

Sunil Kumar Vs. Mcd and Others

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Mar-05-2012

Judge : The Honourable Mrs. Meera Chhibber, Member (J) & the Honourable Dr. Veena Chhotray, Member (a)

Appeal No. : O.A. No.2448 of 2010

Appellant : Sunil Kumar

Respondent : Mcd and Others

Advocate for Pet/Ap. : For the Applicant: M.K. Bhardwaj, Advocate. For the Respondents: R.K. Jain, Advocate.

Judgement :

MRS. MEERA CHHIBBER, MEMBER (J)

1. Applicant has sought the following relief:-

“(i) To quash and set-aside the impugned order dated 29.06.2010.

To direct the respondent No.1 and 2 to forward service book and dossier of applicant to respondent No.3 after counting his past service rendered in Chandigarh Education Department and treating him under old pension scheme.

To direct the respondent No.1 and 2 to give all benefits to the applicant as given to the other similarly placed Assistant Teacher (Primary) appointed under post code

013/2002.”

2. The brief facts, as stated by the applicant, are that he was working as JBT Teacher on contract basis in the Department of Education, Chandigarh. After getting NOC from Chandigarh, he applied for the post of Assistant Teacher pursuant to the advertisement given by Delhi Subordinate Services Selection Board (hereinafter referred to as DSSSB) for recruitment in MCD. He joined the post of Assistant Teacher in post code 0163/04 as selections were delayed. Subsequently applicant was issued offer of appointment as Assistant Teacher (Primary) under Post Code 013/02. He was given notional seniority also but was not allowed the benefit of pension scheme even though others appointed under post 013/02 were given the benefit of old pension scheme.

3. In the meantime, applicant got selected as DASS Grade-II in the Government of NCT of Delhi. He gave technical resignation and joined in Government of Delhi. Applicant requested respondent No.3 to count his past service in MCD and treat him eligible for pension whereupon Government of Delhi asked the applicant to get his case finalized from MCD failing which he would be treated to be governed by the new contribution pension scheme with effect from the date of his appointment in the organization (page 27). Applicant again approached the MCD but no response was received, he thus filed W.P. before the Hon'ble High Court of Delhi seeking directions to the respondents to count his past service rendered in Chandigarh Education Department for the purpose of pension under the old scheme. The said Writ Petition was transferred to this Hon'ble Tribunal and finally disposed of vide order dated 20.10.2009 with a direction to the respondents to settle the claim of the applicant regarding counting of service for the purpose of pension and send necessary decision with documents as relevant to Government of NCT of Delhi so that the applicant could get his dues (page 43). Still no order was passed. Applicant had thus filed CP. When notices were issued MCD passed order dated 29.6.2010, therefore, CP was dropped giving liberty to the applicant to challenge the said order.

4. He has thus challenged order dated 29.6.2010 (page 19) whereby his claim for counting past service in Chandigarh has been rejected on the following grounds:-

“3. The services tendered by Shri Sunil Kumar in Govt. High School Chandigarh Administration on contract basis was not pensionable and he was not entitled for pensionary benefit in Chandigarh Administration as he was not on regular roll of the Chandigarh Administration.

That the District Education Officer, Chandigarh Administration vide letter dated 01.02.2008 has informed that no deduction has been made by this department on account of leave salary, GPG and pension contribution (page no.24/C).

That the applicant has not cleared the probation period in MCD. The service on probation followed by permanent is counted as qualifying service.

Since Sh. Sunil Kumar has worked on contractual basis, therefore, his previous employer i.e. Chandigarh Administration has not deposit pro-rata benefits of leave salary and pensionary contribution etc.

That the services rendered in the Govt. High School Chandigarh Administration was purely on contractual basis. Therefore, the same can not be counted as permanent.

That the contractually employee are not entitled for pensionary benefit. There is no rule wherein it has been stated that the contract employee is eligible for pensionary benefit.”

5. It is submitted by the counsel for the applicant that the impugned order is contrary to Rule 17 of the CCS (Pension) Rules and the judgment given in TA No. 118/2009.

6. He has further submitted that once the applicant was appointed in MCD itself w.e.f. 2002, the MCD was required to cover the applicant under the Old Pension Scheme as all the appointees of Post Code 013 selected with the applicant and given place in the penal of 2002 have been treated under the Old Pension Scheme.

7. Respondent, i.e., MCD has opposed this OA. They have stated the applicant is not entitled for benefits of Old Pension Scheme as the applicant got his joining

after 31.3.2004. Moreover, the applicant is not entitled for counting of his past service in Education Department, Chandigarh as the same was on contract basis and the service rendered on contract basis is not pensionable. The respondents have not received any amount with regard to gratuity etc. from the Education Department, Chandigarh so as to establish that the service of the applicant was pensionable. Without receiving that amount, the respondents cannot include that period of service towards pension. Moreover, as the applicant has joined after 31.3.2004 and hence the service of the applicant with MCD is not pensionable. They have thus prayed that the OA may be dismissed.

