
(2010) 05 SHI CK 0136
In the High Court Of Himachal Pradesh

Sh. Gopal Singh	Vs	APPELLANT
State of H.P. and Another		RESPONDENT

Date of Decision : 04-05-2010

Acts Referred:

Citation : (2010) 05 SHI CK 0136

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sanjay Karol, J.—The facts in the instant case are not in dispute. Petitioner was originally appointed as an Electrician with the Himachal Pradesh Medical College. He continued to work there from 5.8.1973 up to 2.1.1975. Certain posts of Electricians were advertised by respondent No. 2 to which the petitioner applied and vide office order dated 30.11.1974 he was appointed as an Electrician and continued to work as such up to 30.6.1984.

2. Some time in the year 1983, the State of Himachal Pradesh/respondent No. 2 took a policy decision of creating a separate organisation for carrying on the activity of dairy development. Some of the employees of the Animal Husbandry Department were sent on deputation to this organisation. Petitioner was one of them. Consequently w.e.f. 30.6.1984 he continued to work as an Electrician on deputation with the Himachal Pradesh Milk Federation. There is no dispute that he continued to work there till the date of his retirement on 30.11.2006.

3. It is the grievance of the petitioner that even though he has rendered sufficient service yet pensionary benefits, to which he is otherwise entitled to in law, have not been disbursed to him.

4. There is no dispute that petitioner has served the State for a period of 10 years, 11 months and 14 days with the I.G.M.C. & Animal Husbandry Departments and 22 years, 4 months and 29 days with the Milk Federation.

5. The State is opposing the petitioner's claim on the ground that being a temporary employee petitioner was not entitled to the pensionary benefits.

6. While interpreting Rule 37 and 13 of the Central Civil Services (Pension) Rules, 1972 a Division Bench of this Court in judgment dated 4.7.2008 passed in CWP No. 1785/2002, titled as Principal Secretary (AH), to the Govt. of H.P. and Anr. v. Dagu Ram has held as under:

A combined reading of the Rules, instructions etc. quoted hereinabove clearly shows that the intention of the Government is that a government employee shall not lose the benefit of the service rendered by him in government service if he is sent or even voluntarily joins a Public Sector Undertaking or an autonomous body, owned and controlled by the Government. Therefore, we are of the view that even temporary service followed by absorption and substantive appointment in a Government Undertaking would entitle the employee to claim pension for the period he rendered services in the Government Department.

In the present cases, the respondents had rendered long service for more than 10 years in the Animal Husbandry Department. In natural course, they would have been regularized and would have got substantive appointment in the said Department. They would have been entitled to count their temporary service for the purposes of computing the qualifying service in terms of Rule 13 of the Rules. We see no reason why they should be denied this benefit merely on account of the fact that they were sent to a Government Undertaking and absorbed there. It was the Government which decided to form the Milk Fed. It was the Government which decided that the employees working in the dairy development scheme would be sent on deputation to the newly created Federation. No doubt, an option was sought from the employees. However, as observed by us above, in case any employee had refused to join the Milk Fed., he would have lost the job. Therefore, we feel that the words "substantive appointment or post in same or another service", as used in Rule 13 of the Rules, will include any substantive appointment either in Government service or in public sector undertaking or autonomous body owned and controlled by the Government. The employees in such cases would be entitled to count their service including temporary service rendered in Government service for the purpose of calculating their qualifying service.

In view of the above discussion, we are of the considered opinion that the employees are entitled to claim benefit of the temporary service rendered by them in the Animal Husbandry Department of the State of Himachal Pradesh for the purposes of pension. Therefore, for reasons other than those taken by the learned Tribunal, we uphold the order of the learned Tribunal. The writ petitions are accordingly dismissed with no order as to costs.

7. Except for the fact that petitioner had not been confirmed on a substantive post and retired as a temporary employee the facts are almost similar.

8. It is undisputed that petitioner has rendered his services to the satisfaction of

his employer. No disciplinary action against him has either been initiated or is in contemplation. Record does not suggest as to why his services were not confirmed. There has been no fault on his part. An employee who has been working to the satisfaction of his employer for more than three decades in three different organisations of the State ought to have been confirmed. He cannot be left in a state of uncertainty. State as a model employer is duty bound to provide for promotional and retiral opportunities and benefits to its employees. In *Dagu Ram* (supra) the Court itself has observed that but for the fact that persons like petitioner were compulsorily sent on deputation, in normal course they would have been regularised had they continued to serve the Government in the Animal Husbandry Department.

9. The Rules have to be interpreted in a manner so as to subserve the purpose for which they are framed. It is a beneficial legislation made for the employees, who, without any fault on his part cannot be deprived of his retirement benefits. It cannot be disputed that similarly situated persons, who otherwise stand confirmed are eligible to get the pensionary benefits. This fact alone creates an artificial discrimination which is not permissible in law. Keeping in view the long standing service rendered by the petitioner he is deemed to be confirmed and thus entitled to the benefits of pension in accordance with the Rules.

10. The respondents are directed to take consequential actions within a period of twelve weeks from the date of the receipt of the certified copy of the order.

11. For the aforesaid reasons the present petition stands allowed.