
(2011) 02 DEL CK 0533

In the Delhi High Court

Case No : Writ Petition (Civil) No. 5435 of 2008

P.M. Lalitha Lekha

APPELLANT

Vs

Lt. Governor and Others

RESPONDENT

Date of Decision : 02-02-2011

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 4
Delhi School Education Act, 1973 — Section 10, 10(1), 10(2), 4

Citation : (2011) 3 AD 423 : (2012) 186 DLT 538 : (2011) 3 ILR Delhi 525

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : B.P. Singh, Anil Gaur and P.V. Mahavan, for the Appellant; Jyoti Singh, for the Respondent

Judgement

Sudershan Kumar Misra, J.—This petition impugns orders, dated 2nd August, 2007, 22nd April, 2008 and 24th April, 2008 of the Deputy Director of Education, District West-B, Vikaspuri, New Delhi. The only controversy in this matter is with regard to the date from which the service of the Petitioner is to be taken into account for the purpose of computation of her pension. The Respondents have fixed the relevant date as 1st January, 1981, whereas the Petitioner claims that the date ought to have been 1st May, 1976 instead.

2. The Petitioner was appointed as a TGT (Science) on 1st January, 1976 in DTEA Higher Secondary School, Janakpuri, New Delhi i.e. the fourth Respondent. At that point of time the school was an unrecognized one. The school was granted recognition on 1st May, 1976. The Director of Education decided to give "grant-in-aid", to the School from 1st May, 1981. Thereafter in Writ Petition (C) No. 2868/1991, the Petitioner was held entitled to computation of the prescribed period of 12 years service with effect from the date the school was granted recognition, i.e. 1st May, 1976, for considering her entitlement to the senior scale of pay. The Petitioner retired from service on 28th February, 2006. After her retirement, for quantifying the length of service rendered by her for

determining her pension; the Respondents decided that this must be reckoned from the date on which grant-in-aid was given, i.e. 1.5.1981, and not from the date on which the school was recognized, which was 1.5.1976.

3. Counsel for the Petitioner has, inter alias, relied on the aforesaid judgment passed by this Court on 26th July, 1996, in WP (C) No. 2868/1991 that had been moved by her, praying for directions to the school to pay her salary in terms of the senior scale of TGT from 1st May, 1988. In that petition, the court agreed with the Petitioner's contention and held that the period in question must be computed from 1.5.1976 onwards, and the fact that the school was granted, "grant in aid", only from 1.5.1981 onwards, is irrelevant. The stand of the Respondents that this period be reckoned only from 1st May, 1981, which happened to be the date the school was brought under the grant-in-aid scheme by the Director of Education, was rejected on the ground that the school was duly recognized w.e.f 1st May, 1976, and the Petitioner continued to work with the Respondent from that day onwards; therefore, the benefit of the period of 12 years for entitlement to the senior scale of pay would also commence from 1st May, 1976 and not from any later date. L.P.A No. 218/1996 impugning that decision was dismissed, and SLP (C) CC No. 1963/1998 moved by the Respondents before the Supreme Court of India was also dismissed.

4. While the school has not bothered to appear, counsel for the Director of Education contends that the benefit of pension is made available to an employee on the basis of certain contributions towards that benefit, both by the school as well as by the government. Those contributions towards pension by the government only commenced after the grant-in-aid was agreed to be given to the school and the school also started contributing its portion towards the pension of the Petitioner thereafter. The responsibility for releasing monthly pension rests with the Director of Education and consequently, it would be unfair to expect it to meet the liability towards payment of pension for a period for which no contribution has been received from the Respondent school on behalf of the Petitioner. The counsel for the Petitioner, however, states that the Director of Education would have no objection to include the period from 1st May, 1976 to 1st May, 1981, for the purpose of computing her pension provided the school were to contribute its share towards that period.

5. Admittedly, Section 10 of the Delhi School Education Act, 1973, (hereinafter referred as the Act), which was also examined in WP(C) 2868/1991 for the purpose of the Petitioner's claim to the grant of senior scale of pay, as aforesaid, is again the relevant section since it also envisages the grant of pension. That Section, inter alias, states that the scale of pension payable to the employees of any recognized private school shall not be less than that of employees of corresponding status in schools run by the appropriate authority. Section 10 of the Act reads as under:

Section 10 - Salaries of employees

The scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognized private school shall not be less than those of the employees of the corresponding status in school run by the appropriate authority:

Provided that where the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of any recognized private school are less than those of the employees of the corresponding status in the schools run by the appropriate authority, the appropriate authority shall direct, in writing, the managing committee of such bring the same up to the level of those of the employees of the corresponding status in schools run by the appropriate authority:

Provided further that the failure to comply with such direction deemed to be non-compliance with the conditions for continuing recognition of an existing school and the provisions of Section 4 shall apply accordingly.

(2) The managing committee of every aided school shall deposit month, every month, its share towards pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits with the Administrator and the Administrator shall disburse, or cause to be disbursed, within the first week of every month, the salaries and allowances to the employees of the aided schools.