8. In rejoinder, applicant has annexed order dated 24.3.2009 to state that all those persons who were selected under Post Code 013/02 have been granted the benefit of Old Pension Scheme (page 52).

9. We have heard both the counsel.

10. It is seen initially applicant had filed Writ Petition which was transferred to the Tribunal and renumbered as TA 118/2009. The grievance of the applicant in that case was that MCD had rejected his claim for being treated under Old Pension Scheme on the ground that the applicant had joined MCD as Assistant Teacher on 16.4.2005, therefore, he is not entitled to be included under the Old Pension Scheme. Similarly his past service in Chandigarh cannot be counted because contractual appointment was not pensionable nor any deduction had been made by them on account of leave salary, GPF and pension contribution as mentioned in their letter dated 1.2.2008. The TA was disposed of ex-parte without going into the merits of the case by directing the MCD to settle the claim of the applicant regarding counting of service with Education Department, Chandigarh and send it to the Government of Delhi (page 44) meaning thereby no positive directions were given by the Tribunal. In fact, Tribunal had not even adjudicated the matter as it was disposed of without any reply having been filed by the respondents. It is thus wrong to suggest that any issue was decided in TA 118/2009. In view of above, it cannot be stated that the impugned order is contrary to the judgment given in TA 118/2009.

11. When confronted with these facts, counsel for the applicant relied on Rule 17 of the CCS (Pension) Rules without disputing the fact that he was working on contract basis in the Department of Education in Chandigarh which was not pensionable. Since counsel for the applicant had placed reliance on Rule 17 of the CCS (Pension) Rules, it would be necessary to first examine whether CCS (Pension) Rules would be attracted in this case at all. Rule 2 of the CCS (Pension) Rules reads as under:-

“2. Application,

Save as otherwise provided in these Rules, (these rules shall apply to Government Servants appointed on or before 31st day of December, 2003) including civilian Government servants in the Defence Services, appointed substantively to civil services and posts in connection with the affairs of the Union which are borne on pensionable establishments, but shall not apply to:

(a) railway servants;

persons in casual and daily rated employment;

persons paid from contingencies;

persons entitled to the benefit of Contributory Provident Fund;

members of All India services;

persons locally recruited diplomatic, consular or other Indian establishments in foreign countries;

persons employed on contract except when the contract provided otherwise;

persons whose terms and conditions of service are regulated by or under the provisions of the Constitution or any other law for the time being in force”.

12. Perusal of above shows it can be divided in 3 parts:

(1) These rules would apply only to those Government servants who were appointed on or before 31.12.2003.

(2) To such Government servants who are appointed substantively to Civil Services and posts in connection with the affairs of union borne on pensionable establishment.

(3) Rules shall not apply to persons employed on contract basis.

If in above backdrop we examine the facts of the present case, we find as per applicant's own averment in para E on page 14 he had joined MCD on 16.4.2005, i.e., after 31.12.2003, therefore, the CCS (Pension) Rules, 1972, would not apply to him on the face of it.

13. Before joining the MCD, admittedly applicant was working on contract basis in Education Department of Chandigarh but as per clause-(g) of Rule 2 contractual employees are specifically excluded from applicability of CCS (Pension) Rules, 1972 unless the contract provides otherwise. Applicant has not demonstrated that his contract provided for pension. On the contrary, respondents have specifically stated in the impugned order itself that the applicant was working on contractual basis in Chandigarh which was not pensionable. The District Education Officer, Chandigarh Administration had informed vide letter dated 1.2.2008 that no deduction has been made by the Department on account of Leave Salary, GPF and Pension Contribution. They have also not deposited prorata benefits of leave salary and pensionary contribution meaning thereby applicant's service in Chandigarh was not pensionable, therefore, no case has been made out by the applicant for counting his past service in Chandigarh for giving the benefit of Old Pension Scheme.

14. As far as MCD is concerned, they have stated applicant joined them on 16.4.2005 whereas in Rule 2 it has been made clear that the CCS (Pension) Rules, 1972, would apply to those Government servants, who were appointed on or before 31.12.2003, therefore, these rules would not apply to the applicant.

15. Counsel for the applicant sought parity with the selectees of Post Code 013/02. However, perusal of Annexure annexed at page 52 shows all those selectees had joined the post in July, 2003, i.e., before 31.12.2003, therefore, naturally they were governed by the Old Pension Rules whereas applicant had

joined on 16.4.2005, therefore, no parity can be claimed.

16. It is also relevant to note that while granting notional seniority to the applicant vide order dated 22.2.2007 it was made clear that even though seniority is being given but he would be entitled to the benefit accrued on Post Code 0163/04 from the date of joining under Post Code 0163/04 (page 23). This order has not been challenged by the applicant, therefore, the relief, as claimed, cannot be granted. The OA is accordingly dismissed. No costs.

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