
(2019) 03 DEL CK 0273

In the Delhi High Court

Case No : Civil Writ Petition No. 10306 Of 2016

Union Of India & Ors

APPELLANT

Vs

Dr. Narayan Rao Battu & Anr

RESPONDENT

Date of Decision : 27-03-2019

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 30

Citation : (2019) 4 AD(Delhi) 156

Hon'ble Judges : Vipin Sanghi, J; Rekha Palli, J

Bench : Division Bench

Advocate : Kirtiman Singh, Shruti Dutt, Rabin Majumder, Shreemoyee Bhattacharjee, Devik Singh

Final Decision : Allowed

Judgement

Rekha Palli, J

1. Vide the present writ petition, the petitioners assail the order dated 18.04.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A.No.2945/2015, allowing the original application (OA) filed by the respondent no.1/applicant seeking coverage under the old pension scheme.

2. Pursuant to an advertisement issued by the respondent no.2/UPSC inviting applications for the post of Deputy Legislative Counsel (DLC) in Grade III of the Indian Legal Service on 26.04.2003, the respondent no.1 applied for the said post. This advertisement, besides prescribing the educational and other qualifications for the said post, also specified that the benefit of added years of service as admissible under Rule 30 of the CCS (Pension) Rules, 1972 would be applicable to the post. Based on his application, the respondent no.1 was called for an interview by the UPSC on 25.09.2003 and subsequently, the UPSC recommended the name of one Mr. Ashok G. Pawade for appointment to the said post on 07.10.2003, while the name of the respondent no.1 was placed in the

reserve list of candidates.

3. When Mr. Ashok G. Pawade joined service on 19.08.2004, his offer of appointment clearly stipulated that he would be governed by the new pension scheme which had come into force w.e.f. 01.01.2004. However, on 09.11.2004, less than three months after joining service, Mr. Pawade resigned from his post and in light of the vacancy which arose, the petitioner no.1 requested the UPSC to provide a substitute from the reserve list of candidates. Thereafter, the UPSC, vide its letter dated 26.12.2004, recommended the appointment of the respondent no.1 for the aforesaid post. Resultantly, an offer of appointment was made to the respondent no.1 on 05.01.2005 and he was appointed to the post of DLC on 25.02.2005.

4. The respondent no.1 joined service on 25.02.2005 and began making regular contribution towards his pension fund in accordance with the New Pension Scheme. On 07.01.2015, i.e., after a period of approximately 10 years from his date of joining, the respondent no.1 made a representation to the petitioner no.1, for the first time requesting that he be covered under the old pension scheme, which request was rejected vide order dated 12.02.2015. Aggrieved by this decision, the respondent no.1 filed the aforesaid O.A. before the Tribunal.

5. Before the Tribunal, the respondent no.1 claimed that since the advertisement pursuant where to he had been selected, had specifically stated that benefit of added years of service as admissible under Rule 30 of the CCS (Pension) Rules, 1972 was applicable to the post, it was apparent that he would be entitled to the benefit of the CCS (Pension) Rules, 1972, which provides for the old pension scheme.

6. On the other hand, the petitioner's plea before the Tribunal was that the respondent no.1 having been appointed after 01.01.2004 - against the vacancy arising from the resignation of Mr. Ashok G. Pawade, he had been rightly given the benefit of the new pension scheme which was already in force when he joined service.

7. Upon consideration of the rival contentions, the Tribunal vide its impugned order dated 18.04.2016, allowed the O.A. filed by the respondent no.1 in the following terms:

"I have considered the aforesaid submission and I find considerable merit in the same. In the advertisement UPSC had made it clear that the selectees would be entitled to the benefit of old pension scheme. It is an admitted position that the applicant has been selected in pursuance to the some advertisement. Therefore, denying the benefit of old pension scheme to him would amount to changing the rules of the game in the midst of selection process and cannot be permitted. I draw support in this regard from various judgments relied upon by the applicant, such as, Himani Malhotra Vs. High Court of Delhi, AIR 2008 SC 2013 in which it was held that it was not permissible for the Employer to change the rules of the selection process midway. Reliance can also be placed on the following

judgments:-

(i) Tamil Nadu Computer Science Bed Graduate Teachers Welfare Society Vs. Higher Secondary School Computer Teachers Association & Ors., (2009) 14 SCC 517.

