B. Dileeb Vs. Union of India and Others

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Court : Kerala

Decided On : Jun-12-2012

Judge : P.N. Ravindran

Appeal No. : W.P(C).No.37228 of 2010 (C)

Appellant : B. Dileeb

Respondent : Union of India and Others

Judgement :

The petitioner, who is presently employed as Senior Assistant in the Kerala State Electricity Board, (hereinafter referred to as the Board for short), has filed this writ petition for an order directing the respondents to reckon the service rendered by him in All India Radio under the Ministry of Information and Broadcasting during the period from 24.7.1992 to 31.3.1994, for the purpose of computing the length of qualifying service for pension. The brief facts of the case are as follows:

2. The petitioner was formerly employed as Lower Division Clerk in All India Radio, New Delhi under the Ministry of Information and Broadcasting during the period from 24.7.1992 to 31.3.1994. He resigned from service to take up employment as Cashier in the Board and was relieved from All India Radio, New Delhi on 31.3.1994. After he was relieved from All India Radio, New Delhi on 31.3.1994, he joined service as Cashier in the Board on 4.4.1994. Long after he entered service, the Board issued Ext.P2 order dated 1.9.2005 whereby the Board inter alia

decided to count the prior service rendered by its employees in departments of the Government of India/Autonomous Bodies as provided in G.O.(P)No.369/87/Fin. dated 31.3.1987 and G.O.(P) No.703/2002/Fin. dated 12.11.2002, for the purpose of computing the length of qualifying service in the Board, subject to realization of pro-rata pension liability from the Department of Government of India/Central Autonomous Body concerned. The Board also decided to deny the request of employees to remit the pro-rata pension contribution themselves in the event of the former employer refusing to bear the pro-rata pension liability. It was also stipulated that this will be applicable to pending requests as well as to future cases.

3. After Ext.P2 Board order was issued, the petitioner submitted a representation to the fifth respondent requesting him to reckon the service rendered by him in All India Radio during the period from 24.7.1992 to 31.3.1994 for the purpose of computing the length of qualifying service for pension upon his retirement from the service of the Board. The Executive Engineer thereupon sent Ext.P3 letter dated 16.3.2006 to the Deputy Director of Administration, All India Radio, New Delhi, requesting him to intimate whether his department is willing to remit the pro-rata pension contribution for the purpose of reckoning the service rendered by the petitioner in All India Radio as pensionable service. Long thereafter, the petitioner submitted a representation dated 11.5.2009 to the Director General of All India Radio requesting for payment of pro-rata pension contribution in respect of the service rendered by him in All India Radio during the period from 24.7.1992 to 31.3.1994. The said representation was submitted through the fifth respondent Executive Engineer, who forwarded it to the Director General of All India Radio along with his letter dated 12.5.2009.

4. Upon receipt of the said representation, the Director General of All India Radio sent Ext.P4 letter dated 20.5.2009 to the fifth respondent, requesting him to forward the service book of the petitioner for further examination of the case. The fifth respondent thereupon forwarded the service book of the petitioner relating to his service in All India Radio, to the Director General of All India Radio along with Ext.P5 letter dated 8.6.2009. The petitioner thereafter sent a letter dated 28.7.2009 to the Director General of All India Radio. Upon receipt of the

petitioner's service book, the Director General of All India Radio sent Ext.P6 letter dated 6.8.2009 to the petitioner informing him that his case is being examined, that certain clarifications have been sought from the Ministry of Information and Broadcasting and as soon as a reply is received, he will inform the petitioner of the decision taken in the matter. The Ministry of Information and Broadcasting took the stand that in the relieving order the petitioner's resignation was not termed as a technical resignation and communicated its views in the matter to the Director General of All India Radio as per letter dated 19.8.2009. The Director General of All India Radio thereupon sent Ext.P7 letter dated 18.5.2009 (sic for 28.8.2009) to the petitioner, informing him that in view of rule 26(1) of the Central Civil Services (Pension) Rules, 1972, he is not entitled to pensionary benefits as he had resigned from service. A copy of Ext.P7 letter was communicated to the Executive Engineer of the Board also.

