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(2021) 10 CAL CK 0018

In the Calcutta High Court

Case No : W.P.S.T. No. 47, 48 Of 2019

Mrityunjoy Gouda — APPELLANT

Vs

Union Of India And Others — RESPONDENT

Date of Decision : 01-10-2021

Acts Referred:
Constitution Of India, 1950 — Article 226, 227
West Bengal Services (Death-Cum-Retirement Benefit) Rules, 1971 — Rule 17, 33, 33(1), 33(2), 58, 59, 59(10), 67, 67B, 75(aaa), 92A, 189A, 189A(iii), 189A(1)(i)

Citation : (2021) 10 CAL CK 0018

Hon'ble Judges : Sabyasachi Bhattacharyya, J;Jay Sengupta, J

Bench : Division Bench

Advocate : Soumya Majumder, Tapan Kumar Mukherjee, Somnath Naskar, Swapan Kumar Dutta, Tapas Kumar Mandal

Final Decision : Disposed Of

Judgement

Sabyasachi Bhattacharyya, J

1. The present challenge has been preferred against the Judgment and Order No.12 dated August 1, 2018 passed by the West Bengal Administrative Tribunal in Case No. OA-435 of 2016, whereby the petitioner's claim to get pro-rata pension immediately on acceptance of his resignation for taking up new assignment was turned down. The Tribunal held that the pro-rata pension will be disbursed in favour of the applicants only on attaining the age of voluntary retirement, that is, 55 years of age.

2. The petitioner joined as Sub-Inspector (SI) in the West Bengal Police Service (Unarmed Branch) on January 10, 2000. He submitted his resignation on February 22, 2010, that is, soon after completion of ten years' service, for joining services at the UCO Bank as Security Officer. Such resignation was accepted on March 12, 2010.

3. Prior to submitting resignation, on February 19, 2010, the petitioner

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admittedly received his appointment letter from the UCO Bank, asking him to join within March 15, 2010. Upon acceptance of resignation, the writ petitioner joined his service with the UCO Bank which is an autonomous body, although a Nationalized Bank.

4. The moot question raised in the instant writ petition is, whether the petitioner is entitled to get pro-rata pension for rendering more than ten years of service as an employee of the West Bengal Government immediately after acceptance of his resignation or at some future date.

5. Learned counsel for the petitioner places reliance on Rule 58 of the West Bengal Services (Death-Cum-Retirement Benefit) Rules, 1971 (for short, "the DCRB Rules"), which stipulates that a retiring pension is granted to an officer who is permitted to retire after completing qualifying service for 30 years or such less time as may for any special class of officers be prescribed. Although Rule 59 provides for entitlement on qualifying service of 25 years for certain classes of officers, it is argued that the petitioner is not covered under any of such classes. As such, since no specific time is prescribed for the service of the petitioner, by default the petitioner is entitled to get pro-rata pension from the date of acceptance of his resignation.

6. Learned counsel for the petitioner further argues that, as per Rule 92A of the DCRB Rules, the pension admissible to a police officer in the subordinate rank shall be determined in accordance with the provisions contained in Chapters V and VI of the Rules. As such, Rules 58 and 59, which fall within the said chapters, ought to be applied.

7. Moreover, it is contended, Rule 189A of the DCRB Rules has no manner of application, since it operates in the event of absorption in, or transfer to, a public undertaking; whereas, in the present case, the petitioner independently joined service in a Nationalized Bank (the UCO Bank), which is not a public undertaking but an autonomous corporate body.

8. Learned counsel for the petitioner, by citing Rule 33 of the DCRB Rules, submits that as per sub-Rule (2) thereof, resignation of an appointment to take up, with proper permission another appointment, whether permanent to temporary, service in which counts in full or in part is not a "resignation of public service", thereby avoiding the mischief of sub-Rule (1) of Rule 33, which entails forfeiture of past service for such resignations.

9. It is contended that Rule 67 of the DCRB Rules categorically provides the amount of pension payable to an employee. Rule 67, Clause (B) provides that after service of not less than ten years, a pension not exceeding the amounts given in the chart thereinbelow would be payable to the petitioner. The first item of the said chart provides for 20 completed six monthly periods of qualifying service.

