
(2013) 03 CAL CK 0041
In the Calcutta High Court
Case No : WPCT No. 683 of 2012

Shri Parimal Halder

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 04-03-2013

Acts Referred:

Citation : (2013) 03 CAL CK 0041

Hon'ble Judges : Nishita Mhatre, J;Anindita Roy Saraswati, J

Bench : Division Bench

Advocate : Rajinder Singh and Mr. Tapan Kumar Das, for the Appellant; S.K. Mandal, for the Respondent

Final Decision : Allowed

Judgement

Nishita Mhatre, J.—The challenge in this petition is to the order of the Central Administrative Tribunal, Calcutta Bench, Circuit at Port Blair in O.A. No. 124/A&N/2011. By the impugned order, the Tribunal has dismissed the Original Application filed by the petitioner. The order is a common order passed in O.A. No. 43/A&N/2011, O.A. No. 122/A&N/2011, O.A. No. 123/A&N/2011 and O.A. No. 124/A&N/2011. The petitioner has preferred the present petition against the order passed in O.A. No. 124/A&N/2011 which was filed by him before the Tribunal. The petitioner was appointed as a Physical Education Teacher on an ad hoc basis for three months from 1st February, 1999 to 30th April, 1999. He was re-appointed on 9th August, 1999 as a Physical Education Teacher. His appointment was again on ad hoc basis for a period of six months up to 31st January, 2000. The ad hoc appointment was extended for a further period of three months by an order dated 8th February, 2000. Accordingly, the period of the ad hoc appointment was extended up to 30th April, 2000. The petitioner's service was extended on 12th May, 2000 in terms of the Tribunal's order dated 9th February, 2000 in O.A. No. 4/A&N/2000 (Suresh Chandra Paul & Ors. Vs. Union of India & Ors.). This extension was granted up to further orders.

2. There is no dispute that the petitioner was appointed to the post of Physical

Education Teacher on the basis of the recommendation of the Departmental Promotion Committee by an order of 11th July, 2003. Applications were invited by the Assistant Director (Education) from those persons who were appointed on ad hoc basis and were working without a break as Teachers, Librarians, Craft Instructors, Laboratory Assistants for regularising the period of such appointment. The Assistant Director (Education) by a communication sent to all Deputy Education Officers requested them to furnish details by 10th April, 2010 of the teaching staff who were initially appointed on ad hoc basis and were in service without any break.

3. The petitioner preferred an application before the Tribunal seeking the relief of continuity of service with effect from 5th February, 1999 when he was appointed on ad hoc basis followed by a regular appointment on 11th July, 2003. The petitioner prayed that three increments be issued to him. The petitioner also sought arrears of pay and other consequential benefits arising out of the grant of such regularisation.

4. The application was opposed by the respondents principally on the ground that the petitioner's ad hoc service was not continuous as technical breaks in service had occurred.

5. It was contended before us on behalf of the petitioner that the petitioner was entitled to the same pay as a regular teacher for the period for which the petitioner was appointed on an ad hoc basis. The learned Counsel appearing for the petitioner argued that since one Peter Kennedy who was similarly situated had been granted such increments during the ad hoc service rendered by him, though subsequently withdrawn, the petitioner was also entitled to the regular pay scale along with increments.

6. The learned Counsel for the respondents Mr. Mandal has submitted before us that the petitioner had filed an application on an earlier date for regularisation of his service from the date of his appointment as an ad hoc employee. That order had been passed by the Tribunal on 27th September, 2000. The Tribunal, according to Mr. Mandal, had considered the issue as to whether the petitioner was entitled to regularisation on the basis that he was in the merit list of the participants from which the select list had been prepared. It appears that the order in the Original Application to which the petitioner herein was applicant No. 2 was challenged by preferring WPCT No. 887 of 2000. Mr. Mandal has argued that this amounts to constructive res judicata and that the petitioner is not entitled to any relief. According to him, by a circuitous method the petitioner is seeking the same relief as he had in WPCT 887 of 2000.

