

(2013) 03 RAJ CK 0019

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 1351 of 2012

Maharshi Dayanand Saraswati University and Another

APPELLANT

Vs

Mool Singh Tanwar

RESPONDENT

Date of Decision : 04-03-2013

Acts Referred:

Citation : (2013) 2 WLN 369

Hon'ble Judges : Amitava Roy, C.J; Meena V. Gomber, J

Bench : Division Bench

Advocate : T.S. Choudhary, for the Appellant; N.K. Bhatt, for the Respondent

Final Decision : Allowed

Judgement

Amitava Roy, C.J.—The subject matter of challenge in the instant appeal is the judgment and order dt. 9.1.2012 rendered in S.B. Civil Writ Petition No. 9074/2009 upholding the respondent's claim for pension for the services rendered by him as security officer under the appellant-University with effect from 11.08.1988. We have heard Mr. T.S. Choudhary, learned counsel for the appellants and Mr. N.K. Bhatt, learned counsel for the respondent.

2. Sans unnecessary details, the facts in the bare minimum needed to dispose of the instant appeal, are that the respondent, who had retired as Subedar from the Indian Army, was appointed as security officer with the appellant-University on 11.8.1988 on a consolidated pay of Rs. 850/- per month, temporarily and purely on ad hoc basis for a period of three months, at the first instance. The office order mentioned about the possibility of extension of this term, in the event of satisfactory service. He was thereafter continued in the same assignment, in course of which, his consolidated pay was enhanced to Rs. 1,650/- per month and he was also paid caretaker allowance etc. Eventually, by order dt. 12.01.1995 (Annexure-3 to the writ petition), the Vice-Chancellor of the University was pleased to appoint him in the same post in the Grade Pay of Rs. 2000-3200 with usual allowances as per the rules on ad hoc basis for a period of

three months with effect from 1.1.1995 or till further orders, whichever was earlier. The respondent finally retired from the services of the University on 31.3.2000. As pension claimed by him by treating to be in interrupted service from 11.8.1988 was denied to him, he approached this Court.

3. The pleaded defence of the appellant-University, in essence, in the writ proceedings, was that the challenge laid before this Court, having regard to the order of his retirement, was unduly delayed and thus, not entertainable. Apart from contending that the respondent being in receipt of pension as a retired military personnel, he was not entitled to double benefit on that count. The appellant-University urged that its Regulations did not permit payment of pension to an employee, who had been receiving pension otherwise. That the respondent had also not completed the required length of qualifying service, the same being reckonable from 1.1.1995 and not from 11.8.1988, was also underlined.

4. The learned Single Judge, as alluded hereinabove, having regard to the pleaded facts, the documents on record and in particular, Regulation 22 of the University Pension Regulations, 1990 (hereinafter referred to as "the Regulations") enforced with effect from 1.1.1990 and Rule 179 of the Rajasthan Service Rules, 1951 (hereinafter referred to as "the Rules"), held the respondent to be entitled to pension counting his continuous service as security officer under the University with effect from 11.8.1988 till his retirement on 31.03.2000.

5. Whereas Mr. T.S. Choudhary, learned counsel for the appellants has urged, with reference to the proviso under Regulation 2(ii) of the Regulations, that the same were not applicable to the respondent, having regard to the nature of his initial appointment, and that therefore, counting his service from 01.01.1995, he was not entitled to any pension. Mr. N.K. Bhatt, learned counsel for the respondent has argued to the contrary. According to the learned counsel for the respondent, in terms of Regulations 21, 22 & 23 of the Regulations and Rule 179 of the Rules, he (respondent) was entitled to pension, in absence of any express or implied prohibition to the contrary, contained therein. He relied further on the decision dt. 9.5.2003 of a Coordinate Bench of this Court in D.B. Special Appeal (Writ) No. 479/2003 confirming the verdict rendered on the same issue in similar circumstances in S.B. Civil Writ Petition No. 2587/1996 (Sajjan Singh vs. University of Rajasthan & Anr.). He contended that in this decision, directions were issued to grant all retiral benefits to the incumbent therein, who was a ex-military personnel appointed as security guard with the appellant-University. In response to the plea of delay asserted on behalf of the appellant-University to negate the claim of the respondent, Mr. N.K. Bhatt, insisted that the University, having failed to release the pension as due to the respondent in law, the same generated continuous cause of action and thus, the writ petition was not belated.

