(2022) 09 CAT CK 0002

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00349 Of 2019

Ushakumari.R APPELLANT

Vs

Kendriya Vidyalaya Sangathan & Others RESPONDENT

Date of Decision : 02-09-2022

Acts Referred:
Central Civil Services (Pension) Rules, 1972 — Rule 13, 14(2)

Citation : (2022) 09 CAT CK 0002

Hon'ble Judges : Sunil Thomas, Member (J);K.V. Eapen, Member (A)

Bench : Division Bench

Advocate : M.R. Hariraj, .K.I. Mayankutty Mather, Brijesh. A.S

Final Decision : Allowed

Judgement

K.V. Eapen, Member A

1. This Original Application has been filed seeking the following relief :-

1. Quash Annexure A-5.

2. To declare that the service of the applicant from 31.08.1987 is liable to be reckoned as qualifying for pension and pensionary benefits.

3. To quash Annexure A-6, A-7 and A-8 to the extent they do not reckon service from 31.08.1987 as qualifying for pension and direct the respondents to reckon the service of the applicant from 31.08.1987 as qualifying and grant the applicant pension and pensionary benefits due to her based on such revised calculation and pay the applicant monetary benefits to point there from with interest @12% per annum.

4. To grant such other relief as this Hon'ble Court may deem fit to grant.

5. To grant costs of this Original Application.

2. The facts of the case are as follows :

The applicant was selected for appointment against a temporary post of Post Graduate Teacher (PGT) in the Kendriya Vidyalaya Sangathan (KVS) on an initial pay of Rs.1640/- per month in the pay scale of Rs.1640- 60-2600-EB-75-2900/- vide Memorandum dated 17.02.1987 produced in the O.A at Annexure A-1. Among the important conditions mentioned in the said Memorandum were that the person being offered appointment would be on probation for a period of two years which may be extended and that, upon successful completion of probation, he/she would be confirmed in his/her turn according to the availability of permanent vacancies. Other terms and conditions of service governing the appointment would be as laid down in the Education Code for Kendriya Vidyalayas as amended from time to time. This offer of appointment letter was followed by another Memorandum dated 20.02.1987, produced at Annexure A-2, which partially modified the earlier letter by appointing the applicant against the temporary post of PGT (Physics) and directing her to report for duty as PGT (Physics) at Kendriya Vidyalaya (KV) Ernakulam instead of KV Gill Nagar, Madras. Further the said Memorandum at Annexure A-2 also indicated the following :

‟ ….Since Kum.R.Usha Kumari is appointed on trial basis she will perform duties of a regular PGT under the guidance of the Principal her work and aptitude for the teaching profession will be watched. During the trial period 10% of her basic pay will be deducted and credited into Post Office Savings Bank Account in her name which shall be pledged in the name of the Principal of the school, so as to meet part of the cost of training when required. She will not be allowed to withdraw any money from this account during the trial period. But immediately upon her joining a teacher's training course the amount standing to her credit in the Post Office Savings Bank Account will be transferred to the head of the Teacher's training institution, who will retain the fees payable to the institution and handover the balance to her for meeting part of her expenses during the training. If she accepts the offer the terms and conditions stipulated in this office letter cited. She should send her acceptance immediately on receipt of this memorandum in the form already attached along with her above mentioned appointment order and join at Kendriya Vidyalaya, Ernakulam......”

(Emphasis supplied)

3. The applicant has brought to notice another Memorandum at Annexure A-3 dated 21.08.1987 under which the representation of the applicant was considered and she was directed to report for duty at K.V.No.I, Cochin, Naval Base, Cochin immediately but not later than 7. 09.1987 failing which the offer of appointment order given to her would be withdrawn. This was in consideration of the fact that she was in the family way at that time. The applicant submits that she joined on

31. 08.1987 and ever since that date, she has continued as a PGT. As required, she underwent a course for the B.Ed. through Distance Education and passed the same on 15.03.1991. Based on the same, she was regularized with effect from 15.03.1991 by an order dated 27.09.1991. She submits that her appointment on

trial basis was extended since she had not obtained the B.Ed degree due to the delay caused by birth of her 2nd child in June 1989. The applicant has produced a copy of the Service Register which indicates that she was first appointed and joined duty on 31.08.1987 through the Appointment Order dated 17.02.1987. The Register also indicates that she was regularized with effect from 15.03.1991. Further, the Register has also been indicated that she was appointed on a substantive capacity of PGT with effect from 31.08.1989 vide Assistant Commissioner, KVS, Madras letter dated 30.04.1992.

