(2019) 11 UK CK 0092

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 611 Of 2018, Urgency Application No. 14685 Of 2019

Uma Shankar Sharma APPELLANT

Vs

Secretary, Training And Technical Education & Others RESPONDENT

Date of Decision : 13-11-2019

Acts Referred:

Citation : (2019) 11 UK CK 0092

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Harshpal Sekhon, Anil K. Bisht, K.P. Upadhyaya

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. The petitioner has invoked the jurisdiction of this Court seeking a writ of certiorari to quash the order passed by the Joint Secretary, Training and Technical Education Department, Secretariat, Dehradun dated 28.01.2016; and a writ of mandamus directing the Director, Bipin Tripathi Kumaon Institute of Technology, Dwarahat (for short "BTKIT"), District Almora to release the agreed pro-rata pensionary contribution in favour of the Motilal Nehru National Institute of Technology, Allahabad, Prayagraj, Uttar Pradesh (for short 'MNNIT') which is the essential requirement to count the past services of the petitioner in the old pension scheme, who is presently working as Deputy Registrar in MNNIT, Allahabad, Uttar Pradesh.

2. Facts, to the limited extent necessary, are that the petitioner was initially appointed in the post of Assistant Registrar on 09.07.1998, and joined duty on 04.09.1998. He was drawing the pay-scale of Rs.6,500-10,500/- in the General Provident Fund (GPF) cum Pension Scheme (old pension scheme). His services were confirmed in the post of Assistant Registrar on 04.09.2001.

3. While matters stood thus, the MNNIT, Allahabad issued an advertisement

inviting applications for appointment to the post of Deputy Registrar (Accounts) on a contract basis. The petitioner applied, through proper channel, for the post of Deputy Registrar (Accounts), and appeared before the Selection Committee with due permission of the Principal of the BTKIT, Dwarahat. The petitioner was appointed as a Deputy Registrar (Accounts), in the pay-scale of Rs.8,000-13,500/-, on contract initially for a period of one year. The petitioner's request for grant of leave without pay on lien for one year, to join the post of Deputy Registrar (Accounts) at the MNNIT, Allahabad, was acceded to; and he was relieved on 16.12.2006, on lien for one year from 19.12.2006 to 18.12.2007, to enable him to join the post of Deputy Registrar (Accounts). The petitioner joined in the said post on 19.12.2006. His services were extended for a period of one more year i.e. from 19.12.2007 to 18.12.2008. He made a request on 12.12.2007 for extension of leave without pay for a further period of one year from 19.12.2007 to 18.12.2008. He was granted leave without pay, from 19.12.2007 to 18.12.2008, by proceedings dated 12.05.2008. The petitioner's services were extended by the MNNIT, Allahabad for a further period of one year from 19.12.2008 vide proceedings dated 28.11.2008.

4. The petitioner requested the Principal, KEC, Dwarahat, by his letter dated 18.12.2008, to extend his leave without pay for a further period of one year from 19.12.2008 to 18.12.2009 but to no avail. The Principal, KEC, Dwarahat, by his letter dated 12.05.2009, directing the petitioner to report back to duty at the BTKIT, Dwarahat latest by 30.05.2009, otherwise his services would be treated as a technical resignation as per the applicable Rules. The Principal, KEC, Dwarahat sent another letter on 17.07.2009 informing the petitioner that leave without pay had not been extended and, therefore, he must report back to duty. By his letter dated 21.07.2019, the petitioner requested the Principal, KEC, Dwarahat for sanction of extra-ordinary leave without pay, for the period 19.12.2008 to 18.12.2009, assuring that no further extension of leave would be sought. This letter also did not elicit any response.

5. By letter dated 11.08.2009, the Principal, KEC, Dwarhat informed the petitioner that his services had come to an end with immediate effect as per the Rules. The petitioner, by his letter dated 22.08.2009, sought review of the earlier decision to terminate his services. The Board of Governors of the MNNIT, in its meeting held on 12.08.2009, regularized the services of the petitioner with effect from the date of joining i.e. 19.12.2006. The petitioner submitted his letter of resignation to the Director, BTKIT, Dwarahat (earlier KEC, Dwarahat) on 15.02.2010. By another letter of the same date i.e. 15.02.2010, the petitioner sought that his past services be counted for the GPF cum Pension Scheme rendered at his previous employment with the KEC, Dwarahat from 04.09.1998 to 18.12.2006 (for a period of a little more than eight years).