6. Counsel for the Respondent further contends that the difficulty arises from Sub-section (2) of Section 10 of the Act as it requires the managing committee of every aided school to deposit its share towards pay and allowance, medical facilities, pension and other benefits every month with the Administrator, who is then to disburse it. A reading of this Sub-section shows that the word "aided" has been used for the first time in this section. Counsel submits that this means no obligation can be imposed on the school to deposit moneys with the Administrator for a period before it acquired the status of an, "aided" school.

7. The impugned order of the Dy. Director of Education, dated 22nd April, 2008 stating that the period of service in respect of the Petitioner for the period from 1st May, 1976 to 1st May, 1981 cannot be treated as qualifying service for pension does not appear to have any rational basis and, to my mind, cannot be sustained in law. I do not find any link between service rendered by an employee for computing his pension and the decision of the appropriate authority to give grant-in-aid to that school. The grant-in-aid in this matter, is merely a grant given to an educational institution as aid to help defray its expenses, and thus, it cannot be that the grant-in-aid, that is either given or refused, can restrict or enlarge the actual service rendered by an employee, especially in the absence of any special provision linking the period of service to be reckoned for the purpose of pension explicitly to the date on which the grant-in-aid was sanctioned. It cannot be that simply because the Respondent school was not receiving grant-in-aid before 1st May, 1981, therefore, the Petitioner was also not rendering any

service before that date to the Respondent school. The fact that the Petitioner's service was continued after grant of recognition on 1st May, 1976, without any objection from the Director of Education, only shows that the Petitioner was properly appointed and possessed all the necessary qualifications required for that post.

8. If the Respondent's contention were to be accepted, it would lead to further complications. For instance, since admittedly, the grant-in-aid is always given by the authority on certain terms, it is quite possible that the grant-in-aid may be stopped at a later date, either forever or for a specific period, for non-compliance with such terms. In other words, if in the first ten years of service, the school was receiving grant-in-aid, that ten year period will be reckoned towards the computation of the Petitioner's pension, and if for the next five years, grant-in-aid was stopped, then that period of five years will be removed from her tenure of service for computation, and thereafter, if grant-in-aid is again resumed, the later period will be again reckoned. There is no rationale nexus between the length of service rendered by an employee to a school and the, "grant in aid", given by the authority to that school. Prima facie, no such nexus has also been demonstrated.

9. A bare reading of Section 10(1) of the Act clearly states, inter alias, that the scale of pension of the employees of, "any recognized private school" shall not be less than those of the employees of corresponding status in schools run by the appropriate authority. This means that parity has been accorded to the employees of private schools with the employees of corresponding status in schools run by the Authority. Admittedly, in schools run by the Authority, there is no question of any grant-in-aid being bestowed to them and employees of such schools are entitled to pension, regardless of any consideration of the nature of grant-in-aid to the school. Thus, if grant-in-aid cannot be a consideration for giving the benefit of pension to an employee of a school run by the authority, and the employees of recognized private schools, such as the Petitioner, have been accorded parity with them by the Statute, then the issue of grant-in-aid must also not be allowed to affect the pensioners benefits to be granted to the employees of recognized private schools. The Petitioner is entitled to the same pension, on the same terms, as employees of corresponding status of the Authority's schools. That is the mandate of Section 10(1) of the Act.

10. Also, the right to senior scale and pension both emanate from the same Section 10 of the Act, and to my mind, it would be inequitable for this Court to hold that on one hand the Petitioner had indeed rendered proper service right from 1st May, 1976 onwards, thus entitling her to the senior scale after completing 12 years, but part of the same period, i.e. from 1st May, 1976 to 1st May, 1981, is not be considered as, "service", for calculating the Petitioner's pension.

11. The first proviso to Section 10 of the Delhi School Education Act, 1973 clearly obliges the Director of Education to direct the management of all recognized

private schools to rectify any deficiency and to bring all benefits, including, inter alias, pensioners benefits up to the same level as those of employees of corresponding status of the schools run by the Director of Education. The second proviso further provides that in case the management of the school fails to comply with such directions, recognition of the school can be withdrawn under the powers given in Section 4 of the Delhi School Education Act, 1973. This serves a salutary purpose and further empowers the Director of Education to issue appropriate directions aimed at fulfilling the object of Section 10(1) of the Act.

12. The school has been given certain privileges, including recognition, on condition, inter alias, that it complies with Section 10(1). Due to the non-compliance of the conditions by the Respondent school the Petitioner cannot be made to suffer. If the Respondent school does not come forward to honor its employees' entitlement in this behalf, then, steps need to be taken by the appropriate authority to ensure compliance.

13. The payment of pension for the period before the grant-in-aid came into the picture has to be rendered by the school, but post such grant, the liability shifts to the Respondent. This is because the mandate of Section 10(1) is unambiguous. Regardless of whether it receives grant-in-aid or not. So long as it is a recognized private school, pension and other benefits of its employees must be the same as those admissible to employees of the Authority's schools. Under the first proviso, it is the Respondent's duty to ensure that such payment is made. Under the Second proviso the Respondent can take action if those directions are not followed. The Respondents in no circumstance can be absolved from their duty.

