
(2009) 01 RAJ CK 0119
In the Rajasthan High Court

Prem Puri Goswami (Dr.)	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 05-01-2009

Acts Referred:

Rajasthan Civil Services (Pension) Rules, 1996 — Rule 25(2)

Citation : (2010) 1 RLW 134

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mohammad Rafiq, J.—Heard learned Counsel for the parties.

2. This writ petition has been filed by the petitioner seeking a direction to the respondents to pay him pension and other retiral benefits for the services he rendered to the respondents on the post of Senior Teacher w.e.f. 3.9.1971 till 7.6.1993 on which date he resigned from services with prior permission to join as Principal, Jawahar Navodaya Vidyalaya in the State of Gujarat.

3. The petitioner was selected and appointed as Sr. Teacher with the respondents on 3.9.1971 and was posted at Government High Secondary School, Jaitaran in District Pali. He was assigned the work of Education Extension Officer from 1982 till 1987. He continued in the services of respondents till some time in the year 1993 when he came across an advertisement issued by Navodaya Vidyalaya Samiti for appointment on the post of principal of their school, It is not in dispute that Navodaya Vidyalaya Samiti is a autonomous organization funded and controlled by the Ministry of Human Resources Development, Department of Education, Govt. of India. The petitioner requested for permission through proper channel to apply for the aforesaid appointment. His application was forwarded by Additional Director, Primary and Secondary Education, Bikaner vide Order dated 1.10.1992, which is on record. The said order states that in the event of petitioner being selected for appointment as Principal Navodaya Vidyalaya Samiti,

his appointment will not be treated as deputation and that the petitioner shall have to resign from service. The petitioner was selected and as per the condition imposed by the respondents he resigned from service vide application dated 26.7.1994 to take up the said job. The Director, Primary and Secondary Education, Bikaner vide, Order dated 9.5.1995 accepted his prayer for resignation w.e.f. 7.6.1993 itself. The order accepting resignation is on record, which also states that resignation was being accepted in view of the petitioner's selection for appointment as Principal in Navodaya Vidyalaya Samiti.

When the petitioner requested the respondents to grant him benefit of pension and other retiral dues, the Principal, Government Higher Secondary School, Sewar where the petitioner was lastly posted, forwarded his application vide letter dated 15.6.1996 to the Director, Primary and Secondary Education, Bikaner by which he gave clarifications in response to the earlier letter of the Director dated 5.4.1996. The Joint Director (Personnel), Primary and Secondary Education, Bikaner wrote a letter to the Secretary of the Education Department, Jaipur on 19.9.1996 for giving benefit of pension and other retiral benefits to the petitioner specifically mentioning therein that the petitioner was relieved on the condition that in the event of selection he will have to resign. He, therefore, requested that required sanction for leave and amount of pension contribution as one time may be obtained. The petitioner submitted representation on 19.8.1997 and thereafter on 17.2.1998. At one stage, the Deputy Director, Primary and Secondary Education, Ajmer by his letter dated 27.5.1998 recommended for grant pensionary and other retiral benefits to the petitioner in terms of Rule 25(2) of the Rajasthan Civil Services (Pension) Rules, 1996, but this did not materialise. In fact, the Principal Government High Secondary School, Sawar by letter dated 24.10.1998 in response to the aforesaid Order, wrote back saying that since service record of the petitioner was not available, no action could be taken in the matter. The petitioner then submitted number of representations on 12.9.1998, 1.6.2000, 6.6.2000 and 3.6.2001 and finally approached this Court by filing the present writ petition.

4. Shri P.K. Sharma, learned Counsel for the petitioner has argued that the respondents were under an obligation to grant pension and other retiral benefits to the petitioner in terms of Rule 25(2) of the Rules, 1996, which inter alia provides that resignation shall not entail forfeiture of past service if it has been submitted to take up with proper permission, another appointment whether temporary or permanent under the Government where service qualifies. It was urged that the Government has clarified in its Decision No. 1 below Rule 25 that such benefit can be admissible to the Government servant who has been selected for a post in a public sector enterprise/autonomous body or other institution as are referred to in Rule 33 and Appendix-IX. In the present case the Navodaya Vidyalaya Samiti being an autonomous body fully established funded and controlled by Government of India, benefit of Rule 25(2) of the Rules of 1996 would be available to the petitioner. Learned Counsel argued that Joint Director in his letter dated 12.6.2002 wrongly interpreted the case of the petitioner that

since Navodaya Vidyalaya Samiti is not a pensionable establishment benefit of pension would not be available to the petitioner. Learned Counsel argued that qualifying period of service Under Rule 244(1) was originally 25 years and by amending the rules w.e.f. 1.10.1997, it was reduced to 20 years and subsequently, by further amendment w.e.f. 1.12.1999, it was made 15 years. It was thus 20 years on the date when the petitioner resigned on 26.7.1994. The petitioner had by then completed 23 years in service. Since the petitioner resigned with due permission to join another appointment, in view of Rule 244(2) his past services would not liable to be forfeited and, therefore, the petitioner even independently qualifies for grant of voluntary retirement if his case is not treated as that of resignation. On either count, the petitioner would be entitled for benefit of retiral dues. Learned Counsel in support of his arguments relied on the judgment of this Court in the case of R.K. Malhotra and Anr. v. State of Rajasthan and Ors. 2006 (1) R.D.D (Raj.) 508.

