

(2011) 06 SHI CK 0113

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition (T) No. 1053 of 2008

Smt. Kamla Rani

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 23-06-2011

Acts Referred:

Citation : (2011) 06 SHI CK 0113

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kuldeep Singh, J.—The Petitioner has filed the petition for quashing Annexure A-2 dated 29.8.1986 changing the service conditions of the Petitioner with further prayer to quash Annexure A-10 dated December 2005 refusing to count the tenure service rendered by the Petitioner for pensionary benefits. The Petitioner has also prayed a direction to Respondents to treat the service rendered by her as Craft Teacher w.e.f. 25.8.1986 to 31.3.1994 as regular service and pay her pay scale of Rs. 570-1080 w.e.f. 25.8.1986. The prayer for direction to Respondents has also been made to grant pensionary benefits to Petitioner from the date of her retirement on 31.3.2003.

2. The facts in brief are that Petitioner on her appointment as Craft Teacher vide office order dated 21.8.1986 joined as such on 28.5.1986 in Government High School, Amarpur. The appointment order dated 21.8.1986 was modified by Respondent No. 3 by reducing the pay scale of the Petitioner and appointing her on tenure basis and not on regular basis. The modification in the appointment order of Petitioner was done vide order dated 29.8.1986 Annexure A-2. The Petitioner was regularized on 1.4.1994 and she retired on 31.3.2003.

3. The Petitioner had served the department honestly, diligently without any break and complaint from any side from 25.8.1986 to the satisfaction of superiors of the Petitioner. The office order dated 29.8.1986 Annexure A-2

modifying the nature of appointment of the Petitioner was passed in illegal and unjustified manner. The Petitioner had taken up the matter so many times with Respondents No. 2 and 3 at her own level as well as through union, but she was every time told that matter is under consideration. In the meantime, the Petitioner was retired on 31.3.2003 after attaining the age of superannuation but without paying any pensionary benefits.

4. The Petitioner filed Original Application No. 1720 of 2005 in the erstwhile Tribunal and the Tribunal vide order dated 12.7.2005 had directed Director of Secondary Education to treat the Original application itself of the Petitioner as representation and to decide the same within a period of two months. The Director decided the representation of the Petitioner so directed by the Tribunal and vide office order dated December 2005 had refused to count about seven years five months service of the Petitioner for pensionary benefits. It has been alleged that order dated December 2005 is wrong and illegal.

5. The grievance of the Petitioner is that initial terms and conditions of her appointment order were illegally changed without following principle of natural justice. The Petitioner to begin with was appointed on regular basis but her terms of appointment were changed to her detriment vide office order dated 29.8.1986. The Director has wrongly, illegally refused to count seven years five months service of the Petitioner for the purposes of pension. In these circumstances, the writ petition was filed by the Petitioner.

6. The Respondents No. 1 to 3 contested the petition by filing reply and have stated that post of Craft Teacher was offered on 21.8.1986 to the Petitioner, she joined her duties at Govt. High School, Amarpur, District Bilaspur on 25.8.1986. The appointment order of the Petitioner was changed vide office order dated 29.8.1986 by offering appointment to the Petitioner on tenure basis, which the Petitioner had accepted. The Petitioner approached the erstwhile Tribunal during the year 2005 after two years of her retirement. The petition is barred by delay and laches. The Director of Higher Education considered the case of Petitioner and rejected the same. There is No. merit in the petition. The Petitioner had made representation to Director on 19.3.1991 i.e. more than seven years after her appointment. The Petitioner had not completed ten years of service, which is minimum service required for pension. The Petitioner is not entitled to pensionary benefits. The Petitioner is not entitled to counting of service rendered by her from 25.8.1986 to 31.3.1994 which was on tenure basis. The Respondents have prayed for dismissal of the petition.

7. I have heard the learned Counsel for the parties. The learned Counsel for the Petitioner has reiterated the stand taken by the Petitioner in the petition. He has relied judgment dated 7.7.2009 in CWP(T) No. 2599 of 2008, Uma Dutt Sharma v. State of Himachal Pradesh and Anr. and judgment dated 15.7.2010 in LPA No. 36 of 2010, Sita Ram v. State of H.P. and Ors. He has submitted that the Petitioner is entitled to counting of service from 25.8.1986 to 31.3.1994 for the purposes of pensionary benefits after her retirement on 31.3.2003. The learned

Addl. Advocate General has submitted that tenure service of Petitioner from 25.8.1986 to 31.3.1994 cannot be counted for pensionary benefits. The Petitioner was regularized on 1.4.1994 but her service rendered from 1.4.1994 to 31.3.2003 is less than 10 years, therefore, Petitioner is not entitled to pensionary benefits.

