(2015) 03 KAR CK 0334

In the Karnataka High Court

Case No : Writ Petition No. 56436 of 2014(S-KAT)

T. Lakshmana APPELLANT

Vs

The State of Karnataka and Others RESPONDENT

Date of Decision : 10-03-2015

Acts Referred:

Citation : (2015) 03 KAR CK 0334

Hon'ble Judges : K.L. Manjunath, J;P.B. Bajanthri, J

Bench : Division Bench

Advocate : M.S. Parthasarathy, for the Appellant; S. Susheela, AGA, Advocates for the Respondent

Final Decision : Dismissed

Judgement

P.B. Bajanthri, J.

1. In this writ petition the petitioner has questioned the order of the Karnataka Administrative Tribunal(for short "Tribunal") dated 27.11.2014 passed in Application No. 936/2010 vide Annexure-"D" and further sought for allowing the aforesaid application.

2. The petitioner is stated to have been appointed as a Lecturer on 16.10.1982 in the Vani Sakkare Arts and Commerce First Grade College, Hiriyur, which was run by Vani Vilas Co-Operative Sugar Factory Education Society and he has joined on 18.10.1982. Grant-in-aid to the said institution was admitted on 27.3.1987 w.e.f. 1.7.1986. Consequently, petitioner''s appointment was approved with Grant-in-aid on 15.7.1987.

3. On 5.11.2008 the State Government issued special Rules called "Karnataka Education Department Services (Department of Collegiate Education) (Absorption of the Staff of erstwhile Vani Sakkare Arts and Commerce First Grade College, Hiriyur, in the State Civil Services) Rules, 2008. Name of the petitioner reflected in the Schedule to the aforesaid Rules at Sl. No. 4. The petitioner attained age of superannuation and retired from service on 31.5.2008.

4. The petitioner''s appointment was approved with grant-in-aid on 15.7.1987 vide Annexure-A3. In the said order and annexure to the order against the name of the petitioner date of entry into service/duty has been indicated as "1.7.1984". With reference to the aforesaid date of entry into service the petitioner submitted number of petitions, revision petitions and appeals before various authorities relating to determination of entry into service namely whether it should be 18.10.1982 (1.2.1983) or -1984. The said issue was concluded in issuing an endorsement dated 3.11.2005 by the second respondent-Commissioner vide Annexure-A9. The petitioner did not question the validity of the said endorsement by which the grievance of the petitioner to treat his entry into service as 1.2.1983 has been rejected. In other words, the petitioner has accepted the endorsement.

5. When things stood thus the petitioner once again approached the authorities and the second respondent issued a communication on 13.3.2009 vide Annexure-A13 in which it was reiterated that the claim of the petitioner has been turned down on 3.11.2005 by issuing an endorsement and the same has not been questioned before the appropriate authority.

6. Aggrieved by the communication dated 13.3.2009 and further communication dated 30.5.2009 vide Annexure-A15 relating to counting of service for the period from 1.7.1984 to 30.6.1986 towards any service benefits for the reasons that grant-in-aid was allowed only on 1.7.1986. The petitioner further sought for a direction to extend benefit of Rule 247-A of KCSRs i.e. to count w.e.f. 18.10.1982 till grant-in-aid was allowed towards pensionary benefits. With the aforesaid relief the petitioner approached the Tribunal in the year 2010.

7. On 27.11.2014 the Tribunal dismissed the application of the petitioner. Aggrieved by the dismissal of application No. 936/2010 this writ petition has been filed.

8. The petitioner''s counsel Sri. Srikanth submits that in view of the remittance towards triple benefit scheme from 16.10.1982 consequently he is entitled for counting the service for the purpose of pay, pension and leave. The said contention has been made with reference to the Special Rules, 2008 under which among others petitioner''s service has been absorbed in the Education Department. It was further contended that the Tribunal fell in error in not noticing the said fact and though made an observation that he will be entitled to be considered for the purpose of pension and other benefits from 1.7.1983, no clear directions have been issued. It is also submitted that declining the benefit of Rule 247-A of the KCSRs, it is a beneficial provision therefore the petitioner is entitled for the benefits under the said provision. Even the Tribunal erred in not noticing the fact that the petitioner was aged about 32 years and 6 months as on the date of his appointment and as such he was entitled to be considered under the Rules.

9. Per contra, the learned Government advocate Mrs. S. Susheela, contended

that cause of action to the petitioner to set right his date of entry accrued on 15.7.1987 the date on which among others the petitioner''s appointment was approved with grant-in-aid vide Annexure-A3 in which the date of entry of the petitioner has been considered as 1.7.1984. In other words, the petitioner should have questioned the date of entry into service taken for the purpose of grant-in-aid and so also for approval of the petitioner''s appointment. It was further contended that regarding date of entry into service of the petitioner in a quasi judicial litigations the second respondent has issued an endorsement on 3.11.2005 rejecting the claim of the petitioner to consider his date of entry into service w.e.f. 1.2.1983. The petitioner failed to consider aforesaid endorsement. Thus the petitioner last his right to question the date of entry into service as well as rejection of his claim to determine date of entry into service.