(ii) State of Bihar & Ors. Vs Mithilesh Kumar, (2010) 13 SCC 467.

(iii) Arunachal Pradesh Public Service Commission & Anr. Vs. Tage Habund & Ors., AIR 2013 SC 1601.

(iv) P. Mohanan Pillai Vs. State of Kerala & Ors., AIR 2007 SC 2840.

(v) K. Manju Sree Vs. State of A.P, AIR (2008) SC 1470 6 OA-2945/2015

(vi) Civil Appeal No. 4255-4258/2014 (Bishnu Biswas & Ors. Vs. UOI & Ors.) decided on 02.04.2014.

(vii) Ernakulam Bench of CAT judgment dated 21.02.2013 in OA- 560/2012 (V.M. Joseph Vs. UOI & Ors.).

(viii) Ernakulam Bench of CAT judgment dated 28.06.2013 in OA-724/2012 (P. Rajesh Kumar & Ors. Vs. UOI & Ors.)

5. I, therefore, allow this O.A. and set aside the impugned orders dated 02.03.2015 and 13.03.2015. I further direct that the applicant shall be granted the benefit of CCS (Pension) Rules, 1972 from the date of his appointment as Deputy Legislative Counsel. This benefit shall be extended to him within a period of eight weeks from the date of receipt of a certified copy of this order. No costs"

8. Impugning the aforesaid order, Mr. Kirtiman Singh, learned counsel for the petitioner states that once it is an admitted position that the respondent no.1 was appointed to service on 25.02.2005, it is apparent that he was automatically governed by the new pension scheme which had been made applicable to all government servants appointed on or after 01.01.2004. He states that merely because the recruitment process had commenced in 2003, when the old pension scheme was in effect, the same does not confer any right upon the respondent no.1 to be governed by the old pension scheme, especially in the absence of any allegation to the effect that the respondent no.1's appointment was delayed due to any reason attributable to the petitioner. He, thus, submits that the Tribunal has failed to appreciate that merely because the selection process was initiated in 2003, or that the vacancy pertained to the period prior to the introduction of the new pension scheme, does not imply that the respondent no.1-who was appointed only on 25.02.2005 against a vacancy arising out of Mr. Pawade's resignation on 09.11.2004, could claim the benefit of the old pension scheme, which was not applicable to persons appointed on or after 01.01.2004.

9. Mr. Singh further states that the respondents claim was even otherwise barred by delay and laches as also by acquiescence as after joining service on 25.02.2005, he was fully cognizant of the fact that he was being governed by the

provisions of the new pension scheme and had accordingly been making contributions thereto for almost ten years, before he submitted his representation on 07.01.2015. He, therefore, submits that the claim of the respondent that he should be governed by the old pension scheme was wholly misconceived and was erroneously allowed by the Tribunal.

10. In support of his submissions, Mr. Singh has relied upon the following decisions: *Shailender Kumar v. Delhi High Court (Through Registrar General) & Anr.* [189 (2012) DLT 524], *Satyesh Kumar Mishra v. State of Uttar Pradesh* [2016 (6) ADJ 808], *Rabinder Kumar Pattanayak v. Union of India* [Order dated 11.12.2013 in O.A. No. 1869/2011 passed by the Central Administrative Tribunal, Principal Bench at Delhi] and *Sanjay Kumar Thakur & Ors. v. North Delhi Municipal Corporation of Delhi & Ors.* [236 (2017) DLT 163 (DB)].

