
(2002) 02 AP CK 0113

In the Andhra Pradesh High Court

Case No : Writ Petition No. 20678 of 1998

T. Samba Moorthy

APPELLANT

Vs

Accountant General (A and E), Hyderabad and Others

RESPONDENT

Date of Decision : 25-02-2002

Acts Referred:

Andhra Pradesh Revised Pension Rules, 1980 — Rule 26, 26(1)

Citation : (2002) 02 AP CK 0113

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Y. Venkat Sastry, for the Appellant; G.P. for School Education, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—Heard Mr.Srinivas for writ petitioner and Sri Elisha, learned Asst. Government Pleader for School Education.

2. The Writ Petition is filed for a writ of Mandamus directing the respondent to revise and re-fix the pension and other retirement benefits of the petitioner by treating the entire period of post as Grant-in-aid, rendered at U.P.S. Vellatur, Guntur district and A.R.P. High School, Ambam, Nizamabad as qualifying service and consequently release the arrears and other benefits with all consequential and other attendant benefits by declaring the action and the proceedings of the respondents in refusing to do so as being arbitrary, illegal, unconstitutional and pass such other suitable orders.

3. The facts in brief are as follows:

The writ petitioner was appointed as S.G.B.T.Teacher on 29-5-1989 in the Upper primary School, Vellatur, Guntur district and his services were regularised and probation also was declared and the said post was admitted to grant-in-aid under the grant-in-aid quota. It is also averred that the petitioner had taken leave on loss of pay from U.P.S. Vellatur , to attend to certain health problems of his child

and subsequent thereto went to Ambam, Nizamabad district as Doctors suggested change of place for improvement of health of his child. During the said period of loss of pay, the petitioner has taken employment with A.R.P.High School, as Telugu Pandit Grade-I on temporary basis in grant-in-aid vacancy and after improvement of the health of the child, he sought for leave on loss of pay for the period between 10-7-1966 to 9-7-1967 from U.P.S. Vellatur and tendered resignation and continued to work as Telugu Pandit in grant-in-aid post at A.R.P.High School, Ambam, Nizamabad district. It is also stated that during June, 1979, he noticed that the factum of his resignation from U.P.S. Vellatur, Guntur was not recorded in his service register and therefore, he made an application for recording the said fact and got the service register upto date to facilitate his claim for retirement benefits. The Deputy Inspector of School recorded the factum and attested the same in service register. Subsequent thereto, the petitioner retired as Telugu pandit Grade -I on 15-7-1985 on attaining the age of superannuation of 58 years. The 5th respondent has sent the pension and other retirement papers to the District Education Officer, Nizamabad. However, in his proceedings dt 1-7-1986 he has fixed the pension of the petitioner provisionally with effect from 1-3-1985 and respondent No.1 issued modified orders on 12-10-1989 adjusting the D.C.R.C. amounts by unilaterally concluding that the past service rendered by the petitioner till 10-5-1968 cannot be counted towards qualifying service. Hence, the petitioner has made a representation to count the entire service in grant-in-aid post as qualifying service for the purpose of computation of pension and other retirement benefits through the District Educational Officer by urging that the resignation will not nullify the service rendered in the grant-in-aid post. It is also stated that the entire service rendered in the post of grant-in-aid service post is liable to be counted as there is no rule which says that by mere resignation, the previous service is lost in grant-in aid post. The resignation at one place is only to change at a new place and the petitioner resigned at U.P.S. Vellatur and took a new job at A.R.P.High school , Ambam, Nizamabad district that both the posts are grant-in-aid posts and hence the service is liable to be reckoned for the purpose of accounting pensionary and retirement benefits. It is stated that all these representations made by the petitioner had not been considered, hence the present writ petitioner is filed.

4. In the counter affidavits, several factual facts, which were narrated in detail in the writ affidavit were not disputed but the main contention raised by the Government is that by virtue of Rule 26 (1) of the A.P. Pension Rules, 1980, wherein it is clearly mentioned that resignation from service from a post entails for forfeiture of the past service and hence, the writ petitioner is not entitled to the relief prayed for. No doubt several other details had been mentioned in the respective counter affidavits filed by the respondents in this regard.