6. Subsequently, by letter dated 22.04.2010, the Registrar, MNNIT, Allahabad addressed a letter to the Registrar, KEC, Dwarahat enquiring as to whether the parent institute was willing to discharge its liability towards pension/GPF/GIS and

leave salary for the services rendered by the petitioner in the Institute. The Registrar, BTKIT, Dwarahat appears to have answered in the affirmative by his letter dated 25.05.2010. The Registrar, MNNIT, by his letter dated 08.07.2010, requested the BTKIT, Dwarahat to send the petitioner's service book along with one time pro-rata pensionary liability, GPF amount, GIS leave encashment etc. By letter dated 04.12.2010, the petitioner's contribution to the GPF amount, of Rs.1,22,111/-, was sent by the Registrar, BTKIT, Dwarahat without interest to the Registrar, MNNIT, Allahabad.

7. By letter dated 18.02.2011, the Registrar, MNNIT, Allahabad raised a demand of Rs.11,58,223/- on the Director, BTKIT, Dwarahat for payment of pro-rata pensionary liability of the petitioner in terms of the letter dated 25.05.2012. The said letter was forwarded to the State Government for sanction of pro-rata pensionary liability. Certain clarifications were sought by the State Government, by letter dated 18.03.2013, from the BTKIT, Dwarahat, to which a reply was sent on 03.06.2013.

8. By letter dated 28.01.2016, the State Govenrment declined to release the pensionary contribution of the petitioner on the ground that the services rendered by him at the BTKIT, Dwarahat was less than ten years. The petitioner submitted letters dated 25.10.2016 and 29.11.2016 requesting the State Government to re-consider its decision.

9. By letter dated 18.03.2018, the Joint Secretary, Technical Education, is said to have forwarded the petitioner's representation to the Director, BTKIT, Dwarahat for action to be taken; and, on the ground that no action was taken, the petitioner invoked the jurisdiction of this Court.

10. Mr. Harshpal Sekhon, learned counsel for the petitioner, would submit that, since the Registrar, BTKIT, Dwarahat had, by his letter dated 25.05.2010, accepted the liability to pay the petitioner's pension contribution for the services rendered by him with the BTKIT, Dwarahat earlier, it was not open to the BTKIT, Dwarahat to resile therefrom; Para 5(2) of the Government of India Office Memorandum dated 29.08.1984 requires the previous service rendered in an autonomous body under the State Government to be reckoned in computing the pensionary benefits entitlement of an employee on his retirement from service in an autonomous body under the Central Government; in terms of the Office Memorandum of the Government of India dated 07.02.1986 where a Central Government employee, borne on a pensionable establishment, is allowed to be absorbed in a Central Autonomous Body having a pension scheme of its own, the services rendered by him, under the Government, should be allowed to be counted towards pension under the Autonomous Body, irrespective of whether the employee was temporary or permanent in Government, subject to certain conditions; after the new pension scheme was extended with effect from 01.01.2004, the Government of India had issued Office Order dated 22.02.2006 regarding counting of past service of employees of the Central Government in various autonomous bodies, who were appointed on or before 31.12.2003, and

had submitted their resignation on or before 01.01.2004; the BTKIT, Dwarahat had terminated the petitioner's services, for not reporting back to duty, by its letter dated 11.08.2009; what was terminated was the petitioner's lien over the substantive post held by him of Assistant Registrar in the BTKIT, Dwarahat; that did not obliterate the services rendered by the petitioner in the BTKIT for a period of more than eight years from 04.09.1998 till he joined service in MNNIT, Allahabad on 19.12.2006; and having agreed to grant the petitioner pensionary benefits, vide letter dated 25.05.2010, it is not open to the respondents to resile therefrom.

11. On the other hand Mr. K.P. Upadhyaya, learned Senior Counsel appearing on behalf of the second respondent, would submit that the BTKIT is a society registered under the Societies Registration Act; it is wholly funded by the Government of Uttarakhand; it is only if, and after, the Government of Uttarakhand accorded its approval for grant of such pensionary benefits, was the petitioner entitled thereto; the BTKIT had on its own accord, and without approval of the State Government, agreed to pay his terminal benefits; since the financial burden of such payment is required to be borne by the State Government, the letter addressed by the Registrar, BTKIT, Dwarahat on 25.05.2010 is of no consequence; both the Government of India office memoranda, on which the petitioner places reliance upon, have no application; in terms of the extant Rules, it is only employees who have put in a minimum period of 10 years' service with the BTKIT, Dwarahat who are entitled to be extended pensionary benefits; the petitioner joined duty with the MNNIT on 19.12.2006, by which date he had completed a little more than eight years of service; and since he had not completed the minimum period of ten years of service, and had not retired from the service of the BTKIT, he was not entitled to be granted pensionary benefits.

