

(2019) 09 DEL CK 0225

In the Delhi High Court

Case No : Civil Writ Petition No. 4543 Of 2016, Civil Miscellaneous Application
No. 35206 Of 2019

Rajeev Kumar Bhardwaj

APPELLANT

Vs

Guru Gobind Singh Indraprastha University And Ors

RESPONDENT

Date of Decision : 16-09-2019

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 26(2)

Citation : (2019) 09 DEL CK 0225

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : Saurabh Tiwari, Harsh Kaushik, Varun Tandon, Avnish Ahlawat,
Nitesh Kumar Singh, Laveena Arora, Meenal Duggal, Viraj R Datar

Final Decision : Allowed

Judgement

Suresh Kumar Kait, J

1. Vide the present petition, Petitioner prays for the following reliefs:

"b) A writ in the nature of certiorari quashing the order dated 03.02.2012 passed by the Ld. District & Sessions Judge, Delhi/ Respondent No.2, being illegal, arbitrary; without jurisdiction and unjust and in violation of the consolidated instructions contained in O.M. dated 26.12.2013;

c) A writ in the nature of certiorari, quashing the letters dated 23.08.2013 and 21.03.2016, issued by the Respondent No. I/University, being illegal; arbitrary, unjust and in violation of the Government Rules and Regulations;

d) A writ of mandamus commanding the Respondent No.I/University to forthwith make an entry in terms of Rule 26(2) of the CCS (Pension) Rules, 1972 in the service book of the Petitioner, in respect of the service rendered by him in the said University with effect from 25.03.2008 (AN) to 17.11.2008 (FN);"

2. Learned counsel appearing on behalf of the Petitioner submits that as far as

the prayer (b) is concerned, on instructions, he does not wish to press the same in the present petition.

3. The case of the Petitioner is that the Petitioner applied for the post of Lower Division Clerk in the office of the District & Sessions Judge, Delhi and on being selected, the Petitioner joined the service of the District Court as Lower Division Clerk on 05.07.2003. Thereafter, on 16.09.2003, the Petitioner was appointed as adhoc Stenographer in the District Court and on 14. 10.2003, he was appointed as a regular Stenographer. On 17.2.2007, the Petitioner was confirmed in the post of Stenographer. Thereafter, on 8. 10.2007, the Petitioner applied for the post of General Assistant in Respondent No.1/University (hereinafter shall be referred as "the University") through proper channel. While working in the District Court, the Petitioner had also applied for the post of Senior Personal Assistant in this Court through proper channel. On 18.02.2008, the Petitioner received an offer of appointment for the post of General Assistant from the University. Accordingly, on 25.02.2008, the Petitioner submitted Technical Resignation from the service of the District Court, which was accepted with effect from 25.03.2008 (AN) vide Order dated 20.03.2008 issued by the Respondent No.2/District Court, Delhi.

4. Learned counsel appearing on behalf of Petitioner submits that vide Order dated 29.05.2008, the Respondent No.2 clarified that the Petitioner will be entitled to the benefit of past service under Rule 26(2) CCS (Pension) Rules, 1972 and lien was retained for two years as per Rules and therefore, the University was fully aware of this fact even at the time when the Petitioner joined the service of University. On 25.03.2008 (AN) itself, the Petitioner joined the service of the University as General Assistant and the Respondent University called for the Service Book etc. of the Petitioner from the Respondent No. 2/ District & Sessions Judge, Tis Hazari, vide their letter dated 22.4.2008. Vide letter dated 15.05.2008, the Petitioner intimated the University regarding the posts applied for by him in various organisations prior to joining the University, including the post of Sr.PA in this Court. In response thereto, vide letter dated 18.07.2008, the University informed the Petitioner that in case of selection to any of the post(s) applied for, prior to joining the University, the Petitioner shall have to resign from the post in the University, with proper notice.

