
(2000) 07 GAU CK 0004
In the Gauhati High Court
Case No : Civil Rule No. 425 of 1996

Raimohan Sarkar

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 28-07-2000

Acts Referred:

Constitution of India, 1950 — Article 12, 14
Establishment Rules, 1981 — Rule 16, 5, 5(1), 5(2)

Citation : (2000) 3 GLT 148

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : B.B. Deb and B. Bhattacharjee, for the Appellant; U.B. Saha and J. Mazumdar, for the Respondent

Judgement

P.G. Agarwal, J.—The Petitioner Sri Raimohan Sarkar was engaged as a workcharged employee under the Public Works Department, Tripura with effect from 11.12.1959 and while he was working as Meter Reader-cum-Bill Clerk his "services were regularised with effect from 21.6.1966.

2. The Petitioner retired from service on 30.9.1995. On 20th October, 1981 the Government of Tripura, Public Works Department issued the memorandum No. F. 6(28) PWD (E. 11)/78 (ANNEXURE- 7).

3. In view of the provisions contained in Rule 5(1) and 5(2), the Petitioner filed a representation praying for counting his period as a workcharged for the purpose of retiral benefits. As the prayer was rejected by the concerned authority, the present writ petition has been filed for necessary relief.

4. The case of the Respondent State of Tripura is that the Petitioner is not entitled to the benefits of Clause 5(1) and 5(2) of the above rules as he was not a workcharged employee on the date on which the rules came into force and the benefits of Annexure -7 are ment for the workcharged of the Public Works Department who were transferred and absorbed vide that Memorandum only.

5. I have heard Shri B.B. Deb, learned senior Counsel for the Petitioner and Shri U.B. Saha, learned Senior Government Advocate for the State of Tripura.

6. The relevant provisions of Rules are reproduced below:

1 (1) These rules may be called the transfer of workcharged to regular establishment Rules, 1981.

2. They shall come into force at once.

2. (1) The employees of the workcharged establishment in the public works department specified in the schedule attached to these rules shall be transferred and absorbed in the corresponding posts to the regular establishment of the Tripura Public Works Department.

(2) The employees transferred from work charged establishment to the regular establishment under Sub-rule (1) shall be entitled to draw pay and allowances at the same rates as were admissible to them immediately before transfer and absorption in the regular establishment and the date of increment will also remain the same.

3. On and from the date of commencement of these rules no further recruitment of staff shall be made in the workcharged establishment in respect of categories of posts specified in the schedule to these rules.

4. (1) All workcharged employees coming over to the regular establishment under these rules will be eligible for quasi permanency strictly in accordance with the rules applicable to the regular establishment in the Tripura Public Works Department and the continuous service rendered by an employee in the workcharged establishment will count in this respect.

(2) The State Government may from time to time create such number of permanent posts as may be necessary for accommodating the transferred workcharged employees in the regular establishment.

5. (1) The workcharged staff transferred to the regular establishment shall be eligible for pension and gratuity and other pensionary benefits in accordance with the pension rules as are applicable to the employees of the regular establishment of the corresponding rank under the Government.

(2) The entire period of service in the workcharged establishment shall count to the same extent as regular services for the purpose of pension, gratuity or any retrenchment or retirement benefit.

(3) A permanent workcharged employee who does not become eligible for pension, gratuity or retirement benefit in the regular establishment, will be allowed to get pension under the rules applicable to the workcharged establishment as if he had continued to remain in the workcharged establishment even after the date of his transfer to the regular establishment.

