(2009) 07 KL CK 0082

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 32064 of 2008 (S)

P.N. Raveendran Pillai APPELLANT

Vs

Union of India (UOI), Chief Post Master General and Superintendent of Post offices RESPONDENT

Date of Decision : 24-07-2009

Acts Referred:

Citation : (2009) 07 KL CK 0082

Hon'ble Judges : K. Balakrishnan Nair, J;C.T. Ravi Kumar, J

Bench : Division Bench

Advocate : K.R.B. Kaimal, for the Appellant; P. Parameswaran Nair, Asst. Solicitor, for the Respondent

Judgement

Balakrishnan Nair, J.—The applicant in O.A. No. 363/2007, before the Central Administrative Tribunal, Ernakulam Bench, is the writ petitioner. The said Original Application was filed by him, challenging Annexure A1 and A10, produced along with the memorandum of Original Application, a copy of which is produced as Ext.P2.

2. The brief facts of the case are the following:

The writ petitioner joined the Air Force as a Combatant Clerk on 31.1.1967. On completion of 15 years service, he was discharged from the Air Force on 31.1.1982. The petitioner got re-employment as Postal Assistant on 6.8.1984 in the scale of pay of Rs. 260-480. Regarding the fixation of pay, a dispute arose between the petitioner and the respondents. As per the office memorandum issued by the Central Government on 25.11.1958, the petitioner was entitled to get 15 increments for the 15 years'' service rendered by him in the post of Combatant Clerk. So, he claimed, he was entitled to get the pay fixed at the stage of Rs. 396/-. The Central Government issued a further order on 8.2.1983, a copy of which is produced as Ext.P6, providing that the entire pension drawn by a non-commissioned officer shall be ignored while fixing the pay of an ex-service man on re-employment in civil service. Based on those two orders, the petitioner claimed fixation of pay at the stage of Rs. 396. But, the respondents took the view that his pay can be fixed only at the minimum of the scale of pay and he cannot get the benefit of past service in the Air Force . The said dispute led to the filing of O.A. No. 661/1993, which was allowed by Annexure-A2 order by the C.A.T., Ernakulam Bench. In that order, the C.A.T relied on a Full Bench decision of the C.A.T in O.A. No. 3/89. The operative portion of Annexure A2 order of the C.A.T. reads as follows:

In this view of the matter, I follow the Full Bench judgment of the Tribunal in O.A. No. 3/89 and allow the application. The respondents shall fix the pay of the applicant in the re-employed post in the scale of Rs. 260-480 by allowing one increment for each completed year of service of the applicant in the Armed Forces, ignoring the pension drawn by him with all attendant benefits from the date of his re-employment. This shall be done within a period of four months from the date of receipt of a copy of the judgment. There shall be no order as to costs.

3. The C.A.T. has specifically ordered that the petitioner is entitled to get one increment for each completed year of service of the applicant in the Armed Forces ignoring the pension drawn by him with all attendant benefits. Pursuant to the said order of the C.A.T., the petitioner''s initial pay was fixed as per Annexure-A3 at the stage of Rs. 396/- in the scale of pay of Rs. 260-480/-. In the meantime, the respondents moved the Hon''ble Supreme Court and obtained stay of Annexure-A2. Therefore, fixation in Annexure-A3 was never implemented. Later, the Apex Court, as per Annexure-A4 disposed of the appeal stating that the same is disposed of in terms of the decision in Civil Appeal Nos. 4077-78/1992 Director General of Posts and Ors. v. B.Ravindran and Anr. A copy of that judgment referred to in the order of the Apex Court is Ext.P8. Apparently, in obedience to Annexure-A4 order of the Apex Court, the respondents fixed the pay of the applicant at the stage of Rs. 324/-. The apparent reason for the reduction of the amount was that out of the total 15 years'' service rendered by him, the respondents maintained that only 8 years'' service could be reckoned. The reason was that only 8 years'' service was in the post having the same scale of pay. But, in fact, though the post was the same, the pay happened to be different because for the first seven years out of the fifteen years, he was drawing salary in the pre-revised scale. Challenging that order, a copy of which is produced as Annexure-A5 along with Ext.P2, the petitioner filed O.A. No. 153/1998. The said Original Application was heard and allowed by Annexure A7. The relevant portion of the said order reads as follows:

