
(2004) 12 MP CK 0069
In the Madhya Pradesh High Court
Case No : Writ Petition No. 8820 of 2003

Sudhir Jaisani

APPELLANT

Vs

State of M.P. and another

RESPONDENT

Date of Decision : 08-12-2004

Acts Referred:

Citation : (2005) 2 MPLJ 162

Hon'ble Judges : A.K.Shrivastava, J

Bench : Single Bench

Advocate : Imtiaz Husain, for the Appellant; V.P. Nema, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.

By this petition, the petitioner has sought the benefit of his previous Army Service for the purposes of pay, allowances and seniority. He has also sought quashment of Annexure-A-9 dated 10-2-1993 disentitling him from the said benefits.

It is no more in dispute that the petitioner did serve in Defence from 27-10-1979 to 22-1-1985. This fact is also not in dispute that after having served for near about 5 years in Defence initially the petitioner was appointed as C.M.O. in Gas Relief Hospital, Bhopal where he served from 19-2-1988 to 30-1-1989 and from 31-1-1989 he is serving on the post of Assistant Surgeon.

The plain and simple case of the petitioner is that since he had served in Defence for a period from 27-10-1979 to 22-1-1985, his previous services be counted for the purposes of pay, allowances and seniority. Shri Imtiaz Husain, Learned Counsel for petitioner, has also invited my attention to Annexure-A-11 which is an order dated 31-1-1992 issued by the Government of Madhya Pradesh to Director, Health Services directing the services of similarly situated employee Dr, Mahesh Dixit to count his previous service for five years which he served in Army

for the purpose of pay, allowances and seniority. Shri Imtiaz Husain has also invited my attention to Rule 18 of M.P. Civil Services (Pension) Rules, 1976 (for short "Rules") and has contended that the petitioner is entitled to the reliefs which he has sought.

Combating the aforesaid submissions, it has been contended by Shri Nema, learned Govt. Advocate that the petitioner is not entitled for the reliefs which he has sought and the order Annexure-A-11 dated 31-1-1992 which is in favour of Dr. Mahesh Dixit was later on recalled vide Annexure-R-1 dated 26-8-1995 and, therefore the case of the petitioner is not at par with that of Dr. Mahesh Dixit. Facing this tight corner, Learned Counsel for the petitioner has invited my attention to sub-rule (1) (b) to Rule 18 of the Rules and has also invited my attention to Annexure-A-8 which is a letter written by Director, Health Services to the Secretary intimating him that the petitioner had already deposited a sum of Rs. 6,000/- which he had received towards gratuity from his Army Services. The said amount of gratuity has been deposited by the petitioner in Government Treasury.

After having heard Learned Counsel for the parties, I am of the view that this petition deserves to be allowed.

Before appreciating rival contentions of the Learned Counsel for the parties, it would be apposite to re-write Rule 18(1) of the Rules which reads thus :-

Counting of Military Service rendered before Civil Employment.- (1) A Government servant who is re-employed in a civil Service of post before attaining the age of superannuation and who, before such reemployment had rendered regular military service after attaining the age of eighteen years, may, on his appointment in a civil service or post, opt either :-

(a) to continue to draw the military pension or retain gratuity received on discharge from military service, in which case his former military service shall not count as qualifying service; or

(b) to cease to draw his pension or refund the gratuity including death-cum-retirement-gratuity, if any, and account the previous military service as qualifying service, in which case the service so allowed to count shall be restricted to a service, within or outside the employee's unit or department in India or elsewhere, which is paid from the Consolidated Fund of India or which pensionary contribution has been received by the Government of India and the pension intermediately drawn shall not be required to be refunded but the element of pension which was not taken into account for fixation of pay on re-employment shall be refunded to the Defence Department of the Government of India.

On going through the above said rule and particularly sub-rule (1)(b), it is revealed that if the gratuity is refunded or the employee cease to draw pension and the other benefits as mentioned in the sub-rule, his earlier services shall be

counted if he is re-employed as a Government servant. On going through Annexure-A-8 it is revealed that the amount of gratuity has already been deposited by the petitioner in Government Treasury. It is nobody's case that the petitioner is drawing pension. Thus in terms of sub-rule (1)(b) of Rule 18 of the Rules, the earlier services of the petitioner which he rendered in Army, shall be counted for the purposes of fixation of his pay, allowances and seniority. At this juncture, I may also refer to the documents Annexures-A-12, A-13 and A-14 which are gradation lists of different years in which the name of similarly situated co-employee Dr. Mahesh Dixit has been mentioned and thus there is merit in the contentions of the Learned Counsel for the petitioner that though the order which was passed in favour of Dr. Mahesh Dixit Annexure-A-11 dated 31-1-1992 was withdrawn by Annexure-R-1 dated 26-8-1995, the same was never given effect to. If the document Annexure-A-8 dated 7-8-1992 which is a letter written by the Director Health Services to the Secretary recommending the case of the petitioner to count his previous service is kept in juxtaposition to Rule 18 of the Rules and is read conjointly it would become as clear like a noon day that if the employee refunds the amount of gratuity or the benefits which are provided under sub-rule (1)(b) of Rule 18 of the Rules are not assailed by him, his previous services shall be counted for the purposes of pay, allowances and seniority.

At this juncture the learned Govt. Advocate has invited my attention to the circular of the Government Annexure-A-10 and has submitted that if true application of the said circular is given effect to in proper perspective, this petition stands no where and the relief which the petitioner is claiming cannot be allowed to him. I am afraid of such submission for the simple reason that the circular is only an administrative instruction and it cannot override the statutory rule. Since there is clear direction in the Rules to count the previous services of a Government employee if he has complied what he was required to comply under sub-rule (1)(b) of Rule 18, a Government servant cannot be denied to the benefits which he is otherwise entitled in terms of Rule 18 of the said Rules. It has also been contended by learned Govt. Advocate that there is no pleading to that regard in the petition. True, in the petition in very specific words it has not been so pleaded, but this fact cannot be marginalised and blinked away as it is clear on bare reading of Annexure-A-8 that the petitioner did deposit gratuity in the Government Treasury and, therefore, he is entitled to be benefited in terms of Rule 18 of the Rules.

7A. Resultantly this petition succeeds and is hereby allowed. Annexure A-9 dated 10-2-1993 issued by the respondent No. 1 is hereby quashed. The petitioner shall be entitled to the cost of the petition. Counsel's fee Rs. 2,000/- , if pre-certified.