(2006) 03 DEL CK 0012

In the Delhi High Court

Case No : Writ Petition (C) 1976 of 2001

Prof. R.C. Sharma APPELLANT

Vs

Jawaharlal Nehru University and Others RESPONDENT

Date of Decision : 27-03-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 88 DRJ 491

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Varun Goswami, for the Appellant; S.C. Dhandha, for R-1 and K. Mishra, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The Writ Petitioner, in the proceedings under Article 226 of the Constitution of India seeks directions to the first respondent university, its employer (hereafter referred to as JNU) to count his period of service between 03.12.58 and 3.3.1971 rendered with the third respondent (hereafter called Allahabad University), for pension and pensionary benefit purposes. The undisputed facts are that the petitioner joined the Allahabad University, on 3.12.1958 as an ad hoc Assistant Professor of Geography. He continued in that capacity till 22.5.1970, when he was appointed as a direct recruit, pursuant to selection by a properly constituted committee. He was kept on probation. Soon thereafter, JNU advertised for the post of Reader in the International Politics and organization, in its school of International Studies. The Petitioner applied and was offered appointment after due selection. He accepted the offer and joined duties after securing one years ''leave without pay'', for the Allahabad University.

2. After completion of the one year period, the petitioner tendered his resignation to the Allahabad University on 2.3.1972. The resignation was accepted on 24.02.1972 and he was later permanently absorbed with the JNU. The petitioner retired from, JNU on attaining the age of superannuation with

effect from 4.7.92. He had claimed for inclusion of his service in the Allahabad University between 1958 and 1971, for purposes of pension. Pending finalization of the claim, JNU fixed his pension provisionally and also granted pensionary benefits on the basis of his undisputed period of 21 years service (1971-92).

3. The JNU had elicited views of the Allahabad University, on the demand of the petitioner for including his thirteen years services. The Allahabad University by its letter dated 18.6.1992 stated as follows:

as desired item-wise reply to the points raised in your letter under reference is given below.

1. Prof. R.C. Sharma was in service from 3.12.1958 to 2.3.1971.

2. Prof. R.C. Sharma was initially appointed on ad-hoc basis w.e.f. 3.12.1958 and subsequently without break on regular basis w.e.f. 5.1.1971. As he had/been confirmed in the post of the lecturer at the time of leaving the University, he was not admitted to CPF Fund Scheme and as such no matching contribution is payable by this University.

3. As he had rendered less than one years service on regular basis he was not entitled to gratuity and hence the same is not transferable to the JNU. However, had he continued in the service of this University he might have been entitled to retirement benefits on the basis of combined service w.e.f. 3.12.1958 i.e. the date of his initial appointment on temporary basis followed by regular service w.e.f. 23.05.1970 (AN).

Yours faithfully,

Sd/-

(Dy. Registrar A/C)

university of Allahabad

By letter dated 23.09.93 and 2.8.94, the JNU declined the request of the inclusion of past service in the Allahabad University.

4. The Petitioner alleges that JNU cannot ignore his period of service with the Allahabad University, for pension fixation. He terms the stand of the JNU is arbitrary. Reliance has been paled upon a memorandum dated 29.8.84 issued by the Central Government, Department of Personnel, to say that where a public servant is transferred to and absorbed by, a public Sector unit or autonomous organization, his previous period of service has to be taken into consideration. Reliance has also been placed upon a letter issued by the Central Government dated 7-2-1986 to the effect that mobility of the state government personal in such cases, to Central Autonomous Bodies would also not affect the right to include past service while reckoning qualifying service for pensionary benefits.

5. The JNU and Allahabad University have filed their returns in the proceedings. The JNU relies upon a directive by the University Grants Commission, dated

26.11.73 to say that benefit of such past service can be granted provided the previous employer or parent organization pays/ deposits the Capitalized value of pension and gratuity for such past service. The Allahabad University did not deposit such amounts.

6. The relevant extracts of the directive dated 26.11.1973 are reproduced below :

(V) When an employee of a State Government/University is permanently absorbed in a Central University and Vice-versa.

The past service will count for retirement benefits provided that the transfer is certified to be in the public interest and also subject to the following conditions ;

(a) The transfer is made with the consent of parent institution;

(b) The institution to which the employee is transferred shall be the sole judge to decide as to whether the absorption is in the public interest or not; and

(c) the parent institution pays the capitalized value of pension and gratuity in respect of past service of the employee in that institution to the latter employer at the time of this permanent absorption.

(d) In case the employee in question is on CPF Scheme, the accumulations is the CPF account and the capitalized value of gratuity shall be transferred by the parent organization to the new employer.

7. JNU Therefore contents that the subsequent office memorandum dated 29.8.94 cannot bind it. It avers that takes in any case later Government of India order of August 1988 and 30 May 1995 clarified that discharge of pro-rata pensionary liability by the parent organization is necessary in such cases of mobility of personal and that there is no automatic entitlement for inclusion of past service.

8.The Allahabad University states that there is no question of granting pensionary benefits since the petitioner was never; its permanent employee. It is also averred that the petitioner served in the Allahabad University at a time when it had no scheme for pension or pensionary benefits. At the time the only existing scheme entitled permanent employees to the benefits of Contributory Provident Fund (CPF). Deductions under that scheme were effected after confirmation of the employee concerned. The petitioner was never a beneficiary under, or a member of, the CPF Scheme. It is also alleged that the pension scheme was made applicable to Allahabad University employees through and order dated 21.12.83. This too, denied eligibility to temporary/ad-hoc employees. Thus the petitioner could not claim benefit of the thirteen years ad-hoc service rendered by him.