In the result, we find that the applicant is entitled to have his pay fixed in accordance with the provisions contained in Rule 16(2) of the CCS (Fixation of Pay of Re-employed Pensioners) Orders, 1986. Accordingly, the impugned orders are set aside and the respondents are directed to refix the pay of the applicant in terms of the provisions of Rule 16(2) of the CCS (Fixation of Pay of Re- employed Pensioners) Orders, 1986 giving him benefit of increment for the entire service as Combant Clerk in 15 years. The order fixing the pay of the applicant accordingly shall be issued and the monetary benefit flowing therefrom made available to the applicant within two months from the date of receipt of a copy of this order.

4. The respondents challenged that order before this Court by filing O.P. No. 16443/2001. The said Original Petition was dismissed by Annexure-A8 judgment. The relevant portion of the said judgment reads as follows:

7. This contention is in effect an attempt to undo what has been held in Annexure-A1 by the Tribunal below, which has been confirmed by the Supreme Court as revealed by Annexure-A3. As already mentioned above, the direction in Annexure-A1 is to grant one increment for each completed year of service of the second respondent in the Armed Force. When the petitioners themselves admit that the second respondent did have 15 completed years of service before he was discharged from the Army, going by Annexure-A1, he is entitled to 15 increments. In the light of Ext.A1 pronouncement by the Tribunal below which has been confirmed by the Supreme Court, the petitioners cannot contend that he would be granted only 8 increments. Therefore, the Tribunal was well justified in setting aside Exts.A5 and A7.

In purported implementation of Annexure-A7 as affirmed in Annexure-A8, the petitioner''s pay was again fixed by Annexure-A10. His pay was fixed at Rs. 260+1, i.e., Rs. 261/-. He was granted 15 increments, but, the entire pension minus Rs. 15 was deducted from the basic pay of Rs. 396/- arrived at after granting 15 increments. Therefore, his pay was further reduced to Rs. 261. By Annexure-A1 he was called upon to remit the excess salary paid to him. The petitioner was earlier granted the fixation at Rs. 324/- and therefore, going by the present fixation under Annexure-A10, he has drawn excess salary every month. The total excess salary comes to Rs. 94,065/-. In the present Original Application, as mentioned earlier, Annexure A1 and A10 were challenged.

5. The petitioner contended that being dissatisfied with the pay fixed at Rs. 324/-, he started the legal fight and the same finally ended in his pay being fixed at Rs. 260+1, though he succeeded in all the cases. The petitioner pointed out that the respondents never had a case that his entire pension cannot be ignored. Their only dispute was relating to the counting of 15 years service for the purpose of grant of increment. According to them, his service for 7 years was in a lower scale of pay, the same could not be counted. The said dispute was resolved in his favour. But, relying on a mistake committed by the Tribunal while rendering Annexure-A6, the present stand was taken by the respondents. Before the Tribunal, in the present Original Application the respondents stuck to their stand and supported the impugned orders. The Tribunal, after hearing both sides, upheld the contentions of the respondents made relying on Annexure-A7 and dismissed the Original Application by Ext.P1 order. Feeling aggrieved by the said order, this Writ Petition was filed.

