
(2012) 01 SHI CK 0148
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 6649 of 2008

Mohinder Singh Guleria

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 17, 30
Constitution of India, 1950 — Article 309
Criminal Procedure Code, 1973 (CrPC) — Section 24(5)

Citation : (2012) 01 SHI CK 0148

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Judgement

Rajiv Sharma, Judge

1. Petitioner joined his duties as Assistant Advocate General on 3rd November, 1981. He was promoted to the post of Deputy Advocate General in the month of October, 1991. He made a detailed representation, which was recommended by the Advocate General to the State Government for granting him the benefit of Rule 30 of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as "the Rules" for brevity sake). The representation made by the petitioner was rejected on 28th July, 1999. Petitioner assailed the order dated 28th July, 1999 before the erstwhile Himachal Pradesh Administrative Tribunal by way of Original No.1517 of 2000. On abolition of the Tribunal, the case was transferred to this Court and was assigned CWP(T) 6649 of 2008.

2. The stand of the respondent-State in the reply, precisely is that necessary amendment is required to be carried out in the Recruitment and Promotion Rules to consider the case of the petitioner under Rule-30 of the Rules. Petitioner has relied upon Annexure A-4, dated 31st October, 1990 to allow the benefit of Rule-30, which was granted to similarly situated person, namely, Dr. B.K. Sofat, Professor Ophthalmology.

3. Petitioner has filed a detailed rejoinder to the reply filed by the State. This

Court on 25th May, 2010 has directed the State Government to consider the case of the petitioner as per Rules. However, the case of the petitioner was rejected on 6th August, 2010. Petitioner, in order to assail the order dated 6th August, 2010, has amended the writ petition. The respondent-State has filed reply to the same. Since the order dated 6th August, 2010 was not in conformity with order dated 25.05.2010, the respondent-State was directed to re-look into the matter dated 30.05.2011. The State Government has taken a decision on 23rd September, 2011. The same was permitted to be placed on record on the date of hearing.

4. Mr. Harish Behl, learned counsel for the petitioner has strenuously argued that the case of the petitioner is squarely covered under Rule-30 of the Central Civil Services (Pension) Rules, 1972 and he is entitled to get the benefit, which has been given to Dr. B.K. Sofat. He has also argued that the decisions dated 28.07.1999, 06.10.2010 and 23.09.2011 are not in conformity with Rule-30 of the Central Civil Services (Pension) Rules, 1972.

5. Mr. Vikas Rathore, learned Deputy Advocate General has supported the orders dated 28.07.1999, 06.10.2010 and 23.09.2011. According to him, Rule-30 has been withdrawn vide office memorandum dated 14.10.2009 and the case of the petitioner could not be considered till the necessary amendments were carried in the Recruitment and Promotion Rules to the post of Assistant Advocate General and Deputy Advocate General as per Rule 30 and the decision taken by the Government of India dated 21.02.1977. He further argued that the case of the petitioner cannot be treated at par with Dr. B.K. Sofat. He further argued that as far as the case of Dr. B.K. Sofat is concerned, the relaxation clause was invoked and the cadres of Assistant Advocate General/Deputy Advocate General and Himachal Pradesh Health Services are separate.

6. I have heard the learned counsel for the parties and gone through the record carefully.

7. The Third Pay Commission has recommended the insertion of Rule-30 in the Central Civil Services (Pension) Rules, 1972, which reads as under:

We think that the existing provision for giving the benefit of added years of service to specially qualified or experienced personnel appointed to posts where there qualifications are necessary in the public interest is salutary and should continue. We would also recommend that the scientific, medical, technological and other professional services and posts where the benefit of added years of service is considered essential should be identified in consultation with the Union Public Service Commission and the Ministry of Finance, and a suitable provision incorporated in the relevant recruitment rules so that the benefit is automatically available to all the candidates who are recruited in accordance with the provisions of the rules and it should not then be necessary to take a decision in each individual case at the time of recruitment. Further, in the advertisements issued by the Union Public Service Commission for recruitment to such services

and posts it should be mentioned that this benefit would also be available so that candidates of better quality are attracted to the Government service.

8. In order to appreciate the rival submissions, it will be pertinent at this stage to quote Rule-30 of the Central Civil Services (Pension) Rules, 1972, which was substituted on 2nd April, 1975, which reads as under:

30. Addition to qualifying service in special circumstances:

(1) A Government servant appointed to a service or post after 31st March, 1960, shall be eligible to add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one-fourth of the length of his service or the actual period by which his age at the time of recruitment exceeded twenty-five years or a period of five years, whichever is less, if the service or post to which the Government servant is appointed is one

(a) for which post-graduate research, or specialist qualification or experience in scientific, technological or professional fields, is essential; and

(b) to which candidates of more than twenty-five years of age are normally recruited:

Provided that this concession shall not be admissible to a Government servant unless his actual qualifying service at the time he quits Government service is not less than ten years:

Provided further that this concession shall be admissible only if the recruitment rules in respect of the said service or post contain a specific provision that the service or post is one which carries the benefit of this rule.

