

(2014) 02 RAJ CK 0169
In the Rajasthan High Court
Case No : Civil Writ Petition No. 99 of 2002

S.M. Goyal

APPELLANT

Vs

The Central Administrative Tribunal and Others

RESPONDENT

Date of Decision : 11-02-2014

Acts Referred:

Citation : (2014) LabIC 1539

Hon'ble Judges : J.K. Ranka, J;Ajay Rastogi, J

Bench : Division Bench

Advocate : Rajendra Vaish, Advocate for the Appellant; K. Verma, Advocate for the Respondent

Judgement

1. Instant petition is directed against order of the Central Administrative Tribunal (the Tribunal) dated 24.4.2001 followed with the order passed on review application dated 3.8.2001. The grievance of the petitioner before the Tribunal was that he was an employee worked as Demonstrator School Regional College of Education Ajmer (N.C.E.R.T.) and thereafter as Senior Teacher in St. Anselem School (aided institution) the period of service rendered prior to being inducted as Principal on 12.9.1970 in Kendriya Vidyalaya Sangathan be treated as a qualifying service invoking R.30 of Central Civil Services Pension Rules, 1972 (Rules, 1972).
2. At the same time, it was also prayed that he is entitled for stepping up of pay as some of the incumbents who were junior in the cadre were given higher pay and he too is entitled for stepping up of pay.
3. The Tribunal after hearing the parties in its original order dated 24.4.2011 rejected the grievance of the petitioner, however, scope of R.30 of Rules, 1972 as reveals from the record was not urged for consideration and after the claim was rejected, the review application was filed and that was also dismissed vide order dated 3.8.2001 and that is subject-matter of challenge in the instant proceedings.
4. As regard details of the past service which the petitioner rendered in various

other organizations prior to his joining as Principal in Kendriya Vidyalaya Sangathan has been referred to in para-3 of the writ petition and relevant for the present purpose reads ad infra--

5. Indisputably, as per the submission which has been volunteered by the petitioner that at the time he joined service as Principal in Kendriya Vidyalaya Sangathan on 12.9.70, he was serving as Senior Teacher in St. Anselem School, Ajmer where he served from 01.07.69 to 05.09.70 and that was the aided institution, however, while serving as Principal in K.V.S., he stood retired after attaining age of superannuation on 31.10.1992.

6. The main thrust of the counsel for petitioner is that R.30 of the Rules, 1972 clearly acknowledges the past service which he rendered prior thereto in Demonstration School Regional College of Education, Ajmer (N.C.E.R.T.) as Senior Teacher Gr. I or as a teacher in an aided institution that is required to be considered and to be noticed by the authorities for treating as a qualifying service in proportion as contemplated u/R. 30 of Rules, 1972 which indisputably has not been noticed by the employer-respondent and this question was expressly raised before the Tribunal but not considered in original order dated 24.4.2001 and in review application this question was expressly raised and that too was turned down and the review petition was rejected vide subsequent order dated 3.8.2001, However, submits that apart from question as to whether it was raised before the Tribunal may not be so relevant for the reason that it is a pure question of law and even if it was not raised but based on material can certainly be raised for consideration by this Court since no additional pleadings are required to be considered regarding applicability of R.30 of Rules, 1972".

7. Counsel appearing for respondent has vehemently opposed the petition and submits that since question raised regarding applicability of R.30 of Rules, 1972 it was never raised and considered by the Tribunal and that cannot be permitted to raise for consideration in the instant proceedings but as regard the grievance of his claim of stepping of pay is concerned, as reveals from the order dated 24.4.2001 the relief was granted to the petitioner, however, there appears to be minor correction which were also noticed by the Tribunal while disposing of the review application vide order dated 3.8.2001.

