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Court : Jammu and Kashmir

Decided On : Aug-30-2007

Reported in : 2008(1)JKJ553

Judge : Nirmal Singh, J.

Appellant : Kaka Ram

Respondent : State and ors.

Disposition : Petition allowed

Judgement :

Nirmal Singh, J.

1. Petitioner was initially appointed as Safaiwala on stop gap basis in the Family Welfare Department vide order dt. 30th of Aug'90. This arrangement was for 89 days. Thereafter in terms of SRO 75 of 1992, the services of the petitioner were regularized against the aforesaid post. After rendering thirteen years of continuous services, the petitioner superannuated w.e.f. 31st of March' 03. The case of the petitioner was referred to the respondent No. 2 for payment of retrial benefits to the petitioner. The said respondent, however, pointed out that the petitioner has neither been declared quasi-permanent nor permanent even after 11 years of service, and therefore, he is not entitled to pensionary benefits. Petitioner filed a representation and also served upon the respondent authorities a legal notice but

the request of the petitioner for grant of pensionary benefits was declined, hence the present petition.

2. On notice, respondent No. 2 has filed objections in which it is pleaded that petitioner served in the State in temporary capacity up to 12th of May'99 and was declared quasi permanent w.e.f. 13th of May'99. It is stated that the petitioner rendered a total service of 3 years, 10 months and 19 days in quasi permanent status and as per Rule 9 of Schedule-IX of J & K Civil Service Regulations Vol. 11, an employee who has rendered less than five years of service as quasi-permanent and has not been confirmed, then he is not entitled to pension.

3. Admitted. Taken on board for final disposal. After hearing learned Counsel for the parties and perusing the record, I am of the opinion that this petition deserves to succeed.

4. Petitioner admittedly has served in the respondent department for about 13 years. If a Government servant remains in continuous service for more than three years, then he is to be declared as quasi-permanent in terms of Rule 3(1) of the Jammu and Kashmir Civil Services (Temporary Service) Rules, 1961 (here-in-after called the Rules). For facility of reference, the said rule is being reproduced below:

3(1): A Government servant shall be eligible for being declared as quasi-permanent if he has been in continuous Government service for more than 3 years in a Department which is not as a whole temporary....

The term 'quasi permanent' has been defined in Rule 2(b) of the Rules asunder:

2(b): quasi permanent service' means temporary service commencing from the date on which a declaration issued under Rule 3 takes effect and consisting of periods of duty and leave (other than extraordinary leave without allowances) after that date....

5. In para 4 of the writ petition, the petitioner has specifically pleaded that vide order 12th of May' 92, passed by the Chief Medical Officer, Health and Family Welfare Department, Jammu, his services were regularized from that of Contingent whole time Safaiwala and he was placed in the regular grade. This was

done in terms of SRO 75 dt. 30th of March'92. A copy of order dt. 12th of May'92, regularizing the services of the petitioner has also been placed on record as Annexure B. The respondents have not denied this assertion made by the petitioner and respondent No. 2 has simply stated in the objections that the said para 'needs no comments'. Therefore, when the pleadings remain unrepeated and unchallenged, then the said pleadings would be deemed to have been admitted. Thus, it can be safely said that the petitioner, at the time of his superannuation i.e. in March' 03 was a regular employee.

6. At this stage, it would also be apt to notice Article 177 of J & K Civil Service Regulations Vol. I; It reads as under:

177. Service does not qualify unless the officer holds substantive office in a permanent establishment:

Provided that in case of a Government servant retiring from service on or after 1st January, 1962 if he was holding a substantive office on a permanent establishment on the date of his retirement, temporary officiating including temporary service on temporary establishment/Department, S.P.T. or quasi-permanent service followed without interruption by confirmation to the same or another post shall count in full as qualifying service, except in respect of-

(a) periods of service paid on work charge establishment, and

(b) periods of service paid from contingencies.