7. From the above it is seen that the rules have come its force at once i.e. on

and from 20th October 1981. Further, the provisions of Clause 2(1), 2(2), 3, 4(1) and 4(2) were made for the employees transferred from workcharged establishment to the regular charge establishment by virtue of the said memorandum/rules. However, so far Rule 5(1) and 5(2) are concerned the language used is different. There is no limitation that Rule 5 applies to the workcharged employees coming over to the regular establishment under the above rules where as in Clause 2, 3 and 4 that work is categorically and specifically stated so. The omission of the above word was not unintentional. When different language is used in different provisions of the rules it implies that the intention was to convey different meaning. If the Rule making authority had wanted to restrict or limit the benefits of Rule 5(1) and (2) to the employees regularised vide Annexure- 7, in that case the same word and language used in Clause 2 and 3 would have been repeated or used. The intensive omission of those words only the means that the beneficiary provisions of Rule 5(1) and 5(2) were meant for all employees who are similarly situated employees i.e. the workcharged employees who were transferred, absorbed or regularised in the regular cadre/regular establishment of Public Works Department, Tripura prior to coming into force of Annexure-7 provided that they were still in service as on 20th October, 1981 i.e. the date on which Annexure -7 came into force. The only restriction to my mind was that the persons retired before 20th October, 1981 were not entitled to the benefits of Clause 5(1) and 5(2) and the date of retirement was relevant.

8. Learned Government Advocate on the other hand submits that the memorandum (Annexure- 7) was given prospective effect and not retrospective effect and in order to give effect to the various provisions of the above Memorandum it was required to be read as a whole. Learned Government Advocate, therefore, submits that the provisions of the above memorandum was ment for only the employees who were transferred or absorbed vide the above memorandum and the workcharged employees who are regularised prior to that date are not entitled to the above benefits. According to the Learned Government Advocate, 20th October must be held to be the cut off date. In support of his submission, learned Government Advocate has referred to various decisions of the Apex Court, namely, (1) Union of India Vs. P.N. Menon and others, In Para 8 of the above case the Apex Court observed:

Whenever the Government or an authority, which can be held to be a state within the meaning of Article 12 of the Constitution, frames a scheme of persons who have superannuation from service, due to many constraints, it is not always possible to extend the same benefits to one and all, irrespective of the dates of superannuation. As such any revised scheme in respect of post-retirement benefits, if implemented with a cut-off date, which can be held to be reasonable and rational in the light of Article 14 of the Constitution, need not be held to be invalid. It shall amount to "picking out a date from the hat", as was said by this Court in the case of D.R. Nim v. Union of India in connection with fixation of seniority. Whenever a revision takes place, a cut-off date becomes imperative

because the benefit has to be allowed within the financial resources available with the Government.

(2) In the case of State of Punjab Vs. Justice S.S. Dewan (Retired Chief Justice) and others, , the Apex Court observed:

Conceptually, pension is a reward for past service. It is determined on the basis of length of service and last pay drawn. Length of service is determinative of eligibility and the quantum of pension. The formula adopted for determining last average emoluments drawn has an impact on the quantum of pension. In, D.S. Nakara case the change in the formula of determining average emoluments by reducing 36 months" service to 10 months" service as measure of pension, made with a view to giving a higher average, was regarded as liberalisation or upward revision of the existing pension scheme. On the basis of the same reasoning it may be said that any modification with respect to the other determinative factor, namely, qualifying service made with a view to make it more beneficial in terms of quantum of pension can also be regarded as liberalisation or upward revision of the existing pension scheme. If, however, the change is not confined to the period of service but extends or relates to a period anterior to the joining of service then it would assume a different character. Then it is not liberalisation of the existing scheme but introduction of a new retiral benefit. What has been done by amending Rule 16 is to make the period of practice at the Bar, which was otherwise irrelevant for determining the qualifying service also relevant for that purpose. It is a new concept and a new retiral benefit. The object of the amendment does not appear to be to go for liberalisation. The purpose for which it appears to have been made is to make it more attractive for those who are already in service so that they may not leave it and for new entrants so that they may be tempted to join it. Though Rule 16 does not specifically state that the amendment rule will apply only to those who retired after 22.2.1990, the intention behind it clearly appears to be to extend the new benefit to those only who retired after that date. For these reasons the principle laid down in D.S. Nakara case that if pensioners form a class computation of their pension can not be by different formula affording unequal treatment merely on the ground that some retired earlier and some retired later, will have no application to a case of this type. Therefore, on both the grounds the High Court was in error in applying the ratio of the decision in D.S. Nakara case to this case. As rightly contended on behalf of the State, benefit of the amendment would be available to only those direct recruits who retired after it has come into force.

