(2010) 09 DEL CK 0317

In the Delhi High Court

Case No : Writ Petition (C) No. 7236 of 2008

Smt. Rajo Garg (Rajo Gupta) APPELLANT

Vs

Delhi Cantonment Board and Others RESPONDENT

Date of Decision : 22-09-2010

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 26(2)
Constitution of India, 1950 — Article 226

Citation : (2010) 09 DEL CK 0317

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : K.P. Gupta, for the Appellant; Nemo, for the Respondent

Final Decision : Disposed Off

Judgement

Manmohan Singh, J.—The petitioner has filed the present writ petition under Article 226 of the Constitution of India seeking various directions mentioned in the prayer clause.

2. Brief facts are that the petitioner worked as an assistant teacher with Respondent No. 1 Delhi Cantonment Board from 22.10.1990 to 01.07.1998. The petitioner had applied for ''NO OBJECTION CERTIFICATE'' in 1996 from Respondent No. 1 to apply in any other department. The petitioner was drawing a salary of Rs. 4875/- in the pay scale of Rs. 4500-125-7000 from Respondent No. 1 as from 01.01.1998.

3. The petitioner was appointed as assistant teacher with Respondent No. 2/ Municipal Corporation of Delhi under basic pay of Rs. 4500 on 01.04.1998. The petitioner thereafter following the requirements and giving a 3 months'' notice for taking resignation w.e.f. 02.04.1998 and was relieved from duty on 01.07.1998. The petitioner thereafter joined Respondent No. 2 on 02.07.1998.

4. On being asked for the benefits of her previous service with Respondent No. 1, Respondent No. 2 informed petitioner that it can only be granted if Respondent

No. 1 forwards the pension and leave salary contribution to Respondent No. 2. Letters requesting the said benefits to be submitted to Respondent No. 2 through Respondent No. 1 were given to Respondent No. 1 by the petitioner as well as the Respondent No. 2.

5. The petitioner claimed the amount of Rs. 24,056/- towards pension contribution and Rs. 24,252/- towards salary contribution with interest of 6% p.a. calculated w.e.f. 02.07.1998.

6. The petitioner through a letter dated 12.03.2004 and Assistant Education Officer of respondent No. 2 through a letter dated 01.04.2004, contended that since this is a case of transfer from one autonomous body to another autonomous body and rules of appendix 11 of CCS (Pension) Rules 1972 are applicable. It was also contended in these letters that as per OM No. 28-10/84 Pension Unit dated 29th August, 1984, contribution is to be borne by the autonomous body where employee has worked.

7. The respondent No. 1 in the counter affidavit contended that Dopt. OM No. 28-10/84- Pension Unit dated 29 August, 1984 is not applicable because under the said OM benefit can only be granted if transfer of the employee is from one central autonomous body to another central autonomous body. But as Delhi Cantonment Board is a statutory body constituted under central enactment i.e. Cantonment Act, 1924 whereas MCD is Local municipal body constituted under DMC Act, 1957. Thus MCD (Respondent No. 2) does not fall under ambit of OM No. 28-10/84 as respondent No. 2 is neither a central government body not a central autonomous body and petitioner is a permanent employee of Respondent No. 2. Also LAO (Audit Authorities) had advised Respondent No. 1, that petitioner is not entitled to claim any benefits.

8. The respondent No. 1 also contended as per reply to RTI on 06.06.2007, that proper channels were not used by petitioner in taking up job with Respondent No. 2. Further the petitioner was promoted to TGT (Sanskrit teacher) on 14.09.2007 and requested that her pay after promotion be adjusted after considering that she was receiving salary of Rs. 4875 at pay scale of Rs. 4500.-125-7000 and this was not accounted for by the Respondent No. 2 in fixing her salary.

9. The respondent No. 2 in counter affidavit contended that they will consider to fix the pay of petitioner only when the records and pension, gratuity and leave encashment is transferred by Respondent No. 1 to Respondent No. 2.

10. The respondent No. 3 in counter affidavit contended that salary of petitioner after promotion to TGT was fixed after considering the last pay drawn from Respondent No. 2 as per Rule FR22(1)(a)(1) at Rs. 5,850/-. Also Respondent No. 3 is not liable to pay petitioner''s pension/gratuity etc.

11. The contentions raised by the Respondent No. 1 are without any substance because the petitioner applied for appointment in MCD after obtaining ''No

Objection Certificate''. As regards to the applicability of the said Circular, the Respondent No. 1 falls within the ambit of aforesaid memorandum as per para 4 of the said Memorandum which defined Central Autonomous Body wherein it is clearly states that autonomous body includes a Central Statutory Body or a Central University but does not include a Public Undertaking.

12. The Respondent No. 1 admittedly is a Statutory Body constituted under Cantonment Act, 1924 and respondent No. 1 under DMC Act, 1957 and hence they both fall within the definition of Central Autonomous Body.

13. Hence, the petitioner is covered in Sub Clause (ii) of Clause (b) of para No. 3 and also Clause (c) of the said para of the aforesaid memorandum OM No. 28-10/84 Pension Unit dated 29th August, 1984 wherein it is clearly stated that the procedure mentioned in above sub para (ii) will be followed mutais mutandis in respect of employees going from one autonomous body to another.

14. The petitioner is also entitled to avail the benefit of counting of her previous service rendered to the respondent No. 1 with effect from 22.10.1990 to 01.07.1998 for fixation/protection of her pay under Sub-rule (2) of Rule 26 of Pension Rules wherein it is clearly stated that "A 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".

15. The respondent No. 1 is directed to forward a sum of Rs. 24,056/- towards pension and Rs. 24,252/- towards salary contribution along with interest @ 6% p.a. w.e.f. 02.07.1998 till the day and date of its forwarding by way of cheque drawn in favour of the Commissioner MCD.

16. As regards the second prayer made in the petition in para (a) is concerned, I am of the view that the petitioner shall be entitled for the said benefits from the respondent No. 3 who shall take the decision in this regard to pay the pension and gratuity benefits to the petitioner, as the petitioner ultimately has to retire from their office. The remaining prayers made in the petition are rejected as not pressed by the petitioner at the time of hearing.

17. Thus, the present writ petition is disposed of with the abovementioned directions. No order as to costs.