Provided further that in case of continuous quasi permanent service of 5 years or more, a Government servant who may not have been confirmed on any post before the date of his retirement (including retirement on invalid pension) shall be entitled to count the entire period of quasi permanent service and the continuous temporary service whether on pensionable or temporary establishments/Department (excluding non-pensionable establishments mentioned above) preceding his quasi-permanency, towards service qualifying for pension and he shall be eligible for pensionary benefits as if the entire period of temporary service and the quasi-permanent service were permanent and pensionable.

7. Under the aforesaid provision, if an employee at the time of his retirement holds a post on substantive and permanent basis then the services rendered by him/her on temporary basis or as quasi permanent which is without any interruption is to be counted for the purpose of pension. Therefore, three years 10 months and 19 days service rendered by the petitioner in quasi permanent status, as per the objections would be counted for the purposes of pension.

8. It is pertinent to mention here that respondent State has not taken any objection that the services of the petitioner were not regularized under the aforementioned SRO. In , Kesar Chand v. State of Punjab and Ors. A Full Bench of the said Court has held as under:..Article 14 strikes at arbitrariness because a provision which is arbitrary involves the negation of equality. Even the temporary or officiating service under the State Government has to be reckoned for determining the qualifying service. It looks to be illogical that the period of service spent by an employee in a work-charged establishment before his regularisation has not been taken into consideration for determining his qualifying service. The classification which is sought to be made among Government servants who are eligible for pension and those who started as work charged employees and their services regularized subsequently, and the others not based on any intelligible criteria and, therefore, is not sustainable at law. After the services of a work charged employee have been regularized, he is a public servant like any other servant. To deprive him o the pension is nor only unjust and inequitable but is hit by the vice of arbitrariness, and for these reasons the provisions of Sub-rule (ii) of Rule 3.17 of the Rules would be liable to be struck down, being violative of Article 14 of the Constitution....

9. In the case in hand, even though, the State has not taken any objection, the only objection taken by respondent No. 2 is that the petitioner rendered 10 years 9 months and 19 days service in temporary capacity and was declared as quasi permanent in which capacity he rendered 3 years 10 months and 19 days service, and therefore, he is not entitled to pension. The said objection, in view of the Rules aforementioned and the legal position noticed above, cannot be accepted.

The petitioner, as indicated above, was engaged as Safaiwala on stop gap basis w.e.f. 8th of Aug' 90. Thereafter vide order dt. 12th May' 92, his services were

regularized from whole time Safaiwala and he was placed in a regular grade He retired from service on superannuation w.e.f. 31st of March' 03. There is nothing on record to show that the services of the petitioner were not regularized and that he was not working against on a substantive post. As indicated, there is no objection to this effect even by the respondent State also. Therefore, once the services of the petitioner were regularized and he remained in service for more than 13 years working against a substantive post, there is no logic to deprive him of the pensionary benefits as are available to other public servants who are entitled to pension under Article 177 of the Civil Service Regulations, noticed above.

10. Right to pension is a right to property as has been laid down by the Apex Court in *Dcokinandan Prasad v. State of Bihar* : (1971)ILLJ557SC . The observations made in this regard by the Apex Court in the said case be noticed as under:..pension is not a bounty payable on the sweet will and pleasure of the Government and the right of a Government servant to receive it is property under Article 31(1) of the Constitution and the State cannot withhold the same by a mere executive order....

11. There fore, as indicated above, the petitioner who was holding a substantive post at the time of his super annulations, is entitled to pension in terms of Article 177 of the Civil Service Regulations noticed above.

12. For the reasons mentioned above, this petition is allowed. The respondents are directed to release the pension and other retrial benefits in favour of the petitioner within a period of three months from the date a copy of this order is made available to the respondent authorities by the petitioner.

13. In case, the said benefits are not released in favour of the petitioner within the stipulated period, then the petitioner shall be entitled to interest @ 9 percent on the arrears.

Disposed of accordingly.