

(2013) 11 DEL CK 0307

In the Delhi High Court

Case No : Writ Petition (C) No. 3377 of 2012

Prof. Ram Bux Jat

APPELLANT

Vs

Jawahar Lal Nehru University and Others

RESPONDENT

Date of Decision : 22-11-2013

Acts Referred:

Citation : (2013) 11 DEL CK 0307

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : G.D. Gupta and Mr. Piyush Sharma, for the Appellant; Sagari Dhanda, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—By this writ petition, the petitioner, impugns the order dated 9.4.2012 passed by the respondent no. 1-Jawahar Lal Nehru University, (JNU) reducing by re-fixing the pay of the petitioner w.e.f. 1.10.1998. The pay of the petitioner w.e.f. 1.10.1998 has been reduced by the amount of pension which the petitioner was drawing from his erstwhile employer-respondent no. 2-Indira Gandhi National Open University (IGNOU). The impugned order dated 9.4.2012 reads as under:-

JAWAHARLAL NEHRU UNIVERSITY

ACADEMIC BRANCH

No. Acad. 1/SL/1(361) APRIL 09, 2012

OFFICE ORDER NO. 672

Ref: Office Order No. 2078 dated 26.10.2009

Increment order dated 22.7.2010

Increment order dated 19.7.2011

In partial modification of office orders under reference, the pay of Prof. Ram Bux Jat as re-employed Professor has been fixed at Rs. 19895/- p.m. + Rs. 10000/- (AGP) w.e.f. 1.10.2008 (LPD 49790-29895 pension), consequent upon his appointment as Professor in Hindi in the Centre of Indian Languages, School of Language, Literature and Culture Studies in the pre-revised scale of Rs. 16400-450-20900-500-22400 (revised pay band Rs. 37400-67000 + Rs. 10000 (AGP)).

He has also been allowed to draw annual increment of 35 raising his pay as under:

Rs. 21695 + 10000 (AGP w.e.f. 1.7.2009

(Rs. 51590-29895 pension)

Rs. 23545 + Rs. 10000 (AGP) w.e.f. 1.7.2010

(Rs. 53440-29895 pension)

Rs. 25455 + Rs. 10000 (AGP) w.e.f. 1.7.2011

(Rs. 55350-29895 pension)

D.A. on pay drawn from JNU may only be allowed to Prof. Ram Bux Jat if he has discontinued to draw DA on pension authorized to him from his previous employer. Overpayment made to him on account of his salary is required to be recovered.

Other terms and conditions contained in the office order under reference shall remain the same.

(J.P. GAUR)

SECTION OFFICER

The facts of the case are that petitioner was working with the respondent no. 2-IGNOU as a professor in Hindi language. Respondent no. 1 advertised for the post of professor of Hindi language and the petitioner was employed by the respondent no. 1 by direct recruitment w.e.f. 1.10.1998. As per the writ petition itself, petitioner informed his erstwhile employer-respondent no. 2 of his being selected for the post of professor in Hindi by the respondent no. 1 and requested the respondent no. 2 to grant him two years extra ordinary leave with lien from 1.10.2008. Petitioner accordingly joined the respondent no. 1, and his pay was fixed taking the employment of the petitioner to be the case of direct recruitment of a person who was not drawing any pensionary benefits from his erstwhile employer, inasmuch as the petitioner on the date of his employment with the respondent no. 1 continued to have his lien on the post with the respondent no. 2 and had not received any pensionary or other monetary benefits from the respondent no. 2.

2. The admitted position then is that the technical resignation of the petitioner

from his employment with the respondent no. 2 was accepted by respondent no. 2 w.e.f. 1.10.2008-the date from which the petitioner joined services with the respondent no. 1. Pursuant to this technical resignation being accepted, petitioner admittedly was given and was drawing pension and other benefits from the respondent no. 2 w.e.f. 1.10.1998.

3. Though no reasons have been given in the impugned order dated 9.4.2012 reducing the pay of the petitioner by the amount of pension which the petitioner was receiving from 1.10.2008 from the respondent no. 2, the reasons for reducing and refusing the pay of the petitioner from the date of his employment with the respondent no. 1 w.e.f. 1.10.2008 is because of the provisions of Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders 1986. It is not a disputed aspect that this 1986 Order applies to respondent no. 1-JNU and consequently therefore to the petitioner. Of course, I may add here that the impugned order dated 9.4.2012 is not like a judgment of a Court and need not be like a Court judgment which had to give reasons, but effectively the same is an administrative order, simply reducing the pay w.e.f. 1.10.2008. In law, for such an order, reasons can always exist, independently of the order, in the files of respondent no. 1, and which reasons exist on account of the provisions of 1986 Order as stated above.