(2) A Government servant who is recruited at the age of thirty-five years or more, may, within a period of three months from the date of his appointment, elect to forgo his right to pension whereupon he shall be eligible to subscribe to a Contributory Provident Fund.

(3) The option referred to in sub-rule (2) once exercised, shall be final.

9. The Government of India has also taken a decision towards the implementation of Rule-30 for the purpose of identifying the posts to which Rule-30 would apply, including scientific, medical, technological and other professional services for the purpose of added years of service. The decision was also taken that once the posts are identified and the recruitment rules have been made, the same shall automatically be admissible and there would not be any need to decide individual cases. It was also mentioned that in the advertisement issued by the recruiting authority for recruitment to such a service or post, it would be specifically mentioned that the service or post is one which carries the benefit of Rule-30 and the Ministry/Departments were also requested that the question of applicability or non-applicability of the provisions of Rule-30 of the C.C.S. (Pension) Rules to the service or post(s) for which recruitment rules are to be issued, should also be decided in accordance with the laid down procedure.

10. Petitioner was appointed as Assistant Advocate General and he joined his duties on 03.11.1981. The respondent-State has framed the Recruitment and Promotion Rules under Article 309 of the Constitution of India for filling up the post of Assistant Advocate General in the office of Advocate General. A candidate was required to possess the minimum educational qualification of professional degree in Law from a recognized University in India or its equivalent and seven years practice as an Advocate or a District Attorney fulfilling the qualifications prescribed in Sub-section (5) of Section 24 of the Code of Criminal Procedure.

11. Rule-17 empowers the State Government by recording reasons in writing and in consultation with the Himachal Pradesh Public Service Commission to relax any of the provisions of these rules with respect to any class or category or persons or posts.

12. The question now to be considered is at what age the Assistant Advocate General can be appointed after possessing seven years of practice as an Advocate. The Court can take judicial notice of the fact that the candidates obtain the degree in law between the age of 23 and 26 years. Thereafter, the candidate has to put in seven years of practice to be appointed as Assistant Advocate General. It is in these circumstances that Rule-30 in the present case was attracted and covered under the ambit of expression "professional fields". The petitioner was promoted to the post of Deputy Advocate General in the month of October, 1991. The conditions of service of the post of Deputy Advocate General are prescribed under the rules called "The Recruitment and Promotion Rules to Class-I posts/services in the office of Advocate General, H.P.". The essential qualification for filling up the posts is professional degree in law from a recognized University in India or its equivalent, 10 years practice as an Advocate under, out of which 3 years practice should be in High Court. According to foot note-3 of the Rules, the State Government has the necessary power to relax the recourse of rules in consultation with the H.P. Public Service Commission. The State Government has framed fresh rules for filling up the posts of Assistant Advocate General called "The Himachal Pradesh Assistant Advocate General (Class-I Gazetted) Recruitment and Promotion Rules, 1989 on 17th February, 1989. The minimum qualification again prescribed is professional degree in law from a recognized University in India or its equivalent with seven years practice as an Advocate or a District Attorney fulfilling the qualification prescribed in Sub-section (5) of Section 24 of the Code of Criminal Procedure. Rule-17 gives the power to relax the rules.

13. The petitioner has been appointed as Assistant Advocate General on 03.11.1981. He has been recruited under the rules notified on 6th February, 1981. It was incumbent upon the respondent-State to provide in the Recruitment and Promotion Rules that the benefit of Rule-30 will be applicable to the petitioners and similarly situated persons since at the time of their recruitment they exceeded 25 years of age in order to get seven years experience as a professional. Respondent-State, while framing the rules of the post of Assistant

Advocate General on 6th February, 1981 and 17th February, 1989 and of the post of Deputy Advocate General dated 1st December, 1980 overlooked Rule-30 and the decision of the Government of India taken on 21st February, 1971 by making a provision in the Recruitment and Promotion Rules for giving the benefit of Rule-30 after identifying the posts. Rule-30 has been inserted on 2nd April, 1975 and as discussed hereinabove, the manner in which the post has to be identified and necessary steps be taken, have been dealt with extensively in Government of India's decision dated 21st February, 1977. The respondents cannot be permitted to take advantage of their own wrong by not providing special provision to give the benefit of Rule-30 by inserting suitable provisions in the Recruitment and Promotion Rules of the category of Assistant Advocate General/Deputy Advocate General. The post of petitioner was held as a specialized job and he could only be recruited after putting in 7 years' practice at the Bar.

