

(2014) 03 TP CK 0018
In the Tripura High Court
Case No : W.P. (C) 224 of 2006

**Sri Subhas Ranjan Bhattacharjee Vs The State of Tripura, represented by
the Secretary to the Government of Tripura and Others**

Date of Decision : 26-03-2014

Acts Referred:

Citation : (2014) 03 TP CK 0018

Hon'ble Judges : Deepak Gupta, C.J; S.C. Das, J

Bench : Division Bench

Advocate : B. Banerjee, Advocate for the Appellant; J. Majumder, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. By filing this writ petition, the petitioner prayed for directing the respondents to count his past services rendered under the Tripura Khadi & Village Industries Board (for short, "the Board") during the period from 24.01.1974 to 07.09.1981, for the purpose of his pensionary benefits. Heard learned counsel, Mr. B. Banerjee for the petitioner and learned counsel, Mr. J. Majumder for the State respondents.

Other respondents have chosen to remain absent.

2. Petitioner inter alia contended that he served under the Board, a public sector undertaking of the Government of Tripura, during the period from 24.01.1974 to 07.09.1981. While in service, he applied for appointment to the post of Sub-Inspector of Police (for short, S.I. of Police) through proper channel and got the offer of appointment dated 05.09.1981 (Annexure-2). He approached the appropriate authority of the Board for his release to facilitate his joining as S.I. of Police and the Board by Memo dated 07.09.1981 (Annexure-3) released him from service in the afternoon of 07.09.1981 and he joined in the post of S.I. of Police on 09.09.1981, 08.09.1981 being a holiday.

It is contended by the petitioner that he thought that his past services will be automatically counted, and, therefore, because of ignorance, he took no step

towards counting of his past services. On 09.02.2001, he submitted a representation to his authority praying for counting his past services (Annexure-4). His representation was forwarded to the appropriate authority and respondent No. 3 by Memo dated 09.06.2001 (Annexure-6) made queries as to why he applied for the benefit after 20 years. In response to it, the petitioner submitted his explanation stating that because of his ignorance, he could not apply in time. His reply was duly forwarded to the appropriate authority. By a letter dated 20.02.2002, he was asked to inform as to whether he had exercised any option for counting of his past service in lieu of CPF benefit within one year from the date of appointment as a S.I. of Police (Annexure-12). In response thereto, the petitioner submitted his reply dated 20.02.2002 stating that he could not remember whether he exercised option or not and that he was ready to refund CPF amount with interest which he had drawn at the time of release from the service of the Board. His letter dated 20.02.2002 is annexed as Annexure-13. He was thereafter informed by the authority by letter dated 06.05.2002 (Annexure-14) that Finance Department expressed their inability to agree with his proposal for counting the first services. The letter is marked as Annexure-14. Thereafter, the petitioner vide his letter dated 19.03.2004 submitted some specific instances of counting past services of some other persons namely Sri Balaram Basak, Sri Braja Gopal Majumder and Sri Sushil Kr. Das and copy of that letter annexed as Annexure-16. He has also stated that one Sushil Kr. Das, who was working as an Extension Officer in TRTC had been given the benefit of past services by Finance Department U.O. No. 1409/FIN (G)/201 dated 07.03.2001 in the Directorate of Industries & Commerce. A copy of that letter annexed as Annexure-17. Thereafter, his case was taken up for reconsideration by the Finance Department and Finance Department wrote letter to the Executive Officer of the Board for furnishing service book and other service particulars of the petitioner and pursuant thereto the Executive Officer of the Board by a letter dated 17.12.2014 informed the Finance Department of the Government of Tripura, the service particulars of the petitioner and further stated that the service book of the petitioner was not available since the office was shifted from one place to another place. Ultimately, the petitioner was informed by letter dated 21.10.2005 (Annexure-20) that Finance Department regretted the proposal of the petitioner for want of adequate information about past service of the petitioner.

3. Respondent Nos. 1, 2 and 3 contested the case by filing a joint counter affidavit inter alia stating that the petitioner applied for the post of S.I. of Police as an ordinary general unemployed candidate. He did not apply for the post through proper Channel. He also did not enclose any document at the time of his joining that he served in the Board before joining as a S.I. of Police. It is contended by the respondents that the petitioner in Annexure-4 stated - "It is to state here so far I can remember that, at that time of joining in Police Department as S.I. of Police no option for counting of my previous service under Tripura Khadi & Village Industries Board was taken from me."