9. Counsel for the petitioner stated that after the issuance of the circular dated 29-8-1984, as clarified on 7-21986, it was no longer open to the respondents to say that pro-rata contributions had to be deposited with the transferee establishment as a pre conductions for entitlement of an employee, to combined

service pensionary benefits. He submitted that as per decision of the Supreme Court in R.L. Marwaha Vs. Union of India (UOI) and Others, benefit of the circular dated 29.8.84 had to be extended even in case of the employees who were transferred one government establishment and another, prior to its issuance.

10. Learned counsel submitted that even though Allahabad University did not have a pension scheme in 1972, when the petitioner joined JNU, that did not render him ineligible for combined service pensionary benefits because a pension scheme was introduced by Allahabad University in 1983. He also submitted that the settlement/deposit of amounts was a matter of inters financial adjustment between two employers, which in no way interfered with the officers right to the benefit of combined service pension. Learned counsel lastly relied upon the terms of a clarification issued by the University of Delhi on 1.8.1988 stating that if contributions were not made by the transferor organization in case of Government servant who had less than five years service, nevertheless in terms of the OM dated 29-8-1984, pensionary liability of the previous employer could not be insisted and the official would entitled to benefit of the combined service pension.

11. Counsel appearing on behalf the respondents, reiterated the submissions advanced in the Counter affidavit. It was contend that the JNU did not follow central Government Rules but was bound by directive of the UGC. In terms of those directive and orders, deposit pro-rata pensionary contributions were mandatory, for inclusion of service rendered by an official with a previous employer. Therefore the petitioner could not claim pensionary benefits on the basis of combined service since Allahabad University had not deposited any amounts.

12. Counsel for Allahabad University submitted that the petitioner was not beneficiary of any pension scheme. He was neither a confirmed employee not did have a permanent status, when quit its services. It was submitted that the Allahabad University did not even have a pension scheme in 1971 ; it was introduced only in 1983. A CPF scheme existed when the petitioner resigned from the Allahabad University, he was not even a member of that scheme, on account of his non permanent status. The Allahabad University could not be held liable or responsible for depositing pro-rata amounts, in respect of the petitioner length of service with it.

13. The material part of the Office Memorandum of 1984, relied upon by the petitioner, is as follows:

No. 28/10/84-Pension Unit Government of India/Bharat Sarkar Ministry of Home Affairs/Grih Mantralaya Department of Personnel and Administrative Reforms (Karmik Aur Prashasnik Sudhar Vibhag)

New Delhi, August 29, 1984.

OFFICE MEMORANDUM

Sub: Mobility of personnel between Central Government Departments and Autonomous Bodies ?" Counting of service for pension.

* * *

3. This matter has been considered carefully and the President has now been pleased to decide that the cases of Central Government employees going over to a central autonomous body or vice versa and employees of the central autonomous body moving to another central autonomous body may be regulated as per the following provisions:

(A) In case of autonomous bodies where pension scheme is in operation.

(i) Where a Central Government employee borne on pensionable establishment is allowed to be absorbed in an autonomous body, the service rendered by him under the Government shall be allowed to be counted towards pension under the autonomous body irrespective of whether the employee was temporary or permanent in government. The pensionary benefits will, however, accrue only if the temporary service is followed by confirmation. If he retires as a temporary employee in the autonomous body, he will get terminal benefits as are normally available to temporary employees under the Government. The same procedure will apply in the case of employees of the autonomous bodies who are permanently absorbed under the Central Government.

The government/autonomous body will discharge its pension liability by paying in lump sum as a one-time payment, the pro rata pension/service gratuity/ terminal gratuity and DCRG for the service up to the date of absorption in the autonomous body/government, as the case may be. Lump sum amount of the pro rata pension will be determined with reference to commutation table laid down in CCS (Commutation of Pension) Rules, 1981, as amended from time to time.

The terms of the clarification dated 7-2-1986 relate to the state governments, whose employees, upon absorption in Central Government, or autonomous bodies, would be entitled to count the entire length of previous service. The letter dated 1-8-1988 issued by the Delhi University clarified that in cases where employees had put in less than five years service, deposit of pro-rata pensionary contribution with the successor/ transferee organization would not be insisted upon, to include length of continuous service for purpose of pension.

14. The entire case of the petitioner is premised on an assumption that the JNU is an autonomous body within the terms of the expression, under the Government order dated 29-8-1984. While there is no denying the fact that JNU was set up under an Act of Parliament, and the Central Government does exercise some degree of functional and financial control over its affairs, no material was disclosed to establish that the circulars, Guidelines and Memoranda issued by the Department of personnel, Central Government, are binding on JNU. On the contrary, the JNU has asserted that it was, and continues to be bound by

the directives of the UGC, which oblige it to secure a deposit of pro-rata terminal contributions of an employee who works in another organization, for the purpose of ensuring combined service pensionary benefits. Even otherwise, there is nothing in the circular dated 7-2-1986 which authorizes waiver of such pre-deposit, as far as JNU is concerned. As regards the letter dated 1-8-1988, relied upon by the petitioner, what is immediately apparent is that the letter was written by the Delhi University, a separate entity altogether. The terms of that letter clearly show that only less than 5 years service qualifies for exemption from the requirement of pre-deposit of pro rata pensionary contributions. The petitioner was unable to show how the document could bind JNU.

15. Apart from the reasons indicated above, a subsequent public employer, in my opinion can reasonably insist that the pro-rata benefits in a previous employment have to be deposited with it, before the officer/ employees claim for benefit of combined pension can be acceded to. This logic is premised on sound economic considerations. Pension calculations, or projections are based on corpus created by the employer, during the employees tenure. Absent significant contributions, the working of the scheme can go awry. Therefore, the insistence by a subsequent employer that the previous employer must deposit pro-rata amounts, cannot be termed arbitrary.

16. For the foregoing reasons, the petition must fail; it is accordingly dismissed. Rule discharged. No costs.