5. The petitioner thereafter submitted Ext.P8 representation dated 23.9.2009 to the Director General of All India Radio, requesting him to review the decision and to intimate the willingness of the Directorate to remit the pro-rata pension contribution with the Board. By Ext.P9 letter dated 24.9.2009 the petitioner was informed that his request for review is under consideration. The petitioner thereafter submitted Ext.P10 representation dated 23.10.2009. The Director General of All India Radio thereupon sought a clarification from the Government of India as to whether the resignation tendered by the petitioner was a technical one or a simple resignation and whether the petitioner is entitled to reckon the service rendered by him in All India Radio for pensionary benefits. It appears the petitioner had also moved the Board by submitting a representation dated 13.8.2010. The Secretary of the Board thereupon sent Ext.P12 letter dated 6.9.2010 calling upon the petitioner to take necessary steps for remittance of pension contribution by his former employer, to consider his request for reckoning the service rendered by him in All India Radio as pensionable service. The instant writ petition was thereupon filed on 13.12.2010 seeking the following reliefs:-

i) Call for the records relating to Exhibits P7 and P7(a) and quash the original of the same by the issue of a writ of certiorari or other appropriate writ or order.

ii) Issue a writ of mandamus or other appropriate writ order or direction commanding the 2nd respondent to effectively consider and pass appropriate orders upon Exhibit P8 after affording an opportunity of being heard to the petitioner within a time limit.

iii) Issue a writ of mandamus or other appropriate writ order or direction commanding the 4th respondent to permit the petitioner to pay the pro-rata pension which is liable to be paid by the 2nd respondent.

iv) Issue a writ of mandamus or other appropriate writ order or direction commanding the 4th respondent to count the service of the petitioner in All India Radio towards pension in the Kerala State Electricity Board and also direct to revise the pay revision benefits of the petitioner with all monetary benefits.

The main contention raised in the writ petition is that the petitioner's resignation from Central Government service was only technical, for the purpose of taking up employment in the Board and therefore, the past service in All India Radio is not forfeited.

6. Respondents 1 and 2 have filed a counter affidavit dated 8.7.2011 wherein, with reference to rule 26(1) of the Central Civil Services (Pension) Rules, 1972 it is contended that the petitioner is not entitled for pensionary benefits and that the decision of the Government of India was communicated to the petitioner along with Ext.R1(g) letter dated 21.12.2009. Relying on Ext.R1(b) order dated 30.3.1994 it is contended that the resignation tendered by the petitioner on being selected for appointment as Cashier in the Board was accepted and therefore, he cannot claim any benefit for the service rendered by him in All India Radio. The fourth respondent has filed a counter affidavit dated 25.8.2011 wherein it is stated that the petitioner's prior service in All India Radio can be reckoned for pensionary benefits if All India Radio remits pro-rata pension contribution as per Board order dated 12.2.2008. Though a copy of the Board order dated 12.2.2008 is not produced along with the counter affidavit, a copy thereof was made available to me for perusal by the learned standing counsel appearing for the Board.

7. I heard Sri.P.Rajasekharan, learned counsel appearing for the petitioner, Sri.P.Parameswearan Nair, learned Assistant Solicitor General of India, appearing for respondents 1 and 2, Smt.M.P.Sheeba, learned Government Pleader appearing for the third respondent and Sri.K.S.Anil, learned standing counsel appearing for the Board. I have also gone through the pleadings and the materials on record. Shorn of details, the petitioner's contention is that in view of Ext.P2 Board order dated 1.9.2005, he is entitled to have his prior service in All India Radio, which is a department of the Government of India, reckoned for the purpose of grant of pensionary benefits upon his retirement from the service of the Board. It is relying on Ext.P2 Board order that he moved the Director General of All India Radio for pro-rata pension contribution in respect of the service rendered by him in All India Radio during the period from 24.7.1992 to 31.3.1994. That request was finally rejected by Ext.R1(g) letter dated 21.12.2009, a copy of which was communicated to the petitioner, but is not under challenge in this writ petition.