5. Vide letter dated 28.07.2008, the University issued NOC to the Petitioner for attending interview for the post of Sr.PA in this Court, subject to the condition that in case of selection, the Petitioner shall have to resign from the post in the University by giving proper notice and no lien shall be allowed in any case. Vide letter dated 03.10.2008, the Petitioner received offer of appointment to the post of Sr.PA from the Registry of this Court. Accordingly, vide letter dated 16.10.2008, the Petitioner submitted his resignation from the post of General Assistant in the University in order to enable him to join this Court. Vide order dated 4.11.2008, the resignation of the Petitioner was accepted by the University and vide order dated 17. 11.2008, he was relieved from his duties in the

forenoon of 17.11.2008, to join duty in this Court. Petitioner joined service of this Court as Sr.PA in the forenoon of the same date i.e. on 17.11.2008, without any break in service. On 25.02.2008, the Petitioner submitted Technical Resignation from the service of the District Court where he was working prior to joining service of University as the lien on the post of Stenographer retained at District Court for two years was going to expire on 25.03.2010 but the District Court was pleased to extend the lien of the Petitioner for a further period of one year i.e. upto 25.03.2011. The Petitioner was comfortably employed in this Court and he had even successfully completed the probationary period in this Court.

6. Vide letter dated 12.07.2010, the Registry of this Court informed the Petitioner that he had successfully completed the probation on the post of Sr.PA on 17.11.2009 and will be confirmed as Sr.PA on his turn, as and when confirmed vacancy becomes available for him.

7. Learned counsel further submits, when the case of the Petitioner was examined by the Registry of this Court for grant of past service benefits to the Petitioner, they sought certain information from the University vide their letter dated 29.8.2012 since his service book did not contain an entry made by the University under Rule 26(2) of CCS (Pension) Rules. Vide their letter dated 17.12.2012, the University furnished the requisite information to the Registry of this Court, pointing out inter alia that no payment has been received in the University from District Court on account of past service pensionary benefits and therefore, no entry of his past services has been made in the service book.

8. Vide letter dated 14.03.2013, the Registry of this Court forwarded the said letter dated 17.12.2012 of the University to the District Court, for necessary action at their end. Vide letter dated 20.06.2013, the District Court informed the High Court that the University never asked for any past service pensionary benefits in respect of the Petitioner. It was also requested that the service book of the Petitioner be sent for taking further necessary action in the matter.

9. Learned counsel further submits that to the utter shock and surprise of the Petitioner, the University side tracked the issue and informed the District Court vide their letter dated 23.08.2013 that no account for provident fund was maintained and no deduction was made at the University since the Petitioner was on probation and did not complete one year of regular service and since the service of the Petitioner was not confirmed at the University, no communication for transfer of past service benefits was sent to the District Court. In fact, the District Court had merely requested the GGSIP University to initiate the matter for payment on account of past service pensionary benefits, as per rules.

10. Vide letter dated 26.9.2013, the Petitioner inter-alia requested the University to initiate the matter for payment on account of past service pensionary benefits as per rules in respect of the Petitioner with the office of the District Court at the earliest. Vide letter dated 15.01.2014, the University reiterated their stand as intimated by them earlier to the District Court vide their letter dated 23.8.2013

and advised the Petitioner to take up the matter of counting of past service with his previous department i.e. where he was a permanent employee and had retained lien for two years. Moreover, the application of the Petitioner for employment at this Court was forwarded through proper channel from District Court. The Registry of this Court, vide letter dated 09.09.2014, requested District Court to make payment, if any, on account of past service pensionary benefits in respect of service rendered by the Petitioner in District Court to the University. A copy of this letter was also forwarded to the University and they were informed that since the Petitioner joined District Court prior to 01.01.2004 and there is no break in his service, he is covered under the old pension scheme and as such entitled to past service benefits under Rule 26(2) of the CCS (Pension) Rules, 1972. The Registry of this Court categorically mentioned in the said letter that an entry in the Service Book of the Petitioner be made about the service rendered in the University to the effect that the benefits under Rule 26(2) of the CCS (Pension) Rule, 1972 are admissible to him, and if any contribution towards the past service benefits is required from District Court, or any contribution towards GPF etc. for the service rendered in the University, the same may be intimated to them, at an early date. Accordingly, vide letter dated 19.12.2014, Respondent No. 2 complied with the directions of the Registry of this Court and forwarded three cheques towards terminal benefits for the service rendered by the Petitioner in the District Court with effect from 5.7.2003 to 25.3.2008, to the University, drawn in favour of In-Charge (Pers.), the University.