11. On the other hand, learned counsel for the respondent, Mr. Rabin Majumdar supports the impugned order and submits that the vacancy against which the respondent was appointed pertains to the year 2002 and, consequently, the respondent was to be governed by all the terms and conditions, including the old pension scheme, of the CCS (Pension) Rules, 1972 as was applicable to the post of DLC in the year 2002. He submits that, even otherwise, the advertisement and the interviews for this post held by the petitioner were carried out in the year 2003 and, therefore, there was no reason to deprive the respondent of the benefits accruing to the said post till 31.12.2003. Taking his plea further, Mr. Majumdar placed reliance on the Office Memorandum dated 13.06.2000 to contend that a post, which is subsequently filled by a candidate placed in the reserve panel after undergoing the selection process in a particular year, has to be treated as a vacancy for that same year and cannot be treated as a fresh vacancy. He, therefore, submits that the respondent who was appointed against the vacancy which was originally advertised in April 2003, his appointment has to relate back to the said period when the old pension scheme was applicable.

12. The final contention of Mr. Majumdar is that once the advertisement itself clarified that the benefit of Rule 30 of the CCS (Pension) Rules, 1972, which provides for the benefit of added years of service, would be applicable to the post, the petitioner cannot contend that the respondent is not covered by the old pension scheme envisaged under the CCS (Pension) Rules, 1972. He further submits that even in the past, in compliance with the order of the Tribunal in *Rabinder Kumar Pattanayak* (supra), the petitioners have extended the benefit of the old pension scheme to Mr. Pattanayak, even though his date of appointment was 8 months after that of the respondent herein. It is, thus, his contention that as Mr. Pattanayak is junior to him, in terms of their respective dates of appointment to service, the petitioners cannot discriminate against the respondent herein by depriving him of the same benefit which they had granted to Mr. Pattanayak. In the light of the aforesaid, he states that the Tribunal was fully justified in extending the benefit of the old pension scheme to the respondent.

13. In support of his submissions, Mr. Majumdar places reliance on the decisions in *Union of India v. S. Dharmalingam* [AIR 1994 SC 592], *Kulwant Singh & Ors. v. Daya Ram & Ors.* [(2015) 3 SCC 177], *Himani Malhotra v. High Court of Delhi* [(2008) 7 SCC 11], *Rabinder Kumar Pattanayak v. Union of India* (supra) and *Inspector Rajendra Singh v. Union of India* [(2017) 240 DLT 576 (DB)].

14. We have carefully considered the submissions of the learned counsels for the parties and, as stated in our order dated 27.03.2019, we are not at all inclined to accept the reasoning of the learned Tribunal. When the admitted case of the parties is that the respondent was appointed on 25.02.2005, by which time the new pension scheme was already in effect-and a policy decision had already been taken to make the said scheme applicable to all incumbents joining government service on/after 01.01.2004, the respondent cannot claim the right to be covered by the old pension scheme, merely because the vacancy against which he was appointed was initially advertised at a time when the old pension scheme was in force. In our view, the Tribunal, has failed to take into account that the terms 'vacancy year', 'advertisement', 'selection', and 'appointment' connote widely different meanings, and the date of vacancy or of selection cannot be equated with the date of appointment. An appointment is made only after the entire process of selection has been fully concluded.

15. We are of the opinion that once the new pension scheme unambiguously and specifically provided that all incoming office bearers, whose date of appointment is on/after 01.01.2004, would be governed by the new pension scheme, no reference can be made to either the date of vacancy, or the date of advertisement. For the applicability of the pension scheme, it is only the date of appointment which is relevant and must be taken into account, not the dates of vacancy or advertisement, as has been sought to be contended by the learned counsel for the respondent. Therefore, we find no merit in the submission of the learned counsel for the respondent that as the vacancy pertained to the year 2002, the respondent ought to be governed by the old pension scheme.

16. The aforesaid position of law has clearly been laid down by a coordinate bench of this Court in *Shailender Kumar* (supra), on which reliance has been placed by the learned counsel for the petitioner. It may be appropriate to refer to paras 2,6 and 7 of the same, which reads as under:-

"2. Government of India promulgated a new pension scheme which was applied to those who entered the Government service on or after 01.01.2004. That scheme was also adopted by Government of NCT of Delhi vide order dated 19.07.2006. As a result of implementation of the said scheme, those who joined Government service on or before 31.12.2003, are governed by CCS (Pension) Rules, 1972, whereas those who entered the Government service on or after 01.01.2004 are governed by the new pension scheme introduced by the Government. The petitioners submitted a representation seeking applicability of CCS (Pension) Rules, 1972 to them, on the ground that they were offered appointment in the year 2003, though on account of unavoidable delays not

attributable to them, they could not join on or before 31.12.2003. Their representation having been rejected, the petitioners are before this Court by way of this writ petition.