8. The Petitioner vide office order dated 21.8.1986 was appointed Craft Teacher (tailoring) in the pay scale of Rs. 570-1080. The office order dated 21.8.1986 indicates that appointment of the Petitioner was regular. She joined as such on 25.8.1986. On 29.8.1986 the office order dated 21.8.1986 of the Petitioner was modified and her appointment was made on tenure basis. The tenure appointment was made in the pay scale of Rs. 480/- fixed plus and other allowances as admissible under the rules. The letter dated 8.6.1987 Annexure A-3 of District Education Officer; District Bilaspur indicates that Petitioner was offered tenure appointment in the pay scale of Rs. 480-880 on the verbal instructions of the Director of Education, even though she was earlier given the pay scale of Rs. 570-1080. The Petitioner made representations for settling her grievance which have been placed on record. The minutes of the Himachal Pradesh Govt. Teachers Union dated 14.8.1997, 19.12.1998, 18.5.1999 also indicate that even the Union had taken the case of the Petitioner for her regularization from the date of her initial appointment as Craft Teacher. The Director of Education vide order dated December, 2005 has observed that Petitioner had rendered near about seven years and five months service till 31.3.2003, she had not qualified for pensionary benefits. The period of tenure service rendered by Petitioner cannot be counted for pensionary benefits as per existing rules and policy of the Government and rejected the case of the Petitioner for pensionary benefits.

9. The office order dated 21.8.1986 vide which Petitioner was initially appointed was modified by office order dated 29.8.1986. The Petitioner accepted the office order dated 29.8.1986 appointing her as Craft Teacher on tenure basis. It appears the Petitioner has raised grievance against her tenure appointment on 19.3.1991. The protest of Petitioner on 19.3.1991 against her tenure appointment dated 29.8.1986 was too late. Once Petitioner had accepted her tenure appointment vide office order dated 29.8.1986 she could not be permitted to challenge her tenure appointment after nearly four and half years. No. doubt after 1991 either Petitioner herself or the Union espoused the case of the Petitioner for regular appointment from her initial appointment but the Petitioner approached the erstwhile Tribunal in the year 2005 vide OA No. 1720 of 2005 after her retirement on 31.3.2003. The grievance of the Petitioner for considering her appointment as regular appointment from day one i.e. 25.8.1986 is barred by delay laches, hence Petitioner is not entitled to the relief that she be treated as regularly appointed w.e.f. 25.8.1986.

10. The next question is whether tenure appointment of the Petitioner in the pay scale of Rs. 480-880 w.e.f. 25.8.1986 to 31.3.1994 can be counted for

pensionary benefits by adding this period with period of regular service rendered by Petitioner from 1.4.1994 to 31.3. 2003. The Petitioner was appointed in the pay scale of Rs. 480-880, obviously the Petitioner was to get some increment in the pay scale of Rs. 480-880. There is substance in the submission of the learned Counsel for the Petitioner that simply by using the expression "tenure" in the office order dated 29.8.1986 it cannot be said that the appointment of Petitioner infact was "tenure" appointment. The Petitioner continued to work fairly long time on the basis of office order dated 29.8.1986. In Uma Dutt Sharma (supra) a co-ordinate Bench has held as follows:

In the present case also, the Petitioner has been appointed on tenure basis, but No. period was specified in the appointment letter except that services were liable to be terminated on the joining of regular hand. He has worked continuously for four years. Since he has worked for fairly long period, his appointment cannot be held to be purely on tenure basis. He is required to be treated at par with the persons appointed on ad hoc basis for all intents and purposes. Moreover, there is No. difference in the duties discharged by the Teachers appointed on ad hoc basis or tenure basis. The difference is only in the nomenclature.

It has also been held as follows:

That the Petitioner has also been regularized in the year 1995 with effect from 1.4.1994. He had worked continuously and there is No. interruption from 1990 till the date of his regularization.

Accordingly, in view of the observations made hereinabove, the petition is allowed. The Respondents are directed to count the period with effect from 21.4.1990 to 4.12.1995 for the purpose of increments....

11. In Sita Ram (supra) the Division Bench has held that it is also settled principle of law that any service that is counted for the purpose of increment, will count for pension also. In view of appointment of Petitioner in the pay scale of Rs. 480-880, it can be safely inferred that she was getting increment; her appointment was for indefinite period. It is not the case of the Respondents that Petitioner was appointed without following due procedure. Once the Petitioner was appointed for indefinite period and she was given the increment, therefore, in view of "Uma Dutt Sharma" and "Sita Ram" (supra) the service of the Petitioner is liable to be counted from 25.8.1986 to 1.3.1994 for purposes of pension and by adding this service with the regular service rendered by the Petitioner from 1.4.1994 to 31.3.2003, the Petitioner is entitled to pensionary benefits on attaining the age of superannuation on 31.3.2003.

12. In view of above discussion, petition is allowed, order dated December, 2005 Annexure A-10 is quashed. It is held that service of the Petitioner from 25.8.1986 to 31.3.1994 is liable to be counted for pensionary benefits and by adding this service with the service rendered by Petitioner from 1.4.1994 to 31.3.2003 the Petitioner is entitled to pension and pensionary benefits on

attaining the age of superannuation on 31.3.2003. The Respondents are directed accordingly to pay pension to the Petitioner and arrears of pension and other pensionary benefits be also paid to the Petitioner within a period of two months from the date of supply of copy of this judgment by the Petitioner to the competent authority. No. costs.