11. Learned counsel for the Petitioner further submits that the Registry of this Court forwarded the Service Book of the Petitioner to the University vide letter dated 27.01.2015, requesting them to make entries under Rule 26(2) CCS (Pension) Rules, as the payment on account of past service pensionary benefits has already been sent to the University by the District Court vide their letter dated 19.12.2014.

12. It is understood that the Respondent No.1/University returned the cheques earlier sent by the District Court to them, requesting them to make the said Cheques in favour of "Registrar, GGSIP University" instead of "In-charge (Pers.), Guru Gobind Singh Indraprastha University, New Delhi".

Therefore, vide their letter dated 16.2.2015 the District Court requested the Pay & Accounts Office No.VI, Tis Hazari, Delhi, to make all the three cheques in favour of Registrar, GGSIP University, as requested by the University vide their letter dated 09.02.2015. Thereafter, vide letter dated 09.03.2015, the District Court again forwarded three revised cheques to the University towards terminal benefits released for the service rendered by the Petitioner in the District Court with effect from 5.7.2003 to 25.3.2008, drawn in favour of Registrar, GGSIP University, New Delhi.

13. After a silence of more than one year, the University/ the Respondent No. 1, in an illegal and arbitrary manner, informed the Registry of this Court vide impugned letter dated 21.3.2016, inter alia that the University is governed by

GGSSIP University Act, Statutes and Ordinances etc. contained therein and has not yet finalized any rules so far regarding past service benefits and that the employees of the University are covered under Contributory Provident Fund scheme. The service book of the Petitioner was also returned without making any entry for reasons best known to the Respondent No. 1/University.

14. Learned counsel for the Petitioner submits that as per clause 32 of Statute 32 of the Guru Gobind Singh Indraprastha University Act, Statutes and Ordinances provides that where no explicit rules have been made or for any interpretation or clarification, corresponding rules followed in the Government may be adopted subject to the approval of the Board of Management. On 06.04.2016, the office of the District & Sessions Judge enquired from the University to clarify whether they should re-issue the fresh cheques in favour of Registrar, GGSIP University or should they make the payment to the Petitioner through their good office.

15. However, the impugned action of the University in not making entries in the service book of the Petitioner under Rule 26(2) of CCS (Pension) Rules, is illegal, arbitrary, unjust and against the Government Rules, inasmuch as the Respondent No.2 was agreeable to make payment towards terminal benefits for the service rendered by the Petitioner in the office of the District & Sessions Judge, from 05.07.2003 to 25.03.2008 and the Respondent No.2 had in fact, sent three cheques for the said payment, to the University vide their letter dated 19.12.2014.

16. On the other hand, learned counsel for Respondent Nos. 2 and 3 have no objection if the present petition is allowed.

17. As far as the Respondent No. 1/ University is concerned, learned counsel appearing on behalf of the said Respondent submits that the provisions of Clause 29 of Statute 32, as promulgated by the Respondent No. 1 to govern the service conditions pertaining to its non - teaching employees, clearly stipulates that such non-teaching employees of the Respondent No. 1 would be covered under the Contributory-cum-Gratuity scheme (hereinafter referred to as the "CGS") and that the employees shall not be entitled to pension but they will be entitled to such other benefits as laid down in the scheme. Ordinance 4 of the University lays down the Contributory Provident Fund- Cum-Gratuity Scheme. The provisions of Clause 29 of Statute 32 clearly stipulate that employees shall not be entitled to pension but they will be entitled to such other benefits as are laid down in the aforesaid CPF scheme as laid down under Ordinance 4 of the University. The offer of appointment issued to the Petitioner i.e. Memorandum dated 18th February 2008 explicitly stated in para 2 that "the terms and conditions of appointment including retirement benefits shall be governed by the provisions of the notified statutes and ordinances in respect of service conditions of non-teaching employees of the University, as amended from time to time", thus the Petitioner while joining the University opted to be governed by the schemes for retirement benefits as applicable in the University for the non-

teaching employees.

