

(1998) 06 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : O.W.P. No. 1106/93

S.Aya Sing

APPELLANT

Vs

State of J&K and others

RESPONDENT

Date of Decision : 01-06-1998

Acts Referred:

Civil Services Regulations, 1956 — Article 177, 177A, 185, 185D(V)a, 185D(V)b(ii)
Constitution of India, 1950 — Article 226
Jammu and Kashmir Civil Procedure Code, 1977 — Order 6 Rule 17

Citation : (1998) SriLJ 448

Hon'ble Judges : R.C.Gandhi, J

Bench : Single Bench

Advocate : Seema Shehkar, O.P.Thakur, Advocates appearing for the Parties

Judgement

1. The petitioner has sought for the issuance of a writ of mandamus commanding the respondents to process his case for sanction of pension and

other benefits in his favour and to pay the arrears due with interest at the rate of 20% per annum.

2. Petitioner has averred in the petition that he was appointed as a driver on substantive basis on 4.10.1971 in the J and K Minerals Ltd, a

Corporation wholly owned and controlled by the State of Jammu and Kashmir. The petitioner was driving Impalla Cheverlat car of the J and K

Minerals Ltd. for the use of the Managing Director or Chairman of the Corporation. He rendered 20 year of service in the said Corporation to the

entire satisfaction of the officers. The said car was transferred to the state Motor Garages and it was also decided that the petitioner be also

transferred alongwith the post held by him in the J and K Minerals Ltd. to the State Motor Garages. However, the aforesaid decision could not be

implemented till 1988 when the car was returned by the State Motor Garages after three years on the ground that the state Government has not approved the purchase of the car at the rate of Rs. 12,000/.As regards the petitioner, it was decided by the Government that he would be absorbed as a fresh employee with out giving him the benefit of his past service. The petitioner alleges that these conditions were not acceptable to him or the Corporation. The matter came up for discussion once again in the meeting of the Board of Directors of J and K Minerals Ltd. held on 10.7.1988 where in it was resolved that the matter be referred to the General Administration Department (GAD) for issuing requisite orders for transferring the car to the State Motor Garage alongwith driver on suitable condition particularly to ensure that the driver was given the benefit of his past service also. The secretary to Government, GAD, under letter No. TR103/83SMG dated 17.2.1988 of the Transport Department was intimated that the spare parts for the imported car(Cheverlot) are not easily available throughout the country, therefore, the department has dropped the idea of purchasing the car from the J and K Minerals Ltd. The Transport Department also conveyed to the GAD that he has no objection if the petitioner is transferred to the State Motor Garages alongwith the post held by him in the J and K Minerals Ltd.

3. The Government under Govt. order No.1301GD of 1988 dated 9.9.1988 accorded sanction for transfer of the petitioner driver to the State Motor Garages alongwith the post held by him in the J and K Minerals Ltd. On representation of the petitioner, his pay also came to be protected under Govt. Order No:38GAD of 1990 dated 8.1.1990 and was fixed at the rate of Rs.1,760/per month in the payscale of Rs.9001830.The petitioner retired on attaining superannuation on 30.4.1992.His pension case was processed and forwarded by the State Motor Garages to the Accountant General for sanction of the pension. The Accountant General has objected for according sanction on the ground that the petitioner is not entitled to pension as his case is not covered under Article 185D(V) (b) of the J and K Civil Services Regulation Aggrieved of it, the petitioner is seeking the relief of processing his case for sanction.

4. Respondents have filed objections stating there in that the petitioner was transferred to the State Motor Garage by Govt. Order dated

9.9.1988(supra) clearly specifying in the order that he will be placed at the bottom of the seniority list of the Drivers of the State Motor Garages.

However, subsequently on the representation made by the petitioner, sanction was accorded for protection of his pay in terms of Govt. Order

dated 8.1.1990, the petitioner has rendered less than four years of service as an employee of the Government in the department of State Motor

Garages, therefore, he is not entitled to pension though his case was processed which has not found favour with the Accountant General having

found him ineligible for grant of pension in view of the provisions of Article 185D(v)(b) of the CSR. The petitioner was transferred from

nonPensionable post in the corporation to the State Government and thus not entitled to pension.

5. I have heard learned counsel for the parties, perused the pleadings and other material on record.

6. The contention of Mr.Thakur that since the pay of the petitioner has been protected, it assumes the element of implied sanction of granting

benefit of the service rendered in the J and K Minerals as a qualifying service for the purposes of pension, is misplaced. The petitioner on his

transfer from the J and K Minerals Ltd. to the petitioner, his seniority also ought to have been fixed accordingly reckoning the past service. A

Government employee under the service rules is entitled to pension only when he is having qualifying service of not less than ten years to his credit.

The petitioner had served in the J and K Minerals Ltd. With effect from 4.10.1961 to 20.9.1988 and was transferred to the State Motor Garage

with effect from 21.9.1988 afternoon. Learned counsel for the petitioner could not produce any rule or law which can be pressed in aid of his

contention for reckoning the past service rendered by the petitioner in the J and K Minerals Ltd. to be qualifying service in a Govt. Department for

the purposes of pension and other benefits. Respondent NO.4 has rejected the case of the petitioner for grant of pension stipulating that Article

185d(v) (b) of the CSR does not cover the case of the petitioner.

7. The above provision of law deals with the absorption of a permanent government servant in a public sector undertaking whereas the case of the

petitioner is with regard to absorption from a public sector undertaking to a government department, this provision of law also does not help the

petitioner .He could not make out any case for seeking the direction prayed for.

8. Respondents have filed an application seeking permission of the Court to amend the objection filed on behalf of respondents 1 to 3 on the

ground that while preparing objection an error has crept up to the effect that the J and K Minerals Ltd. has been mentioned and projected as

Autonomous/statutory body"" instead of a 'public sector undertaking in reply filed to the writ petition. The result of this error is that the stand of the

Government is in consonance with the opinion of the Finance Deptt. that Article 185D(v) (a) and(b) (ii) of the J and K CSR applies only in case of

autonomous/statutory bodies and not to public sector undertakings on the ground that the respondents have made an admission which cannot be

withdrawn. It is not a case of admission but a mistake of fact. If the contention of the petitioner is accepted, the petitioner being not eligible to

pension has to be granted the pension. The contention apparently is fallacious. The provisions of Article 185D(v) (a) and (b) (ii) deal with the cases

of autonomous/statutory bodies and not to public sector undertakings as the J and K Minerals Ltd. is. This application of the respondents has

been opposed by the petitioner on the ground that the respondents have made an admission which cannot be withdrawn. It is not a case of

admission but a mistake of fact. If the contention of the petitioner is accepted, the petitioner being not eligible to pension has to be granted the

pension. The contention apparently is fallacious. The provisions of Article 185D (v) (a) and (b) (ii) deal with the cases of autonomous/statutory

bodies excluding public sector undertakings?

9. In view of the above findings the application needs to be allowed.

10. Though the case of the petitioner has been recommended by the State Motor Garages for sanction of the pension under the impression that he

may be entitled to the past service for pensionary benefits. Respondent No.4 has taken a valid objection that unless the petitioner has the requisite

qualifying service entitling him for pension, no such benefit of grant of pension can be extended in favour of the petitioner. Learned counsel for the

petitioner could not support his contention with any provision of law for seeking relief as prayed for.

11. The result is that the petition is held to be not maintainable and is dismissed.