(2016) 02 KAR CK 0227

In the Karnataka High Court

Case No : Writ Petition No. 49574/2014 (S-CAT)

The Union of India and Others APPELLANT

Vs

H.L. Raghuram RESPONDENT

Date of Decision : 18-02-2016

Acts Referred:

Citation : (2016) 02 KAR CK 0227

Hon'ble Judges : Mohan M. Shantana Goudar and K.N. Phaneendra, JJ.

Bench : Division Bench

Advocate : H. Jayakara Shetty, Advocate, for the Appellant; B.S. Venkatesh Kumar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mohan M. Shantana Goudar, J.—1. The respondent was initially engaged as Gramin Dak Sevak, Branch Post Master at Huskur Branch Post Office in Mandya Division, Karnataka State, about 25 years prior to 2001. On passing the departmental examination, he was selected and appointed as Postman at Maddur Post Office on 9.11.2001. He was working in the said post of Postman till he attained the age of superannuation on 30.6.2011. Thus, it is clear that he had not only served as Gramin Dak Sevak for about 25 years, but also served as duly appointed Postman (as regularly appointed Postman) for about 9 years 7 months and 21 days. Considering the length of service of the respondent as a regular employee and as the respondent has not completed 10 years of service as a regular employee, he is not paid with the pension, but he was given all other retirement benefits such as earned leave encashment, gratuity, etc. The respondent being aggrieved by non-disbursement of pension in his favour, approached the Central Administrative Tribunal, Bangalore Bench, in O.A. No. 541/2013, which came to be disposed of on 18.7.2014 by the impugned order.

2. The Tribunal while disposing of O.A. No. 541/2013 has directed the Department-petitioners herein to consider the request of the respondent by applying Rule 49(3) r/w. Rule 88 of the Central Civil Services (Pension) Rules,

1972 (''Pension Rules'' for short).

3. Heard the learned advocates on both sides and perused the records.

The document at Annexure-A1, dated 7.9.2001 duly signed by the Superintendent of Post Offices, Mandya Division reveals that the respondent herein was declared successful in the examination held on 10.6.2001 for promotion to the cadre of Postman in ''seniority quota''. Certain other persons were also declared successful in ''merit quota'' with which we are not concerned in this writ petition. Thus, it is clear that the respondent was declared successful in the examination held on 10.6.2001 for the post of Postman as far back as on 7.9.2001 itself. However, the Superintendent of Post Offices, Mandya Division took two months'' time to confirm permanency in favour of the respondent to the post of Postman on 5.11.2001. The document at Annexure-A2, dated 5.11.2001 duly signed by the Superintendent of Post Offices, Mandya Division clarifies that the respondent who had appeared for examination of 2000 Batch, has successfully completed the prescribed postman training; which means, after passing the departmental examination on 7.9.2001, the respondent herein underwent successfully the training till 5.11.2011 on which date, he was given posting as a Postman. However, according to the petitioners'' counsel, the said order dated 5.11.2011 vide Annexure-A2 was implemented on 9.11.2011.

4. The Department takes advantage of dates viz., 5.11.2011 and 9.11.2011, i.e., the dates on which the respondent was allotted the posting as regular Postman, to deny the benefits of pension in his favour. There cannot be any dispute that if 5.11.2011 or 9.11.2011 is taken into consideration, then the respondent would not complete 10 years of mandatory service for getting the pension. The relevant Rules to be taken into consideration in respect of the respondent are Rules 49 and 88 of the Pension Rules, which read as under:-

"49. Amount of Pension

(1) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month''s emoluments for every completed six monthly period of qualifying service.

(2) (a) In the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years, the amount of pension shall be calculated at fifty per cent of average emoluments, subject to a maximum of four thousand and five hundred rupees per mensem.

(b) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty-three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under Clause (a) and in no case the amount of pension shall be less than rupees three hundred and seventy-five per mensem.

(c) notwithstanding anything contained in Clause (a) and Clause (b) the amount of invalid pension shall not be les than the amount of family pension admissible under sub-rule (2) of Rule 54.

(3) In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half-year and reckoned as qualifying service.