7. There is no dispute that the petitioner had been appointed on an ad hoc basis. He was informed while being appointed that he would have no claim in future for appointment to the post against which the ad hoc appointment was made. He was also informed that such appointment would not bestow upon him any right for future appointment. There is also no dispute that ad hoc appointment of the

petitioner as Physical Education Teacher was extended from time to time. However, there is no dispute that the issue before the Tribunal was only for regularisation of the petitioner's service with effect from his ad hoc appointment.

8. On perusal of the pleadings before us we find that 22 (Twenty-two) posts of Physical Education Teachers were advertised on 30th January, 1997. The petitioner applied for the post and was duly selected. However, he was given an ad hoc appointment initially on 1st February, 1999, thereafter, on 9th August, 1999. The petitioner was re-appointed and continued in service till he was regularised with effect from 11th July, 2003 as a Physical Education Teacher. The prayer of the petitioner in this case i.e. O.A. 124/A&N/2011 is as follows:-

(A). An order be passed directing the respondent authorities to grant benefit of continuous service on adhoc with effect from 05.02.1999, followed by regular appointment on 11/7/2003 by granting three increments for purpose of fixation of pay.

(B). An order be passed directing the respondent authorities to pay arrears of pay and other consequential benefits arising out of grant of increments and fixation of pay.

(C) Any such order/orders be passed and or direction or directions be given as this Hon'ble Tribunal may deem fit and proper.

(D) Cost and incidentals to this application.

9. This prayer, in our opinion, is not the same as the prayer sought by the petitioner in the earlier round of litigation. The Tribunal did not grant the prayer for regularisation with effect from the date when the petitioner was appointed on an ad hoc basis. Aggrieved by that, the petitioner had approached this Court in WPCT 887 of 2000. By the order passed on 26th February, 2001 by this Court, it was held that the petitioner should be treated equally with others who had been appointed on ad hoc basis from the merit list prepared during the earlier selection.

10. Thus, the prayer sought in the earlier round of litigation before the Tribunal was very different from the prayer sought in the present application being O.A. No. 124/A&N/2011. Whereas, in the present application i.e. O.A. No. 124/A&N/2011 the prayer is for payment of arrears and consequential benefits with respect to the pay scale which the petitioner was seeking, the prayer sought in the earlier application i.e. O.A. No. 4/AN/2000 was for regularisation of the ad hoc period of appointment. It is, therefore, not possible to accept the submission of the learned counsel for the respondents that the decisions in O.A. No. 4/AN/2000 which was confirmed by the High Court would operate as res judicata in respect of the prayer of the petitioner in O.A. No. 124/A&N/2011.

11. In AIR 1996 971 (SC) the Supreme Court held that the period of ad hoc service rendered by an employee must be taken into consideration for the purposes of pay fixation. The Supreme Court observed that although the ad hoc

service rendered by an employee cannot be counted for the purpose of seniority, the employee is entitled to the benefit of this period of ad hoc employment while fixing his pay scale.

12. In the present case also, the prayer of the petitioner is that the period of service rendered by him while in ad hoc employment should be considered for the purposes of fixation of his pay. The petitioner has also sought increments for the period of service rendered by him on ad hoc basis from 5th February, 1999 onwards. The appointment of the petitioner on ad hoc basis continuously commenced from 9th August, 1999 and continued till he was regularly selected as Physical Education Teacher on 11th July, 2003. Therefore, the petitioner would certainly be entitled to all increments and consequential benefits for the ad hoc service rendered by him and for purposes of pay fixation when he entered regular employment as a Physical Education Teacher.

13. Emphasis was placed by the respondents before the Tribunal on a letter submitted by the petitioner while accepting the ad hoc appointment. According to the Respondents this letter indicated that the petitioner was not entitled to any benefit of the ad hoc appointment with respect to seniority and the pay scale payable to the petitioner. The Tribunal has denied this benefit to the petitioner because he had accepted the ad hoc appointment by foregoing his claim for future appointment. This letter has no relevance to the claim made by the petitioner for fixation of his pay scale by reckoning the period of ad hoc service rendered by him immediately prior to his regularisation in service. An employee cannot be denied the benefits to which he is entitled in law because he had agreed to forego what was his legitimate right at the time he was appointed.

14. Accordingly, the impugned order of the Tribunal is quashed and the petition is allowed with no order as to costs.

Anindita Roy Saraswati, J.

I agree.