

(2012) 11 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Special Appeal (W) No. 515 of 2012

State of Rajasthan and Others

APPELLANT

Vs

Gangadhar Sharma

RESPONDENT

Date of Decision : 06-11-2012

Acts Referred:

Citation : (2013) LabIC 890

Hon'ble Judges : Vineet Kothari, J;Dinesh Maheshwari, J

Bench : Division Bench

Advocate : Hemant Choudhary, for the Appellant; Vinay Jain, for the Respondent

Judgement

1. This intra-Court appeal against a part of the order dated 5.5.2011 as passed by the learned single Judge of this Court in CWP No. 1537/2003 is reported to be time-barred by 322 days. An application seeking condonation of delay has been filed stating the time taken in the official processes to be the reason for delay. Though a reply has been filed opposing the application but after having heard the learned Government counsel for the appellants and the learned counsel for the writ petitioner (the respondent herein) and having considered the totality of facts and circumstances and subject-matter of this appeal, it appears that the delay had essentially been for the time consumed in the official processes and in collection of all the record; and it is just and proper to condone the delay and to consider the matter on merits. Accordingly and in view of the above, the delay in filing the appeal is condoned. The appeal is taken on the regular side.

2. Having regard to the short point involved, with the consent and at the request of the learned counsel for the parties, we have heard the matter finally at this stage itself.

3. The writ petition leading to this appeal was filed by the respondent Shri Gangadhar Sharma stating his agony and grievance as against the order dated 28.3.2003 whereby his services as a Class IV employee were sought to be terminated rather contrary to the orders earlier passed by this Court and by the

4. The relevant factual aspects as emerging from the writ petition and as unfolded in the order impugned could be noticed as follows: The respondent was allegedly appointed as Class IV employee on part-time basis in the Primary School at Rajaji-Ka-Khera, Panchayat Samiti Mandal, District Bhilwara by the order dated 1.1.1975. On 11.4.1989, the said primary school at Rajaji-Ka-Khera was upgraded but remained under the administrative control of the Panchayat Samiti; and the administrative control of the school was taken over by the State Government in the month of April 1991. The respondent alleged that all the staff members of the school were absorbed in the Government service but the same treatment was not accorded to him though he was allowed to continue even after the month of April 1991. It appears that after 16.5.1992, neither the State Government nor the Panchayat Samiti made payment of salary to the respondent wherefore he preferred a writ petition (CWP No. 4680/1992) that was allowed by the order dated 27.1.1994; and in pursuance of the order dated 27.1.1994, the respondent was paid the salary up to 30.9.1994. On 1.10.1994, the District Education Officer relived the respondent and directed him to join in the office of the Vikas Adhikari, Mandal; but the Vikas Adhikari passed an order dated 3.10.1994, directing him to join in the office of the District Education Officer for the reason that no post of Class IV employee was vacant in Panchayat Samiti Mandal. Being aggrieved with the orders dated 1.10.1994 and 3.10.1994, the respondent preferred another writ petition, being CWP No. 180/1995, in which, by the order dated 18.1.1995, the District Education Officer, Bhilwara was directed to make payment of salary to the respondent as had been paid for the period up to 30.9.1994 until further orders because the respondent's service had not been terminated by following any process of law. Thereafter, a show-cause notice was issued to the respondent as to why his services may not be terminated. The respondent preferred yet another writ petition, being CWP No. 2898/1995, which was transferred to the Rajasthan Civil Services Appellate Tribunal and was registered as Appeal No. 498/1999; and another Appeal (No. 337/1999) was filed by him before the Tribunal for payment of salary. Both the appeals were heard together and decided by an order dated 19.12.2001 wherein, directions for payment of salary along with 18% interest were issued. Then, by the order dated 28.3.2003, the Additional Chief Executive Officer, Elementary Education, Bhilwara directed the Head Master, Government Upper Primary School Kareda that the respondent be removed from service for the reason that initially, no appointment order was issued in his favour.

5. Questioning the aforesaid order dated 28.3.2003 and seeking regularisation, the respondent filed the writ petition leading to this appeal; and claimed the following reliefs:--

(a) record of the case may kindly be called for and Hon''ble Court may pleased to issue a writ of mandamus and/or a writ in the nature of mandamus or any other appropriate writ the order dated 28.3.2003 may kindly be quashed with all

consequential benefits,

(b) respondents be directed to consider the case of petitioner for regularization,

(c) during the pendency of the writ petition petitioner should be taken back on duty and he should be paid salary month by month,

(d) respondents should also be directed to pay interest @ 12% on dues amount,

(e) by an appropriate writ, order or directions, any other relief which is deemed fit in the facts and circumstances of this case may kindly be granted in favour of the petitioner.

(f) costs of this writ petition may kindly be awarded in favour of the petitioners.

