
(2008) 02 CHH CK 0002
In the Chhattisgarh High Court

Rajani Bhushan Mishra

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 14-02-2008

Acts Referred:

Citation : (2008) 2 MPHT 69

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—This petition impugns the order dated 26-11-2005 (Annexure P-1), whereby the petitioner has been denied retiral benefits on the ground that the petitioner had not served the qualifying service of twenty years without break.

2. The indisputable facts, in nutshell, are that initially the petitioner was appointed as Assistant Professor (English) in Government Girls College, Raigarh, on ad hoc basis on 5-9-1983. Thereafter, in continuation he was appointed in the same capacity in Government Degree College, Pathalgaon, on 8-1-1985 on ad hoc basis. The Madhya Pradesh Regularisation of Adhoc Appointment Rules, 1986 came into force for regularization of the ad hoc employees on 27-9-1995. The petitioner, being aggrieved by non-regularisation of his services on the post of Assistant Professor (English) filed the petition before the High Court of Madhya Pradesh at Jabalpur in Miscellaneous Petition No. 1949 of 1987. On creation of the State Administrative Tribunal, the said petition was transferred to the Tribunal and was re-numbered as T.A. No. 3953/1988. The learned Tribunal by its judgment and order dated 20-8-1998 (Annexure P-2) passed the following order:

The petitioner's case shall, therefore, be considered for regular appointment in terms of Rules, 1986 keeping in view the educational qualification required for the post of Lecturer on the date the said rules came into force, that is to say 5-6-86 and grant him regular appointment with all consequential benefits. The

petitioner's services have been terminated with effect from 16-11-92 as per Annexure R-3. Therefore, as regards the payment of salary etc., for the period after this date of termination, it is directed that an enquiry shall be made as to whether the petitioner worked elsewhere during this period and if it is found that he was not employed elsewhere then only the payment of salary and allowances shall be made to him for this period. Such shall be made by an officer not below the level of Additional Director in the Higher Education Department within a period of 6 months from the date of receipt of this order by respondent.

3. Feeling aggrieved, the State filed a writ petition being No. 3814 of 2000 in this Court. This Court dismissed the writ petition on 27-6-2003 (Annexure P-4), holding that there was no illegality or infirmity in the order passed by the learned Tribunal. Pursuant to the order passed by the learned Tribunal, the respondents/ State regularized the services of the petitioner with effect from 4-3-1987 by order dated 12-4-1999 (Annexure P- 3). There was no mention about break in service during any period from 4-3-1987 till 12-4-1999.

4. The petitioner, being aggrieved by the order dated 26-11-2005 (Annexure P-1), filed this petition praying for a writ/direction to quash the impugned order dated 26-11-2005 (Annexure P-1) and direct the concerned authorities to grant pension to the petitioner in accordance with law.

5. Shri Manindra Shrivastava, learned Sr. Counsel appearing with Shri H.S. Patel and Shri D.K. Patel, Advocates, would submit that the petitioner having been appointed on ad hoc basis on 5-9-1983 is entitled to pension as the petitioner has completed more than twenty years in service in the light of Rule 15-A of MP/ CG Civil Services (Pension) Rules, 1976 (for short, "the Rules, 1976"). Learned Counsel submits that in fact, the petitioner was terminated from services on 16-11-1992 and he was reinstated and regularised in services with effect from 4-3-1987 by order dated 12-4-1999. Learned Counsel further submits that, therefore, the petitioner was in continuation of service from 5-9-1983 till he took voluntary retirement from services on 10-2-2005. The period being more than twenty years entitles the petitioner to grant of regular pension under the provisions of Rule 15-A of the Rules, 1976.

6. Per contra, Shri U.N.S. Deo, learned Government Advocate appearing for the respondents/State submits that services of the petitioner would be counted from the date of regularisation, i.e., 4-3-1987 and the period spent earlier on appointment as ad hoc basis, may not be considered as qualifying service for the purpose of pension.

7. Having heard learned Counsel appearing for the parties, perused the pleadings and documents appended thereto, it is evident that there was no break in services of the petitioner as the petitioner was appointed on 5-9-1983 on the post of Assistant Professor (English) in Government Girls College, Raigarh, on ad hoc basis. The post of Assistant Professor (English) in Government Girls College, Raigarh, is admittedly a pensionable service. Thereafter, the petitioner continued

in the same capacity till he was regularized with effect from 4-3-1987 by order dated 12-4-1999.

8. The contention of the learned Counsel appearing for the respondents/State is that the qualifying service would be counted from the date of regularization in services, is not sustainable as it is contrary to the Rule 15-A of the Rules, 1976. Rule 15-A of the Rules, 1976 provides for counting of ad hoc service for the purpose of pension. Rule 15-A of the Rules, 1976 reads as under:

fu;e 15&,) rnFkZ Isok dh x.kuk& rnFkZ Isok vgZdkjh gksxh] ;fn&

?v? rnZFK fu;qfDr fu;fer in ds fo:) Fkh rFkk fu;qfDr fcuk Isok es O;o/kku fu;fer dh xbZ gS] vFkok

?c? mPp in ij rnFkZ fu;qfDr LFkk;h] LFkkukiUu vFkok vLFkk;h gSfl;r esa /kkfjr fuEu in ls inksUufr gksus ij dh x;h Fkh A

9. Admittedly, since there was no break in service of the petitioner with effect from 5-9-1983 till 4-3-1987, service will be counted as qualifying service for the purpose of grant of pension as well as calculation of pension. It is supported by a letter dated 16-5-2005 written by the Principal, Government Degree College, Sarangarh, Distt. Raigarh, addressed to the Commissioner, Higher Education, Directorate, Government of Chhattisgarh (Annexure P-6), which reads as under:

fu;fer fu;qfDr fnukad 4&3&87 ls Jh feJk dh vgZdkjh Isok 18 o"kZ 27 fnol gS fdUrq&

isa"ku fu;e 15&,) rnFkZ Isok vgZdkjh gksxh] ;fn&

?v? rnFkZ fu;qfDr] fu;fer in ds fo:) Fkh] rFkk fu;qfDr fcuk Isok esa O;o/kku fu;fer dh xbZ gS A

Jh vkj-ch- feJk fu;ferhdj.k frfFk 4&3&87 ls iwoZ fnuakd 3&3&87 dks Isok esa Fks A vr% fcuk Isok esa O;o/kku fu;fer dh xbZ gS A

vr% Jh feJk dh vgZdkjh Isok fnukad 8&1&85 ls 31&3&2005 rd 20 o"kZ] 2 ek] 8 fnu gS A

vkns"k fnukad 12&4&99 esa mYysf[kr frfFk 16&11&92 ls dk;ZHkkj xzg.k fnukad 24-5-99 rd dh frfFk dk osru Hkqxrku "kklu ls vkns"k izlkfjr ugh gksus ds dkj.k ugh fd;k x;k gS A

10. On bare reading of Rule 15-A of the Rules, 1976, it is clear that the qualifying services would start from 5-9-1983 till the petitioner took voluntary retirement. Taking the entire period into consideration, the proposal of the Principal, Govt. Degree College, Sarangarh, Distt. Raigarh (Annexure P-6) is correct and the petitioner is entitled to grant of pension in terms of the Pension Rules. If the petitioner is entitled interest on the pensionary amount which became due, the same shall be payable to the petitioner in accordance with law immediately after application for voluntary retirement came into force.

11. The petition is accordingly allowed.

12. No order as to cost