4. Let me reproduce the relevant provisions of 1986 Order, and the same read as under:-

2. Application-(1) Save as otherwise provided in these orders, these orders shall apply to all persons who are re-employed in Civil Services and posts in connection with the affairs of the Union Government after retirement on pension, gratuity, and/or Contributory Provident Fund benefits from the service of-

(a) Union Government including Railways, Defence, Posts and Telecommunication;

(b) State Governments and Union Territory Administrations; and

(c) Public Sector Undertakings, Local Bodies, Autonomous Bodies like Universities or Semi-Government Organizations like Port Trusts.

(2) These orders shall also apply to persons re-employed in regular work charged capacity.

(3) Unless otherwise provided, these orders shall also apply to persons re-employed on contract basis.

(4) These orders shall not, however, apply to-

(a) Persons re-employed after resignation, removal or dismissal, provided they have not received any retirement/terminal benefits for the pre-employed service;

4. Fixation of pay of re-employed pensioners.-[(a) Re-employed pensioners shall be allowed to draw pay only in the prescribed pay-scale/pay structure of the post

in which they are re-employed. No protection of the scales of pay/pay structure of the post held by them prior to retirement shall be given.

NOTE.-Under the provisions of CCS (RP) Rules, 2008, revised pay structure comprises the grade pay attached to the post and the applicable pay band.]

[(b) (i)-In all cases where the pension is fully ignored, the initial pay on re-employment shall be fixed as per entry pay in the revised pay structure of the re-employed post applicable in the case of direct recruits appointed on or after 1-1-2006 as notified vide Section II, Part A of First Schedule to CCS (RP) Rules, 2008.]

[(ii) In cases where the entire pension and pensionary benefits are not ignored for pay fixation, the initial basic pay on re-employment shall be fixed at the same stage as the last basic pay drawn before retirement. However, he shall be granted the grade pay of the re-employed post. The maximum basic pay cannot exceed the grade pay of the re-employed post plus pay in the pay band of Rs. 67,000, i.e. the maximum of the pay band PB-4. In all these cases the non-ignorable part of the pension shall be reduced from the pay so fixed.

Illustration

A Colonel who retired with basic pay of Rs. 61,7000 (grade pay Rs. 87,000, pay in the pay band Rs. 53,000) is re-employed as a Deputy Secretary in an organization with grade pay of Rs. 7,600. In this case, on re-employment, his basic pay will continue to be Rs. 61,700. However, his grade pay on re-employment will be Rs. 7,600 and the pay in the pay band Rs. 54,100. Thereafter, the non ignorable part of the pension will be reduced from the pay so fixed.

NOTE-In the revised pay structure basic pay is pay in the pay band plus the grade pay attached to the post]

(a) The re-employed pensioner will, in addition to pay as fixed under Para (b) above shall be permitted to draw separately any pension sanctioned to him and to retain any other form of retirement benefits. (d) In the case of persons retiring before attaining the age of 55 years and who are re-employed, pension (including pension equivalent of gratuity and other forms of retirement benefits) shall be ignored for initial pay fixation in the following extent:-

(i) In the case of Ex-servicemen who held posts below Commissioned Officer rank in the Defence Forces and in the case of civilians who held posts below Group "A" posts at the time of their retirement, the entire pension and pension equivalent of retirement benefits shall be ignored.

(ii) In the case of Commissioned Service Officers belonging to the Defence Forces and Civilians pensioners who held Group "A" posts at the time of their retirement, the first Rs. 4,000 of the pension and pension equivalent retirement benefits shall be ignored.]

5. On behalf of the petitioner, it is contended that since the petitioner's employment with respondent no. 1 was direct recruitment, and was not re-employment after retirement from the respondent no. 2, the 1986 Order will not apply. It is argued that once the employment of the petitioner with the respondent no. 1 originally from 1.10.2008 was in the nature of direct employment by direct recruitment, the 1986 Order will not apply. Reliance is also placed upon Rule 10 of the CCS Pension Rules, 1972 to argue that retirement only is a retirement on the age of superannuation.