18. Learned counsel for Respondent No. 1 further submits that under the provisions of Clause 1.1 (i) of Ordinance No. 4 governing the CPF-cum-Gratuity Scheme, the University only makes CPF deductions after the completion of a period of one (1) year of continuous service with it, which admittedly, the Petitioner failed to do so. As such, no deduction on account of CPF was made by the University in respect of the Petitioner, during period of his employment with the University.

19. It is also submitted that the accompanying Petition does not involve a question of mere continuity of service as claimed by the Petitioner, it involves the question of continuity of service for the purposes of pensionary benefits under the CCS (Pension) Rules 1972. During the period of employment of the Petitioner with the University, there was no rule for continuity of past service for pensionary benefits for the employees governed under Statute 32 of the University. Clause 29 of Statute 32 explicitly bars pension and thus pensionary benefits and the benefits of Rule 26(2) of CCS (Pension) Rules 1972 for the pensionary benefits cannot be extended to the Petitioner.

20. Learned counsel further submits that the Board of Management of the University, vide its decision dated 23.02.2015 (60th meeting), has approved an amendment to aforementioned Clause 29 of the Statute 32, which stipulates that "the employees of the University will be covered under the scheme of Contributory-cum-Gratuity scheme notified in the ordinance. However, the employees, who were appointed on regular basis prior to 01.01.2004, may opt Pension-cum-General Provident Fund Scheme of the University as laid down in the Ordinance." Learned counsel submits that the aforesaid amendment is presently under consideration of the Government. Board of Management, vide the decision taken in Item No. 50.03 dated 27.09.2012, has approved Ordinance 36 of the Respondent No. 1, which deals with Pension-cum-General Provident Fund Scheme. Clause 3 of the said Ordinance 36 deals with the counting of the past service and Clause 26 of the Ordinance 36 provides, inter alia, for applicability of CCS (Pension) Rules to the University. However, the benefits of the said Ordinance 36, if any, cannot be provided to the Petitioner on account of the fact that the proposed Ordinance 36 has not been published in the official gazette by the Government of the National Capital Territory of Delhi and the proposed amendment to Statute 32 is still under consideration.

21. Heard learned counsel for the parties in length.

22. Fact remains, the issue in the present petition is that the Petitioner seeks entry in his service book for the period he worked with the University-Respondent No. 1. Undisputedly, the present petition is not for any benefit/pension/ gratuity etc. However, the Petitioner seeks only the entry to be made in his service book by the University. Though, as per the appointment letter of the Petitioner, the post in which he remained with the University is non-pensionary

and he is not an employee of the University anymore but is an employee of this Court. Therefore, I fail to understand as to why the University has objection for making the entry in the service book.

23. Accordingly, I hereby while allowing the petition direct the Respondent No. 1/ University to make entry in the service book of the Petitioner.

24. It is explicitly made clear that the Petitioner shall not claim any pension/ contributory allowance or gratuity from the University at any subsequent time.

25. I hereby further clarify that this order will not effect, in any manner, the status of the University as a non-pensionary establishment.

26. Accordingly, the Registry of this Court is directed to send the service book of the Petitioner to the University within one week for the necessary entry, which shall further be made within one week. Thereafter, the service book of the Petitioner shall be returned to Registry of this Court after necessary compliance.

27. The writ petition is allowed and disposed of accordingly with no order as to costs. Pending application also stands disposed of.