
(2017) 01 RAJ CK 0050
In the Rajasthan High Court
Case No : 296 of 2013

Prof. S.P. Paliwal S/o Shri Mukut Bihari	APPELLANT
Vs	
Jai Narayan Vyas University	RESPONDENT

Date of Decision : 24-01-2017

Acts Referred:

[University of Rajasthan Pension Regulations, 1990](#), Regulation 18, Regulation 17(a)

Citation : (2017) 01 RAJ CK 0050

Hon'ble Judges : Sandeep Mehta

Bench : SINGLE BENCH

Advocate : Dr. Nupur Bhati, Kuldeep Mathur

Final Decision : Dismissed

Judgement

1. By way of this writ petition, the petitioner Professor

S.P. Paliwal has approached this Court craving the following

relief :-

"(A).By an appropriate writ, order or direction, the communication dated 05.07.2012 (Annex.11) and office order dated 17.05.2012 (Annex.13) may kindly be quashed and set aside. (B). By an appropriate writ, order or direction, the respondents may kindly be directed to grant the petitioner notional annual increments due in 2010 and 2011 along with arrears of 6th Pay Commission and salary of Professor Grade.

(C). By an appropriate writ, order or direction, the respondents may kindly be directed to consider the petitioner for all retiral benefits due to him while considering his date of retirement to be 30.11.2011 after granting him weightage of 4 month & 13 days from the date of his acceptance of voluntary retirement. "

2. Facts in brief are that the petitioner herein was

initially appointed on the post of Assistant Professor in the Department of Hindi in the respondent Jai Narayan Vyas University w.e.f. 02.11.1984. Upon revision of Pay Scales by the UGC w.e.f. 01.01.1996, the petitioner was given selection scale/designation of associate professor in the revised pay scales. On 07.07.2009, the petitioner applied and was selected for the post of professor in the Mahatma Gandhi Antarrashtriya Hindi Vishwavidyalaya, Wardha, Maharashtra. On 14.07.2009, the petitioner submitted an application in the respondent JNVU to relieve and permit him to join as a Professor at the Wardha University for a period of one year while keeping lien on his existing post of associate professor in the Department of Hindi. This prayer of the petitioner was accepted. After having served for about one year at the Wardha University, the petitioner filed an application for extension and for granting him one year's extra-ordinary leave w.e.f. 17.07.2010. The said prayer for extension was accepted vide office order dated 09.08.2010 and the lien of the petitioner on the post of J.N.V.U. was extended for a period of one more year on the pre-decided terms and conditions, and he was allowed to continue at Wardha University subject to approval of the Syndicate. The petitioner, thereafter, submitted an application seeking voluntary retirement from the respondent J.N.V.U. and for grant of weightage of five years qualifying service in reference to the Pension Regulations, 1990. The application received by the respondent JNVU on 13.04.2011 was conditionally accepted vide order (Annexure-9) dated 02.11.2011 in the following terms:-

"The Vice-Chancellor has been pleased to accept his voluntary retirement w.e.f.

17.7.2011 with the condition that the date of voluntary retirement will not be after the date of confirmation on the post of Professor at Mahatma Gandhi Antarrashtriya Hindi Vishwavidyalaya, Panchteela, Umari, Wardha and the benefits of retirement will be applicable as per Rules."

3. In the intervening period, an order (Annexure-10) dated 09.04.2011 was passed, whereby, the petitioner was promoted to the post of Professor Hindi under the Career Advancement Scheme subject to approval of the UGC w.e.f. 19.05.2001 or from the date of eligibility determined by the University, whichever was later. The petitioner, thereafter, filed an application dated 12.05.2012 to the respondent Registrar, JNVU for grant of weightage of qualifying service for the purpose of pension during his service period as Professor at the Wardha University. The Registrar JNVU, vide order (Annexure-12) dated 05.12.2012, intimated the petitioner that his prayer could not be accepted as being contrary to the University Pension Regulation's and he was not entitled to dual benefits as he had not rejoined the university at the end of lien period. A final No Dues Certificate (Annexure-13) dated 17.05.2012 was issued to the petitioner stipulating that he will be entitled to retiral benefits only in accordance with the Pension Regulation's 17(a) and (c) up to 16.07.2009. The petitioner raised a protest against the said action of the respondents by letter/representation (Annexure-14) dated 14.03.2012. Claiming that he retired upon attaining age of superannuation on 30.11.2011, he requested for grant of notional increments on 01.07.2010 and 2011 and to re-fix his salary accordingly. He further prayed that he should be extended weightage of four months, thirteen days in his qualifying service for purposes of Pension. The said

application was not responded to whereupon, the petitioner repeated his request by another letter dated 12.05.2012 addressed to the Vice Chancellor, JNVU. Failing to get any response to his representations, the petitioner has approached this court by way of the instant writ petition claiming the abovementioned relief.

