
(2013) 09 DEL CK 0363

In the Delhi High Court

Case No : Writ Petition (C) No. 916 of 2011

Prof. R. Chandra

APPELLANT

Vs

GNCT of Delhi and Others

RESPONDENT

Date of Decision : 12-09-2013

Acts Referred:

Citation : (2013) 09 DEL CK 0363

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : B. Mahapartra, for the Appellant; Vibhav Mishra, Ms. Tania Ahlawat, Advocates for Ms. Avnish Ahlawat, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—By this writ petition, petitioner seeks direction for quashing of the order dated 31.12.2008 passed by the respondent no. 2. The impugned order dated 31.12.2008 has the effect that the petitioner's earlier services with Regional Engineering College, Kurukshetra, Haryana (in short "REC, Kurukshetra") has not been joined with the service rendered by the petitioner thereafter with respondent no. 2 for calculating the pension of the petitioner payable to the petitioner by the respondent no. 2. The facts of the case are that petitioner joined the REC, Kurukshetra on 3.8.1970 and served there till 23.6.1982. The petitioner was appointed to the post of Assistant Professor in the respondent no. 2 on 24.6.1982. Petitioner claims that this earlier service rendered with the REC, Kurukshetra be added to the service rendered by the petitioner with the respondent no. 2 from 24.6.1982 for the purpose of calculating his pension.

2. The admitted relevant rule applicable for joining of services for grant of pension is Para 6(3)(b)(ii) of Appendix 7 of CCS (Pension) Rules and the same reads as under:-

An employee of an Autonomous Body on permanent absorption under the Central

Government will have the option either to receive CPF benefits which have accrued to him from the Autonomous Body and start his service afresh in Government or choose to count service rendered in that Body as qualifying service for pension in Government by forgoing employer's share of CPF contribution with interest thereon, which will be paid to the concerned Government Department by the Autonomous Body. The option shall be exercised within one year from the date of absorption. If no option is exercised within stipulated period, employee shall be deemed to have option to receive CPF benefits. The option once exercised shall be final.

3. On behalf of the petitioner before me, the following arguments are urged:-

(i) Petitioner has exercised the option within one year of the date of confirmation which was on 25.3.1994, inasmuch as, the letters of the petitioner dated 19.1.1995 and 15.3.1995 should be taken as the exercising of option in terms of the aforesaid Para 6(3)(b)(ii) of Appendix 7 of CCS (Pension) Rules.

(ii) The date of absorption as required under the relevant rule should be the date not of original appointment but the date of confirmation i.e. one year should be counted from 25.3.1994 and not from 24.6.1982.

(iii) Petitioner had deposited the CPF amount received from REC, Kurukshetra with the respondent no. 2 way back on 16.7.1997 as per the directions of respondent no. 2, and therefore, respondent no. 2 now cannot claim violation of Para 6(3)(b)(ii) of Appendix 7 of CCS (Pension) Rules.

(iv) Petitioner is entitled to benefit of Para 6(3)(b)(ii) of Appendix 7 of CCS (Pension) Rules because, other persons who were not confirmed, namely Professors P. Kunde and S.K. Majumdar, have received the benefits of pension payment although they retired with temporary status i.e. it is argued that if persons with temporary status can get the benefits then the petitioner should be similarly placed and he should be given the benefit.

4. In my opinion, in the facts of the present case, it cannot be said that petitioner has acted in accordance with and complied with the relevant Para 6(3)(b)(ii) of Appendix 7 of CCS (Pension) Rules inasmuch as, for acting in terms of this relevant provision it was necessary that petitioner should not have got credited to his account and taken benefit of CPF amount from the earlier employer-REC, Kurukshetra. Admittedly, the petitioner received the CPF amount of Rs. 32,012/- from the REC, Kurukshetra and which therefore is in violation of the relevant provision because para 6(3)(b)(ii) of Appendix 7 of CCS (Pension) Rules requires that the person who leaves an earlier organization before joining the Central Government should not receive CPF amount from his earlier employer and the said CPF amount must be directly paid by the autonomous organization to the Central Government. Since in the present case, petitioner has received the amount from the earlier employer towards CPF contribution, thereafter, merely because the amount is sought to be deposited with the Central Government will not mean that the action of the petitioner is in terms of Para 6(3)(b)(ii) of

Appendix 7 of CCS (Pension) Rules and thus this aspect itself in my opinion disentitles the petitioner to claim benefit of Para 6(3)(b)(ii) of Appendix 7 of CCS (Pension) Rules. It is important to note that petitioner after all has enjoyed the benefit of receiving the CPF amount from the Regional Engineering College, Kurukshetra, Haryana till 16.7.1997 when the amount was deposited with the respondent no. 2. This period would be probably of 15 years because petitioner left REC, Kurukshetra in 1982 in around when he would have received the CPF amount and it is only in 1997 that the amount was deposited with respondent no. 2.