8. Ext.P2 Board order reads as follows:-

"KERALA STATE ELECTRICITY BOARD

Abstract Establishment - Reckoning of prior service rendered elsewhere by the Board employees for pensionary benefits in the Board- Guidelines - Further orders issued.

ESTABLISHMENT SECTION

BO (FB)No.2576/2005 (Estt.IV/reckoning service/2005)

Dated, Thiruvananthapuram, 01.09.2005

Read:-

(1) G.O.(P)No.369/87/Fin. dated 31.03.1987.

(2) G.O.(P)No.298/89/Fin. dated 17.06.1989.

(3) Government letter No.14898/PU/A3/88/Fin. dated 07.04.1988.

(4) B.O.No.424/1992 (Estt.IV/1960 /1991) dated 12.03.1992

(5) G.O.(P)No.703/2002/Fin. dated 12.11.2002.

(6) Proceedings of the Board Meeting dated 22.08.2005 (Agenda Item No.191/2005)

ORDER

In the Government orders read 1st and 2nd paper above, (adopted by Board vide Board Order dated 25.07.1989 and 25.08.1989), it was stated that where a State Government employee borne on a pensionable establishment is allowed to be absorbed in Government of India/Autonomous body, the service rendered by him under the Government shall be counted for pension under the Government of India or Autonomous body irrespective of whether the employee is temporary or permanent in Government. The same procedure will be applied in the case of employees of Government of India/Autonomous body who are permanently absorbed under the State Government/State Autonomous body provided the Government/Autonomous Body will discharge its pension liability in lump sum. It was further clarified in Government letter 3rd cited that this benefit can be allowed for both employees absorbed and who are subsequently recruited, but in the case of those subsequently recruited, the employees should have applied for the post through proper channel with the permission of the former employer. Thus past service rendered by the Board employees in Government of India/Autonomous body is counted for pension in the Board subject to recovery of pro-rate pension liability from the former employer.

In the Board Order read as 4th paper above it was decided to reckon the service rendered by a Board employee in State Government Departments/Quasi Government Organizations prior to his appointment/ absorption in KSE Board, as qualifying service to sanction pensionary benefits in the Board.

As per Government Order read as 5th paper above (adopted vide Board Order dated 03.09.2003) employees of the State Government Departments who left the former service in the Central Government/ Central Public Sector Undertakings on their own volition for taking up appointment in the State Government Department will be allowed to reckon their prior service for pensionary benefits in the State Government, if the former employer remits the share of proportionate pro- rata pensionary liability on a service share basis.

A number of representations from the Board employees who have prior service elsewhere, are pending disposal in the Board for want of clarification. On detailed examination of the cases, the Board in its meeting held on 22.08.2005 decided to accord sanction to the following:-

(1) Continue to count the prior service in the Departments of Government of India/Central Autonomous Body rendered by the Board employees as provided in the G.O.(P) No.369/87/Fin. dated 31.03.1987 and G.O.(P) No.703/2002/Fin. dated 12.11.2002 for the purpose of pension in the Board, subject to realization of the pro-rata pension liability from the Departments of Government of India/Central Autonomous body concerned.

(2) Continue to count the past service rendered by the Board employees in the Kerala State Government Departments for the purpose of pension in the Board, without insisting the Kerala State Government Departments to pay the pro-rata pension liability to the Board.

(3) Count the past service rendered by the Board employees in the Kerala State Public Sector Undertaking/Autonomous bodies for the purpose of pension in the Board subject to realization of the pro-rata pension liability from the Kerala State Public Sector Undertaking/Autonomous bodies.