(4) The amount of pension finally determined under Clause (a) or Clause (b) of sub-rule (2), shall be expressed in whole rupees and where the pension contains a fraction of a rupee it shall be rounded off to the next higher rupee.

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88. Power to relax

Where any Ministry or Department of the Government is satisfied that the operation of any of these rules, causes undue hardship in any particular case, the Ministry or Department, as the case may be, may, by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner:

Provided that no such order shall be made except with the concurrence of the Department of Personnel and Administrative Reforms.

From Rule 49 of the Pension Rules, it is clear that in case of a Government servant retiring in accordance with the Pension Rules before completing qualifying service of ten years, he would not be entitled to the pensionary benefits, however he is entitled to service gratuity which shall be calculated at the rate of half month''s emoluments for every completed six monthly period of qualifying service.

Rules 49(1) and 49(2)(b) of the Pension Rules if homogeneously read would further make it clear that if an employee has worked for ten years, he would be entitled for pensionary benefits. It is also not in dispute that under Gramin Dak Sevaks (Conduct & Employment) Rules, 2001, Gramin Dak Sevak cannot be equated to a civil servant and Sevak shall be outside the Civil Service of the Union. A Sevak shall not claim to be at par with the Central Government employees. Thus, the Gramin Dak Sevaks are not entitled to pensionary benefits. Hence, the period of service rendered by the respondent as Gramin Dak Sevak will not be taken into consideration for the purpose of calculating mandatory of 10 years of regular service for getting pensionary benefits. Thus, it is clear that service rendered by the respondent in the post of Postman would only be relevant for the purpose of determination as to whether he is entitled to pensionary benefits or not.

Rule 49(3) of the Pension Rules specifies that in calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half-year and reckoned as qualifying service. Since the respondent has completed more than 9 1/2 years of service, Rule 49(3) of the Pension Rules will come to the aid of the respondent, inasmuch as the fraction of service rendered by him after 9 1/2 years shall be treated as a completed one half-year and shall be reckoned as qualifying service.

5. In addition to the same, under Rule 88 of the Pension Rules, the Ministry of Department of Government has power to relax the requirement of Rule 49 of the Pension Rules in case if the Department finds that Rule 49 of the Pension Rules causes undue hardship to the employee. However, the period of relaxation has to be exercised by the Department with due diligence in favour of the concerned employee, more particularly under Rule 49(3) of the Pension Rules.

6. We find from the records that the petitioners have not at all exercised jurisdiction vested in them under Rule 49(3) r/w. Rule 88 of the Pension Rules while denying the pension in favour of respondent. If these Rules are read homogenously, the respondent would get the benefit of pension.

7. More over, as mentioned supra, the respondent''s post was approved on 7.9.2011 itself and thereafter he underwent training meant for the post of Postman. Therefore, it is deemed that the respondent is recognized as a Postman w.e.f. 7.9.2011 and training was given to him for two months from that day for effective discharge of the duties of Postman and thereafter on 9.11.2011 he was given regular posting. The period of training undergone by the respondent as a Postman cannot be ignored while considering the length of service and for determining the eligibility to get the pension. In view of the same, we do not find any ground to interfere with the order of the Tribunal inasmuch as the Tribunal has come to the correct conclusion.

8. Learned counsel appearing for the petitioners relies upon a decision of the Apex Court in the case of Union of India and Others Vs. The Registrar and another (Civil Appeal Nos. 13675-13676/2015 (SLP (Civil) Nos. 17035-17036/2013), disposed of on 24.11.2015) to contend that respondent may not be entitled to the benefit of the pension.

The said submission cannot be accepted. In the aforesaid judgment, the employees concerned were only part-time casual employees. They were neither full time casual employees nor permanent employees. In the matter on hand, the employee-respondent is a permanent employee who worked as Postman. Therefore, the dictum laid down by the Apex Court in the said judgment is not applicable to the facts and circumstances of this case.

Hence, writ petition fails and accordingly the same stands dismissed.

The order of the Central Administrative Tribunal, Bangalore Bench, dated 18.7.2014 passed in O.A. No. 541/2013 shall be complied with as early as possible but not later than the outer limit of four months from the date of receipt of this order.