5. Shri Hemant Gupta, learned Additional Government Counsel opposed the writ petition and argued that Rule 25(2), supra provides that past services would be counted only in the event of a government servant resigned with prior permission to join another appointment under the Government where service qualifies. It was argued that the phraseology "service qualifies" would mean that under an employment with the Government itself or with the State Government or Central Government and that too where the service qualifies for pension. It was argued that in that event, the government would have been required to share proportionate burden of pension for the period of service rendered by the petitioner with it. In the present case, it was argued that it was not an appointment under the Government, but it was only under Navodaya Vidyalaya Samiti which is not a pensionable establishment, therefore, Rule 25(2) would not apply to the petitioner. It is therefore, prayed that writ petition be dismissed.

6. I have given my anxious consideration to the arguments aforesaid and perused the material available on record.

7. Normal consequences of resignation is forfeiture of past service, which is what has been provided for by Rule 25(1) of the Rules of 1996, but Rule 25(2) provides that resignation would not entail forfeiture of past service if it is tendered with prior permission to take up any appointment, whether temporary or permanent, under the Government where service qualifies, words "Under the Government" as being insisted by the respondents now before this Court cannot be accepted to mean only an appointment with the Government itself, either the State Government or the Central Government because the respondents State in its Decision No. 1 taken Under Rule 25(2) of Pension Rules, 1996 has clarified this position, which is as follows:

A government servant who has been selected for a post in a Public Sector Enterprise/Autonomous Body or other institutions as are referred to in Rule 33 Appendix IX may be released only after obtaining and accepting his resignation from the Government service. Resignation from Government service with a view

to secure employment in any of those organizations with proper permission will not entail forfeiture of the service for the purpose of retirement/terminal benefits. In such cases, the Government servant concerned shall be deemed to have retired from service from the date of such resignation and shall be eligible to receive all retirement/terminal benefits as are admissible under the Rules 33 and 34 and Appendix IX.

The aforesaid decision of the Government itself would show that phraseology under the Government did not strictly mean only an appointment or employment with the Government itself. It may be an appointment with a public enterprise or autonomous body or other institution as referred to Rule 23 and Appendix IX. Here in the present case, it is not in dispute that prior to applying for appointment on the post of Principal, Navodaya Vidhalaya, the petitioner requested for permission and in fact his application was forwarded by Additional Director, Primary and Secondary Education, Bikaner vide letter dated 1.10.1992 in which a condition was imposed that in the case of eventual selection of the petitioner, his appointment shall not be treated as deputation and that he shall have to resign from service. There was thus sufficient compliance of the requirement of Rule 25(2) that the petitioner has taken up another appointment with prior permission. Such appointment was under the Government because the word "under" cannot be interpreted to mean "with" and is of larger connotation and would cover even an appointment with public sector enterprises or autonomous bodies which is established, funded and controlled by Government of India. The respondents themselves acknowledge this fact because the State Government in its decision clarified this position by providing that an appointment in a public sector enterprise/autonomous body or other institution as are referred to Rule 33 and Appendix IX of Rule 1996 would also be covered by Rule 25(2). Rule 33 in terms provides as follows:

A Government servant who has been permitted to be absorbed in a service or post in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government shall, if such absorption is declared by the Government to be in the public interest, be deemed to have retired from service from the date of such absorption and shall be eligible to receive retirement benefits which he may have elected or deemed to have elected, and from such date as may be determined, in accordance with the orders of the Government applicable to him.

Appendix IX provides for grant of pro rata retirement benefits to Government servants permanently transferred to public sector undertakings, autonomous bodies etc. Section 1 of Appendix IX in its Clause 4(i) provides as follows:

(4) Pensionary benefits:

(i) Resignation from Government service with a view to secure employment in a State public enterprise/autonomous body with proper permission will not entail forfeiture of the service for the purpose of retirement/terminal benefits. In such

cases, the Government servant concerned shall be deemed to have retired from service from the date of such resignation and shall be eligible to receive all retirement/terminal benefits as admissible under the relevant rules applicable to him in the parent organisation.

Section 1 of Appendix IX in its Clause 4(ii) provides as follows:

(ii) Pension and gratuity:

A Government servant eligible for pension and selected/absorbed in a State enterprise/

8. Argument of the respondents that since the Navodaya Vidhalaya does not have the pension scheme and therefore the petitioner would not be entitled to receive pro rata monthly pension cannot be accepted firstly because the respondents themselves in Appendix IX, supra have provided for a situation in which two services may not be clubbed for the purpose of pensionary benefits and it is the option of the Government servant to receive pro rata monthly pension or to receive a lump sum amount in lieu of monthly pension. And secondly, the petitioner independently qualifies for the retiral/terminal benefits in view of the fact that he resigned on 7.6.1993 with due permission when he had already completed 21 years 9 months and 4 day sin service, he had qualified for voluntary retirement as envisaged under Rule 244(i) of Rajasthan Service Rules because on that date he had completed 20 years of service. Moreover, services of the petitioner were not liable to be forfeited because he had resigned to take up another appointment with due permission. The petitioner thus even independently qualifies for pro rata retiral benefits for the service rendered for 21 years 9 months and 4 days. Apart from that, the petitioner shall also be entitled to receive pro rata monthly pension as envisaged u/s 1 of Appendix IX in its Clause 4(C) and arrears thereof.

In the result, this writ petition is allowed. The respondents are directed to grant to the petitioner the pro rata retiral benefits for services of 21 years 9 months and 4 days w.e.f. 7.6.1993 on which date he retired from their services. Since the writ petition was filed on 2.8.2002 and resignation of the petitioner was accepted w.e.f. 7.6.1993, he shall be entitled to interest for the aforesaid arrears @ 9% per annum only from the date of filing of the writ petition.

Compliance of the judgment be made within three months from the date its copy is produced before the respondents.