

(2015) 03 KAR CK 0311
In the Karnataka High Court
Case No : Writ Petition No. 5903/2015 (S-RES)

Krishnappa

APPELLANT

Vs

The Commissioner, Bruhath Bengaluru Mahanagara Palike
(BBMP) and Others

RESPONDENT

Date of Decision : 04-03-2015

Acts Referred:

Citation : (2015) 03 KAR CK 0311

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : Manmohan P.N., for the Appellant

Final Decision : Dismissed

Judgement

B.V. Nagarathna, J.—Petitioner has assailed endorsement dated 07.11.2014 (Annexure "S" to the writ petition) issued by 2nd respondent -Deputy Commissioner (Administration), Bruhath Bengaluru Mahanagara Palike (BBMP), Bengaluru. By that endorsement, petitioner has been notified that he cannot seek seniority in the cadre of Assistant Engineer, BBMP, by taking into consideration his past service as Assistant Engineer in the Public Works Department.

2. The relevant facts of the case are that initially, the petitioner having obtained a Diploma in Civil Engineering and B.E., and M.E., Degrees in Civil Engineering, joined service as a Lecturer in the department of Technical Education, through Karnataka Public Service Commission on 03.03.1999. He was promoted as Lecturer, Senior Grade with effect from 12.03.2004 and served in Sri Jayachamrajendra, Government Polytechnic, Bengaluru, till 30.08.2007. Respondent No. 3 had issued a notification dated 09.03.2007 calling for applications from eligible candidates to the post of Assistant Engineer (Civil). In response to that notification, petitioner had applied to the said post and he was selected and appointed as Assistant Engineer in the 3rd respondent - Department. He reported for duty on 30.08.2007. By order dated 31.08.2007,

petitioner was deputed to work in BBMP. Accordingly, petitioner reported for duty under 1st respondent on 06.09.2007 as Assistant Engineer and was assigned duties in the office of the Executive Engineer (Major Roads) vide order dated 09.11.2007.

3. When the matter stood thus, Karnataka Public Service Commission issued notification dated 26.02.2009 calling for applications from eligible candidates to the post of Assistant Engineer (Civil). In response to that, petitioner applied. He was selected to the post of Assistant Engineer, BBMP, by order dated 03.10.2009 and 1st respondent issued a communication dated 10.02.2010 requesting the petitioner to appear on 24.02.2010 in the office of the Assistant Commissioner (Appointment and Enquiry). The petitioner was selected and appointment order was issued by 1st respondent on 03.06.2010. Thereafter, petitioner submitted his resignation and he was relieved from the office of the 3rd respondent and reported for duty under the 1st respondent on 21.06.2010. Petitioner was assigned the post of Assistant Engineer, Ward No. 33, office of the Assistant Executive Engineer (J.C. Nagar Sub-Division) by order dated 20.07.2010. Petitioner has since then been discharging his duties as Assistant Engineer under the 1st respondent - BBMP. Petitioner made a representation to respondent Nos. 1 and 2 requesting them to consider his past service for the purpose of pension, leave, salary and other service benefits. By order dated 24.08.2011, 2nd respondent granted the benefits in respect of salary, pension, leave and other benefits as per Rule 252(b) of the Karnataka Civil Services Rules ("KCSRs" for short). That was made by taking into account the service of the petitioner in Technical Education Department from 12.03.1999 to 30.08.2007 and in the 3rd respondent -department from 31.08.2007 to 21.06.2010

4. When the matter stood thus, 1st respondent issued provisional seniority list of Assistant Engineers, BBMP, on 31.01.2013. Petitioner made representation as against that list on 28.02.2013 requesting that his service in the Department of Technical Education as well as in the 3rd respondent - department be reckoned for the purpose of seniority. Petitioner also submitted objections on 27.02.2013 to the seniority list and the same is produced as Annexure "Q" to the writ petition. As his objections were not considered, he filed W.P. No. 52974/2013 seeking a writ of mandamus directing respondents to consider his representation dated 28.02.2013. That writ petition was disposed on 28.11.2013 directing the 2nd respondent to consider his representation expeditiously in accordance with law within a period of three months from the date of receipt of copy of that order. Subsequently, 2nd respondent by impugned order/endorsement dated 07.11.2014, has rejected the request of the petitioner to consider his past service for the purpose of seniority in the cadre of Assistant Engineer on the ground that his past service cannot be considered for the purpose of seniority. That order is impugned in this writ petition.

5. I have heard learned counsel for the petitioner and perused the material on record.

6. While drawing my attention to various Annexures filed along with the writ petition, learned counsel for the petitioner contended that when the past service of the petitioner has been considered for the purpose of leave, salary, pension and other service benefits, 1st and 2nd respondents ought to have considered his past service for the purpose of seniority in the cadre of Assistant Engineer. He contended that Hon''ble Supreme Court in the case of Union of India (UOI) Vs. Kuldip Singh Permer and Others, AIR 2003 SC 3614 : (2003) 7 JT 154 : (2003) 6 SCALE 460 : (2003) 9 SCC 472 : (2003) SCC(L&S) 1132 : (2003) 2 SCR 677 Supp : (2004) 1 SLJ 274 has held that while determining the seniority of an absorbee or deputationist from State service absorbed into Central Government service, then the date from which equivalent grade has been held in the erstwhile parent department must be taken into consideration and seniority must accordingly be given. He, therefore, contended that a similar relief must be given to the petitioner.