10. Hence, the Tribunal acted without jurisdiction, learned counsel submits, in

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applying Rule 189A, instead of Rules 58 and 59, of the DCRB Rules.

11. Learned Senior Advocate appearing for the State argues that the petitioner was an employee for ten years in a post under the West Bengal Police Service, thus excluding him from the purview of Rule 58. On the other hand, Rule 59 contemplates qualifying service of 25 years and, thus, is not applicable to the petitioner.

12. Hence the Tribunal, it is submitted, was justified in applying Rule 189A of the DCRB Rules, which governs pro-rata pensions for employees who take up service under Government-owned or controlled enterprises, including Nationalized Banks.

13. There are two components to the petitioner's claim: first, his entitlement to it; second, the quantum, if entitled.

14. Rule 189A of the DCRB Rules provides for pro-rata pension, as claimed by the petitioner. Sub-Rule (1), clause (i), in no uncertain terms, provides that such entitlement arises on "permanent absorption" in a service or post in or under a Corporation, Company or a body wholly or substantially owned or controlled by "the Government", a "permanent Government servant" shall be so eligible on the length of his "qualifying service under Government" till the date of "absorption" in accordance with the pension rules "of Government" in force on the date of absorption. The emoluments for such purpose shall mean the emoluments with the "Government" servant would have drawn under "the Government" but for his transfer to such undertaking.

15. Clause (iii) of Sub-Rule (1) stipulates such pro-rata pension or gratuity admissible in respect of the service render under "Government" to be disbursable from the date on which the Government servant would have retired voluntarily under the rules applicable to him or from the date of his absorption in the undertaking whichever is later.

16. In the present case, admittedly, the petitioner was working in the unarmed branch of the West Bengal Police Service which is controlled by the State Government of West Bengal. However, he opted for retirement after ten years of service and joined a Nationalized Bank, which can be construed as a body wholly or substantially owned or controlled by the Central Government.

17. In the absence of any definition of the term "Government", the same has to be construed, in the context of the DCRB Rules, as the State Government of West Bengal and not the Central Government. The names of the Rules is the West Bengal Services (Death-Cum-Retirement Benefit) Rules, 1971 and the same has been enacted by the State Legislature. The Rules, thus, operates within the State of West Bengal and its services, in the absence of anything to the contrary, and cannot be assumed to refer to the Central Government as "the Government" in any of its provisions.

18. It would be absurd to assume that the first half of Rule 189A (1) (i) connotes the State Government services and, in the second, refers to the Central

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Government as "the Government". In the instant case, the petitioner would be entitled to pro-rata pension, only if he had joined in a State Government undertaking after the qualifying period of service in a State Government service.

19. However, the petitioner opted for service in a Nationalized Bank, which is controlled substantially not by the State Government, but by the Central Government. Hence, the petitioner does not get the benefit of pro-rata pension under Rule 189A in any event, since he does not qualify under the second portion of Clause (i).

20. Secondly, the petitioner voluntarily retired and, of his own initiative, joined service in a Nationalized Bank, which is not a State Government undertaking at all. Clause (i) contemplates "permanent absorption" and speaks of "transfer", none of which terms applies to a voluntary retirement/resignation and joining service under a different entity than the State Government.

21. Thirdly, the term "qualifying service" has been defined in Rule 17 of the DCRB Rules as qualifying service of a Government servant commencing from the date he takes charge of the office to which he is first appointed either substantively or in an officiating or temporary capacity.

22. Rule 58 of the DCRB Rules fixes the minimum period of qualifying service at 30 years to entitle an officer of the State Government to retiring pension, with the exception that if less time is prescribed as qualifying service for any special class of officers, the latter will be entitled to retiring pension upon completing of such less period.

23. Rule 59 carves out such exceptions by providing that the period of minimum qualifying service for members of certain services, as specified in the categories given therein, would be 25 years. Category 10 of Rule 59 applies such exception to members of the West Bengal Police Service. Admittedly, the writ petitioner completed only ten years of service as a sub-inspector of the West Bengal Police Service (unarmed branch). Hence, Rule 59, and not Rule 58, of the DCRB Rules is applicable to the petitioner, which fixes the minimum period of qualifying service at 25 years.

