
(2006) 10 BOM CK 0001
In the Bombay High Court
Case No : Writ Petition No. 68 of 2003

Shrikrishna Metkar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-10-2006

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 14, 26, 26(1), 26(2), 3

Citation : (2007) 1 ALLMR 796 : (2007) 1 BomCR 666 : (2007) 1 MhLj 812

Hon'ble Judges : V.C. Daga, J;A.B. Chaudhari, J

Bench : Division Bench

Advocate : Kalyani Deshpande, for the Appellant; Govind Mishra, for the Respondent

Final Decision : Dismissed

Judgement

A.B. Chaudhari, J.—Dissatisfied with the order dated 29-7-2002 passed by the Central Administrative Tribunal, Mumbai, in Original Application No. 2055 of 2002, the petitioner has challenged the same in this writ petition. By the impugned order, the Tribunal has held the applicant/petitioner not eligible for the pension.

2. The petitioner had filed Original Application No. 2055/02 before the Tribunal stating therein that having been appointed in 1977 he came to be declared as quasi-permanent in 1980 and was transferred from Ratnagiri to Nagpur where he continued to serve till 2-6-1987. During his service at Nagpur he suffered from illness and, as such, due to ill-health he tendered his resignation on 2-6-1987 which eventually came to be accepted on 11-11-1987. A certificate was accordingly issued by the Department on 1-9-1999. Thus, the petitioner worked from 31-3-1977 to 1-6-1987 as Transmission Executive at All India Radio.

3. It was the case of the petitioner that he, having completed 10 years and two months" service, was entitled to pensionary benefits, which was not granted to him. He stated that he become eligible for pension having completed ten years of

service after the recommendations of 4th Pay Commission which came into effect with effect from 1-1-1986. The learned Counsel for the petitioner relied upon of decision of Apex Court in Union of India and Others Vs. Dr. Vijayapurapu Subbayamma, to support her contention that the petitioner was entitled to pension after completing service of ten years. Mrs. Deshpande, learned Counsel for the petitioner, during the course of arguments, stated that at any rate the petitioner was entitled to pro rata pension and for that purpose she relied upon the decision of the Apex Court in the case of Praduman Kumar Jain v. Union of India reported in : 1994(3)SCALE160 .

4. Mrs. Deshpande, learned Counsel for the petitioner, urged before us that what was applicable in the instant case was Rule 49 of the Pension Rules, and in particular Rule 49(2)(b). Rule 49(2)(b) reads thus:

49. Amount of Pension

(1)...

(2)(a)...

(b) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty-three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under Clause (a) and in no case the amount of pension shall be less than (Rupees three hundred and seventy-five) per mensem.

In order to buttress her argument that the resignation tendered by the petitioner would, in fact, amount to voluntary retirement, she relied upon para 8 of the decision of Apex Court decision in the case of J.K. Cotton Spinning and Weaving Mills Company Ltd. Vs. State of U.P. and Others, reading as under:

8. In the present case the employee's request contained in the letter of resignation was accepted by the employer and that brought an end to the contract of service. The meaning of term "resign" as found in the Shorter Oxford Dictionary includes "retirement." Therefore, when an employee voluntarily tenders his resignation it is an act by which he voluntarily gives up his Job. We are, therefore, of the opinion that such a situation would be covered by the expression "voluntary retirement" within the meaning of Clause (i) of Section 2(s) of the State Act. In Santosh Gupta Vs. State Bank of Patiala, , Chinnappa Reddy, J. observed as under (at p : 1220 of AIR):

Voluntary retrenchment of a workman or the retrenchment of the workman on reaching the age of superannuation can hardly be described as termination, by the employer, of the service of a workman.

(Here the word "retrenchment" has reference to "retirement.").

The above observations clearly supports the view which commends to us. We are, therefore, of the opinion that the High Court was not right in concluding that

because the employer accepted the resignation offer voluntary made by the employee, he terminated the service of the employee and such termination, therefore, fell within the expression "retrenchment" rendering him liable to compensate the employee u/s 6N. We are also of the view that this was a case of "voluntary retirement" within the meaning of the first exception to Section 2(s) and therefore the question of grant of compensation u/s 6N does not arise. We, therefore, cannot allow the view of the High Court to stand.

5. Per contra, Shri Govind Mishra, learned Central Government Counsel appearing on behalf of the respondents, opposed the claim made by the petitioner. He strongly relied upon Rule 26 of Central Civil Services (Pension) Rules, 1972 (for the sake of brevity called as Pension Rules). It was the case of the respondents that the petitioner having voluntarily tendered his resignation on his own volition, lost his entire past service for the purpose of pension and, as such, became ineligible to claim pension in accordance with the Pension Rules.

6. We have heard Mrs. Deshpande, learned Counsel for the petitioner and Mr. Govind Mishra, learned Counsel, for the respondents.

6A. Perusal of the decision of the Supreme Court in the case of M/s J. K. Cotton Spg. Wvg. Mill Co. Ltd., Kanpur (*supra*) would reveal that the act of resignation of the employee has been found to be covered within the meaning of expression of "voluntary retirement." We have also perused the resignation letter dated 2-6-1987 that was tendered by the petitioner which does not reveal that the petitioner wanted to resign in order to get any other job. He resigned due to illness.