(4) For a time limit of one year from joining the Board for the Board employee who desires to apply for counting the past service, if any, for the purpose of pension in the board and to make applicable this time limit in future cases. A time limit of one year from 01.09.2005 will be allowed to the existing employees to apply for counting the past service, if any, for the purpose of pension. Request made after this time limit will not be entertained.

(5) Since a time limit of one year is prescribed, there is no necessity to levy interest on belated remittance of pro-rata pension contribution. No interest on this account will be levied in the case of employees whose representations are pending for decision in the Board at present.

(6) Also decided to deny the request of the employees to remit the pro-rata pension contribution by the employees themselves, in the event of the former employer refusing to pay the pro-rata pension liability. This is applicable to the pending request as well as to the future cases.

(7) Also decided not to reopen the cases settled in the past otherwise than in the above mentioned lines and to regulate the pending cases as per these guidelines. Orders issued in this regard stand modified to the above extent.

By Order of the Board,

Sd/-

A.Ramanujan,

Secretary."

9. The Board order dated 12.2.2008 referred to in paragraph 5 of the counter affidavit filed by the fourth respondent is extracted below:-

KERALA STATE ELECTRICITY BOARD

Abstract

Establishment - Reckoning of prior service rendered by Board employees - computation of pro-rata pension liability - Clarification - Orders issued.

ESTABLISHMENT SECTION

B.O.(FB)No.399/2008 (Estt.IV/3436/2007)

Dated, Thiruvananthapuram, 12.02.2008

Read:

(1) B.O.(FB)No.2574/2005(Estt.IV/RECKONING SERVICE/05) dated 01.09.2005.

(2) G.O.(P)No.193/04/Fin. dated 20.04.2004.

(3) Letter No.PO1/G1/Inw/952/07-08 dated 13.11.2007 of the Senior Accounts Officer Office of the Accountant General (A and E).

(4) Proceedings of the Board Meeting dated 23.01.2008 (Agenda Item No.24/2008).

ORDER

As per the guidelines issued by the KSE Board in the Board Order read as 1st above for reckoning of prior service rendered by Board employees for pensionary benefits in the Board, the past service of Board employees in PSUs, Autonomous Bodies etc., will be counted for the purpose of pension, in the Board subject to realization of pro-rata pension liability from the organization concerned. A time limit of one year from 01.09.2005 was also fixed to the existing employees to apply for the same.

As per the Government Order read as 2nd above, the former employer should remit DCRG/Service gratuity and commuted value of the entire admissible pension reckoning the commutation factor applicable to the next birthday as on the date of absorption/joining the Government service, Autonomous Bodies etc., as the case may be. In view of the said stipulations in the Government Order, clarification on the method of calculation of pension liability has been obtained from the Accountant General.

Having examined the matter, the Full Board in its meeting held on 23.01.2008 has decided to accord sanction to implement the mode of calculation of pension liability as clarified by the Accountant General in all pending cases of reckoning of past service of Board employees for pensionery benefits as mentioned below:-

"An employee having qualifying service of less than 5 years will be eligible for only service gratuity calculated at the rate of one months pay (plus DA if the date of quittance of former service is on or after 01.03.1997) for each year of qualifying service. For qualifying service less than 10 years, one is not entitled to pension, but only service gratuity and DCRG based on the length of qualifying service. In case where an officer has 10 years or more qualifying service, the pro-rata pension is calculated on the basis of average emoluments for 10 months immediately preceding the date of relief from the former service. The pro-rata pension liability is to be remitted in lump sum as a one time payment and is to be determined with reference to the commutation table laid down in Part-III Kerala Service Rules. The DCRG is worked out on the basis of the last pay drawn plus DA admissible at the time of relief of former service. If the date of relief is prior to 01.03.1997, DA factor is not reckoned for calculation of DCRG."

The Board has also decided to reckon all pending cases of past service of Board employees up to 31.07.2003. Orders are issued accordingly.