8. We have heard counsel for the parties and with their assistance examined the material on record.

9. As regard object and reasons under which R.30 has been inserted by rule making authority under the Scheme of Rules, 1972 have been considered by the Apex Court in Union of India and another Vs. S. Dharmalingam, which reads ad infra--

7. From a perusal of Rule 30(1) it is evident that it seeks to confer a benefit in the matter of addition to qualifying service on a Government servant who is appointed to a service or post fulfilling the conditions laid down in Clauses (a) and (b) of sub-rule (1) of Rule 30 of the Rules after March 31,1960. Clause (a)

envisages that the service or post should be one for which post-graduate research, or specialist qualification or experience in scientific, technological or professional fields, is essential. Clause (b) postulates that such service or post is one to which candidates of more than twenty-five years of age are normally recruited. The benefit in the matter of addition to qualifying service is, however, limited to the actual period not exceeding one-fourth of the length of his service or the service or post referred to in Rule 30 or the actual period by which his age at the time of recruitment exceeded 25 years or a period of five years whichever is less. This would show that the intention underlying the said provision is to compensate the Government servant for the time taken by him in securing the additional qualifications or experience which are essential for appointment to the service or post. This benefit is available to every Government servant who fulfils the requirements of the rule and there is nothing in sub-rule (1) of Rule 30 to exclude the applicability of the said provision to a person who is already in Government service at the time of his appointment to a service or post referred to in Rule 30. To hold that the benefit under Rule 30 cannot be availed of by a person who is already in Government service at the time of his appointment to a service or post referred to in sub-rule (1) of Rule 30 would lead to anomalous consequences. A person who after employment in Government service for one year is appointed to a service or post referred to in sub-rule (1) of Rule 30, would be entitled to addition of only one year to his qualifying service if the benefit of Rule 30 is denied to him while a person who is not employed as a Government servant at the time of his appointment to a service or post referred to in Rule 30 would be entitled to addition to a period extending upto 5 years to his qualifying service. There appears to be no reason for subjecting a person who is already in Government service at the time of his appointment to a service or post referred to in Rule 30 to a differential treatment and denying him the benefit available to other persons who is not in Government service at the time of such appointment. The language used in Rule 30 does not make such an invidious distinction. In our view, therefore, addition to qualifying service under sub-rule (1) of Rule 30 is available to every Government servant who is appointed to a service or post referred to in sub-rule (1) of Rule 30 after 31st March, 1960, irrespective of the fact whether he was already in Government service or was joining Government service for the first time, at the time of appointment to the service or post referred to in Rule 30.

10. In our considered view, the petitioner is not entitled to claim benefit of R.30 of Scheme of Rules, 1972 for the reason that he was not in Govt. service at the time when he entered and joined as Principal in Kendriya Vidyalaya Sangathan on 12.9.1970 and indisputably as per the statement which we have noticed and extract in para-3 of the petition the petitioner was working as Senior Teacher in St. Anselm School, Ajmer (Govt. aided institution) from 1.7.69 to 5.9.70 and in continuation thereof he joined service as Principal in Kendriya Vidyalaya Sangathan and there was break in service rendered prior thereto in Demonstration School Regional College of Edu., Ajmer (N.C.E.R.T.) from

27.12.1967 to 30.6.1969 and indisputably on the date when he joined as Principal he was not in Govt. service, and R.30 only protects the service rendered by an employee who was in Govt. service prior to his induction on the post filled by open selection on the post of Principal, and this what the Apex Court also considered in the case referred to supra where the employee was working as Investigator in the National Sample Survey while in Govt. service he was employed on his selection for the post of Labour Officer selected by open selection through the Union Public Service Commission and question arose was whether the service which he had rendered prior to his induction as Labour Officer in Govt. service in the National Sample Survey could be considered as qualifying service contemplated u/R.30 of Scheme of Rules, 1972. As we have already noticed in the instant case, the petitioner was not in Govt. service at the time when he entered into service as Principal on 12.9.70 and as regard the service which he has rendered from 27.12.67 to 30.6.69 is concerned as we have already observed there was break in service and accordingly the past service rendered in the facts and circumstances cannot be considered as a qualifying service provided u/R. 30 of Rules 1972.

11. We have gone through the order of the Id. Tribunal and do not find any manifest error being committed in passing the order which requires interference of this Court. Consequently, the writ petition is devoid of merit and accordingly dismissed.