
(2000) 01 DEL CK 0032
In the Delhi High Court
Case No : CWP.No. 4252 of 1996

V.P. Verma (Prof.)

APPELLANT

Vs

University of Delhi

RESPONDENT

Date of Decision : 27-01-2000

Acts Referred:

Citation : (2000) 5 AD 152 : (2000) 86 DLT 462 : (2000) 55 DRJ 53

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Mr. S.K. Jain, for the Appellant; Ms. Rekha Aggarwal, for the Respondent

Judgement

A.K. Sikri, J.—Petitioner is a Professor working in the Department of Philosophy of the University of Delhi. He retired on 31st October, 1994. Thereafter he was re-employed for a period of 3 years with effect from 1st November, 1994. This writ petition was filed on 5th November, 1996 when he was still working on re-employment. In the petition, petitioner has claimed the following reliefs:

"1. Issue a writ of mandamus and/or any other appropriate writ to the University of Delhi directing the University to

(a) fix the pay of the petitioner as in October, 1994 at the basic of Rs. 5,400/- per month.

(b) grant gratuity and the pensionary benefits to the petitioner on 32 years of service i.e. his continuous service from 14.09.1967 to 31.10.1994 plus five years of added benefit of service for pensionary benefits.

(c) grant him leave encasement of 240 days.

(d) grant him commutation of pension after re-fixation of pension on 32 years of his service and the appropriate fixation of his pay as on October, 1994 at a basic of Rs. 5,400/- per month.

- (e) grant him arrears of pay, pension and gratuity on appropriate fixation of pay.
2. Award interest 18% per annum to the petitioner on the delayed payments of his due gratuity , pension, leave encasement, arrears of pay etc.
 3. Award damages/compensation as may be deemed appropriate and just by this Hon"ble Court for the undue and avoidable delay by the University causing agony and harassment to the petitioner.
 4. Award the costs of this petition."

The occasion to file this writ petition with aforesaid prayers has arisen in the following factual background.

2. Petitioner was first appointed as Teaching Assistant in the Department of Philosophy, University of Delhi, with effect from 14.09.1967 and continued to work as such up to 13.12.1968. He was appointed as Teaching Assistant after his selection by a duly constituted Selection Committee and was given regular grade/scale of pay applicable to the said post. He was also granted annual increment and enrolled as member of Contributory Provident Fund Scheme. With effect from 14.12.1968 he was appointed as temporary lecturer in the same department against the vacancy and continued to work as such till 24th February, 1970. The appointment to the post of temporary lecturer was also through regular selection process and he was given annual increments during this period also. He continued to contribute in the Contributory Provident Fund Scheme with effect from 25.02.1970, he was appointed as permanent lecturer and received promotions from time to time and finally retired as Professor on 31 st October,1994.

3. However, on retirement, for the purpose of fixation of pension, payment of terminal dues including gratuity and leave encashment, the respondent/ University has counted the period from 25.2.1970 when the petitioner was appointed as Lecturer on permanent bases whereas the claim of the petitioner is that period from 14.9.67 to 24.2.70 be also counted when petitioner worked as Teaching Assistant and Temporary Lecturer. Petitioner also claimed that he be given five years weightage for pensionary benefits.

4. It is not necessary to go into most of these controversies as these stand settled during the pendency of the petition. In fact on 22.4.97 statement was made by counsel for the respondent that whatever is due and payable to the petitioner shall be paid to the petitioner within 2 weeks. Thereafter, on 13th May, 1997 it was recorded that petitioner was paid the amount of Rs. 79,920/- towards leave encasement, gratuity and pension and two outstanding issues which remained were regarding fixation of pay and 5 years benefit of service. Even Pay-Fixation was done and it left with only one dispute i.e. benefit of 5 years of added service. On 21.7.97 counsel for the respondent made the statement that this point was also under active consideration of the department.

5. It may be mentioned at this stage that the Vice-Chancellor had constituted a

Committee headed by Professor Abad Ahmad, Pro-Vice-Chancellor to examine the issue relating to 5 years of added service under Clause 1(h) of Statute 28(a) of the Delhi University statutes. The Committee submitted its report dated 14.3.1997 and in the said report it made the following recommendation:

"The Committee, after deliberation, recommended that Prior to September, 1991 the minimum qualifications for recruitment to the post of Lecturer was post-graduate research and hence there was no problem with regard to cases of 1960s which coming up now is the Pension Cell for consideration of the benefit of added years of service. This provision would apply to all those who joined as Lecturers/Readers/Professors it will not apply to those who initially joined the University/College as Asstt. Lecturers. Where as person initially appointed as Asstt. Lecturer is subsequently appointed as Lecturer through a selection committee, the benefit of added years of service would be available with reference to the date of appointment as Lecturer. Such person could opt to forge that benefit and count. Instead, his/her service as Asstt Lecturer for pension if that is more beneficial."