6. However, in the case before us, there was no order passed by any Court restraining the respondents from making appointments to the post of LDC in District & Sessions Court. They were in a position to join service soon after their medical examination and police verification was complete. On the other hand, in the case of Government of NCT of Delhi & Anr v. Dr. Pawan Kumar N. Mali & Ors. dated 03.02.2011 in WP(C) No. 5983/2010, relief was granted to the petitioners, primarily applying the principle that the order of the Court cannot prejudice anyone. Had there been no stay order in that case, the respondents in that case would have joined service prior to 01.01.2004, since not only the offer of appointment had been made to them, even their medical examination had been conducted well before the cut-off date of 01.01.2004. They were prevented from joining service, only because of stay order granted by the Court. On the other hand, none of the petitioners before this Court could have been allowed to join service prior to 01.01.2004 since the character verification in respect of all the three petitioners was received after 31.12.2003. This judgment, therefore, cannot be applied to the case before us.

7. This is not the case of the petitioners that their inability to join on or before 31.12.2003 was attributable to any negligence or lapse on the part of the respondents. If inability of the petitioners to join service on or before 31.12.2003 is not attributable to the respondents or to any order passed by a Court and was only on account of the time taken by the Hospital/Police in conducting medical examination and police verification, the petitioners cannot claim parity with the petitioners in the case of Dr. Pawan Kumar N. Mali (supra)."(emphasis supplied)

17. We have also carefully considered the reliance placed by the respondents upon the decisions in Rabinder Kumar Pattanayak (supra) and Inspector Rajendra Singh (supra) and find the same to be inapplicable to the facts of the present case. These decisions pertain to matters involving persons who, despite having been selected for a post, were unable to join service along with their batch mates before 31.12.2003 either because of pending litigation, or a lapse on the part of the employer leading to the delay in appointment. It was only in these limited circumstances that the Court granted them the benefit of the old pension scheme after observing that it would be unfair to deny these persons the benefits which were granted to their batch mates who had been appointed pursuant to the same selection process. In the facts of the present case, the respondent—who was appointed against a post which was initially advertised in the year 2003; the vacancy for which arose for a second time in the November 2004, and; his appointment to the same having been made in the year 2005, he cannot claim reprieve under the aforesaid decisions because the delay in his appointment was attributable neither to any pending litigation, nor a lapse on the part of the employer. Therefore, the aforesaid decisions do not, in any manner, forward the

case of the respondents.

18. We have also considered the decisions in Himani Malhotra (supra) and Kulwant Singh (supra) relied upon by the respondent and find that the same are also not applicable to the fact situation in the present case. In Himani Malhtora (supra), the Supreme Court was dealing with a case where the criteria for selection was changed after the selection process had already commenced, which was held to be impermissible. In the present case, there is no allegation of the selection criteria having been changed and, therefore, in our view, the said reliance is wholly misplaced. In so far as the decision in Kulwant Singh (supra) is concerned, we find that the same is also not applicable herein, as the said decision reiterated the settled position that vacancies arising prior to the amendment of the recruitment rules, have to be filled in accordance with the unamended rules, which issue is not at all germane to the controversy in the present case.

19. Finally, we proceed to examine the plea of the learned counsel for the respondent that once the advertisement itself provided for the grant of benefit of added years of service, as admissible under Rule 30 of the CCS (Pension) Rules, 1972, the respondent ought to be covered under the old pension scheme as envisaged under the CCS (Pension) Rules. In order to appreciate the said plea, it may be appropriate to refer to the said condition in the advertisement, as also Rule 30 of the CCS (Pension) Rules, 1972. The advertisement to the post of DLC laid down asunder:

"(Ref.No.F.1/16/2003-R-VI) ONE DEPUTY

LEGISLATIVE COUNSEL IN THE LEGISLATIVE DEPARTMENT, MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS, GRADE III OF THE INDIAN LEGAL SERVICE.