5. I also cannot agree with the argument urged on behalf of the petitioner that because the respondent no. 2 in terms of its letters and directions asked the petitioner to deposit the CPF amount with the respondent no. 2, therefore, the respondent no. 2 is estopped from questioning the non-compliance of Para 6(3)(b)(ii) of Appendix 7 of CCS (Pension) Rules. In my opinion, if I allow this Court's imprimatur to violation of the relevant provision of Para 6(3)(b)(ii) of Appendix 7 of CCS (Pension) Rules in this case only on the ground that some officers have deliberately or by mistake caused violation of the relevant provision by asking the petitioner to deposit the CPF amount which was received by the petitioner from his erstwhile employer-organization with the Central Government, the same will cause an entitlement to different persons to violate this specific provision and yet claim entitlement to join services of a past employer with the present employer. I therefore cannot permit this plea of estoppel raised by the petitioner in the face of categorical language of Para 6(3)(b)(ii) of Appendix 7 of CCS (Pension) Rules.

6. Therefore, even independently of any other arguments, which have been urged by the petitioner, the very fact that petitioner received from his erstwhile employer the CPF contribution in violation of Para 6(3)(b)(ii), the same will disentitle the petitioner to join his past services of REC, Kurukshetra with the services rendered with the Central Government.

7. For the sake of arguments now let us assume that there is no violation of Para 6(3)(b)(ii) of Appendix 7 of CCS (Pension) Rules because the action of the petitioner in receiving the CPF amount from his erstwhile employer has been condoned by the petitioner asking to deposit the amount with the respondent no. 2, let us then examine as to whether petitioner has exercised his option within one year from his date of confirmation and as to whether the period of one year does not start from the original date of absorption of the petitioner with the respondent no. 2. To this extent I think the petitioner is right in contending that petitioner should exercise the option only within one year of the date of confirmation. This is because in the cases of Professors P. Kunde and S.K. Majumdar the respondent no. 2 has accepted the exercise of option on 21.7.1983 and 26.8.1992 respectively, although, these persons joined the respondent no. 2 on 28.7.1974 and 5.2.1975 respectively. Therefore, the respondent no. 2 having taken the date of confirmation of services of Professors

P. Kunde and S.K. Majumdar as the date of absorption for the purpose of Para 6(3)(b)(ii) of Appendix 7 of CCS (Pension) Rule, petitioner will be entitled to similar treatment.

8. Accordingly, now it has to be examined as to whether petitioner has exercised the option for pension within one year from his date of confirmation on 25.3.1994. In this regard petitioner relies upon the letter dated 19.1.1995 sent to the Principal, Engineering College, Kurukshetra, Haryana, and copy of which was marked to the respondent no. 2, and by which letter petitioner had sought information from Regional Engineering College, Kurukshetra, Haryana with respect to the period from which contribution of CPF + interest thereon was made, date up to which interest on the REC, Kurukshetra contribution has been made etc. Since petitioner claims that this letter is an exercise of option with the respondent no. 2 in terms of Para 6(3)(b)(ii) of Appendix 7 of CCS (Pension) Rules, let us examine this letter and which reads as under:-

To

The Principal

Regional Engineering College

Kurukshetra-132119

(sub-count in service rendered at REC, Kurukshetra)

Sir,

Kindly in reference to your office letter No. ACS/2958 dated 15-1-1995 at the subject cited above. I shall feel obliged if you kindly send the additional information on the following in service rendered at your institute.

1. Period from which college contribution of CPF+ interest thereon was made?
2. Date up to which the interest on the college contribution has been made by your institute and at what rates.
3. Service Certificates for the period 1 served at the REC, Kurukshetra.
4. Gratuity paid to me with dates.

With kind regards,

Yours faithfully,

Sd/-

(Prof. R. Chandra)

19.1.1995

9. In my opinion, exercise of option in terms of Para 6(3)(b)(ii) of Appendix 7 of CCS (Pension) Rules has to be a specific and exhaustive option and that too it

has to be specifically addressed to the employer. There has to be a request to the employer for joining of services of the past employer with the present employer-Central Government. In view of the language of the letter dated 19.1.95, I do not think that respondent no. 2 can treat this letter dated 19.1.1995 of the petitioner as if it was an application made to or option exercised with the respondent no. 2 for pension scheme because neither there is any language of exercise of the option and nor is this letter addressed to respondent no. 2.

10. Petitioner also places similar reliance upon a calculation sheet dated 15.3.1995 issued by the REC, Kurukshetra to the petitioner, copy of which is alleged to have been sent to the respondent no. 2 that this letter should be treated as exercise of the option. Though it is not clear from the record whether this copy was actually received by the respondent no. 2 let me for the sake of argument take it as if this letter has been sent to the respondent no. 2. Once again since this letter dated 15.3.1995 only refers to calculations and that too by REC, Kurukshetra and therefore I fail to understand how this letter can be treated as a letter by the petitioner and that too to the respondent no. 2 for exercise of the option in terms Para 6(3)(b)(ii) of Appendix 7 of CCS (Pension) Rules.