This report was placed before the Executive Council and vide Resolution No. 12 dated 3.6.1997. Council resolved to accept the recommendation of the Committee. This resolution of the Executive Committee Along with the recommendation of Professor Abad Ahmad Committee has been filed by the University Along with affidavit dated 15th October, 1997 and it is stated that as per the said Resolution benefit of 5 years of added service available to any one as Lecturer/Reader/Professor and where a person is initially appointed in any cadre every time benefit of added service would be available without reference to date of appointment as Lecturer. This would mean that a Teacher can either opt for his total service including that one before the appointment of Lecturer/Reader/Professor or to count the service as Lecturer/Reader/Professor with 5 years of added years of service. But both the benefits are not admissible.

6. Petitioner filed reply-affidavit dated 18th March, 1998 in which he has submitted that he was appointed as permanent Lecturer with effect from 25th February, 1970 and confirmed with immediate effect that earlier period of service rendered by him as temporary Lecturer from 14.12.68 to 24.2.1970 was treated as period spent on probation. He has also submitted that as Teaching Assistant and temporary Lecturer he was appointed by duly constituted Selection Committee, granted annual increment and contributed to C.P.F. and there was no disintegration in service. Accordingly under Statute 28A 1 (h). all services rendered on a full time basis are to be counted as "qualifying service". Therefore his submission is that the aforesaid Resolution No. 12 dated 3.6.1997 of the Executive Council of the University is contrary to the Statute 28 A 1(h) of the Statutes and he is entitled to both the benefits namely counted entire service from 14.9.67 to 31.10.94 as well as 5 years of added service.

7. Statute 28A 1(h) defined qualifying service as under:-

"(h) "Qualifying Service" means service rendered by a person in a substantive capacity including periods spent on probation. All service rendered to the university on a full time basis in a temporary or officiating capacity followed without interruption by confirmation in the same or another post shall count as qualifying service except in respect of periods of service paid from "Contingencies"."

It can not be disputed that as per the aforesaid definition of qualifying service, it is the right of the petitioner to get the service rendered from 14.9.1967 to 24.2.1970 also counted as qualifying service for the purpose of pension.

8. As far as the benefit of 5 years of service is concerned, for the purpose of pension, this weightage is given to an employee in view of Note I appearing under Statute 28A 1(h) which reads as under:

"An employee, who has not derived any form of retirement benefits from some other organisation before joining the service of the University of Delhi, 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: which is least, if the post to which he is appointed is one:

(a) for which post-graduate research. or specialised qualification, or experience in scientific, technological or professional field 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 an employee unless his actual qualifying 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 post contain a specific provision that the post is one which carries the benefit of this Clause."

9. It is not disputed that petitioner is covered by this note and Therefore he is entitled to the weightage of 5 years service. The relevant consideration for giving this benefit is the nature of post to which he is appointed namely to a post for which post Graduate Research or specialised qualification or experience or scientific technology or professional skill is essential and to which candidate of more than 25 years of age should normally be recruited. Therefore the period of service rendered by the petitioner as Teaching Assistant and temporary Lecturer is counted on one consideration and weightage of 5 years service given to him, While calculating pension, on altogether different consideration. If the petitioner is held entitled to both the benefits on the basis of aforesaid definition of qualifying service, then it cannot be said that he was given only one out of two benefits. Resolution to the Executive Committee to the effect that one can opt for one each of two benefits is Therefore clearly contrary to the Statutes.

10. Accordingly this petition is allowed. Rule is made absolute. Respondents are directed to fix the pension of the petitioner after adding 5 years of service to the Service rendered by the petitioner for the purpose of fixing his pension. This exercise is to be done by the respondents within a period of 2 months from the date of receipt of copy of this judgment and the petitioner be given arrears of pension. The petitioner shall not be entitled to any interest on the arrears of pension. If the same are paid within a period of two months. Otherwise interest at the rate of 12% per annum would be given to the petitioner on these arrears with effect from 1.1.1997 (on taking into consideration that this writ petition was filed on 5.11.1996) till the date of payment of the arrears.

11. No order as to costs.