24. Since the writ petitioner did not complete 25 years' qualifying service, he is not entitled to get retiring pension at all, either under Rule 58 or Rule 59.

25. As per Rule 33 (2) of the DCRB Rules, the writ petitioner's resignation could not entail forfeiture of past service as stipulated in Rule 33 (1), since he resigned from his appointment to take up, with proper permission, another appointment and, thus, cannot be said to have resigned from public service as envisaged in Sub-Rule (1) of Rule 33. However, the said provision does not help the writ petitioner in the present case since, even if his past service is taken into account, the petitioner did not complete the necessary period of qualifying service, that is, 25 years, to be entitled to retiring pension in the first place.

26. Rule 67 (B) of the DCRB Rules merely enumerates the amount of pension

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payable after service of not less than ten years. However, the same pertains merely to the quantum of pension, which is subject to the entitlement of the concerned official to get pension. In view of Rule 59 (10) of the DCRB Rules, the petitioner is not entitled to pension at all (having not completed the requisite qualifying period of 25 years in service), hence rendering the question of quantum redundant.

27. Rule 67 itself comes under Chapter VI of the DCRB Rules, which provides the amount of pensions under normal circumstances, subject to entitlement of the officer in the first place. In view of Rule 59 (10), the petitioner's entitlement to get retiring pension does not arise at all.

28. Chapter VIII of the DCRB Rules provide for the rules applicable to special departments or special officers. Rule 92A, which comes under the said Chapter, clearly stipulates the special rules for the police. As per the said Rule, the pension admissible to a police officer in the subordinate rank shall be determined in accordance with the provisions contained in Chapters V and VI of the DCRB Rules.

29. However, on a conjoint reading of Rules 58 and 59, the petitioner is not entitled to retiring pension at all, which renders the question of amount of pension academic.

30. Moreover, the genesis of the concept of "pro-rata pension", which the petitioner claims, is Rule 189A of the DCRB Rules, which is not applicable to the writ petitioner as per his own admission and also in view of the above discussions.

31. The concept of 'retiring pension' is to provide financial support to retired persons after superannuation. However, the writ petitioner took a chance by opting to resign from the West Bengal Police Service after only ten years of service for the specific purpose of joining a different remunerative post with a Nationalized Bank. Whatever may be the petitioner's entitlements under the provisions applicable to Nationalized Banks, he cannot be permitted to be unduly enriched from the public exchequer by opting out of a State Government service of his own volition, much prior to completion of the minimum qualifying service, to join a service for gain, while simultaneously claiming the benefit of pension for his State Government service.

32. Thus, the writ petitioner is not entitled to pro rata pension at all. Although the Departmental Representative of A.G., West Bengal, conceded before the Tribunal that the petitioner is entitled to pension on attaining the age of 55 years, such concession on law is immaterial and does not bind the State, particularly since public money is involved.

33. Rule 75 (aaa) of the West Bengal Service Rules, Part I, has been erroneously relied on by the Tribunal on the sole premise that Rule 189A (iii) of the DCRB Rules apply to the petitioner. Yet, in view of the above discussions, such premise

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itself is erroneous, since Rule 189A is not applicable in the case of the petitioner, which denudes the petitioner of the entitlement to pro-rata pension altogether.

34. Although no challenge has been preferred to the impugned judgment and order of the Tribunal at the behest of the Respondents, this Court has ample powers of superintendence and the power of judicial review over Tribunals in West Bengal under Article 227 of the Constitution of India, read in conjunction with Article 226 of the Constitution, which is not confined to the strict parameters and grounds of the present challenge. Since such illegality has been brought to the notice of Court, this Court cannot shut its eyes, thereby permitting the petitioner to get unduly enriched without any entitlement to get pro-rata pension at all, which would involve unnecessary and unlawful expenditure of public money.

35. Hence, the impugned judgment ought to be modified to the extent that the writ petitioner is not entitled to get pro-rata pension, as claimed by him, at any point of time; not even when he attains the age of voluntary retirement.

36. W.P.S.T. No.47 of 2019 and W.P.S.T. No.48 of 2019 are disposed of accordingly, without any order as to costs.

Urgent certified server copies shall be supplied to the applying parties, subject to due compliance with the necessary requisites.

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