12. From the facts noted hereinabove, it is evident that the petitioner had, on his own accord, applied for the post of Deputy Registrar in the MNNIT, Allahabad. The BTKIT, Dwarahat had no doubt accorded permission to the petitioner to submit his application for the said post. The BTKIT, Dwarahat had also granted him leave without pay initially for a period of one year from 19.12.2006 to 18.12.2007, and thereafter for a further period of one year from 19.12.2007 to 18.12.2008. The petitioner, evidently, sought grant of extra-ordinary leave of one year on each occasion since his appointment with the MNNIT, Allahabad was on contractual basis for a period of one year, which was also periodically extended thereafter. After he was granted leave without pay for a period of one year from 19.12.2007 to 18.12.2008, the petitioner again sought further extension of leave without pay for a period of one more year i.e. from 19.12.2008 till 18.12.2009, since his services were again extended by the MNNIT, Allahabad for a period of one year from 19.12.2008 till 18.12.2009. This request of the petitioner, for grant of extra-ordinary leave, was not acceded to and he was asked by the BTKIT, vide its letter dated 12.05.2009, to join back at the institute latest by 30.05.2009, failing which he would be treated as having resigned from service.

13. Subsequently, by letter dated 17.07.2009, the Principal, BTKIT, Dwarahat informed the petitioner that, as his leave without pay had not been extended, he must report back to duty. By letter dated 11.08.2009, the petitioner was informed that his services had come to an end as per Rules with immediate effect. It is only after the letter dated 11.08.2009, whereby the petitioner's services was treated to have come to an end with immediate effect, was his services regularized with the MNNIT, Allahabad in terms of the resolution of the Board of Governor dated 12.12.2009, with effect from his initial date of appointment i.e. 19.12.2006. It is only thereafter that the petitioner submitted his resignation on 15.02.2010, though his services with the respondent-institute had already come to an end as was communicated to him by the Principal of the BTKIT by his letter dated 11.08.2009. It is for the period 04.09.1998 till 19.12.2006, ie when the petitioner served with the BTKIT, Dwarahat, that he claims payment of his pensionary benefits, and for its inclusion in the services rendered by him with the MNNIT, Allahabad.

14. It is true that pursuant to the letter addressed by the MNNIT dated 23.04.2010, asking whether the BTKIT, Dwarahat was willing to discharge its liability towards the pension, GPT/GIS and leave salary towards the services rendered by the petitioner in the institute, the BTKIT, Dwarahat, by its letter dated 25.05.2010, had answered as 'yes'. Acceptance by the institute, to discharge the liability relating to pension/GPF/GIT and leave salary towards the services rendered by the petitioner in the institute, notwithstanding, it was for the State Government to take a decision in this regard, and not for the institute to accede to any such request, since the financial liability for payment of the said amount (which in terms of the demand raised by the MNNIT, Allahabad, in its letter dated 18.02.2011, is for Rs.11,58,223/-) is required to be borne by the State Government.

15. In his letter dated 28.01.2016, the Joint Secretary, Government of Uttarakhand, informed the Principal, BTKIT, Dwarahat that, in terms of the Pension Rules, the petitioner ought to have served for a period of ten years under the Government of Uttarakhand; since he had served for a period of less than ten years, he was not entitled to be paid pensionary benefits; the BTKIT had, after terminating the services of the petitioner, forwarded a sum of Rs.1,21,111/-towards the GPF contribution to the MNNIT, Allahabad vide letter dated 20.11.2010; the basis, on which a demand for Rs.11,58,223/- was raised, was not known; and there was no basis to add the service of less than ten years as qualifying service for payment of pensionary benefits.

16. It is not in dispute that the minimum service required to be rendered under the Government of Uttarakhand, for being eligible for payment of pension, is ten years; and the total period of service rendered by the petitioner, in the BTKIT, Dwarahat, was less than the minimum prescribed service of ten years, as it was for a period of eight years and three months.

17. The claim of the petitioner, as put across by Mr. Harshpal Sekhon, learned

counsel appearing on his behalf, is based on the office memorandum issued by the Government of India dated 29.08.1984 and the subsequent office memorandum dated 07.02.1986. In terms of the O.M. dated 29.08.1984, in case of autonomous bodies where a pension scheme is in operation, and where Central Government employees borne on pensionable establishment are allowed to be absorbed in an autonomous body, the services rendered by them under the Government shall be allowed to be counted towards pension under the autonomous body irrespective of whether the employee was temporary or permanent in Government; the same procedure would apply to employees of autonomous bodies who were permanently absorbed under the Central Government; the Government/autonomous body would discharge its pension liability by paying in a lump sum, as a one-time payment, the pro-rata pension/ service gratuity/terminal gratuity and DCRG for the service upto the date of absorption in the autonomous body/Government, as the case may be; and the lump sum amount of the pro-rata pension would be determined with reference to the commutation table laid down in the CCS (Commutation and Pension) Rules, 1981, as amended from time to time.