5. Sri Srinivas, learned counsel representing the writ petitioner had taken me through the A.P. Teachers Contributory Pension cum Gratuity Rules, 1961 and had contended that for the teachers who had worked in aided institutions , the

said rules are applicable . Learned counsel also had contended that Rule 26 of the A.P.Revised Pension Rules, 1980 dealing with forfeiture of service on resignation will be applicable only in cases of Government servants but not in cases of teachers who worked in aided institutions. The learned counsel further submits that the respondents had misinterpreted the rules and intended to deprive the writ petitioner the retirement benefits to which the petitioner is duly entitled to as per law.

6. On the contrary, Mr.Elisha, learned Government Pleader for School Education had drawn my attention to Rule 26 of the A.P. Revised Pension Rules, 1980 and also G.O.(P).No.88 dated 28-3-1980. He has further contended that Rule 26 aforesaid is applicable even in case of aided institutions as can be seen from G.O.Ms.No.88 referred to supra. The contention of the other side that 1961 Rules can be made applicable even at this distant point of time cannot be sustained. Heard both the counsel and perused the material available on record.

7. The facts are very plain and simple. The only question that has been argued by both the counsel is relating to applicability of Rule 26 of A.P. Revised Pension Rules, 1980 in cases of retired teachers of aided institutions for the claim of the pensionary and other retirement benefits. Rule 26 of the A.P. Revised Pension Rules, 1980 deals with forfeiture of service on resignation , the relevant portion for the same reads as follows:

Forfeiture of service on resignation:

(1) Resignation from a service or post entails forfeiture of past service:

Provided 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.

(2) Interruption in service in a case falling under the provisio to sub-rule (1), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servants on the date of relief or by formal condonation to the extent to which the period is not covered by leave to him."

8. Learned counsel for the petitioner had stressed on the words "under the Government" and contended that this rule 26 cannot be extended in case of the retired teachers of aided institutions. G.O.(P) No.88 dated 26-3-1980, the beginning portion itself reads as follows and the relevant portion for the present purpose reads as here under.

"One of the terms of reference to the Pay Revision Commissioner was to review the existing retirement benefits of all categories of employees of the State Government, Local Bodies and Aided institutions and to examine the question of extension of retirement benefits to work charged Establishment and to make suitable recommendations. Accordingly, the Pay Revision Commissioner has reviewed these benefits and has made certain recommendations which have

been accepted by Government."

9. Learned Asst. Govt. Pleader laid stress on the expression "aided institutions" in the said Government order and contended that by virtue of the same, rule 26 of A.P. Revised Pension Rules, 1980 has to be made applicable to the writ petitioner also . It is already brought to my notice that the A.P. Teachers Contributory Provident Fund cum Gratuity Rules, 1961 continues to be a statute book and those rules are not referred to in A.P.Revised Pension Rules, 1980.

10. The main contention of the writ petitioner is that the writ petitioner is entitled to better retirement benefits if rule 26 of the A.P. Revised Pension Rules, 1980 is not made applicable to him. A prima facie reading of Rule 26 shows that the said rules are applicable to government servants. Even G.O.Ms.No.88 dated 26-3-1980 specifically states that one of the terms of reference to the Pay Revision Commissioner to review the existing retirement benefits of all categories of employees of the State Government, Local bodies and aided institutions and to examine the question of extension of retirement benefits to work charged establishments and to make suitable recommendations and hence in the light of the language implied in G.O.(P) 88 , it cannot be said that in the instant case, the writ petitioner is governed by Rule 26 of the A.P. Revised Pension Rules, 1980. Hence, in my considered opinion, the stand taken by the writ petitioner is well justified and hence, the writ petitioner is entitled to the relief prayed for in the writ petition.

11. For the foregoing reasons the writ petition is allowed. But in the circumstances of the case no costs.