9. There is no dispute at the Bar that the Petitioner Raimohan Sarkar was an existing employee of the State of Tripura on 20th October, 1981 when the Annexure-7 came into force. As a matter of fact, he retired in 1995. It is long 14 years after promulgation of Annexure-7. Thus, there may be cases whereby the persons who are regularised by virtue of Annexure -7 had worked as Workcharged employees since 1959 or 1960 and retired along with the Petitioner. Thus, if, we accept the contention of the Respondent-State these employees will

be entitled to the pensionary benefits for the period they worked as workcharged employees in view of the Annexure-7, but the Petitioner will be deprived of the same only because he was regularised prior to that person. This imaginary fellow and the Petitioner stand on the same footing having entered into service as workcharged employee then regularised and later on retired. In the case of D.S. Nakara and Others Vs. Union of India (UOI), it was held that there cannot be discretion between pensioners forming a single class and governed by the same rules. The learned Govt. Advocate has submitted that the decision in D.S. Nakara (supra) was distinguished and explained by the Apex Court in catena of decisions, Krishena Kumar and Others Vs. Union of India and others, State of West Bengal and Others Vs. Ratan Behari Dey and Others, , State of Punjab v. Boota Singh, (2000) 3 SCC 733 The Court therefore observed:

On merits we find that the retirement benefits which are claimed by the Respondent are benefits which are conferred by subsequent orders/notifications. Therefore, persons who retired after the coming into force of these notifications and order are governed by different rules of retirement than those who retired under the old rules and were governed by two different sets of rules. They cannot, therefore, be equated. Further, granting of additional benefits has financial implications also. Hence, specifying the date for the conferment of such additional benefits cannot be considered as arbitrary.

10. In the present case as stated above, the Petitioner was very much in service when the amended provisions came into force and he retired after long 15 years. Further, Annexure-7 no where provides that the benefits of Clause 5(1) and 5(2) shall not be applicable to the persons who were regularised prior to that date.

11. Learned Counsel for the Respondents has further submitted that the Petitioner while serving as workcharged employee was a beneficiary of the contributory provident fund and, as such, he is not entitled to the pensionary benefits for the said period. The persons who are regularised vide Annexure- 7, while serving as a workcharged employee were also similarly contributing to the contributory provident fund and, as such, the above submission has no basis.

12. Learned Counsel for the Petitioner, at this stage, has submitted that on his regularisation the contribution to the contributory provident fund scheme was stopped. Further, the contribution made by the government in the said contributory provident fund scheme in respect of the Petitioner during the service as workcharged establishment was transferred back to the Government in its entirety under the Head of Account 8005. Learned Counsel further submits that not only the contribution, ever/the interest thereon was credited back to the Government account and this shows the intention of the Government that they wanted to give benefit of service rendered by the Petitioner as workcharged employee towards his pension; otherwise the above action will amount to double jeopardy. In one hand his period of service as workcharged employee will not be counted for pensionary benefits and on the other hand the Government contribution to the contributory provident fund during the period is also taken

back.

13. The learned Counsel for the Petitioner has also stated that the benefits of Clause 5(1) and (2) were extended by the Government to a similarly situated persons, namely the Respondent No. 7 and, as such, it can not be denied to the Petitioner. The allegations were contained in paragraph 23 of the writ petition and the Respondent state has given a evasive reply in para 25 of their counter affidavit.

14. In view of the aforesaid, it is held that the benefits of Clause 5(1) and (2) of the rules (Annexure-7) for counting the period of service as workcharged employee for the purpose of retiral benefits is available to all such employees who are regularised from the workcharged department to regular department, provided that they retired from service on or after 20th October, 1981. The Petitioner is, accordingly, entitled to the above benefits. The Respondent State is, therefore, directed to count the service rendered by the Petitioner in the workcharged establishment for the purpose of pensionary benefits. As the Petitioner had retired from service in the year 1995, the Respondents are directed to complete the process within a period of three months from today. There would be no order as to costs.