6. We have duly considered the rival pleadings and the documents in support thereof. The arguments advanced have also received our attention.

7. Admittedly, the respondent, at the time of his appointment as security officer,

was a retired military personnel. As the order dt. 11.8.1988 would indicate, he was appointed temporarily and purely on ad hoc basis for a period of three months on a consolidated pay of Rs. 850/- per month. There is no wrangle at the Bar that he continued to render uninterrupted services since then, till he retired on 31.3.2000. In between, admittedly, he was appointed in the same post in the Grade Pay of Rs. 2000-3200 with incidental allowances. While this order also mentions his term of appointment to be three months, he continued in service till his retirement. The appellant-University, as its pleadings would disclose, has accepted his services on and from 01.01.1995 to be on regular basis.

8. The Regulations have been framed by the University to determine the modalities for grant of pension to its employees. As Regulation 2 thereof would disclose, the Regulations is applicable to all persons regularly appointed to its service on or after 01.01.1990, with the exception, amongst others, of persons employed on contract or part-time basis. On a plain reading of Regulation 2 and the proviso, in particular, it is not discernible per se that the Regulations are not applicable to retired military personnel in receipt of pension. Literally as well, as the respondent admittedly had been appointed temporarily on ad hoc basis, he does not seem to be within the categories of persons excluded from the applicability of the Regulations. Indubitably, the respondent, to reiterate, did render continuous and uninterrupted services as security officer with the appellant-University from 11.08.1988 till 31.03.2000. Thus, the entire duration of his service, if accepted, he admittedly would be entitled to pension, contemplated by the Regulations. Regulations 21, 22 & 23, being of formidable significance, are quoted hereinbelow:-

Reg.21: Beginning of qualifying Service:

The qualifying service of an employee begins from the date he takes charge of the post to which he is first appointed but does not qualify till he has completed 18 years of age, except for grant of compensation gratuity.

Reg.22: Conditions of Qualifying Service:

The service of an employee does not qualify for pension unless it conforms to the following conditions:

- (1) It is a paid service of a regularly appointed employee under the University.
- (2) The employment is in substantive, temporary or officiating capacity.

Reg.23:

(a) The service of an employee transferred from a temporary to permanent post shall be counted, if the post was at first created experimentally or temporarily.

(b) The officiating services of an employee, without a substantive appointment, in a post which is vacant or the permanent incumbent of which does not draw any part of the pay or count service, shall be counted if he is confirmed without interruption in his service.

Rule 179 of the Rules also deserves extraction.

179. Conditions of Qualifications.-The service of an officer does not qualify for pension unless it conforms is to the following three conditions:

- (i) The service must be under Government.
- (ii) The employment may be in substantive/permanent, temporary or officiating capacity.
- (iii) The service may be paid by the Government.

9. A cumulative consideration of the above provisions would demonstrate that the qualifying service of an employee under the University commences from the date he takes charge of the post to which he is first appointed. Further, the conditions of qualifying service for pension are that the incumbent ought to be a regularly appointed employee of the University in a paid service. Further the employment has to be in substantive, temporary or officiating capacity. Clause (b) of Regulation 23, in particular, predicates that the officiating services of an employee, without a substantive appointment, in a post which is vacant or the permanent incumbent of which does not draw any part of the pay or count service, would be counted if he is confirmed without interruption in his service.

10. Though the respondent's initial appointment had been on ad hoc basis and his term thereof was prescribed, it was extended from time to time and he was also awarded regular pay scale with effect from 1.1.1995. On a conjoint consideration of the attendant facts and circumstances Hearing on the service profile of the respondent, we are left unconvinced that the Regulations are not applicable to him, by construing his appointment to be on contract or part-time basis. His continuance in service without any break for almost twelve years, in our comprehension, makes his employment to be one in officiating capacity. This also is in tune with the letter and spirit of Rule 179 of the Rules, as above.

11. In this view of the matter, we are inclined to hold that the qualifying service of the respondent for pension under the Regulations, ought to be with effect from 11.8.1988. In arriving at this conclusion, we have also drawn sustenance from the proposition laid down in Sajjan Singh (supra), in which the contextual facts are substantially identical to the one, in hand. We are also inclined not to non-suit the respondent on the ground of delay, having regard to the factual background as well as continual default of the appellant-University in attending to his claim for pension, as due to him under the Regulations. The appeal stands dismissed. No costs.