18. Paragraph 5(2) of the said O.M. dated 29.08.1984 stipulates that, where no terminal benefits for the previous service has been received, the previous service in such cases would be counted as qualifying service for pension only if the previous employer accepts pension liability for the service in accordance with the principles laid down in the O.M; in no case pension contribution/liability shall be accepted from the employee concerned; and these orders would be applicable only where the transfer of the employee, from one organization to another, was/ is with the consent of the organization under which he was serving earlier, including cases where the individual had secured employment directly on his own volition provided he had applied through proper channel/with proper permission of the administrative authority concerned. The said O.M. dated 29.08.1984, as is evident from Paragraph 3 thereof, applies only to cases of Central Government employees going over to a Central autonomous body or vice-versa, and employees of Central autonomous bodies moving to another Central autonomous body.

19. The BTKIT, Dwarahat is, as has been noted hereinabove, a Society funded entirely by the Government of Uttarakhand, and not by the Central Government. It cannot, therefore, be held to be a central autonomous body governed by the O.M. dated 29.08.1984. Reliance placed on the said O.M. dated 29.08.1984 is, therefore, of no avail.

20. However, in the subsequent O.M. dated 07.02.1986, it is stated that reciprocal arrangements may be entered into with the various State Governments to the effect that where employees, of the State Government/State Autonomous Bodies/State Statutory Bodies, have been absorbed in Central Autonomous Bodies, they may be allowed the same benefits as have been extended to the Central Government servants and vice-versa. Paragraph 5 of the

said O.M. makes this order applicable to employees of State Governments and State Autonomous Bodies moving to Central Government/Central Autonomous Bodies in respect of the 13 State Government listed under the said Paragraph, which includes the State of Uttar Pradesh.

21. While Mr. K.P. Upadhyaya, learned Senior Counsel appearing on behalf of the second respondent, would submit that no reciprocal arrangement has been entered into between the Central Government and the Government of Uttarakhand, the fact remains that when the O.M. dated 07.02.1986 was issued by the Government of India, the State of Uttarakhand had not been created and was only a part of the State of Uttar Pradesh.

22. Mr. Harshpal Sekhon, learned counsel for the petitioner, would submit that, since the State of Uttarakhand is a successor State of the erstwhile State of Uttar Pradesh, the said O.M. of the Government of India dated 07.02.1986 would automatically apply to employees of the Government of Uttarakhand, and of its autonomous bodies, also. This fact is disputed both by Mr. K.P. Upadhyaya, learned Senior Counsel appearing on behalf of the second respondent and Mr. Anil K. Bisht, learned Standing Counsel appearing for the State of Uttarakhand. Reliance is also placed on behalf of the respondents on the provisions of the Uttarakhand Retirement Benefits Act, 2018 (for short the "2018 Act"), to contend that the Act would apply to employees appointed on or before 01.01.2005 in case they complete the age of superannuation/voluntary retirement and compulsory retirement, and in case of death; and, in terms of the said Act, the petitioner is not entitled to be granted pensionary benefits as demanded by the MNNIT, Allahabad for a sum of Rs.11,58,223/-.

23. It would be wholly inappropriate for us to examine whether the Government of India O.M. dated 07.02.1986, which has been made applicable to autonomous bodies under the Government of Uttar Pradesh, would also apply to autonomous bodies under the Government of Uttarakhand, for these are all matters for the Government of Uttarakhand to examine in the first instance. The letter of the Joint Secretary, Government of Uttarakhand, dated 28.01.2016, makes no reference to the Government of India O.M. dated 07.02.1986, and since the said letter was issued before the 2018 Act was made, he could not have made any reference thereto in his letter dated 28.01.2016.

24. Suffice it, in such circumstances, to direct the first respondent to consider whether the Government of India O.M. dated 07.02.1986 is applicable to institutes such as BTKIT, Dwarahat; and whether, in terms of the said O.M, the petitioner is entitled to be extended pensionary benefits for the services rendered by him with the BTKIT, Dwarahat from 04.09.1998 till 18.12.2006. The first respondent shall examine the matter afresh, and take a considered decision on the petitioner's claim to be paid pensionary benefits in terms of the Government of India O.M. dated 07.02.1986, and communicate its decision to the petitioner with utmost expedition and, in any event, within three months from the date of production of a certified copy of this order.

25. The Writ Petition is disposed of accordingly. No costs.