By Order of the Board,

Sd/-

M.Subair,

SECRETARY"

A reading of the Board order dated 12.2.2008 discloses that the only variation brought about to Ext.P2 by that order is as regards the mode of quantification of the pension liability. In other words, the Board order dated 12.2.2008 does not substantially alter or amend the terms and stipulations in Ext.P2.

10. Ext.P2 Board order makes it evident that the Board decided to count the prior service rendered by its employees in departments of the Government of India/Central Autonomous Bodies as provided in G.O.(P)No.369/87/Fin. dated 31.3.1987 and G.O.(P)No.703/2002/Fin. dated 12.11.2002 for the purpose of

pension, subject to realization of pro-rata pension liability from the department of the Government of India/Central Autonomous Body concerned. In paragraph 6 of Ext.P2 Board order it is stipulated that in the event of the former employer refusing to pay the pro-rata pension liability, the request of employees to remit the pro-rata pension contribution themselves would not be entertained. It is also stipulated that this is applicable to pending as well as future requests.

11. The system of allocation of leave salary and pension between Central and State Governments was dispensed with by the Government of India in consultation with the State Governments as per Office Memorandum No.14(5)86/TA/1029 dated 9.10.1986 of the Government of India, Ministry of Finance. One of the decisions was that the liability for pension including gratuity will be borne in full by the Central/State Department to which the Government servant permanently belongs at the time of retirement. The Accountant General of Kerala thereupon requested the State Government to issue appropriate orders and the State Government in turn issued G.O.(P) No.369/87/Fin. dated 31.3.1987. The said Government order reads as follows:

FINANCE (RULES) DEPARTMENT

G.O.(P)369/87/Fin. Dated, Trivandrum, 31st March, 1987

Abstract:- Simplification of adjustments on account of allocation - of Leave Salary and Pension between Central and State Governments - Orders Issued.

Read:-

1. Office Memorandum No.14(5) 86/TA/1029 dated 9-10-1986 of the Government of India, Ministry of Finance, Department of Government of Expenditure, New Delhi.

2. Letter No.Co.or.III/12-2/152/964 dated 9-1-1987 from the Accountant General, Kerala, Trivandrum.

ORDER

In the Office Memorandum cited first Government of India have in consultation with the State Governments decided to dispense with the system of allocation of leave salary and pension between Central and State Governments and among Departments of the various State Governments. The Accountant General in his letter cited has requested to issue reciprocal orders. Government after consideration, reiterate the decision of the Government of India dispensing with the system of allocation of leave salary and pension between Central and State Governments as specified below, for compliance by all concerned.

(a) Leave Salary.- The existing system of allocation or sharing of the liability on account of Leave Salary Contributions by Central Government to State Government or vice versa will be dispensed with. The liability for leave salary will be borne in full by the Department from which the Government servant proceeds on leave, whether it be his parent Department or a borrowing Department with whom he is on deputation.

(b) Pension.- The liability for pension including gratuity will be borne in full by the Central/State Department to which the Government Servant permanently belongs at the time of retirement. No recovery of proportionate pension will be made from Central/State Government under whom he had served.

(emphasis supplied)

(c) Contributory Provident Fund.- The liability for Government contributions will be borne by the parent Department of the Central or State Government and no share of contributions will be received from any borrowing Department. The above provisions are extended to the exchange of officers between two State Governments. These orders will take effect from 1.4.1987 and apply to all cases of leave salaries and pensions sanctioned on or after that date.

By order of the Governor,

ROBY J.NAYAGOM,

Additional Secretary.