6. The learned single Judge of this Court took note of all the factual aspects and the order passed in the aforesaid previous proceedings and found the conduct of the present appellants qua the respondent totally illegal and arbitrary; and the impugned order dated 28.3.2003 being rather in conflict with the orders earlier passed in favour of the respondent. This apart, the learned single Judge found that the order impugned had been passed without any basis and without even an opportunity of hearing to the respondent. The learned single Judge, therefore, found it just and proper to quash the order impugned and also to issue directions to the respondents to treat the respondent as a regular employee of the Education Department w.e.f. 1.4.1992 and allowed the writ petition with costs quantified at Rs. 5,000/-. The learned single Judge, however, further proceeded to direct that the entire period of service of the respondent, right from 1.1.1975 until the date of superannuation, would be treated as qualifying service for the purpose of pension. The reliefs as granted and the directions as issued in the order impugned read as under:--

(1) Impugned order Annexure-5 dated 28.3.2003 is hereby quashed and set aside;

(2) The respondents shall treat the petitioner as regular employee of the respondent Education Department with effect from 1.4.1992, the year in which the petitioner approached this Court for granting regular pay-scale;

(3) The respondents shall grant all benefits to the petitioner as provided for regular Class IV employees with effect from 1.4.1992 and pay cost of the writ petition as Rs. 5,000/- to the petitioner; and,

(4) The respondents are further directed to fix pay of the petitioner under the revised pay-scale rules as applicable from time to time while treating the petitioner as regular Class IV employee with effect from 1.4.1992 and shall treat entire period of service of the petitioner right from 1.1.1975 till the date of superannuation as qualifying service for the purpose of pension etc. The fixation of salary as per revised pay-scale rules shall be made within a period of four months from the date of receipt of certified copy of this order.

7. It is the part of the direction No. 4, as contained in the order impugned, to the extent of treating the entire period from 1.1.1975 as the qualifying service for the purpose of pension, which is the bone of contention in this appeal.

8. It is submitted that the questioned part of the order impugned whereby the ad hoc period of part-time service is directed to be counted for pension purposes remains contrary to law and so also contrary to the record. It is also submitted that the initial engagement of the writ petitioner had been by the Vikas Adhikari at his own level and was never approved and sanctioned by the Government; and this period of casual or part-time employment could not have been ordered to be counted for the purpose of pension, per Rule 2 of the Pension Rules, 1996.

9. Per contra, the learned counsel for the respondent has supported the order impugned and submitted that the respondent had been made to suffer unnecessarily in the rounds of litigation though he continued in service from 1.1.1975 and it had been the fault only on the part of the appellants that they omitted to provide him proper pay scale and regular service despite administrative control of the school concerned having been taken over by the Government in the month of April, 1991 and all other employees having been absorbed in the Government service.

10. After having given thoughtful consideration to the rival submissions and having examined the record, we are unable to approve the questioned part of the order impugned even while finding rest of the order to be justified and requiring compliance.

11. So far the question of treatment of the services allegedly rendered since 1.1.1975 is concerned, in the first place, it appears that such an issue was neither the subject-matter of the writ petition nor was put forward by the writ petitioner for grant of any such relief. As noticed, the questioned relief that has been granted by the learned single Judge regarding pensionary benefits was not even the part of specific prayers made in the writ petition. Noteworthy further it is that in the earlier writ petition, CWP No. 4680/1992, the directions in the order dated 27.1.1994 had been as under:--

In the result, the writ petition, filed by the petitioner, is allowed and the District Education Officer, Bhilwara, is directed to make payment of salary to the petitioner in the regular pay scale applicable to the post of Class IV employees since the date of filing the writ petition, i.e., August 31, 1992. The arrears of salary should be paid to the petitioner within a period of one month from today and in future, he should be paid salary in the regular pay scale month by month. If the arrears of salary are not paid to the petitioner within a period of one month from today then the petitioner shall be entitled for interest @ 12% per annum from the date the same became due.

12. Yet further, in CWP No. 180/1995, the directions in the order dated 18.01.1995 had been as under:--

By an order dated 1.10.1994 the Distt. Education Officer, Primary Education, Bhilwara relieved the petitioner and directed him to report to Vikas Adhikari Panchayat Samiti Mandal after getting him paid (sic) in accordance with directions issued by this Court in S.B. Civil Writ Petition No. 4680/92 decided on 27.1.1994. The petitioner in compliance of this order went to Vikas Adhikari Panchayat Samiti, Mandal and reported for duty. On 3.10.1994, the Vikas Adhikari returned the original order to the Distt. Education Officer for the reason that no post of Class IV employee was vacant in the Panchayat Samiti and, therefore, it was not possible to take the petitioner on duty. The petitioner again returned to the Distt. Education Officer and on 3.10.1994 itself reported back for duty. Since then, he is not being taken on duty at either place. On 1.12.1994, the petitioner's counsel issued a notice for demand of justice, which has also remained unresponded. In these circumstances, it is directed that the petitioner shall be taken on duty by the Distt. Education Officer, Primary Education, Bhilwara and shall be paid salary as has been paid for period up to 30th Sept., 94 until further orders, as the petitioner's service has not been terminated by following any process of law.

13. The Tribunal, in its order dated 19.12.2001, had also commented on the unfair treatment of the respondent and issued directions for payment of salary; and issued further directions to the concerned Departments i.e., the Education Department and the Panchayati Raj Department to resolve the dispute regarding the post of the respondent. However, it is difficult to find directly or even by implication in any of the aforesaid orders any such proposition whereby the services, as allegedly rendered from 1.1.1975, were to be treated as qualifying service for the purpose of pension. With respect, even in the order impugned we are unable to find any basis for issuance of such directions.

14. In view of the above, we find it difficult to endorse the questioned part of the order impugned. Of course, as observed, rest of the order remains thoroughly justified and is required to be complied with without further delay.

15. Accordingly, this appeal stands partly allowed in the manner that second part of first sentence in direction No, 4 of the order impugned i.e., "and shall treat entire period of service of the petitioner right from 1.1.1975 till the date of superannuation as qualifying service for the purpose of pension etc." shall stand annulled. Rest of the order impugned is affirmed. The appellants shall carry out compliance of the requirements of order passed by the learned single Judge, as modified hereinabove, at the earliest; and in any case, before 31.12.2012. Parties are left to bear their own costs of this appeal.