...

DUTIES: Legislative drafting, scrutiny of statutory rules, orders, etc.

OTHER BENEFIT: BENEFIT OF ADDED YEARS OF SERVICE AS ADMISSIBLE UNDER RULE 30 OF CCS (PENSION) RULES, 1972 IS APPLICABLE TO THE POST."

Whereas, the aforesaid Rule 30 of the CCS (Pension) Rules, 1972 lays down asunder:

"30. Addition to qualifying service in special circumstances

(1)[A Government servant who retires from a service or post after the 31st March, 1960], shall be eligible to add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one-fourth of the length of his service or the actual period by which his age at the time of recruitment exceeded twenty-five years or a period of five years, whichever is less, if the service or post to which the Government servant is appointed is one-

(a) for which postgraduate research, or specialist qualification or experience in scientific, technological or professional fields, is essential; and

(b) to which candidates of more than twenty-five years of age are normally recruited;

Provided that this concession shall not be admissible to a Government servant unless his actual qualifying service at the time he quits Government service is not less than ten years:

Provided further that this concession shall be admissible only if the Recruitment Rules in respect of the said service or post contain a specific provision that the service or post is one which carries the benefit of this rule.

[Provided also that this concession shall not be admissible to those who are eligible for counting their past service for superannuation pension unless they opt before the date of their retirement, which option once exercised shall be final, for the weightage of service under this sub-rule forgoing the counting of the past service.]

(2) A Government servant who is recruited at the age of thirty five years or more, may, within a period of three months from the date of his appointment, elect to forgo his right to pension whereupon he shall be eligible to subscribe to a Contributory Provident Fund.

(3) The option referred to in sub-rule (2) once exercised, shall be final."

20. In the light of the aforesaid position, we have given our anxious consideration to the plea of the learned counsel for the respondent that once the advertisement unambiguously provided for grant of benefits under Rule 30 of the CCS (Pension) Rules, 1972, it was incumbent upon the petitioner to equitably extend the benefit of the old pension scheme to the respondent, but are unable to accept the same. In our opinion, the advertisement nowhere stated that the respondent would be governed by the old pension scheme under the CCS (Pension) Rules, 1972 but, merely stated that the benefit of counting added years of service, as envisaged under Rule 30 of the CCS (Pension) Rules, 1972, would be made available to those who were to be appointed to the post. Merely because the advertisement made a reference to the grant of the benefit as provided in Rule 30, it cannot at all be said that the old pension scheme under the CCS (Pension) Rules, 1972 would automatically be applicable to the respondent.

21. In our view, once the new pension scheme unambiguously provided that all new incoming appointees, whose appointment was made after a specific cut-off date i.e. 01.01.2004, would be squarely governed by its provisions, the said cut-off date could not be tinkered with, except in those limited circumstances when the court finds that the appointment was delayed due to any pending litigation, or due to lapses attributable to the employer.

22. Even though the learned counsel for the petitioners, by placing reliance on C. Jacob v. Director of Geology [(2008) 10 SCC 115] and Union of India v. M.K. Sarkar [(2010) 2 SCC 59] contends that the delay and laches of almost ten years in placing forth his demand disentitles the respondent from any reliefs, in view of our aforesaid conclusion that the respondent having been appointed after 01.01.2004 cannot claim to be governed by the new pension scheme, we do not deem it necessary to deal with this contention of the petitioners.

23. However, as noted in our order dated 27.03.2019, the petitioners ought to explain as to how they can deprive the respondent of the benefit of the added years of service promised to him in the advertisement, pursuant where to he was selected to the said post, for which purpose we have already directed the petitioners to file an additional affidavit and have listed the matter for hearing on 06.05.2019.

24. For the aforesaid reasons, the impugned order dated 18.04.2016 passed by the Central Administrative Tribunal in O.A.No.2945/2015 is set aside and the writ petition is allowed in these terms.