4. The applicant has also produced as an impunged order at Annexure A-5 an Office Order dated 22.02.2019, wherein, it is indicated that her date of joining was 31.08.1987, on trial basis. The date of regularization is indicated as 15.03.1991 and the date of confirmation as 15.03.1993. In the remarks column it is indicated, therein, that regularization has been done from the date of acquiring B.Ed degree. It is also indicated in the order that an earlier order appointing the above employees in the substantive capacity stands cancelled with immediate effect. The main issue agitated by the applicant is that the order at Annexure A-5 had been issued without any notice to her, just before her retirement on 31.03.2019. Following from this, when her pension was sanctioned the qualifying service was reckoned as 28 years and 17 days as can be seen in the Annexure A-6 (1) Sanction Order and Annexure A-6 (2) Pension Payment Order (PPO) etc. It is indicated at the Annexure A-6 (2) PPO that her date of beginning of service in KVS was 15.03.1991 and her qualifying service is 28 years 00 months 17 days. Thus, the applicant is aggrieved that, as such, her service from 31.08.1989 to 15.03.1991 has not been recognized as qualifying service. Orders relating to encashment of leave and sanction of the commutation of pension have also been produced at Annexure A-7 and Annexure A-8.

5. The applicant submits that on receipt of the Annexure A-5 order showing her date of regularization/confirmation etc., she had made a representation dated 05.03.2019 to the second respondent regarding counting her 'trial basis' service in KVS as qualifying service. She was informed vide Annexure A-9 (1) that the office of the second respondent has no power to consider her grievance as it is a matter of KVS & CCS Pension Rules/policy matters. Further, she was given a copy of a letter dated 08.02.2002 issued in the case of another teacher Smt.K.M.Nalini Devi by the KVS, Head Quarters in New Delhi wherein it was indicated that as per Rule 13 of CCS Pension Rules, 1972 it is envisaged that "qualifying services from the date he/she takes charges of the post to which he/she first appointed either substantively or in an officiating or temporary capacity", and terms like "on Trial Basis" is not covered under the terminology of qualifying services as far as CCS Pension Rules, 1972 amended from time to time is concerned. Aggrieved by the position taken by the respondents she made yet another representation, produced at Annexure A-10, mentioning that as per the PPO her qualifying service has been shown as 28 years 0 months and 17 days, which has been calculated without considering her services during the 'trial basis' period as otherwise it would have been 31 years and 8 months. It has also been

mentioned in the representation that, during the trial basis period, she had worked as a regular PGT performing all the duties assigned to her and had been appointed on the pay scale of PGT (not on consolidated pay), sanctioned increment in the subsequent years, attended in-service courses, joined GPF, been allotted KVS quarters and had worked with out any break in service. Further, she was also given the senior scale and selection scale late, as the trial period was not counted, which has also affected her pensionary benefits like gratuity also. Hence she requested that the office should consider her 'trial basis' period services for calculating the qualifying service.