7. The Central Administrative Tribunal after hearing the counsel for the parties held that in accordance with the recommendations of the 4th Pay Commission, pension is payable after ten years only if the retirement is by virtue of superannuation or on invalid grounds. The learned Member of the Tribunal though held that the eligibility for claiming pension after ten years of service was with effect from 1-1-1986, the Tribunal rejected petitioner's contention in that behalf. The Tribunal relied upon the judgment of Ernakulam Bench of the Tribunal in the case of Dr. N.P. Hrishi v. Government of India and Anr. and held that the case of the present applicant was covered by the said decision of Tribunal, and therefore the petitioner was not entitled to any relief.

8. During the course of hearing, we repeatedly asked the counsel for the parties to produce the copy of the said judgment in the case of Dr. N. P. Hrishi of Ernakulam Bench of the Tribunal. Since the respondents had relied upon the said judgment before the Tribunal, we repeatedly requested Mr. Mishra, learned Central Government counsel, to produce the copy of the said judgment for our perusal. However, despite sufficient opportunity being given to both the counsel for the parties, the copy of the said judgment was not produced before us. We were also handicapped inasmuch as except mentioning the name of Dr. N. P. Hrishi, no other details have been mentioned in the impugned order of the

Tribunal.

9. We have given our anxious consideration to the matter in issue. What we find is that prior to 1-1-1986, i.e. the effective date of recommendations of 4th Pay Commission, an employee who had put in less than 20 years of qualifying service was not eligible to earn pension. After coming into force of the recommendations of the 4th Pay Commission, effective from 1-1-1986, this requirement of qualifying service to earn pension was reduced from 20 years to ten years. By the said recommendations, a new class of pensioners was introduced. This is what the Apex Court has held in *Union of India v. Dr. Vijayapurapu Subbayamma*'s case (supra). Thus the object of making the aforesaid change clearly appears to us to be to make eligible those who have put more than ten years of service as against 20 years in the past. If this is so, the very purpose of revision of Pension Rules by reducing the qualifying service to ten years cannot be defeated either directly or indirectly.

10. Resignation is a voluntary act on the part of the employee. In view of the law laid down by the Apex Court, in a situation where an employee voluntarily tenders his resignation, which is an act by which he gives up his job, that act would be within the sweep of the expression "voluntary retirement". Rule 3(q) of the Pension Rules defines "qualifying service". It contemplates that qualifying service means service rendered while on duty or otherwise which shall be taken into account for the purpose of pension and gratuity admissible under the rules.

11. In the light of the above discussion, we were to take a view that Rule 49(2) (b) will apply rather than Rule 26 of the Pension Rules in the case of the petitioner. But then we noticed that the Hon"ble Supreme Court has already interpreted Rule 26 and, therefore, after acceptance of resignation, in terms of Rule 26(1), the past service stands forfeited. [See *Union of India (UOI) and Others Vs. Braj Nandan Singh*,]. Rule 26 has been held to be mandatory. Para 5 of the judgment is reproduced below:

In order to appreciate rival submissions Rule 26 which is the pivotal provision needs to be quoted. The same reads as under:

26. Forfeiture of service on resignation - (1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service. (2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper performance, another appointment, whether temporary or permanent, under the Government where service qualifies.

Rule 26 as the heading itself shows relates to forfeiture of service on resignation. In clear terms it provides that resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service. The language is couched in mandatory terms. However, Sub-rule (2) is in the nature of an exception. It provides that resignation shall not entail forfeiture of past service if it has been submitted to take up, with

proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies. Admittedly this is not the case in the present appeal. Rule 5 on which great emphasis was laid down by the learned Counsel for the respondent deals with regulation of claims to pension or family pension. Qualifying service is dealt with in Chapter III. The conditions subject to which service qualifies are provided in Rule 14. Chapter V deals with classes of pensions and conditions governing their grant. The effect of Rule 26 sub-rules (1) and (2) cannot be lost sight of while deciding the question of entitlement to pension. The High Court was not justified in its conclusion that the rule was being torn out of context. After the past service is forfeited the same has to be excluded from the period of qualifying service. The language of Rule 26 sub-rules (1) and (2) is very clear and unambiguous. It is trite law that all the provisions of a statute have to be read together and no particular provision should be treated as superfluous. That being the position after the acceptance of resignation, in terms of Rule 26 Sub-rule (1) the past service stands forfeited. That being so, it has to be held that for the purpose of deciding question of entitlement to pension the respondent did not have the qualifying period of service. There is no substance in the plea of the learned Counsel for the respondent that Rule 26 sub-rules (1) and (2) has limited operation and does not wipe out entitlement to pension as quantified in Rule 49. The said rule deals with amount of pension and not with Entitlement."

12. Following the aforesaid decision of the Hon''ble Supreme Court, we have no alternative but to dismiss the petition. Rule is discharged. Costs made easy.