10. The learned counsel for the respondent further submits that the petitioner kept quiet from 3.11.2005 till 31.5.2008 the date on which he attained age of superannuation. The petitioner is learnt to have noticed that for the purpose of pension and other benefits his service has been counted w.e.f. 1.7.1986. In this background, he had submitted representation to extend additional benefit of four years of qualifying service the same was rejected on 13.3.2009 and 30.5.2009.

11. The learned Government advocate specifically pointed out that on 3.11.2005 an endorsement has been issued stating the reasons for not counting the service from 1.2.1983. A gist of the reason is that the petitioner was not employed as a Lecturer on full time on the other hand he was employed as Lecturer on hourly basis. That apart, salary grant was admitted only on 1.7.1987 and prior to that the service rendered by the petitioner cannot be counted for the purpose of extending any service benefits. The learned Government Advocate pointed out that as per Govt. O.M. No. FD 04 SRA 2010 Dated 16.02.2012 relating to considering eligibility service under Rule 247/247A and 2 and 7B of KESRC, facility under Rule 247-A will not be available in the following circumstances:

"1. xxxxxxx

2. Employees governed by Triple benefit Scheme Rules;

3. xxxxxx

4. xxxxxx

5. xxxxxx

6. xxxxxx

7. xxxxx

8. xxxxxx

9. xxxxx"

The petitioner is not entitled to any relief under Rule 247-A are there in bar to the employees governed by Triple Benefits Scheme Rules. The petitioner is one of the beneficiary in the aforesaid scheme. Therefore the petitioner is not entitled to any benefit under Rule 247-A.

12. Heard the counsel for the parties.

13. At the outset the petitioner is not entitled to count service rendered between 18.10.1982 to 1.7.1987, as grant-in-aid was admitted only w.e.f. 1.7.1987. In this regard necessary endorsement was issued under quasi-judicial litigation by the second respondent-Commissioner under the Karnataka Education Act on 3.11.2005. The petitioner failed to question the said endorsement. Moreover the petitioner had cause of action to rectify the date of entry into service as 18.10.1982 approved on 15.7.1987 the date on which the petitioner''s appointment was approved with grant-in-aid. On this issue itself the petitioner''s claim before the Tribunal and this Court has to be rejected.

14. The petitioner''s initial appointment was temporary and it was on hourly basis between 1982 to 1984. This has been taken into consideration while approving the petitioner''s appointment with grant-in-aid. Consequently, entitlement of any benefit under Rule 247-A of the KCSRs is impermissible. On this issue the Tribunal considered as follows:--

"7. In above context it is to be noted that this Tribunal in Doreswamy case cited supra had held that even in the cases of absorption, the benefit of Rule 247-A could be extended. It was inter alia, mentioned that the purpose of rule 247-A is to provide for computing the length of service, it is a beneficial provision and should be liberally construed in the absence of restrictive words used in the said provision. In view of above ruling, benefit of addition qualifying service has been given to person regularized from daily wages, stipendiary graduates etc. However, in the context of this case, it is seen that there is specific proviso in the Rule 247A that this benefit is not admissible to employees governed by Triple Benefit Scheme Rules. In view of legislative intent being clear, judgment in Doreswamy''s case, referred supra would not come to the aid of the applicant. Considering the entire background, we do not find any merit in the plea for extending the benefit of qualifying service in terms of the Rule 247-A."

15. In view of Rule 4 of the Special Rules, 2008 the service rendered in erstwhile Vani Sakkare Arts and Commerce First Grade College the petitioner is entitled for leave, seniority, pay and pension subject to conditions stated therein. It is relevant to read Rule 4 which is extracted herein:--

"4. Leavem seniority, pay and pension of the persons absorbed:(1) The service rendered in the erstwhile Vani Sakkare Arts and Commerce First Grade College, by the persons absorbed under these rules specified in column(2) of the Schedule, shall notwithstanding anything contained in any other rules, count for the purpose on pay, pension and leave subject to remittance of management share and employees share of contribution toward Triple benefit scheme to the Government but for the purpose of seniority, service from the date of absorption under these rules shall be taken into consideration.

(2) The pay of the employees shall be fixed at the appropriate stage in the scale of pay of corresponding post in which he is absorbed."

16. In view of the facts and records of the writ petition it is evident that the petitioner is entitled for service benefits only w.e.f. 1.7.1984 with reference to the approval of the petitioner''s appointment with grant-in-aid vide order dated 15.7.1987, endorsement dated 3.11.2005 and Special Rules 2008. The petitioner has not made out the case so as to claim date of entry into service as 18.10.1982 or 1.2.1983. The decision of the Tribunal is upheld and it has been clarified how the petitioner is not entitled to relief. Accordingly, the writ petition is dismissed. No order as to costs.