
(2013) 07 GAU CK 0011
In the Gauhati High Court
Case No : Writ Petition (C) No. 4647 of 2008

Shri Umesh Chandra Dutta	Vs	APPELLANT
The State of Assam and Others		RESPONDENT

Date of Decision : 24-07-2013

Acts Referred:

Assam Secondary Education (Provincialisation) Act, 1977 — Section 2(ii)
Constitution of India, 1950 — Article 226

Citation : (2013) 07 GAU CK 0011

Hon'ble Judges : N. Chaudhury, J

Bench : Single Bench

Advocate : S.D. Choudhury and Mr. S. Hoque, for the Appellant; U.K. Goswami, Learned Standing Counsel, Education Department, for the Respondent

Final Decision : Allowed

Judgement

N. Chaudhury, J.—By this application under Article 226 of the Constitution of India the petitioner has prayed for interference of this Court for redressal of his grievance that despite having adequate qualification in service he has been denied the benefit of pension. The petitioner was initially appointed as a teacher in Lalit Chandra Deka Girls' M.E. School, Patrapur. Having worked there for about 2 years the petitioner was appointed as Head Master of the High School Section, namely, Lalit Chandra Deka Girls' High School. It is understood that in view of his service as Assistant Teacher in the M.E. School Section he was promoted to the post of Head Master of the High School Section of the School. It appears that the school got adhoc grant w.e.f. 01.01.1984. Both the sections of the school, namely, the ME School and the High School Section were provincialised by 1991. The petitioner retired from the post of Head Master of Lalit Chandra Deka Girls' High School on 31.08.1995. According to the petitioner his service should be counted from 01.02.1985 i.e. his initial appointment in the school for the purpose of retirement benefit and in that event he has served for more than 10 years which entitles him to the benefit of pension. But in the communication dated 06.05.1996 the Inspector of Schools, KDC, Guwahati addressed to the

Director, Secondary Education shows the date of appointment of the petitioner as 08.03.1987 and date of retirement as 31.08.1985 and thus the petitioner was shown to have been left with service of merely 8 years 5 months and 23 days. It is the contention of the petitioner that in view of such report submitted by Inspector of Schools, KDC, Guwahati he has been deprived from the benefit of pension. u/s 2(ii) of the Assam Secondary Education (Provincialisation) Rules, 1977 date of appointment means in relation to any employee the date on which he joined the service to the School imparting Secondary Education on and from the date of its coming under adhoc system of grants-in-aid. So in that view of the matter the date of appointment of the petitioner cannot be the date of provincialisation and or any other date except the date of his initial appointment or atleast from the date of coming under adhoc system of grants-in-aid. In this case the school received adhoc grant on 01.01.1984 and the petitioner was appointed on 01.10.1985 and as such in this case the date of appointment has to be 01.10.1985 itself.

2. The learned Standing Counsel, Education Department submits that the petitioner retired as Head Master of Lalit Cahandra Deka Girls' High School and in that school he joined only on 08.03.1987 and he shall not get the benefit of past service w.e.f. 01.02.1985. In this regard it can be seen that similar situation arose in the case of B.K. Mohapatra Vs. State of Orissa and Another, wherein there were two classes of schools. The petitioner was a teacher of B Class of school and after the merger of the princely state with the province of Orissa said B.K. Mahapatra did not get the benefit of his past service in the group B schools and only his service under the A class school was considered. The Hon''ble Supreme Court in paragraph 9 of the judgment held, inter alia, that the benefit of entire past service rendered by government servant cannot be taken away and the Government ought to have made a scheme for rationalisation. In the case in hand admittedly there were two sections, one M.E. Section and the another is High Section. Obviously the M.E. Section served as the feeder source of the High School. The petitioner was appointed to the post of Head Master of the High School Section on the basis of the service rendered in the M.E. Section of the school. In that view of the matter, it is difficult to accept the contention of the learned Standing Counsel that the petitioner rendered services in a different school and the same cannot be taken into consideration for the purpose of recounting his qualifying service for pension.

3. It appears that both the Sections subsequently were provincialised on 19.11.1991 separately and thereafter in 1999 both the schools were amalgamated. Even by applying the doctrine of relating back in view of amalgamation the petitioner becomes entitled to the benefit of past service.

4. After hearing the learned counsel for the petitioner and the learned Standing Counsel of the Education Department I allow this writ petition with a direction to the respondents more particularly the Director of Secondary Education to consider the case of the petitioner for past service rendered in Lalit Chandra

Deka Girls" M.E. School and thereafter to take necessary steps for the purpose of giving retirement benefits. The necessity as well as philosophy of granting pension benefit to a retired government employee has been held by the Hon''ble Supreme Court in the case of D.S. Nakara and Others Vs. Union of India (UOI), . It has been held that pension is nothing but a deferred wage of an employee who has given the hey day of his service to the Government. Paragraph 19 & 20 of the said judgments are quoted below:

19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answers to these and incidental questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deokinandan Prasad Vs. The State of Bihar and Others, wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone''s discretion. It is only for the purpose of quantifying the amount having regard to service and other a lied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab and Another Vs. Iqbal Singh, .

5. On consideration of all these aspects of the matter, the only conclusion that can be drawn is that the petitioner''s past service in M.E. School has to be counted and he should be given retirement benefits. The same shall be done by respondent No. 2 within a period of 3 months from the date of receipt of the certified copy of this order.

6. Accordingly, the writ petition is allowed. No order as to costs.