(2018) 10 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 2828 Of 2010, IA No. 3977 Of 2010

Yogesh Kumar Kaul @APPELLANT@Hash State of Jammu & Kashmir and others

Date of Decision : 01-10-2018

Acts Referred:

Jammu and Kashmir Civil Service Regulations, 1956 — Rule 52(I), 52(IV)

Citation : (2018) 10 J&K CK 0003

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : D.S. Chouhan, R. Koul

Final Decision : Dismissed

Judgement

1. This petition by the petitioner is for settlement of his pension case and also for release of other post retiral benefits like gratuity, GP Fund etc. The petitioner also claims interest @ 12% p.a. on the amounts allegedly withheld by the respondents.

2. Briefly put, the facts as narrated in the writ petition are that the petitioner was appointed as Clerk in the Revenue Department vide Order No.3551-55/Est dated 24.03.1974 and was adjusted by the Division Commissioner, Kashmir in Circle Office Hajan, Baramulla. The petitioner joined his duties on 19.01.1974. Vide Govt. Order No.Rev (NG) 200 of 1978 dated 01.08.1978, the petitioner was transferred on deputation to the Road Transport Corporation. While the petitioner was serving in the SRTC, he was promoted in the Corporation against different posts from time to time and eventually retired on superannuation on 31.04.2009 as Joint Managing Director of the Corporation. It is stated that at the time of conversion of the erstwhile Govt. Transport Undertaking (GTU for short) into the J&K State Road Transport Corporation (SRTC for short), all the employees, who were working in the erstwhile GTU were asked to opt either for the Corporation services or to retain their status as Government servant. It is claimed that the petitioner was already a Government employee of the Revenue Department and was in the Corporation on deputation and, therefore, opted for availing the

benefits of Government service. It is, thus, contended by the petitioner that since he continued to be a Government servant having not opted for Corporation service, he is entitled to payment of pension and other post retiral benefits as are admissible in the case of a Government employee. The petitioner claims that he made several requests and representations to the respondents for treating him also a beneficiary in terms of Government Order No.38-GR (TR) of 1986 dated 03.10.1986, but the respondents have not acceded to the request and have retired him as an employee of the Corporation releasing in his favour only post retiral benefits admissible to the employees of the Corporation. In this factual backdrop, the petitioner has filed the instant petition and prayed for the relief claimed in the writ petition.

3. The respondents, i.e., Department of Transport of the State Government as also the SRTC have filed their separate objections. The reliefs claimed by the petitioner have been opposed by the respondents on the grounds that the petitioner was an employee of the Revenue Department and was serving in the Corporation on deputation. He was granted promotions from time to time in the Corporation and ultimately retired on 30.04.2009 as Joint Managing Director of the Corporation. It is submitted that as per clause (I) and clause (IV) of the Rule 52 of the J&K Civil Service Regulations, the period of deputation in any case cannot be accede 3 years which, however, on the request of borrowing agency can be extended to a maximum of 4 years. The petitioner remained in the Corporation beyond the aforesaid period and therefore, overstayed his deputation. That being so, the petitioner who was supposed to report back to his parents department after completing the maximum tenure of four years of the deputation, ceased to be the employee of the Government when he failed to so report back. It is submitted that the petitioner while serving in the Corporation not only got the promotions in the Corporation and rose to the position of Joint Managing Director but had also contributed in the Corporation towards Compensatory Provident Fund which goes to prove that the petitioner had accepted his position to be the permanent employee of the Corporation. Regarding the plea of the petitioner that like other Government employee of erstwhile GTU who had given option to be the employee of the Corporation or to remain Government employee was equally applicable to the petitioner, the respondents, in their objections, have stated that the petitioner was transferred on deputation in the Corporation in the year 1978 whereas the GTU had been converted to J&K SRTC in September, 1976 and that the Government order providing option to the employees of the GTU was only meant for the employees of the GTU and not to the employees of other departments like Revenue Department as is the case of petitioner.

4. To the similar effect is the reply filed by the Corporation.

5. Having heard learned counsel for the parties, perused the record, the only question which arises for determination is with regard to the status of the petitioner. In the given facts, this Court is to determine as to whether the

petitioner after having been transferred to the Corporation by deputation continued to be a Government employee therefore, entitled to pensionary benefits as are admissible to the Government employees or became member/ employee of the Corporation and therefore, was rightly granted post retiral benefits as are admissible to the employees of the Corporation. Admittedly, the petitioner was an employee of the Revenue Department. He came to be transferred on deputation to the Corporation way back in the year 1978. As rightly contended that in terms of Rule 52 of the J&K CSR, he could have stayed on deputation for a maximum period of four years and was, therefore, liable to be repatriated to his parent department, i.e, Revenue Department. This, however, did not happen. The petitioner continued to be in the Corporation and even earned promotions in the Corporation from time to time. He was eventually retired as Joint Managing Director on attaining the age of superannuation on 30.04.2009. The petitioner accepted all the promotions and the benefits attached to such promotions without any protest. He never raised his voice for seeking his repatriation to his parent Department. In these circumstances, as rightly contended by the respondents, petitioner by efflux of time and by his conduct ceased to be a Government employee. In these circumstances, the irresistible conclusion is that the petitioner became a permanent employee of the Corporation. It is how the petitioner also understood his position when he accepted promotions granted to him in the Corporation from time to time and even subscribed to contribute in the CPF. The contention of the petitioner that in view of the fact that he never opted to be a member of the Corporation and therefore, continued to be a Government servant cannot be accepted. He served the Corporation from the year 1978 till his superannuation on 30.04.2009 and never claimed to be a Government employee. The reliance placed by the petitioner on Govt. Order No.38-GR (TR) of 1986 dated 03.10.1986 is also grossly mis-conceived. The aforesaid Order has been issued in different context altogether. Needless to say that the erstwhile GTU was converted into J&K SRTC in the year 1976 and the employees working in the GTU were given option to opt for the services of the Corporation or remain in the service of the Government. This option was extended to the employees of the GTU vide Govt. Order No.25-TR of 1979 dated 27.03.1979. The petitioner was an employee of the Revenue Department and not of the erstwhile GTU, though, such option was not available to him. The petitioner, therefore, did not submit any option, yet by his conduct of continuing in the Corporation beyond the maximum tenure of deputation of 4 years and thereafter getting promotions in the Corporation from time to time he is estopped from claiming, that too, after attaining the retirement and getting all the post retiral benefits from the Corporation, to say that he continued to be a Government servant till his retirement and therefore, entitled to pension. It is a case of deemed absorption of the petitioner in the Corporation. The respondents are right in treating him the employee of the Corporation and granting him the benefits whatever payable to him. The petitioner who was a Clerk in the Revenue Department rose to the position of Joint Managing Director of the Corporation only because of his continuance in the Corporation.

6. Viewed from any angle, the contention of the petitioner that he continued to be a Government employee despite having accepted promotions in the Corporation and availing of all the benefits available to the employee of the Corporation cannot be accepted.

7. The judgment cited by Mr. Chouhan learned counsel reported as 2002 (3) SCC 219 titled Jawahar Lal v. State of J&K and others is not applicable to the facts of the case as the same has been rendered in the different set of facts and does not in any manner deal with the issue involved in this petition.

8. Viewed thus, this writ petition is without any merit and is accordingly dismissed along with connected MP(s).