Referring the above statement, the respondents contended that the petitioner admitted that he did not exercise option and that he did not return the amount of CPF to the Department for counting his past services. It is also contended by the respondents that the services under the Board was not pensionable service and the petitioner enjoyed benefit of Contributory Provident Fund. After his appointment in the Police service as a S.I. of Police, the petitioner was supposed to inform the Department within one year after surrendering the CPF and in that case, his prayer for counting past service would have been definitely considered. It is also contended that the petitioner at the time of his joining did not submit his release order from the Board and that has created the problem. Referring to Annexure-13 to the writ petition, the respondents contended that the petitioner himself stated - "So I could not remember specifically whether I have submitted option or not. However I am ready to refund the C.P.F. amount with interest which was drawn by me at the time of release from Tripura Khadi & Village Industries Board in consideration of counting of my past service."

Referring to the above statement, the answering respondents contended that while the petitioner himself stated that he did not exercise option and enjoyed the CPF benefits with interest he cannot now claim the benefit of pension for his past services. He cannot be given the opportunity of depositing the CPF with interest after such long years. It is also contended by the respondents that the benefit of past services has been given to some employees, who deposited the CPF amount and their service records are easily available. It is clearly contended by the respondents that service book is the most important record which is required to be considered for counting the pensionable service. The Finance Department contacted with the Board and the Board has informed the Finance Department that the service book of the petitioner was not available and because of that the petitioner's past service could not be taken into consideration for counting.

4. It is not disputed that the petitioner before joining the post of S.I. under the Home Department of the Government of Tripura on 09.09.1981, served as a Lower Division Clerk under the Board from 24.01.1974 to 07.09.1981. It is further an undisputed fact that the service under the Board was not pensionable and the petitioner got the benefits of CPF and he has drawn the same at the time of his release from the Board. It is also not disputed that service book of the petitioner in respect of his service record under the Board is not available and the Board, on query, made by the Finance Department informed it in writing that the service book was not available. Only his service particulars in respect of his joining and leaving the service has been intimated by the Executive Officer of the Board to the Joint Secretary of the Finance Department by writing Annexure-18.

5. It is contended by the learned counsel, Mr. Banerjee that Annexure-18 reflecting the date of joining the service of the Board and date of his release. It is also reflecting the qualification and date of birth of the petitioner. Only because the service book is not available, the petitioner should not be deprived of his past

services.

It is emphatically submitted by Mr. Banerjee, learned counsel that the petitioner rendered uninterrupted service of 8 years under the Board and if he get the benefit of said previous service counted for the purpose of pension, he will get a reasonable pension for the rest of his life. The petitioner might not have exercised his option while joining as SI of Police because of his ignorance, he did not immediately brought it to the notice of his authority about his past service since he thought it will be counted automatically. For such ignorance of the petitioner, he should not be deprived of the benefit of past service. The petitioner cannot be held responsible for the missing of his service book and on that ground, the petitioner cannot be deprived of the legitimate right of the benefit of past services counted for the purpose of his pension.

6. Learned counsel, Mr. J. Majumder, appearing on behalf of the State-respondents submitted that in the offer of appointment (Annexure-2), there was a specific term that the petitioner should submit discharge certificate of previous employment, if any. But the petitioner did not submit any document of his previous employment at the time of his joining as S.I. of Police. He was supposed to exercise his option within one year from the date of his joining, but he did not admittedly exercise his option. If he was intending to get the benefit of his previous service, he would surrender his CPF, but the petitioner consciously drawn the CPF with all benefits while he was released from the Board and so, he cannot claim the benefit of counting his previous service. Most important is the service book of the petitioner for counting his past services. Service book is the only document to be taken to consideration for counting past services of an employee. The petitioner set up some example, but in those cases, all service records were available. The petitioner took up his issue after 20 years he left the job of the Board and the Board has clearly intimated that his service book was not available. If the service book was not available, the Finance Department was absolutely right in regretting the proposal of the petitioner. Nobody can say that during the period of his past service, it was an unblemished continuous service without any break. In the absence of any such document or record, past service cannot be counted. Learned counsel, therefore, prayed for dismissal of the writ petition.