4. The respondents have filed reply to the writ petition disputing the claims made by the petitioner. It is asserted that while accepting the application for voluntary retirement submitted by the petitioner by order dated 02.11.2011, it was clearly stipulated that the application for VRS was being accepted with the condition that the date of voluntary retirement will not be after date of confirmation on the post of Professor at the Mahatma Gandhi Antarrashtriya Hindi Vishwavidyalaya, Wardha, Maharashtra and the benefits of retirement will be applicable as per the University Pension Regulation. It is further mentioned in the reply that benefit of continued service on the strength of lien against post could only have been conferred to the petitioner had he returned and rejoined duty at the JNVU. Since, the petitioner never rejoined duty at the JNVU and rather attained age of superannuation while serving the University at Wardha, his retirement was made effective from the date of commencement of the leave not due in light of regulation 17(a) of the Pension Regulations. The petitioner's claim for weightage of five years service under Clause-18, has been countenanced on the strength of Regulation 17(a) of the regulations. As regards, the claim of the petitioner for grant of benefits of CAS, the respondents have mentioned that the said issue will be finalized after confirmation of the

date of eligibility of the petitioner for the post of Professor and the matter is reportedly pending before a committee constituted by the Vice Chancellor.

5. Dr. Nupur Bhati, learned counsel for the petitioner vehemently urged that the respondents themselves granted leave to the petitioner for joining at the Wardha University. They extended the leave period and continued his lien on the post. Thus, the petitioner is entitled to benefits of continued service for the purpose of pension. She submitted that as per Regulation 18 of Pension regulations, an employee seeking voluntary retirement is entitled to a weightage of 5 years of qualifying service, which has to be notionally added to the qualifying service actually rendered with the outer limit of total length of service being 33 years. She urged that the petitioner is entitled to weightage of five years of additional qualifying service as per the regulation and prayed that the writ petition should be allowed in the terms prayed for.

6. Per Contra, Sh. Kuldeep Mathur learned counsel representing the respondent university vehemently opposed the submissions advanced by the petitioners counsel. He urged that the petitioner was clearly communicated by order (Annexure-9) dated 02.11.2011, that his date of voluntary retirement will not be after the date of confirmation on the post of Professor at Mahatma Gandhi Antarrashtriya Hindi Vishwavidyalaya, Wardha, Maharashtra and that the benefits of retirement will be applicable as per rules. The petitioner never raised any protest against the said communication, which has attained finality. The representation submitted by the petitioner for grant of

weightage of additional qualifying service for pension purposes was rejected as being barred by the rules clearly intimating him that he was not entitled to dual benefits as he had not rejoined duty at the JNVU after completion of lien period. He urged that the additional weightage under Regulation 18 would only be admissible to an employee of J.N.V.U. who is granted voluntary retirement under Clause-17(a) of the regulations while continuing in service of the University. It is clearly provided under Clause 17(c), that for an employee seeking retirement under regulation 17(a) while he is on leave not due without returning to duty, retirement shall take effect from the date of commencement of the leave not due and the leave salary if any paid to him in respect of such leave period shall be recoverable. He submitted that the language of the above regulation is unambiguous and the petitioner is not entitled to the relief claimed for in this writ petition.

7. I have heard and considered the arguments advanced by the learned counsel for the parties and have gone through the material available on record.

8. The basic thrust of the arguments advanced by Dr. Nupur Bhati learned counsel for the petitioner was that the petitioner is entitled to weightage of 5 years qualifying service for the purpose of Pension. However, the said argument is per-se devoid of any merit in view of clear language of regulation 17(c) of the regulations which reads as below :-

"17(c). If an employee seeks retirement under regulation 17(a) while he is on leave not due, without returning to duty, the retirement shall take effect from the date of commencement of the leave not due and the leave salary, if any, paid in respect of such leave shall be recovered from him."

9. The above regulation is not under challenge in this writ petition. Whilst, accepting the petitioners voluntary retirement application by order (Annexure-9), he was clearly intimated that the date of his voluntary retirement coming into effect shall not be after the date of confirmation on the post of Professor at the Mahatma Gandhi Antarrashtriya Hindi Vishwavidyalaya, Wardha, Maharashtra and will be governed by the University Pension Regulations which clearly provide that voluntary retirement sought by an employee on leave not due without returning to duty shall take effect from the date of commencement of leave. The respondents, while accepting the petitioners voluntary retirement application, referring to the said regulation, considered him voluntarily retired from the date of leave not due and rightly so in the opinion of this Court.

10. In view of the clear and unambiguous language of regulation 17(a) reproduced hereinabove, the petitioner is not entitled to benefit of weightage of additional qualifying service as after taking leave for joining at the Wardha University he never returned to join duty in the respondent J.N.V.U. Regarding the remaining prayers made in the writ petition for grant of CAS and other benefits in the grade of Professor, the respondents have clearly indicated in the reply that the matter is under consideration of the Vice Chancellor to whom, recommendation has already been made vide order (Annexure-10) dated 09.04.2011. It is expected that if decision has not been taken till date in this regard then the matter shall be finalized expeditiously and not later than within a period of four months from the communication of a copy of this order.

11. As a consequence of the above discussion, I am of the firm opinion that the impugned orders (Annexure-11 & 13) dated 05.07.2012 and 17.05.2012 do not suffer from any illegality, irregularity or perversity as the same are absolutely in line with the Pension Regulations governing the respondent university and resultantly, the petitioner is not entitled to the relief claimed for in this writ petition.

12. The writ petition being devoid of any merit is dismissed with the above observations. No order as to costs.