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(2012) 11 KAR CK 0004

In the Karnataka High Court

Case No : Writ Petition No. 11343 of 2011 (S-R)

Prof. S Sundarajan APPELLANT

Vs

Indian Institute of Management RESPONDENT

Date of Decision : 15-11-2012

Acts Referred:
Central Civil Services (Pension) Rules, 1972 — Rule 48A, 49, 49 (1), 49 (2) (b)

Citation : (2013) 1 AKR 553 : (2013) 1 KarLJ 346 : (2013) LabIC 846

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : P.S. Manjunath, for the Appellant; Pradeep Kumar J., A/W Sri. K. Kasturi, for the Respondent

Final Decision : Allowed

Judgement

Subhash B. Adi

1. The petitioner has sought for a direction, directing the respondent to accord proportionate pension in terms of Rule 49(2)(b) of the Central Civil Services (Pension) Rules, 1922 (hereinafter referred to as ''the Rules'' for short) on the ground that he had completed 18 years of service in terms of the Rules and he is entitled for proportionate pension. The case of the petitioner is that, he joined the services of the respondent-Institution on 1.5.1991 as Associate Professor. He was promoted as a Professor w.e.f. 17.5.1994. The petitioner took voluntary retirement on 31.5.2009. When he applied for grant of pension in terms of Rule 49(2)(b) of the Rules, the same was not granted on the ground that the petitioner has not put in qualifying service of 20 years as required under Rule 48A of the Rules. Hence, the petitioner is before this Court.

2. Sri. P.S. Manjunath, learned counsel for the petitioner submitted that Rule 48A of the Rules before amendment prescribes the qualifying service as 30 years. As Rule 48 was amended by insertion of Section 48A fixing the qualifying service for grant of full pension as 20 years, but Rule 48A relates to the full pension. In case

if the employee of the respondent-Institution had not completed 20 years of service, but had completed 10 years of qualifying service, such employee is entitled for proportionate pension in terms of Rule 49(2)(b) of the Rules. The scope and ambit of Rule 48A and Rule 49(2)(b) is different. One deals with full pension and the other deals with proportionate pension. In case if an employee has not completed 10 years of service, he will not be entitled for pension, but will be entitled for gratuity in terms of Rule 49(1) of the Rules. In view of Rule 49(2)(b) of the Rules, the petitioner is entitled for pension as against number of years of service he has put in, in the respondent-Institution. However, the respondent-Institution, without considering the provisions of Rule 49 of the Rules, has erroneously denied the same.

3. Sri. Kasturi, learned senior counsel for the respondent submitted that Rule 48A is the Rule which prescribes qualifying service and the required qualifying service is 20 years. Admittedly, the petitioner had not completed 20 years of service and he has put in only 18 years of service. Rule 49 cannot be read in isolation as it does not refer to notwithstanding what is contained in Rule 48A. As such, when the qualifying service is fixed as 20 years, any service rendered less than 20 years will not qualify for the pensionary benefit.

4. The only question that arises for consideration in this writ petition is:

Whether an employee of the respondent-Institution who had put in more than 10 years of service but less than 20 years of service, would be entitled for pension under Rule 49(2)(b) of the Rules or not?

5. It is not in dispute that Rule 48 was amended and Rule 48A is inserted. Rule 48A(1) of the Rules reads as under:

(1) At any time after a Government servant has completed twenty years'' qualifying service, he may, by giving notice of not less than three months writing to the appointing authority, retire from service.

Provided that this sub-rule shall not apply to a Government servant, including scientist or technical expert who is-

(i) on assignments under the Indian Technical and Economic Co-operation (ITEC) Programme of the Ministry of External Affairs and other aid programmes.

(ii) posted abroad in foreign based offices of the Ministries/Departments,

(iii) on a specific contract assignment to a foreign Government,

unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.

6. Reading of Rule 48A shows that a Government servant who has put in 20 years of qualifying service, may give notice of not less than three months in writing, to the Appointing Authority, to retire from service. Further reading of Rules 48A and 49 shows that that these Rules categorizes three types of

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retirement benefit, viz. (1) who had completed 20 years of service, (2) who had completed 10 years of service but not completed 20 years of service and (3) who had not completed 10 years of service.

7. Rule 49 confers right on an employee to receive proportional benefit if he had completed 10 years of qualifying service but less than 20 years of qualifying service for full pension. If the employee had not completed 10 years of service, he would not be entitled for pensionary benefit, but would be entitled for gratuity in terms of Rule 49(1).

8. To appreciate the contention of Sri. P.S. Manjunath, it is appropriate to refer to Rule 49(1) and 49(2) which reads as under:

49(1) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month''s emoluments for every completed six monthly period of qualifying service.

49(2)(a) In the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years, the amount of pension shall be calculated at fifty per cent of average emoluments, subject to a maximum, of four thousand and five hundred rupees per mensum;

(b) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty-three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under Clause (a) and in no case the amount of pension shall be less than Rupees three hundred and seventy-five per mensum;

(c) notwithstanding anything contained in Clause (a) and Clause (b) the amount of invalid pension shall not be less than the amount of family pension admissible under sub-rule (2) of Rule 54.

9. On reading of sub-Rule (1), it is absolutely clear that it is applicable only to such employees who had not completed 10 years of service. Sub-Rule (2)(b) relates to such employees who had completed 10 years of qualifying service but not completed 20 years of qualifying service. Such person is entitled for proportional benefit. Rule 49 of the Rules does not deal with full pension but it deals with proportional benefit, however, Rule 48A deals with grant of full pension.

10. To protect the interest of such employees who could not complete 20 years of qualifying service even though they had completed 10 years of service, as stipulated under Rule 49(2)(b) of the Rules, they have been provided with proportional pension. The Rule making authority intended to protect the interest of such persons who had completed 10 years of service to grant proportional pension.

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11. As such, it is not in dispute that the petitioner herein had completed 10 years of service. It is also not in dispute that he opted for voluntary retirement before completion of 20 years of service. Even then, he would be entitled for the benefit of Rule 49(2)(b) to the proportional pension for the service he has rendered.

12. Hence, denial of pension to the petitioner proportionate to the number of years of service he has put in, is contrary to Rule 49(2)(b) of the Rules. Hence, the petitioner is entitled for a direction as prayed for. Accordingly, petition is allowed. If the petitioner has given the notice as required, the respondent shall consider the same and grant proportionate pension in consonance with Rule 49(2)(b) of the Rules as early as possible not later than two months from the date of receipt of notice or from the date of receipt of copy of this order, whichever is later.

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