7. Annexure-2 is the Memorandum of the offer of appointment of the petitioner in the post of S.I. of Police dated 05.09.1981. Term No. 3 (V)(e) of the terms of appointment contained in Memo dated 05.09.1981 clearly shows that the petitioner was supposed to submit a discharge certificate of previous employment, if any (attested copy). The service record of the petitioner in the Home Department, which is placed by the learned State counsel, does not show that any such discharge certificate of previous employment was produced by the petitioner at the time of his joining in the post of S.I. of Police. The petitioner also produced no document to show that he applied for the post of S.I. of Police through the Board. No certificate to that effect also been produced by the

petitioner. The petitioner placed on record a release order dated 07.09.1981 (Annexure-3 to the writ petition), but there is no evidence that the said document, the petitioner produced before the appropriate authority at the time of his joining the post of S.I. of Police. It is an admitted fact that the petitioner did not exercise his option in respect of his past service after joining the post of S.I. of Police. It is also an admitted fact that at the time of release from the Board, the petitioner had drawn the CPF benefits with interest thereon. To enjoy the benefit of past service for the purpose of pension, the petitioner was supposed to surrender his CPF and would make prayer for recording his past service in his service book. After his joining on 09.09.1981 in the post of S.I., the petitioner did not do so immediately thereafter and he made representation for the first time only on 09.05.2001 i.e. after 20 years of service. The respondents asked the petitioner to submit his previous service records. Annexure-19 to the writ petition shows that the Executive Officer of the Board was asked by the Finance Department to send the service book etc., relevant records of the service of petitioner. Annexure-18 shows that the Executive Officer informed the joint Secretary to the Finance Department that the service book of the petitioner was not available and from the personal file of the petitioner, his date of joining, date of birth and date of release from the Board was simply intimated. His service particulars could not be informed by the Executive Officer in the absence of the service book which is said to have not available because of shifting of office from one place to another. For the absence or missing of service book of the petitioner, the official respondents cannot be blamed. It is the lapses on the part of the petitioner in taking step at appropriate time. The petitioner set up examples of other similar cases wherein past services were counted. In all those cases perhaps the records of the past service were readily available and therefore, the benefit of past service has been given.

8. The petitioner is to prove his own case by adducing sufficient evidence and materials. What is not in the custody of the petitioner, he would made prayer before the Court to call for from the custody of the respondents. The service records of the petitioner has been placed by the State-respondents. The petitioner relied on Annexure-18 i.e. the communication made by the Executive Officer of the Board wherein it has been stated that the service book of the petitioner was not available because of the shifting of the office from one place to another place. If the service book is not available, it is very difficult to say about the past services of the petitioner as to whether the entire past service is liable to be counted for the purpose of pension or not. In the absence of such materials on record, it is very difficult to direct the respondents to count the past services of the petitioner for the purpose of pension.

9. In the writ petition, the petitioner nowhere stated that at the time of his joining the post of S.I. of Police, he submitted his release order issued by the Board. The respondents in their counter affidavit, clearly and specifically stated that the petitioner, at the time of his joining the post of S.I. of Police, did not submit his release order from the Board. This statement of the respondents has

not been countered by the petitioner by filing any rejoinder and therefore, the statements remain unchallenged. It is, therefore, evident that the petitioner at the time of joining the post of S.I. of Police as per the terms of appointment did not submit any copy of his release order and/or discharge certificate from his previous department.

The past service of the petitioner was not a pensionable service and CPF was applicable. At the time of his release from the Board, he received the CPF with benefits thereon.

He did not surrender his CPF within a year from the date of his release from the Board. He also did not exercise his option to get the benefit of his past service counted for the purpose of pension.

The service book of the petitioner is not available and the reasons for the loss of the service book is attributable to the petitioner alone since the petitioner did not make prayer for counting his past service within reasonable time after he was released from the Board.

Respondents cannot be held responsible for the loss of service book of the petitioner.

There is no scrap of paper placed before the Court that the petitioner placed on record any material to show his past services at the time of joining the post of S.I. of Police.

For the foregoing reasons, the writ petition is found to be devoid of merit and hence dismissed, but in the circumstances without cost.