7. Having heard learned counsel for petitioner and on perusal of the material on record, it is noted that the petitioner has got the benefit of his past service as a Lecturer in the Technical Department and as Assistant Engineer in the Public Works Department for the purpose of his pay, pension, leave and other benefits by order dated 24.08.2011 (Annexure "M"). In that order, though reference has been made to Rule 252-B of KCSRs., there is no reference made to his seniority in terms of his past service as that benefit is a personal benefit granted to the petitioner without affecting any one else in the cadre of Assistant Engineer, BBMP.

8. Be that as it may, petitioner filed his objections to the provisional as well as the final seniority list of Assistant Engineer issued by 1st respondent subsequent to recruitment made to the post of Assistant Engineer pursuant to notification at Annexure "F" dated 26.02.2009. It is pursuant to that notification calling for applications for recruitment to the post of Assistant Engineer that the petitioner with the permission of the authorities concerned, applied. He was selected and appointed as Assistant Engineer, BBMP., on 03.06.2010. Subsequent to that appointment, petitioner resigned from 3rd respondent - department on 21.06.2010. As a result, his deputation to BBMP., also came to an end. Thereafter, on 20.07.2010, petitioner joined duty as Assistant Engineer under the 1st respondent - BBMP. That appointment is pursuant to recruitment made by respondent Nos. 1 and 2 on the basis of Annexure "F" - notification. Therefore, there was cessation of service of petitioner under 3rd respondent, when he resigned on 26.01.2010 and thereafter, has been newly recruited as Assistant Engineer, BBMP and duties were assigned and he reported for duty on 20.07.2010. However, since he was qualified to the post in the 3rd respondent and with the permission of the concerned authorities, he had applied to the post of Assistant Engineer, BBMP., he was selected and appointed. The respondent authorities on the basis of Rule 252(b) of the KCSRs., held that his resignation from the 3rd respondent - department could not be construed as a resignation from public service. Rule 252(a) and (b) of the KCSRs., reads as under:--

"252. (a) Resignation of the public service, or dismissal or removal from it for misconduct, insolvency, inefficiency, but not due to age, or failure to pass a prescribed examination entails forfeiture of past service.

[Exception.-The provisions of this Rule regarding forfeiture of past service due to resignation of public service shall not apply to the cases of retirement or death while in service of a Government servant on or after the 19th September, 1974.]

[(b) Resignation of an appointment to take up, with proper permission, another appointment, whether permanent or temporary, service in which counts in full or in part, is not a resignation of public service.]"

9. Respondent Nos. 1 and 2 construed the resignation of the petitioner from 3rd respondent - department as coming within the scope of clause (b) of Rule 252. Taking that aspect into consideration, 2nd respondent by order dated 24.08.2011, granted all service benefits to the petitioner including protection of pay by reckoning his past service for the purpose of pension, leave etc. In that order, there is no reference to reckoning of the past service of the petitioner for the purpose of seniority in the cadre of Assistant Engineer, BBMP and in my view, rightly so.

10. The seniority list that has been now made by 1st respondent in the cadre of Assistant Engineer is on the basis of recruitment made pursuant to notification at Annexure "F" and the notification dated 03.06.2010, Annexure "K". Annexure "K" categorically states that the final selection list has been prepared on the basis of the merit in the recruitment. As per merit, petitioner is at Sl. No. 91. Therefore, the seniority list is now made on the basis of the merit of the candidates in the recruitment. When the petitioner has entered into new service i.e., as Assistant Engineer in BBMP, he cannot draw sustenance on his past service for the purpose of his seniority in the cadre of Assistant Engineer, BBMP though he may have been given other service benefits for the purpose of pension etc.

11. Respondent Nos. 1 and 2 have already given the benefit of the past service to petitioner, which is concerning him individually or personally. The benefit of past service cannot be given to petitioner so as to upset the merit that has been considered as the basis for preparation of seniority list in the cadre of Assistant Engineer, BBMP. Therefore, petitioner has rightly not been assigned seniority based on his past service in the 3rd respondent - Department. His seniority has been rightly assigned on the basis of his merit in the final selection list. The 2nd respondent, by placing reliance on Rule 252(b) of the KCSRs., has stated that petitioner is entitled to all other benefits, which are due to him as his resignation is not construed as cessation of service for the purpose of pay, pension etc. and has rightly held that his past service cannot be considered for the purpose of seniority.

12. Seniority is one of the conditions of service having a direct nexus to promotion to the next cadre. The common meaning attributed to the word

seniority is "length of service", which is normally a comparison between length of service in the same grade and not the overall length of service in different grades. The method of fixing seniority is in accordance with the recruitment rules. Normally, seniority is reckoned from the date a person enters the cadre i.e., from the date of initial appointment on officiation (on promotion) or probation (on direct recruitment).

13. The judgment of Hon''ble Supreme Court relied upon by petitioner's counsel is of no assistance to petitioner as that case is with regard to determination of seniority in the case of a deputationist from State service being absorbed into Central Government service, which is not applicable to the present case. Thus, there is no infirmity in the endorsement dated 11.07.2014 issued to petitioner. There is no merit in the writ petition.

Writ petition is dismissed.