
(2012) 01 MP CK 0014

In the Madhya Pradesh High Court

Case No : Writ Petition No. 14858 of 2008 (S)

Mrs. Kamrunisha

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-01-2012

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2013) 1 SCT 33

Hon'ble Judges : T.K. Kaushal, J;Ajit Singh, J

Bench : Division Bench

Advocate : Akash Choudhary, for the Appellant; Kanak Gaharwar, for the Respondent

Final Decision : Dismissed

Judgement

Ajit Singh, J.—On 11.4.1995 the petitioner was appointed on a Class IV post. Her appointment was on compassionate ground due to the death of her husband while in service. On 30.4.2005 she attained the age of superannuation and retired from service. She was paid all retiral benefits but for pension. Her pension was denied on the ground that she had only nine years, eight months and two days of qualifying service as against required ten years minimum qualifying service. She was also informed vide letter dated 18.1.2005 that she had taken extraordinary leave without pay for four months and 18 days which was deducted from her total service and, therefore, her qualifying service was less than ten years. Aggrieved, the petitioner filed Original Application No. 991/2005 before the Central Administrative Tribunal, Jabalpur Bench (in short, "the Tribunal"). There she averred that as the extraordinary leave without pay taken by her was on medical grounds which was without break in service, the period of extraordinary leave should not have been deducted from the period of qualifying service. The respondents, in their reply, denied her claim and stated that under Rule 21 of the Central Civil Services (Pension) Rules, 1972 (in short, "the Rules 1972") extraordinary leave granted only on medical certificate can be counted as

qualifying service. The respondents also stated that the period of extraordinary leave taken by the petitioner without medical certificate, therefore, had to be deducted and after such deduction her qualifying service was found to be less than minimum ten years for earning pension.

2. The Tribunal on the request of petitioner summoned her service book which revealed that she had taken 175 days of extraordinary leave without pay out of which 29 days of such leave was on production of medical certificate. Thus, even according to the service record of petitioner, she had taken 146 days of extraordinary leave without production of medical certificate. The petitioner admittedly did not claim before the Tribunal that she was unable to join the duty on account of civil commotion or for prosecuting higher scientific and technical studies. This being the situation, the Tribunal by order dated 12.12.2006, Annexure P1, held that the respondents rightly deducted the period of extraordinary leave without pay taken by the petitioner from the period of qualifying service and dismissed her original application. The petitioner then filed Review Application No 21/2007 on the ground that her length of qualifying service has not been calculated as provided in sub-rule (3) of Rule 49 of the Rules 1972. In the review application, the petitioner also submitted that if the length of her qualifying service had been calculated, as provided in sub-rule (3), she would easily fulfill the minimum requirement of ten years qualifying service. The Tribunal by order dated 5.5.1998, Annexure P2, disagreed with her submission and dismissed the review application also. It is in this background, the petitioner has filed the present petition under Article 227 of the Constitution for quashing of orders dated 12.12.2006 and 5.5.2008.

3. Rule 21 of the Rules 1972 reads as under:

21. Counting of periods spent on leave All leave during service for which leave salary is payable and all extraordinary leave granted on medical certificate shall count as qualifying service:

Provided that in the case of extraordinary leave other than extraordinary leave granted on medical certificate, the Appointing Authority may, at the time of granting such leave, allow the period of that leave to count as qualifying service if such leave is granted to a Government servant

(i) omitted.

(ii) due to his inability to join or rejoin duty on account of civil commotion; or (iii) for prosecuting higher scientific and technical studies.

From the perusal of the above quoted rule, it is clear that only that extraordinary leave which is granted on medical certificate can be counted as qualifying service. The petitioner had admittedly taken 146 days of extraordinary leave without production of medical certificate and on deduction of this period, her qualifying service was found to be less than minimum ten years for earning pension. This factual position has not been denied by the learned counsel for

petitioner. We, therefore, affirm the finding of the Tribunal that on deduction of 146 days of extraordinary leave taken by the petitioner, her qualifying service was less than minimum ten years for earning pension.

4. We shall now examine whether the petitioner is entitled for the calculation of length of qualifying service as stated in sub-rule (3) of Rule 49 of the Rules 1972. Rule 49 reads as under:

49. Amount of Pension:-

(1) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six monthly period of qualifying service. (2)(a) In the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years, the amount of pension shall be calculated at fifty per cent of average emoluments, subject to a maximum of four thousand and five hundred rupees per mensem;

(b) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty-three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under Clause (a) and in no case the amount of pension shall be less than Rupees three hundred and seventy-five per mensem;

(c) notwithstanding anything contained in Clause (a) and Clause (b), the amount of invalid pension shall not be less than the amount of family pension admissible under sub-rule (2) of Rule 54.

(3) In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half-year and reckoned as qualifying service.

(4) The amount of pension finally determined under Clause (a) or Clause (b) of sub-rule (2), shall be expressed in whole rupees and where the pension contains a fraction of a rupee it shall be rounded off to the next higher rupee.

5. It is now well-settled that it is permissible to assign the heading or title of a section a limited role to play in the construction of statutes. The heading or title may be taken as broad and general indicators of the nature of the subject-matter dealt with thereunder. The heading or title may also be taken as a condensed name assigned to indicate collectively the characteristics of the subject-matter dealt with by the enactment underneath (See Principles of Statutory Interpretation 12th edition 2010 by Justice G.P. Singh, page 168). The heading of Rule 49 is "Amount of Pension". This rule apparently deals with the calculation of amount of pension. The expression "qualifying service" occurring in Rule 49(1)(2) (a) and (b) will be governed by the definition of qualifying service mentioned in

sub-rule (3) of Rule 49. The definition of qualifying service as mentioned in Rule 49(3) will apply only for interpreting "qualifying service" as occurring in Rule 49(1) and (2)(a) and (b) and will not apply for construing the expression "qualifying service" occurring in other rules. In Union of India and Others Vs. Rakesh Kumar etc., the Supreme Court has also held that Rule 49 only prescribes the procedure for calculation and quantification of pension amount. Since the qualifying service of petitioner was found to be less than the minimum ten years for earning pension, she is apparently not entitled for pension. Therefore, she is also not entitled for the calculation of length of qualifying service as stated in sub-rule (3) of Rule 49 which deals with the calculation and quantification of the amount of pension. For these reasons, the petition fails and is dismissed. No order as to costs.