6. The main reliance placed by the applicant is on Rule 13 of the CCS Pension Rules, 1972 which has indicated that qualifying service of a Government servant would commence from the date he takes charges of the post to which he is first appointed either substantively or in an officiating or temporary capacity, provided that the officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post. She submits that her service 'on a trial basis' cannot be treated as anything other than temporary service in the understanding of Rule 13 and there is no justification, whatsoever, to refuse reckoning of the service right from her date of joining on 31.08.1987 as qualifying service for the purpose of pension. The applicant submits that she was appointed against a temporary post on probation by the order at Annexure A-1 dated 17. 02.1987 and, as such, she was appointed on substantive capacity though termed as 'on trial basis'. Thus, the service still 15.03.1991 should be treated only as temporary service or service on probation, both of which count for pension. She seeks to make a distinction that service on trial basis is not the same as service as an apprentice. The period of service of the applicant during the so called 'trial period' was a period when her duty and pay were purely regulated by the respondents under conditions which were determined by them. Her service was paid for by the respondents and it was not on a non-pensionable establishment. As such, there is no justification in this stand to treat the period as 'non qualifying'. She was also subscribed to the GPF throughout her service from 1987. In addition, during oral submission, learned counsel for the applicant, Mr.M.R.Hariraj also brought to notice Rule 14 (2) of the CCS (Pension) Rules, 1972, wherein, the expression 'Service' has been shown to mean service under the Government and paid by that Government from the Consolidated Fund of India or a Local Fund administered by that Government but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by that Government. The KVS salaries are not in a non pensionable establishment with all salaries being paid by the Government of India. Hence, under these conditions, her service qualifies for pension from the date that she took charge to the post where she was appointed 'either substantively or in an officiating or temporary capacity' as per Rule 13 of the CCS (Pension) Rules, 1972.

7. The O.A was filed in May, 2019 and was admitted and posted before Registrar's Court for completion of pleadings by 26.08.2019. However, it is seen

that the reply statement was filed by the respondents only in April, 2021. Due to the delay a separate M.A for accepting reply statement was filed, which was allowed by the Tribunal and the reply was taken on record. In their reply statement, the stand taken by the respondents is that, while the applicant was appointed as PGT (Physics) on trial basis initially on 31.08.1987, her services was regularized only after her acquiring B.Ed with effect from 15.03.1991. Hence the 'trial basis' period between these two dates cannot be counted for the purpose of service as during that period she was not holding what is the essential qualification for the post. It is submitted that the possession of B.Ed is an essential qualification for the post of PGT. The Annexure A-2 Memorandum of the KVS Regional Office is a modification to a partial extent of the offer of appointment dated 17.02.1987 issued by Annexure A-1. Annexure A2 clearly shows that she was appointed on a trial basis. Further, by Annexure A-3, the KVS had considered her representation to join late as she was in the family way. The respondents had allowed her to join on the basis of medical fitness certificate at K.V.Naval Base, Cochin. It is submitted by the respondents that, on noticing the error in the date of confirmation due to regularization of her service with effect from 15.03.1991, the matter was taken up in the Department Promotion Committee for review. The DPC reviewed the matter and recommended date of confirmation with effect from 15.03.1993. The Annexure A-5 order does not require any notice to be given as it was only correcting the date of confirmation due to a mistake noticed based on the facts. It is submitted that none of the representations of the applicant in any case point to this and the only matter raised by her is for counting of her trial basis period as qualifying service. Further, the Senior Scale and Selection Scale of the applicant were granted based on the completion of 12 years and 24 years of service with effect from the date of regularization. Thus, her contention that her services during the trial period should be treated as on probation is not justified as her regularization was with effect from 15.03.1991 only. The fact that the period when she was working on trial basis was not counted for grant of senior scale or selection scale was something which the applicant was well aware of. What is pertinent, as per the respondents, is that her appointment order, vide Memorandum dated 17.02.1987 (Annexure A-1) followed by the Memorandum in partial modification dated 20.02.1987 (Annexure A-2) clearly indicated that her offer of appointment was on trial basis. Further, Annexure A2 also indicated that during the trial period, 10% of her basic pay would be deducted and credited into Post Office Savings' Bank account in her name, which, in turn, would be pledged in the name of the Principal of the school so as to meet the cost of training when required. In addition vide her representation dated 02.07.1991 the applicant had informed the respondents about her completion of B.Ed. and requested to discontinue the deduction of 10% basic pay.