14. The matter is required to be considered from another angle. Petitioner has given the example of one Dr. B.K. Sofat, Professor, Ophthalmology, who has been given the benefit of Rule-30 of the Central Civil Services (Pension) Rules, 1972 vide notification dated 31st October, 1990. Petitioner has specifically mentioned about this fact in his decision. However, Mr. Vikas Rathore, learned Deputy Advocate General has argued that the case of Dr. B.K. Sofat will not be applicable in this case since he belongs to a different cadre. This plea cannot be accepted. At the time when Dr. B.K. Sofat has been given the benefit under Rule-30, there was no provision in the Recruitment and Promotion Rules called "The Himachal Pradesh Health Services Rules, 1974" notified on 19th January, 1974. It is for the first time that as per Rule-22 of the new rules called "The Himachal Pradesh Civil Medical Service (General Wing) Rules, 1995, a provision of giving the benefit of addition to qualifying service in special circumstances is laid down in Rule-30 of the Central Civil Services (Pension) Rules, 1972.

15. Case of the petitioner was also required to be considered on the analogy of Dr. B.K. Sofat. In the case of Dr. B.K. Sofat and the petitioner, the employer is the State Government. The equals could not be treated as un-equals.

16. The sum and substance of the stand taken in the reply and as argued by Mr. Vikas Rathore, learned Deputy Advocate General is that the post was required to be advertised and as per proviso (2) to Rule-30, the recruitment rules in respect of the service or post should contain a specific provision that the service or post is one which carries the benefit of this rule.

17. It was for the State Government to take an appropriate decision by treating the post of Assistant Advocate General/Deputy Advocate General as a professional field, more particularly, when the petitioner has already exceeded 25 years age in order to gain experience of seven years provided under the Recruitment and Promotion Rules mentioned *ibid*. On 30th May, 2011, this Court has directed the respondent to re-look into the matter. In sequel thereto, a fresh decision has been taken on 23rd September, 2011. Now, the stand taken in this

decision is that as per office memorandum issued by the Finance Department on 14.10.2009, the benefit of adding years of qualifying service for the purpose of computation of pension stood withdrawn w.e.f. 01.01.2006. A provision should have been made in the Recruitment and Promotion Rules as per Rule-30 after identifying the post. Now, as far as the issuance of office memorandum dated 14.10.2009 is concerned, it will apply prospectively. The accrued/vested rights of the petitioner cannot be destroyed on the basis of memorandum dated 14.10.1999. It will not apply retrospectively.

18. Ordinarily, the scope of judicial review in these matters is limited, however, in this case, the respondent-State is remiss in discharge of its statutory duties by not adhering to Rule-30 and the Government of India's decision, notified on 21st February, 1971 by not inserting a special provision for giving additional benefit towards qualifying service as a professional to the petitioner. The very purpose of insertion of Rule-30 will be defeated if the respondent-State does not make special provision in the Recruitment and Promotion Rules for giving benefit of additional qualifying service. Rule-30 has been inserted to mitigate the hardships in only specialized fields, where the Government servant cannot get in the Government service, since he is required to get a specialized training or particular experience. The very purpose of Rule-30 has been set to naught by the State Government by not doing the needful by making a provision at the time of notification of Rules and thereafter.

19. Their Lordships of the Hon''ble Supreme Court in Govt. of NCT of Delhi and Others Vs. All India Young Lawyers Association (Regd.) and Another, have given the benefit of 10 years qualifying service to the direct recruits of Delhi Higher Judicial Services for computing pension and other retiral benefits. The facts of this case were that All India Young Lawyers Association filed a petition before the Delhi High Court, inter alia, seeking a mandamus to the Government of NCT of Delhi and others that the actual period of practice at the Bar subject to a maximum of fifteen years should be added to the total pensionable service while computing the pension and other retiral benefits in the case of a direct recruit to the Delhi Higher Judicial Service. The Delhi High Court allowed the prayers and directed the State that Rule 26(B) be inserted in the Delhi Higher Judicial Service Rules, 1970 and weightage of fifteen years of practice or such other number of years of practice at the Bar whichever is less, be given to the direct recruits while computing their pension and other retiral benefits. The Government of NCT of Delhi and others filed an SLP before the Hon''ble Supreme Court. The Hon''ble Supreme Court partly allowed the appeal. Their Lordships have restricted the period from fifteen years to ten years for computing pension and other retiral benefits to direct recruits of the Delhi Higher Judicial Service. Their Lordships further directed the NCT Delhi to suitable insert Rule 26(B) in the Delhi Higher Judicial Service Rules, 1970. Their Lordships have held as under:

2. Respondent No. 1 preferred a Writ Petition being W.P. (C) No. 21211 of 2005 before the High Court of Delhi, inter alia, seeking a mandamus to the appellants

herein that the actual period of practice at the Bar subject to a maximum of 15 years, should be added to the total pensionable service while computing the pension and other retiral benefits in the case of a direct recruitee to the Delhi Higher Judicial Service.