14. Counsel for the Respondent then refers to Rule 14 of the CCS (Pension) Rules, 1972, which, according to her, defines qualifying service for computing pension and is applicable to the Petitioner as well. It reads as under:

14. Conditions subject to which service qualifies:

The service of a government servant shall not qualify unless his duties and pay are regulated by the Government, or under conditions determined by the Government.

For the purposes of Sub-rule (1), the expression "Service" means service under the Government and paid by that Government from the Consolidated Fund of India or a Local Fund administered by that Government but does not include service in non-pension able establishment unless such service is treated as qualifying service by that Government.

In the case of a Government servant belonging to a State Government, who is permanently transferred to a service or post to which these rules apply, the continuous service is rendered under the State Government in an officiating or temporary capacity, if any, followed without interruption by substantive

appointment, or the continuous service rendered under that Government in an officiating or temporary capacity, as the case may be, shall qualify:

Provided that nothing contained in this sub-rule shall apply to any such Government servant who is appointed otherwise than by deputation to a service or post to which these rules apply.

She contends that the service of a Government servant shall not qualify for pension unless his duties and pay are regulated by the government or under conditions determined by the Government as mentioned in Sub-clause 1. Therefore, for service to be treated as, "qualifying service", for the computation of pension, it is necessary for the government to come into the picture, which it did, only after sanction of "grant-in-aid" on 1st May, 1981. Whether this rule, which applies to government servants would apply to employees of aided private schools as well as is not free from doubt. It may be that the terms under which the "grant-in-aid" was granted to the school, have made this rule applicable for determining qualifying service. Even then, this can only regulate the obligation accepted by the Department from the date, "grant-in-aid" was sanctioned. It cannot extinguish, or even whittle down, either the right of the employees, or the obligation of the concerned school, specified u/s 10(1) of the Act for the period before sanction of "grant-in-aid".

15. In this context, it must be kept in mind that the Delhi School Education Act contemplates unaided private schools also. Even such schools are granted recognition. The mandate of Section 10(1) applies with full rig our to them also. There also, the duty to pay pension to its retiring employees at par with those similarly placed in the Authority's Schools remains sacrosanct, and the entire service of the retiring employee has to be reckoned for computing pension. If the School in this case had not sought, and been granted, "grant-in-aid", the Petitioner's service would have been counted right from the date of recognition i.e. 1st May, 1976. To think that merely because the school was given grant-in-aid sometime later, would go to reduce the reckonable service of its employees for computing pension is, under the circumstances, illogical. Not only that, when the scale of pension is mandated by Section 10(1) of the Act to be the same as that of employees of the Authority's Schools, Rule 14 of the CCS Pension Rules cited by the Respondent cannot be allowed to limit or reduce that parity granted by the Statute. To permit that would lead to an obvious disparity and operate to the detriment of employees, such as the Petitioner, who were properly employed on, or soon after the grant of recognition but before sanction of, "grant-in-aid".

16. The nature and extent of the obligations of the individual Respondents to each other in this matter may be different. But so far as the Petitioner is concerned, her right to be treated at par with employees of the Authority granted by Section 10(1) of the Act is untrammelled and admits to no exception. She is entitled to have her service reckoned from the date of recognition of the School which is 1st May, 1976. The obligation of the Director to pay the Petitioner in terms of the "grant-in-aid" formula, where both the School and the Director of

Education contribute proportionately, applies after 1st May, 1981. Obviously, if any further amount is payable to the Petitioner for her service from 1st May, 1976 to 1st May, 1981, that is the responsibility of the School, who was the Petitioner's primary employer. Here, counsel for the Director has stated that her clients are willing to pay their share of her pension for the period from 1st May, 1976 to 1st May, 1981 also provided the School also contribute its share. This is a generous and eminently fair offer, and under the circumstances, both the Respondents are directed to make good the arrears in pension and other dues accordingly.

17. As discussed above, the date of grant-in-aid has nothing to do with calculating the pension of the Petitioner. Till the time no grant-in-aid was given to the school, the liability to pay the pension was of the school only. The Director of Education has the power to ensure that that this is paid and the Petitioner does not suffer. The Director's offer to contribute its share for even the pre-grant in aid period has already been noted by this Court, consequently, the school is now required to contribute only its share in terms of the grant in aid scheme even for the period from the date of recognition of the school to the date grant in aid was given, i.e. from 1.5.1976 to 1.5.1981.

18. The Director of Education is therefore directed to take into account the Petitioner's service from the date on which the school was given recognition, i.e. from 1st May, 1986 and compute her pension accordingly, and to disburse the Petitioner's pension every month on that basis henceforth. The Director is further directed to disburse all arrears of unpaid pension as determined after the aforesaid computation, within one month from today. The corresponding effect of this on the Petitioner's gratuity, and other relevant aspects, as a consequence of the relief granted in this petition shall naturally follow, and all arrears in this behalf shall be paid to the Petitioner within two months from today by the concerned Respondent. The Director is at liberty to seek any contribution, or to recover any portion of that pension and other dues, if any, which his office will be disbursing in terms of this judgment, from any other party, including the school itself, in the exercise of its powers under the First and the Second proviso to Section 10(1) of the Act.

19. The petition is disposed off accordingly.