6. We heard the learned senior counsel Sri.K.R.B. Kaimal for the petitioner and Sri. Thomas Thomas on behalf of Sri.P.Parameswaran Nair, Assistant Solicitor General of India. The learned senior counsel submitted that going by Annexure-A7, it can be seen that the Tribunal committed a mistake in ordering to fix the pay of the petitioner under Rule 16 (2) of the CCS (Fixation of Pay of Re-employed Pensioners) Orders, 1986. In fact the said rule was introduced only on 31.7.1986 with effect from 1.7.1986. The said rule has no application to the fixation of pay of the writ petitioner on re- employment on 6.8.1984. There was no dispute before any forum regarding ignoring the full pension of the petitioner for fixation of pay, as he is a non-commissioned officer. This right accrued to him under Ext.P6 order. The relevant portion of the said order reads as follows:

The undersigned is directed to refer to this Ministry''s OM No. 2(7)/78/6664/D (Civ-1) dated 30.8.1978 and to say that the question of raising the limit of present ceiling/pension which has to/ of being ignored in fixing of pay on reemployment of ex servicemen, who retire before attaining the age of 55, has been under the consideration of the government for some time. The President is pleased to decide that in case of those Ex-servicemen retiring before attaining the age of 55, the pension as indicated below may be ignored in fixing their pay on re-employment.

(i) In the case of Service Officers, the first Rs. 250/- of pension.

(ii) In the case of personnel below commissioned officer rank, the entire pension.

7. So, in the case of the petitioner, who was a non-commissioned officer, the learned senior counsel submitted that at no point of time there was any dispute regarding ignoring the entire pension. So, the judgment, Annexure-A7, should be read as a whole and in fact Rule 16(2) was relied on only to highlight or support the claim of the petitioner that he is entitled to get one increment for the entire 15 years'' service. The said Rule was comparable to the earlier provisions under the 1958 Government Order. But, the Tribunal in Ext.P1 mechanically followed the direction in Annexure-A7 and held that the petitioner is entitled to get fixation only under Rule 16(2) and by virtue of explanation (2) to Rule 16(2), Rs. 15, out of the total pension alone is ignorable. So, the impugned orders were held to be valid. The same is a perverse approach warranting interference by this Court, it is submitted.

8. The learned Counsel for the respondents on the other hand fully supported the view taken by the Tribunal. Annexure-A7 being an inter-parte judgment, the petitioner cannot demur against that and the respondents have only implemented it, it is submitted.

9. Evidently, there is a mistake in Annexure-A7. If, mechanically, Annexure-A7 is applied, explanation 2 of Rule 16 (2) will come into ply and only Rs. 15 of the pension drawn by the petitioner alone could be ignored. But, we notice that the new rules were introduced only from 1.7.1986 and we are concerned with the fixation of pay in 1984. At that time Ext.P6 was governing the field and all along

the stand of the respondents was that Ext.P6 will apply. In other words at no point of time, they claimed that his pension has to be deducted from the basic pay of the petitioner. So, if Annexure-A7 is read in the light of the pleadings and in the background facts of the case, we have no doubt in our mind that the Tribunal mentioned Rule 16(2) only to support the petitioner''s right to get increment for each year''s service. The pay of an incumbent, who joined in 1984, could not be fixed in the light of a Rule which came into force on 1.7.1986. Further, we notice that in the earlier proceedings before the Tribunal, this Court and the Apex Court, the claim of the writ petitioner for ignoring pension on the strength of Ext.P6 was never disputed by the respondents or rather it was conceded and all authorities proceeded on the footing that he is entitled to have his entire pension ignored by virtue of Ext.P6.

10. In the light of the above position, we have to read Annexure-A7. If that be so, the same will not stand in the way of the petitioner getting 15 increments for fixation of his initial basic pay and also the right to ignore the entire pension drawn by him. In view of the above position, the order of the Tribunal, Ext.P1 is plainly untenable. The Tribunal has missed the wood for the trees and rendered a decision, which has to be described as perverse. In the result, Ext.P1 is quashed. We also quash Annexures-A1 and A10 produced along with Ext.P2. It is declared that the petitioner is entitled to get his initial basic pay fixed at Rs. 396/- with effect from 6.8.1984 (as fixed in Annexure A3). The respondents shall implement the above declaration and grant the consequential benefits to the writ petitioner within three months from the date of production/receipt of a copy of this judgment.

The Writ Petition is disposed of as above.

