

(2005) 01 BOM CK 0086
In the Bombay High Court
Case No : W. P. No. 528 of 1997

Narayan Chaudhary

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 24-01-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 3 MhLj 693

Hon'ble Judges : V.C. Daga, J; M.G. Gaikwad, J

Bench : Division Bench

Advocate : S.R. Barlinge, for the Appellant; U.K. Patil, A.G.P. for respondent
Nos. 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

V.C. Daga, J.—The petitioner in this petition is challenging the order dated 28th May, 1996 passed by the respondent No. 1 - State of Maharashtra, refusing to consider the services rendered by the petitioner from 2-2-1959 to 10-6-1968 under the Central Government and from 11-6-1968 to 13-6-1971 in the different schools in the State of Gujarat, for the purpose of calculation and payment of pension to the petitioner. Factual Matrix:

2. Factual matrix reveal that the petitioner completed his 58 years of age in the month of June, 1996. He stood retired as an Assistant Teacher from S.A.G. High School, Savada. The services rendered by the petitioner from 14-6-1971 to 13-6-1984 as Assistant Teacher in Nagar Palika Kanya Shala, Savada, Tq. Raver, District Jalgaon was only taken into account for the purpose of pension and gratuity.

3. The petitioner claims to have worked as Jr. N.F.C. Instructor, Grade-I, an employee of the Central Government, from 2-2-1959 to 10-6-1968. The petitioner further claims to have worked as an Assistant Teacher in the M.S.M. High School, Gomtipura, Ahmedabad from 11-6-1968 to 30-6-1970 and

thereafter as Assistant Teacher in M.S.M. High School Bhadra, Ahmedabad, from 1-7-1970 to 13-6-1971. He, therefore joined and worked as an Assistant Teacher in Nagar Palika Kanya Shala, Savada from 14-6-1971 to 13-6-1984 and retired from this school.

4. The petitioner contends that the services rendered by the petitioner with the Central Government or its institution were liable to be taken into consideration for calculating the pension. He further submits that several representations were made by the petitioner to the Deputy Director of Education as well as Respondent No. 1 -State with a prayer to consider the services rendered by the petitioner in Central Government and for the purpose of calculating his Gratuity and pension.

5. The petitioner submits that the School authorities have submitted the representation of the petitioner to the Dy. Director of Education as well as Education Officer. He further submits that the Dy. Director of Education had also forwarded his proposal for favourable consideration of his case with recommendations to take into account the services rendered by the petitioner from 2-2-1959 to 10-6-1968 and from 11-6-1968 to 13-6-1971 and from 14-6-1971 to 30-6-1996 in the State other than Maharashtra for the purpose of calculating the gratuity and pension of the petitioner. However, the respondent No. 1 illegally rejected the said proposal on the ground that the petitioner did not render his services from 1959 to 1971 in the State of Maharashtra. Being aggrieved by the aforesaid decision of the Respondent No. 1-State, the petitioner has filed this petition under Article 226 of Constitution of India.

6. The learned Counsel appearing for the petitioner vehemently submitted that as per the Government Resolution dated 2nd September, 1970, it was open for the State Government to favourably consider case of the petitioner on merits. He further submits that while calculating teacher's total service, it is also open for the State Government to consider the services rendered by him in another State. He, thus, submits that in this case the State Government ought to have favourably considered the case of the petitioner.

7. The petitioner further submits that if the Government Resolutions issued by the State Government from time to time are perused, it would be clear that from time to time the scope of consideration of the previous services rendered by an employee with different States, organizations and/or institutions, were ordered to be taken into account for the purpose of calculating the pension. He pressed into service number of Government Resolutions in support of his submission. Such Govt. Resolutions are - Resolution No. SSN-3365-G, dated 4th November. 1968; Resolution No. PSN-1089/217722/(6832) PS-2 dated 30th July, 1991; Resolution No. SSN-1970-9516-G, dated 27th August, 1970; Resolution No. 1175/3293/XII (625), dated 7th February, 1979; No. VIS-1090/218098/(9431) PS-1, dated 3rd August, 1992; No. SSN-1971-G, dated 14th February, 1972; No. SSN-1968-G, dated 23rd March, 1972; No. PEN 1083/2641/(5010-A)/MS-6 dated 21st November, 1986; No. TCM 2572/9792-W, dated 21st February, 1974;

No. PEN-2287/128/(43)/MS-6, dated 14th June, 1991; No. PEN-1091/(461/91) MS-6, dated 1st January, 1992; No. SSN-1970-40072-G, dated 12th October, 1970, issued by the State Government from time to time.

8. The learned Counsel for the petitioner also placed reliance on the judgment of the Division Bench of this Court in W. P. No. 1778 of 1986 Dharanikanta v. State of Maharashtra and Ors., decided on 2nd August 1989 (Unreported), wherein the Division Bench of this Court, while interpreting the Government Resolution dated 10th of July, 1974, directed the respondents to calculate the pensionary benefits, past and future, on the basis of the Resolution taking into account the period spent by the petitioner in that petition in the East Pakistan when the Government Resolution permitted only consideration of services rendered in West Pakistan. Based on this judgment of this Court, Mr. Barlinge, learned Counsel for the petitioner, urged that if the services rendered in the West Pakistan could be considered for the purpose of pension, then on what logic, the services rendered by the petitioner in State other than State of Maharashtra, could be excluded from consideration for the purpose of computing pensionary benefits.

9. The submission made by the learned Counsel for the petitioner, is no doubt weighty and needs serious consideration, but it being a policy matter, it will not be possible for this Court to accept this submission and directly issue a writ of mandamus against the State directing them to include the period of service spent out the State of Maharashtra. Courts are specialist in protection of liberty and interpretation of legislation and are, accordingly, well placed to subject Criminal justice legislation to careful scrutiny. However, Courts are not specialist in realm of policy making nor should they be. However, considering the width of different Govt. Resolutions and the decisions of the State Government taken from time to time to widen the horizon of inclusion of the past services rendered in the other institutions for the purposes of computing pension, compel us to put a question as to why the services rendered by the petitioner in the State other than State of Maharashtra, could not be taken into account for computing pension of the petitioner. The submission that the inclusion of services rendered by the petitioner in the State other than State of Maharashtra; for computation of pension of the petitioner seems to be rational. We do not find any cogent reason in the impugned order passed by the State Government.

10. No reasons are to be found in the impugned order for exclusion of such period. It is needless to mention that reasons ought to have been given in the impugned order so as to enable us to read the mind of the State. It is needless to mention that the order should be self explanatory and should not keep the Court guessing for reasons. Reason is manifestation of mind of the decision maker. It is a tool for judging the validity of the order. It gives opportunity to the Court to see whether or not the decision maker proceeded on the relevant material. We find that the rejection of the claim of the petitioner is without any reason. Even in the counter affidavit no reason is disclosed. The impugned order is also contrary to the principles of natural justice.

11. We, on the above canvas, set aside the impugned order and remit this matter to the State Government for consideration of case of the petitioner afresh. The respondent No. 1-State shall give an opportunity of hearing to the petitioner and pass a reasoned order, on its own merits, in accordance with law following the principles of natural justice.

12. The petition is accordingly allowed. Rule is made absolute in above terms with no order as to costs.