

(2005) 04 GAU CK 0049
In the Gauhati High Court

Thangkhokhup S.Kipgen

APPELLANT

Vs

State of Manipur and Ors.

RESPONDENT

Date of Decision : 28-04-2005

Acts Referred:

Citation : (2005) 04 GAU CK 0049

Hon'ble Judges : B.K.Sharma, J

Bench : Single Bench

Advocate : R.K.Nokulsana Singh, Dhanabhir, Ch.Bidyamani Devi, Advocates
appearing for Parties

Judgement

1. By this writ petition, the petitioner has prayed for a direction to the respondents to count his past service which he has rendered on adhoc basis towards pensionary benefits. Although, in the prayer made in the writ petition as it stood at the time of filing of the same is for counting of such service from 20.5.80 to 6.8.98, at the time of hearing of the writ petition, the prayer made was to count such past service with effect from the date of joining the post of Functional Manager by the petitioner pursuant to the order of appointment dated 31.7.1991.

2. Although the petitioner has stated about his service career from 197980 in different capacities, with the modified relief claimed on behalf of the petitioner during the course of hearing of the case, the appointments of the petitioner prior to his appointment as Functional Manager by order dated 31.7.1991 need not be referred to. Suffice is to say that during the period from 197980 to 31.7.91, the petitioner rendered services, all on adhoc basis in different capacities with some breaks. Eventually, he was appointed as Functional Manager by order dated 31.7.91 and it is only thereafter he continued in his service uninterruptedly.

3. On an earlier occasion, the petitioner approached this Court by filing a writ petition being Civil Rule No. 1122/1994 claiming regularization of his service. The writ petition was disposed of by judgment and order dated 29.9.97 directing the

respondents to consider and examine the case of the petitioner for regularization of his service in the post of Functional Manager. In the judgment it was categorically held that the petitioner had been serving continuously and uninterruptedly in the post of Functional Manager since the date of his joining in the service in the year 1991 by virtue of the order of appointment dated 31.7.91.

4. Pursuant to the aforesaid judgment and order of this Court, the services of the petitioner was regularized as Functional Manager (Credit) by order dated 7.8.98. The petitioner made representations praying for retrospective regularization of his service for the purpose of pensionary benefits. One of his such representations was forwarded by the General Manager, District Industries centre, Imphal west to the Director of Commerce & Industries, Manipur by communication dated 3.11.98. Such representations not having evoked any response, the petitioner approached this Court by filing the instant writ petition.

5. I have heard Mr. R.K. Nokulsana, learned Sr. Counsel assisted by Mr. Dhanabhir, learned Advocate for the petitioner. I have also heard Ms. Sh. Bidyamani, learned Additional Govt. Advocate, Manipur.

6. Mr. Nokulsana, learned Sr. Counsel during the course of his argument referring to the prayers made in the writ petition submitted that the petitioner, atleast is entitled to count his service from the date of joining the post of Functional Manager (Credit) pursuant to the order of appointment dated 31.7.91. Referring to the earlier judgment of this Court, about which mention has been made above, he submitted that there being no dispute that the service of the petitioner from 1991 is continuous and uninterrupted, in the normal circumstances, the petitioner is entitled to get the benefit of the service rendered by him from 1991 till regularization of his service by order dated 7.8.98 for the purpose of pensionry benefits.

7. Ms. Ch. Bidyamani, learned State Counsel on the other hand submitted in reference to the stand of the respondents in the counter affidavit that there is no question of counting the past service of the petitioner as has been claimed in the writ petition. She submitted that the services of the petitioner having been regularized only in 1998 pursuant to the order of this Court, the petitioner is not entitled to count his past service even for the purpose of pensionary benefits.

8. I have considered the submissions made by the learned counsel for the parties and the materials available on record. As observed above, although the prayer made in the writ petition is for retrospective regularization of service from 197980 but during the course of hearing of the case, such prayer was confined only to the service rendered by the petitioner in the same post of Functional Manager on adhoc basis during the period from the date of joining the post pursuant to the order of appointment dated 31.7.91 till regularization of his service by order dated 7.8.98. There is no dispute that the petitioner was in continuous and uninterrupted service during the said period. Eventually, his service was regularized by the said order dated 7.8.98 pursuant to the order

passed by this Court.

9. In the aforesaid judgment and order dated 29.9.97 passed by this Court in Civil Rule No. 1122/1994, there is a definite finding that the petitioner is in continuous and uninterrupted service in the post of Functional Manager (Credit) from 1991 onwards. The respondents also in their counter affidavit have admitted the position by making the following statements in paragraph 5.

?That, as regards para No. 4 of the writ petition, it is to submit that the term of adhoc appointment of the petitioner to the post of Functional manager (Credit) was extended from time to time from 31.7.91 upto 6.8.98 and his salaries have been paid.?

10. From the above, there is no denial, rather it is an admitted position that the petitioner was in continuous and uninterrupted service from 1991 pursuant to the order of appointment dated 31.7.91 in the post of Functional Manager (Credit) till his service was regularized by order dated 7.8.98. It is true that the said period of service was rendered on adhoc basis and thus will not count for seniority in service. In fact, the petitioner has also not prayed for counting his seniority from any earlier date than the date of regularization of service. However, his prayer is for counting of his past service for the purpose of pensionary and other retirement benefits. In the normal circumstances, an adhoc period of service followed by regularization does not count for seniority. However, altogether a different consideration comes into play when such period of service is taken into account for other service benefits by maintaining continuity in service. In the instant case, if the adhoc period of service rendered by the petitioner from 1991 till regularization of his service by order dated 7.8.98 is taken into account, the petitioner will be entitled to better pensionary benefits.

11. At the time of filing of the writ petition, the petitioner was aged about 48 years. By now he has attained the age of about 54/55 years and thus his retirement is fast approaching. With the regularization of his service from 7.8.98, he will have only few years of service to his credit till his retirement on attaining the age of superannuation, which needless to say will have a telling effect on his pensionary and other retirement benefits. As noticed above, the petitioner was in service from 1979/80, may be in different capacities with some breaks. However, while holding that and as acceded to by the petitioner that he may not be entitled to count his entire service from 1979/80, it will be harsh to the petitioner, if his continuous and uninterrupted period of service from 1991 in the post of Functional Manager (Credit) is not accounted for towards pensionary and other retirement benefits. In the normal circumstances, an incumbent is entitled to count his adhoc period of service followed by regularization towards pensionary and other retirement benefits, although he may not be entitled to seniority for the said period.

12. For the foregoing reasons and discussions, it is held that the petitioner will be entitled to count his past service from the date of joining the post of Functional

Manager (Credit) pursuant to the order of appointment dated 31.7.91 till the date of regularization of his service by order dated 7.8.98 for the purpose of pensionary and other retirement benefits. It is made clear that the petitioner will not be entitled to count his seniority for the said period, but he will be entitled to count the said period towards continuity of his service for the purpose of other service benefits including pensionary and other retirement benefits.

13. Writ petition succeeds to the extent indicated above. There shall be no order as to costs.