11. The next letter for exercise of the option which is relied upon by the petitioner is letter dated 30.6.1995 and which letter can be said in a way to be the exercise of option and this letter reads as under:

No. DCE/CHEM/95/614 Dated: 30/6/95

PRINCIPAL

Subject: Count in service of the period of service rendered at Regional Engineering College, Kurukshetra.

Sir,

This is to bring to your kind notice that prior to joining the college as Assistant Professor w.e.f. 24/06/82. I had served in various capacities in R.E.C., Kurukshetra w.e.f. 23/11/69 to 23/6/82 details of which are elucidated in letter no. GA-1/5943 dated 9/6/95 (copy enclosed). The information regarding C.P.F. etc. is given in letter no. ACS/2958 dated 15/3/95 (copy enclosed). Keeping the above in view, I am to request that the period of service rendered at R.E.C. Kurukshetra by me be counted and necessary entries be made in my Service Book,

Sd/-

(Prof. R. Chandra)

Head of Appl. Chem. Dept.

However, it may be noted that this letter is dated 30.6.1995 and the date of confirmation of the petitioner is 25.3.1994 i.e. this letter has been sent one year

after the date of confirmation of the petitioner. The argument urged on behalf of the petitioner that petitioner was totally ignorant of his confirmation on 25.3.1994 is an argument I would refuse to accept especially because no rule or any circular was pointed out to me which required the respondent no. 2 to specifically inform the date of confirmation to an employee. Also, I would like to draw adverse inference against the petitioner because I do not think it is conceivable that a person who is confirmed in service would not know for about 3 months thereafter that he was confirmed. Therefore, the option having been exercised after one year of confirmation, the same will not be in accordance with Para 6(3)(b)(ii) of Appendix 7 of CCS (Pension) Rules. Of course, I must again hasten to add that I am considering the entitlement of the petitioner to exercise the option, although I have already held in the earlier part of this judgment that petitioner is not entitled to exercise option because petitioner received the CPF amount from his erstwhile employer directly into his account although the payment of CPF contribution with interest thereon by the erstwhile employer had to be directly made by the earlier organization to the respondent no. 2 and it was not for the petitioner first to get the amount credited in his account, enjoy the corpus and returns thereon for a long period of many years and thereafter pay the amount to respondent no. 2.

12. That takes us to the argument urged on behalf of the petitioner that since Professors Mr. P. Kunde and Mr. S.K. Majumdar have received the pensionary benefits, although they retired with temporary status, therefore, the petitioner should also be granted pension because in the absence of petitioner having been notified his date of confirmation, he should be treated similarly with Professors Mr. P. Kunde and Mr. S.K. Majumdar. In fact, this argument urged on behalf of the petitioner has already been dealt with above that petitioner should be taken to have known his date of confirmation and therefore, petitioner's case would be different from the cases of Professors Mr. P. Kunde and Mr. S.K. Majumdar who were never confirmed during the period of their employment and they retired with temporary status with the respondent no. 2. The cases of Professors Mr. P. Kunde and Mr. S.K. Majumdar are therefore clearly different than the case of the petitioner on their respective facts.

13. Therefore, in my opinion, the claim of the petitioner that past services with the erstwhile employer Regional Engineering College, Kurukshetra, Haryana have to be tagged on to the period of services with the respondent no. 2 for calculations of pension payment by the respondent no. 2, is misconceived for the aforesaid reasons of petitioner directly receiving the CPF amount from the erstwhile employer and the petitioner not having to exercise the option within one year of his date of confirmation with the respondent no. 2.

14. Learned counsel for the petitioner sought to place reliance upon certain observations made by the learned Single Judge of this Court in the case of K.S.R. CHARI Vs. Union of India (UOI) and Others, to argue that cases of pensioners must be considered sympathetically by Courts. Reference is invited to the

observations of the learned Single Judge which states that government should adopt a policy that persons who have also not opted for pension can be allowed to do so now. Of course, the observations made by the learned Single Judge are entitled to be respected however ultimately it is the administrators who make the policy and Courts cannot step into the field of policy making by the government. If the government has made a particular policy, and which is backed by a specific CCS Pension Rule, it would be difficult to hold that the person should be given pension although the requirement of relevant provision has not been complied with.

15. In view of the above, though there seems to be equities in favour of the petitioner, who deposited the CPF amount received from his erstwhile employer with the respondent no. 2, however, once it is found that petitioner has otherwise not acted in terms of the requirement of the relevant provision, this Court would not be able to give relief to the petitioner in the facts of the present case. Though the writ petition is therefore dismissed, leaving parties to bear their own costs, however, considering the bonafide actions of the petitioner in depositing the CPF amount received from his erstwhile employer with the respondent no. 2 and respondent no. 2 also acting thereupon including by issuing letter dated 12.12.96, I would direct that the appropriate authority in the respondent no. 2 can consider sympathetically as per law any representation which will be made by the petitioner for grant of pension as prayed in this writ petition to the petitioner and that there can be a policy that period of one year should be counted from a specific date of intimation of confirmation of an employee in the services of the respondent no. 2. The writ petition is accordingly dismissed, subject however to the aforesaid observations.