3. The High Court, after hearing both sides, by its impugned judgment held that the prayers made by the writ petitioner (respondent No.1 herein) were reasonable and directed that the Rule 26(B) be inserted in the Delhi Higher Judicial Service Rules, 1970 (for short "the Rules") and weightage of fifteen years of practice or such other number of years of practice at the Bar whichever is less be given to the direct recruits while computing their pension and other retiral benefits, thereby allowed the writ petition.

7. Learned counsel appearing for the State contended that the reason why Government has agreed to give weightage of 7 year's practice at the Bar is that because in the case of direct recruitments to the Delhi Higher Judicial Service, a member should have seven years" practice at the Bar and that is why Government thought it fit to give weightage of seven years.

8. Learned counsel appearing for the first respon-dent-association submitted that High Court was right in directing the Government to give weightage of fifteen years" practice at the Bar while computing pension and other retiral benefits because otherwise most of the members of the Delhi Higher Judicial Service would not be able to get full or adequate/reasonable pension at the time of retirement. It is also submitted that better conditions of service should be made available to the persons who are direct recruitees from the Bar otherwise the best talent would not be attracted for selection.

9. Learned counsel appearing for respondent No. 2-High Court of Delhi has also brought to our notice the fact that the request was made by the High Court in the year 1987 and despite repeated reminders, Government has acceded to the request only in the year 2006 by its letter dated 02nd February, 2006. It is also brought to our notice by the learned counsel appearing for respondent No. 2 that in the States of Punjab, Haryana and Gujarat, weightage of 10 years" practice at the Bar is given in the case of direct recruits while computing pension and other retiral benefits.

10. We have considered the various contentions raised before us. Learned counsel appearing for the State vehemently contended that only the period of seven years" practice at the Bar is to be added because the minimum qualification to enter into the Delhi Higher Judicial Service as a direct recruit is seven years" practice at the Bar. That reason, by itself, does not appear to be justifiable as the total period of service for getting maximum or full pension is 33 years as per the general rules of the Government of Delhi.

11. Learned counsel for the State submitted that if 15 years" practice at the Bar is added, then there is an apprehension that after joining the Delhi Higher Judicial Service and working for a shorter period, members may quit the job

because even after working for a shorter period, they will get the proportionate pension if their past practice of 15 years at the Bar is added.

12. Having regard to the facts of the case and having heard learned counsel for the parties, we deem it appropriate that 10 year's practice at the Bar or such other number of years whichever is less, could be added while computing pension and other retiral benefits in the case of a direct recruit to the Delhi Higher Judicial Service. We order accordingly.

13. Insofar as apprehension of learned counsel for the State is concerned, we make it clear that weightage of 10 years' practice at the Bar will be given only if the direct recruit, who joins the Delhi Higher Judicial Service, actually works for minimum ten years in the Delhi Higher Judicial Service and then retire so as to enable them to get reasonable/adequate pension at the time of retirement because as per general rules to be eligible for minimum pension a person should have completed at least ten years of service. Government of NCT of Delhi is directed to suitably insert Rule 26(B) in the Delhi Higher Judicial Service Rules, 1970.

20. The underlying intention of Rule 30(1) is to compensate a government servant for the time taken by him in securing the specialist qualifications or experience which are essential for appointment to the post to which he is appointed.

21. In the instant case, the petitioner was required to have seven years essential experience as an Advocate for the purpose of appointment to the post of Assistant Advocate General. The facts of the present case are akin to the facts of the case cited hereinabove. Consequently, the petitioner is entitled to get the 10 years of practice at the Bar to be added while computing pension and other retiral benefits.

22. Petitioner has also made a detailed representation, which was recommended by the Advocate General. However, the same has been rejected on 28.07.1999 without a speaking order. It is by now well settled that any order which has civil consequences, must be speaking /detailed and should not be laconic. Case of the Dr. B.K. Sofat has been considered under Rule-30 and not by giving relaxation in Rules, as stated in the reply to the amended petition.

23. Accordingly, in view of the observations and discussions made hereinabove, the writ petition is allowed. Annexure P-6, dated 6th August, 2010 and order dated 23rd September, 2011 are quashed and set aside. Respondent-State is directed to add 10 years of practice at the Bar of the petitioner towards qualifying service for the purpose of computing pension and other retiral benefits. Respondent-State is further directed to initiate the process for inserting the provision in the Recruitment and Promotion Rules for the purpose of giving the benefit of addition to qualifying service as per Central Civil Services (Pension) Rules, 1972 read in conjunction with the decisions taken, as noticed hereinabove for computing pension and other retiral benefits. The needful shall be done within

a period of three months from today. The pending application(s), if any, also stands disposed of. No costs.