High Court

Case No : WP(C) 52 of 2012

Krishna Lal Sukladas APPELLANT

Vs

The State of Tripura and Others RESPONDENT

Date of Decision : 20-07-2015

Acts Referred:

Citation : (2015) 07 TP CK 0070

Hon'ble Judges : Deepak Gupta, C.J;S. Talapatra, J

Bench : Division Bench

Advocate : C.S. Sinha, for the Appellant; S. Chakraborty, Addl. G.A., Advocates for the Respondent

Final Decision : Disposed off

Judgement

Deepak Gupta, C.J—The short question involved in this petition is whether the petitioner is entitled to be granted pro-rata pension on the service rendered by him with the State of Tripura.

2. The admitted facts are that the petitioner joined service in the State of Tripura in the Civil Secretariat as typist on 16.9.1971. He thereafter joined the Agriculture Department as LDC on 01.3.1972. On 05.10.1982 he was posted on deputation to the Tripura Tribal Areas Autonomous District Council (TTAADC). In February, 1983 he prayed that he be permitted to join service with the Tripura Gramin Bank. He was permitted to join and it is not disputed that on 28.12.1983 he joined service of the Tripura Gramin Bank after getting permission of his employer and after following all the proper procedure as required by law.

3. The petitioner retired from service on 31.12.2011. He had been praying to the State that he should be granted pension for the period of service rendered by him with the Government of Tripura from 16.9.1971 to 28.12.1983. The State Government has rejected his prayer and the stand of the State is that in terms of the memorandum dated 09.01.1984 issued by the Central Government and the memorandum dated 14.01.1988 issued by the Government of Tripura read with

memorandum dated 23.9.1985 also issued by the Government of Tripura, the petitioner is not entitled to pro-rata pension on the service rendered with the State of Tripura.

4. Here we make reference to Rule 37 of the CCS(Pension) Rules which are admittedly applicable in the State of Tripura. Rule 37 reads as follows:--

"37. Pension on absorption in or under a corporation, company or body

(1) A Government servant who has been permitted to be absorbed in a service or post in or under a Corporation or Company wholly or substantially owned or controlled by the Central Government or a State Government or in or under a Body controlled or financed by the Central Government or a State Government, shall be deemed to have retired from service from the date of such absorption and subject to sub-rule (3) he shall be eligible to receive retirement benefits if any, from such date as may be determined, in accordance with the orders of the Central Government applicable to him.

EXPLANATION.--Date of absorption shall be -

(i) in case a Government employee joins a corporation or company or body on immediate absorption basis, the date on which he actually joins that corporation or company or body;

(ii) in case a Government employee initially joins a corporation or company or body on foreign service terms by retaining a lien under the Government, the date from which his unqualified resignation is accepted by the Government.

(2) The provisions of sub-rule (1) shall also apply to Central Government servants who are permitted to be absorbed in joint sector undertakings, wholly under the joint control of Central Government and State Governments/Union Territory Administrations or under the joint control of two or more State Governments/Union Territory Administrations.

(3) Where there is a pension scheme in a body controlled or financed by the Central Government in which a Government servant is absorbed, he shall be entitled to exercise option either to count the service rendered under the Central Government in that body for pension or to receive pro rata retirement benefits for the service rendered under the Central Government in accordance with the orders issued by the Central Government.

EXPLANATION.--Body means Autonomous body or Statutory body."

5. We need not refer to the entire Rule 37-A except the heading and sub-rule (1) thereof only to show the difference between Rule 37 and Rule 37-A. Rule 37-A reads as follows:--

"37-A. Conditions for payment of pension on absorption consequent upon conversion of a Government Department into a Public Sector Undertaking:--

(1) On conversion of a department of the Central Government into a Public

Sector Undertaking, all Government servants of that Department shall be transferred en-masse to that Public Sector Undertaking, on terms of foreign service without any deputation allowance till such time as they get absorbed in the said undertaking, and such transferred Government servants shall be absorbed in the Public Sector Undertaking with effect from such date as may be notified by the Government. xxx xxx xxx"

6. A bare perusal of Rule 37 and Rule 37-A clearly shows that Rule 37 is applicable when a Government Servant joins service under a Corporation or Company wholly or substantially owned by the Central Government or a State Government and such Government servant shall be deemed to have retired from the date of his absorption in such Corporation or Company. Rule 37 is absolutely clear that for the period of Government service rendered by such an employee, he is entitled to pro-rata pension keeping in view the service rendered by him.

7. As far as the office memorandum dated 09.01.1984 is concerned, the opening lines of the memorandum are as follows:--

"The question of entering into reciprocal arrangement with the various State Governments to the effect that where State Government employees are permanently absorbed in a Central Public Sector Undertaking/Autonomous body, the liability for their post service in the form of pro-rata retirement benefit may be undertaken by the State Government concerned and where permanent Central Government servant is permanently absorbed in a public sector undertaking/autonomous body under the state Government''s control, the liability for his post service may be undertaken by the Central Government, has been under consideration for some time."

8. A bare perusal of these aforesaid lines of the memorandum clearly shows that the subject matter of the memorandum is not the entitlement of the Government employee to pro-rata pension. In fact, the subject matter of the memorandum is what should be the reciprocal arrangement between the State Government and the Central Government with regard to the services rendered by a State Government employee who joins a Central Government Undertaking or a Central Government employee who joins a State Government Undertaking. The issue is to fix the liability between the State and Central Government for this period and nothing more than that. The memorandum dated 14.01.1988 is in furtherance of the memorandum dated 10.02.1984 and again reference has been made to permanent State Government employees permanently absorbed in Central Government Public Undertakings and vice versa. Para-4 of the memorandum reads as follows:--

"4. Cases of employees who had already left State Government service and were permanently absorbed in Central Government Public Undertaking, Autonomous bodies, etc. before 9.1.84 shall not be reopened."

9. This paragraph makes it amply clear that this notification is only applicable to State Government service employees who were permanently absorbed in Central

Government Public Undertaking, Autonomous bodies and not to those State Government employees who were permanently absorbed in State Government Public Undertakings and Autonomous bodies.

10. Coming to the memorandum dated 23.9.1985 that can be divided into two parts. It refers to both Rule 37 and 37-A and we are only concerned with that portion of the memorandum which deals with Rule 37. Para-3 and its various sub-paras clearly relate to pro-rata retirement benefit under Rule 37-A, and not to Rule 37. As far as Rule 37 is concerned, only paras-1 and 2 of the memorandum are relevant for our purpose. Para-1 makes it clear that a State Government employee who has been permitted in the public interest to be absorbed in a service in a Corporation or Company wholly or substantially owned by the State Government shall be deemed to have retired from service from the date of such absorption and shall be eligible to pro-rata retirement benefit as prescribed therein. A bare reading of Rule 37 with the memorandum dated 23.9.1985 makes it absolutely clear that when a State Government employee is absorbed in a State Government Undertaking and he has joined service in the State Government Undertaking with the approval of the State Government, then such employee is entitled to claim pro-rata pension on the period of service rendered with the State Government. This rule admits of no other meaning.

11. In view of the above discussion, we are clearly of the view that the petitioner is entitled to pro-rata pension and other retiral benefits on the service rendered by him in State Government from 16.9.1971 to 28.02.1983 which is admittedly more than 10(ten) years and, therefore, he has completed the minimum qualifying service of 10 years. The respondents are directed to calculate and pay the entire amount due and payable to the petitioner within a period of 3(three) months from today along with interest @ 9% per annum from 01.4.2012.

12. The writ petition is disposed of in the aforesaid terms. No costs.

