
(1995) 05 DEL CK 0003

In the Delhi High Court

Case No : Civil Writ Petition No. 1740 of 1994

Manu Ghosh

APPELLANT

Vs

State-Delhi Administration and Others

RESPONDENT

Date of Decision : 08-05-1995

Acts Referred:

Citation : (1995) 34 DRJ 212 : (1995) LabIC 2433

Hon'ble Judges : S.D. Pandit, J;P.K. Bahri, J

Bench : Division Bench

Advocate : S.P. Ghosh and A. Ahlawat, for the Appellant;

Judgement

S.O. Pandit, J.

(1) Rule D.B.

(2) We have heard learned counsel for the parties in detail and have also carefully examined the record. We proceed to decide this petition finally.

(3) Petitioner, Manu Ghosh, was appointed as Head Mistress of Chhola Nagpur Girls High School, Ranchi, Bihar on 17.7.67. Thereafter she joined as Principal in Vidhya Bhawan Senior Secondary School, Delhi on 16.7.76. She retired as Principal of the said School after attaining the age of superannuation on 30.9.1988. Her pension papers were prepared and she has been awarded pensionary benefits by calculating the service rendered by her between the period 16.7.76 to 30.9.88. Her service period running between 17.7.67 and 15.7.76 was not taken into consideration for deciding the length of service rendered by her. She had approached the authorities in the Pension Department and had requested to also count the period running between 17.7.67 to 15.7.76 and refix the pensionary benefits. Her claim has been rejected and, hence, she has come before this Court in this writ petition.

(4) The claim of the petitioner is resisted by the respondent contending that she had not applied for the post of Head Mistress of Vidhya Bhawan Senior

Secondary School through proper channel, i.e. through her employer. Similarly, till her retirement she had never sought for the calculation of her service rendered at Chhota Nagpur Girls High School, Ranchi, Bihar. Thus, her claim is not tenable in view of the government instructions as well. as the rules and, hence, her petition is liable to be rejected. It is further pointed out that, as a matter of fact, on 14.7.76 the petitioner had proceeded on leave when she was working with Chhota Nagpur Girls High School and had not even informed the said School authorities about her taking up the job in Vidhya Bhawan Senior Secondary School, Delhi and had merely sent her resignation subsequently. Her resignation was accepted vide resolution No.6 dated 25.1.78 by the Management of Chhota Nagpur Girls High School and she was informed about the same by letter dated 10.3.1978. It is, thus, contended that the claim of the petitioner is not tenable in law and, Therefore, the same should be rejected.

(5) Fundamental Rule 26 makes provision as to how the past service is to be calculated and how the employee forfeits past service. The provisions of sub-rule (2) of F.R. 26 run as under:

"A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment whether temporary or permanent, under the Government where service qualifies."

(6) The above provision clearly shows that in order to have counting of the past service it is necessary for a government employee to obtain proper permission before accepting another appointment. In the instant case petitioner has not at all produced any document on record to show that she had obtained permission from her first employer or the government authorities, i.e. Director of Education to apply for the post of Head Mistress in Vidhya Bhawan Girls Higher Secondary School. It is also very pertinent to note that till attaining the age of superannuation and retirement she had never made any claim to count her previous service in the Chhota Nagpur Girls High School in Ranchi. The respondents have produced on record copy of the service book of the petitioner maintained by the Chhota Nagpur Girls High School, Ranchi. In the said service book the following endorsement is made:-

"IT is further certified that there was no government or Managing Committee's contribution (provident fund) in the aforesaid amount. As she went on leave w.e.f. 14th July, 1976 and never turned up on her post rather sent her resignation later on, the Managing Committee's contribution was not sanctioned to her."

"CERTIFIED that Mrs. Manu Ghosh, ex-head mistress of the School left the school w.e.f. 14th July, 1976 by proceeding on leave and lately sent her resignation to the Managing Committee. The Hon'ble Secretary of the Managing Committee wrote a letter vide No.D-483 dated 10.3.78 apropos to the resolution No.6 dated 25.1.78 of the meeting of the Managing Committee."

"IT is further certified that as per records available in the office she did not take the prior proper permission or send the application for another post through

proper channel or intimate to the department for joining her new post at New Delhi rather she went on leave."

(7) The circular issued by the Director of Education of the Government of National Capital Territory of Delhi as regards giving benefit of past service also clearly mentions as under:- .

"THESE orders .will be applicable only where the transfer of the employee from one organisation to another was/is with the consent of the organisation under which he was serving earlier including cases where the individual had secured employment directly on its own volition provided he had applied through proper channel/with prior permission of the administrative authority concerned."

(8) The above contents also clearly show that the petitioner is not entitled to have the calculation of. her past service as the headmistress of the Cholanagpur Girls High School, Ranchi, as she had not applied for the new job with prior permission and/or through proper channel.

(9) We, thus, in view of the discussion above, hold that the writ petition deserves to be dismissed as there is no substance in the contentions raised by the petitioner. We dismiss the writ petition but in the circumstances of the case we direct the parties to bear their respective costs.