6. In my opinion, the arguments which have been raised on behalf of the petitioner are misconceived and are liable to be rejected and the arguments urged on behalf of respondent no. 1 relying upon the provisions of 1986 Order reproduced above, have to be accepted. There are various reasons for accepting the argument urged on behalf of respondent no. 1. The first reason is that the provision of Rule 2(4)(a) of 1986 Order uses the expressions "resignation" or "removal" or "dismissal", meaning thereby, it is not that the 1986 Order only applies to persons who have been re-employed after the ordinary age of superannuation. There is some confusion in the language of Rule 2(4)(a) because the expression "not" is used on two occasions, however, the effect of using the expression "not" twice only means the fact that once a person joins on re-employment and is receiving retirement/terminal benefits from the erstwhile employer, then, he has to be governed by this 1986 Order, and provisions 4(b) (i) and (ii) of which squarely apply in the facts of the present case.

7. No doubt, when the petitioner was originally employed with respondent no. 1 it was a case of direct recruitment and re-employment, and not of resignation, however, in view of the subsequent fact that the technical resignation of the petitioner stood accepted by the respondent no. 2 w.e.f. 1.10.2008, the effect would be that the pay which was to be fixed by the respondent no. 1 in the employment of the petitioner with it had to be in terms of Rule 4 as per which protection of pay structure last drawn by the petitioner could not have been granted inasmuch as a person cannot receive pensionary benefits and at the same time a higher pay by protection of the last drawn pay. Rules 4(b) (i) and (ii) make it clear that when there is re-employment, if the re-employed person receives the pensionary benefits from his erstwhile employer, then, the scale of pay which is to be fixed of such person has to be at the first stage of the last basic pay and not the higher pay which was paid to such employee by his erstwhile employer at the time when he gets re-employment. The last line of sub-Rules 4(a) and (b)(ii) make it clear that in all cases where there is re-employment, and the re-employed person is getting pension from his erstwhile employer, then, the non-ignorable part of the pension shall be reduced from the pay so fixed by the subsequent employer and there is no pay protection of the employee being granted the pay last drawn from his earlier employment. The first line of Rule 4(b)(i) also specifically states this very aspect that when pensionary benefits are received from the earlier employment/employer the pay fixed on re-employment is of the entry pay-scale. Since in the present case, the

pay of the petitioner initially was fixed at a higher level from 1.10.2008 by ignoring the fact that petitioner was in fact receiving the pension, however due to the subsequent event of his technical resignation having been accepted by the respondent no. 2 w.e.f. 1.10.2008, therefore, the impugned order dated 9.4.2012 in terms of Rules 4(a) and 4(b) rightly reduced the pay granted to the petitioner by the respondent no. 1 from the date of his original employment with the respondent no. 1 w.e.f. 1.10.1998 by reducing from such figure of pay the pension which the petitioner did in fact receive w.e.f. 1.10.2008 from respondent no. 2/erstwhile employer, on account of his technical resignation having been accepted by the respondent no. 2 and the petitioner getting the pension and other retirement benefits from the respondent. There cannot be any other interpretation of the aforesaid relevant provisions of 1986 Order, the object of which was that higher scale of pay is granted to a re-employed person by protection of the last drawn pay, only if such a person is not drawing retirement benefits including pension from his erstwhile employer, and if retirement benefits are drawn, then surely there can be re-fixation of pay by reducing the amount of pension drawn from the erstwhile employer from the higher pay which is granted on account of pay protection to the employee.

8. The argument urged on behalf of the petitioner relying upon Rule 10 of the CCS Pension Rules, that re-employment under the pension rules is only on account of normal age of superannuation is an argument which totally flies against the language of Rule 2(4)(a) of the 1986 Order which by its terms applies not only to a person who superannuates on the ordinary date of superannuation, but also to those employees who get re-employment on their resigning from services with the earlier employer or on account of their being removed or dismissed from their services by the earlier employer.

9. In view of the above, no relief can be granted to the petitioner because the effect of grant of the relief would be to allow the petitioner to seek a higher pay-scale when he was not entitled to do so because he was drawing pension for the period for which he was getting the higher pay. In view of the above, there no merit in the petition, and the same is therefore dismissed, leaving the parties to bear their own costs.