8. The respondents, through learned counsel Mr.K.I.Mayankutty Mather represented by Mr.Vineeth Komalachandran, have submitted submitted, therefore, that it is clear that the respondent KVS has made no error in

computing her qualifying service vide the Pension Payment Order produced at Annexure A-6 (2) as beginning on 15.03.1991 and having a total qualifying service of 28 years 0 months and 17 days. However, at the same time, learned counsel for the respondents did bring to our notice Order passed by the Cuttack Bench of this Tribunal in O.A.No.584/2009 on 07.03.2019. In that order, the issues were similar, except to the extent that the order dealt with the effective date of grant of Senior Scale and Selection Grade to a PGT in Physics in the KVS. The applicant in that case was appointed as a Teacher in Physics on a trial basis for two years during which he was asked to get the degree in B.Ed after which his service would be regularized. He joined on a trial basis on 09.11.1986 and got the B.Ed Degree on 11.03.1989 and his services were thus regularized from 11.03.1989. After the completion of 12 years of service from the date of regularization on 11.03.1989, he was granted the Senior Scale for the teachers. It was the case of the applicant that in the matter of two other similarly placed teachers who had filed O.As in the same Tribunal, the respondents had been directed to extend the benefit of Senior Scale after completion of 12 years from the date of initial appointment and not from the date of regularization. Hence the applicant sought a similar benefit as extended to those two teachers. After considering various factors, including the DoP&T O.M dated 03.07.1986 relating to adhoc/trial period service for determination of seniority, as well as the KVS letter dated 24.02.2003 stating that the services rendered on 'adhoc' basis or during trial period could not be counted for grant of Senior Scale or Selection Grade, the Tribunal in paragraph 9 held as follows :

“9. Regarding the issue of the date which will be relevant for the purpose of calculating 12 years, we have gone through the order dated 2.3.2009 of the Tribunal in which it was held as under :-

“3..................There is much difference between trial based appointment and ad hoc appointment. As per service rules, one of the questions for appointment to the post of PGT is the pass of B.Ed. Degree which the applicant lacked when he was appointed during 1985 and the applicant succeeded in B.Ed. Degree examination only during 1988. In the above view of the matter we find that passing of the B.Ed. Degree only relates to confirmation or regularization of the service where as the claim of the applicant is that she is entitled for senior scale of pay on completion of 12 years of service in the K.V.S. In the absence of any service rules preventing the authorities from allowing the senior scale of pay or counting the entire service for other service benefits except seniority, the applicant is entitled for senior scale of pay w.e.f. the date of completing 12 years of service in the cadre of PGT.”

9. Further, in paragraph 10 the Tribunal indicated that, based on the orders of the Tribunal in O.A.No.771/2005 filed by one Smt.Nirupama Kar dated 02.03.2009, the benefit of counting the period of service as Teacher prior to regularization for the purpose of granting senior scale had been allowed by the Tribunal to the applicant. It was also indicated that the said order in

O.A.No.771/2005 was under challenge before the Hon'ble High Court in W.P.(C) No.9505/2009 filed by the respondents. However, notwithstanding this, the Tribunal allowed the present O.A (O.A.No.584/2009) in part by extending the same benefit as allowed by the Tribunal in the O.A.No.771/2005 to the present applicant, who was similarly placed as Smt.Nirupama Kar, the applicant in O.A.No.771/2005. It was also mentioned that the order would be subject to the outcome of the W.P.(C) No.9505/2009 before Hon'ble High Court. Learned counsel for the respondents further produced copy of the Judgment passed by the Hon'ble Orissa High Court in W.P.(C) No.9505/2009 on 25.04.2019 arising from the order of the C.A.T., Cuttack Bench passed in O.A.No.771/2005 dated 02.03.2009. The judgment indicates only that in their Lordship's considered opinion, it would not be proper to interfere/disturb the order of 2nd March, 2009 after ten years. However, it was made clear that this should not be treated as precedent.

10. We have given our anxious consideration to the pleadings taken as well as the oral submissions made by both learned counsel. At the outset, it is to be considered that the orders provided for our notice, i.e., in O.A.No.584/2009 of the Cuttack Bench of the Tribunal as well as by the judgment of the Hon'ble Orrisa High Court in W.P.(C) No.9505/2009 largely can be taken to support the position taken by the applicant in this O.A. Though the order pertains to the grant of senior scale and selection grade to the PGT in the KVS, it is significant that the Order has taken the date of consideration for the completion of 12 years as from the date of initial appointment on trial basis and not from the date of regularization after the procurement of the B.Ed Degree by the applicant therein. The Hon'ble High Court in W.P.(C) No.9505/2009 upheld this position, on the ground that it would not be proper to interfere/disturb the order of the Tribunal in the O.A.No.771/2005 owing to a period of ten years being passed since the Order was passed. It was also indicated that this should not be taken as precedent. We would thus consider that these orders are more in the nature of a persuasive position in favour of the applicant and not to be taken beyond that aspect. What is to be specifically considered by this Tribunal is a little different, in the sense that the crucial issue in this matter before us is the date from which the commencement of qualifying service should be taken for the purposes of grant of pension under Rule 13 of the CCS (Pension) Rules 1972 and nothing else. It is the stated position of the applicant that this as per the Rule should commence from the date when the applicant was appointed in a temporary capacity, which, in this case implies, from the date she was appointed on a trial basis in the KVS. We find that there is considerable support for this proposition of the applicant, as the respondents have not disputed, for example, the fact that she was being paid a regular salary, albeit with a deduction of 10% of her basic pay to be credited into Post Office Savings Bank Account in her name to be pledged in the name of the Principal of the School for payment towards the dues to meet the expenses during the training. However, the terms of her employment as it appears from the representation which has been enclosed at Annexure A-10

by the applicant, was also that she being paid on the pay scale basis of PGT and not on a consolidated pay basis. She was also sanctioned increments in the subsequent years, was deputed to in-service courses, was allowed to join the GPF and was also allotted KVS quarters. There was no break in service between her service on a trial basis and her date of regularization on 15.03.1991. This satisfies the proviso to Rule 13 that the officiating or temporary service should be valid without interruption by substantive appointment in the same or another service or post. Thus from all accounts she was in a kind of service, which, even if it is termed 'on trial basis' was in a nature of a temporary service on probation.

11. Therefore, in view of these factual considerations, it is felt that a case has been made by the applicant for consideration of qualifying service from her date of initial appointment on 31.08.1987. The respondents in their reply statement or in their oral submissions have not brought anything to dispute it in any fundamental way and have only mentioned that the period concerned was not counted for grant of senior scale or selection grade. This only shows that they seem to take the position that since it was not counted for the purposes of upgradation of her pay, it should not also be counted for the purposes of her pension. However, even this issue which, ironically is brought to our notice as well as to the notice of the learned counsel for the applicant, by the learned counsel for the respondents seems to have been settled by the case dealt by the Cuttack Bench, which found that the period spent on a trial basis should also be counted for the purposes of grant of senior scale as well as selection scale. If this is the case, there is a counter persuasive value as we indicated for counting the said period for the purposes of pension as well as for qualifying service.

12. Flowing from the above considerations, we hold that the date of commencement of qualifying service in terms of Rule 13 of the CCS (Pension) Rules, 1972 in the case of the applicant for the purposes of pension should be taken by the respondents as beginning from her date of entry into the service of the KVS, even if it was on a trial basis ie., from 31.08.1987. Hence, we find that the service of the applicant from the said date ie., 31.08.1987 is to be reckoned as qualifying for pension and that all pensionary benefits should be calculated on the basis of qualifying service beginning from this date. The orders at Annexure A-6 (sanction of pension/PPO), Annexure A-7 (encashment of earned leave), Annexure A-8 (commutation of pension) as well as any other pensionary benefits which are linked to the date from which qualifying service has to be counted will have to be thus re-calculated accordingly. The benefits due to her as a result of this exercise should be paid within a period of three months from the date of receipt of a copy of this order. However, we do not find any necessity for granting any interest on the arrears as a result of the said recalculation.

13. The O.A is accordingly allowed to the extent as indicated in the previous paragraph. No order as to costs.

(Dated this the 2nd day of September 2022)