12. In the Government order dated 31.3.1987 it was stipulated that the liability for pension including gratuity will be borne in full by the Central/State Department to which the Government servant permanently belongs at the time of retirement and no recovery of proportionate pension will be made from Central Government/State Government under whom he had served. Later by G.O.(P) No.383/89/Fin. dated 29.8.1989, the State Government ordered that when an employee of the State Government/State Autonomous Body, borne on pensionable establishment, is allowed to be absorbed in the Government of India/Autonomous Body, the service rendered by him under the State Government/State Autonomous Body shall be allowed to be counted towards pension under the Government of India/ Autonomous Body irrespective of whether the employee was temporary or permanent in the Government/Autonomous Body. It was further stipulated that the same procedure will be applied in the case of employees of Government of India/Autonomous Bodies who are permanently absorbed in the State Government/Autonomous Bodies and that the Government/ Autonomous Body, will discharge its pension liability by paying in lump sum, as a one time payment, the pro rata pension/service gratuity, terminal gratuity and death-cum-retirement gratuity for the service up to the date of absorption in the Autonomous Body/Government as the case may be. It was also stipulated that the lump sum amount of the pro rata pension will be determined with reference to the commutation table laid down in Kerala Service Rules, Part III. The Government order dated 29.8.1989 was issued without noticing the fact that the system of allocation of leave salary and pension between Central and State Governments had been withdrawn as per Office Memorandum dated 9.8.1986. The Government of Kerala thereafter issued circular No.74/99/Fin. dated 4.12.1999. The said circular is extracted below:

GOVERNMENT OF KERALA

Finance (Pension-B) Department

CIRCULAR

No.74/99/Fin.Dated, Thiruvananthapuram, 4th December, 1999

Sub:- Mobility of personnel between Central Government/Central Autonomous Bodies to State Government/State Public Sector Undertakings etc.-sharing of pensionary liability on pro-rata basis-Clarification

Ref:-

1.G.O.(P) No.893/78/Fin. dated 30.12.1978

2.G.O.(P) No.369/87/Fin. dated 31.3.1987

3. G.O.(P) No.383/89/Fin. dated 29.8.1989

In the Government Orders referred to above, Orders/Guideline were issued for reckoning the service rendered in Government of the India departments/Central Autonomous bodies for counting pensionary benefits consequent on permanent absorption in State Government departments/State autonomous bodies and vice versa. Pro-rata pension is payable in cases of permanent absorption of Government employees in State/Central Public Sector Undertakings and vice versa. When persons are deputed to these organisation in public interest and the employee and the foreign employer are willing to absorb permanently, then only the question of sharing pro-rata pensions/service gratuity arises. If the deputation and appointment is on one's own volition and the Foreign Employer is willing to absorb the employee, pro-rata pension/service gratuity are to be shared. This is the intention and purport of the term"mobility" and sharing of pro-rata pensionary liability used in the context mentioned in the Government Orders referred above. When a Government servant is deputed to a foreign service, the foreign employer has to pay the pension contribution from the funds of the organisation. Leave salary and pension contribution are calculated at 10% + 15% respectively of the maximum of the scale of pay. This will not mean payment of the pensionary benefit on retirement. It is only a token gesture to count the service as "qualifying service" and to satisfy the general condition that service should be paid from the general fund of the State. Hence it is purely a qualificatory one. But many are taking it as a substitute for pro-rata pension and interpret that once pension contribution is paid by the organisation or the employee himself, that service can be counted for pension.

2. The guiding principle of shouldering pro-rata pension is on the premises of the facts mentioned above. It is hereby clarified that if one gets appointment in a public sector undertaking, Local Body or University while in Sate service, after applying with reference to the notification, the role of the employer is very limited. He issues only an N.O.C. to the effect that the department has no objection in sparing the service if selected and the application is routed through the head of the office. That does not mean and purport to the effect that Government will share the pensionary benefits for the period spent in state service. Similar is the case when one comes from Government of India service or vice versa as a fresh recruit to state services or autonomous bodies. It cannot be taken as an appointment by transfer or mobility of personnel referred in the G.O.'s cited. Such mobility of personnel are guided purely by personal consideration and convenience and no public interest is involved

(emphasis supplied)

3. As per rules, service paid out of the funds outside the consolidated fund of the State or Centre like, Local Body funds, Grant-in-aid, funds of Public Sector Undertakings will not qualify for pension. There is no bar to count the past service as far as Government or Government of India service are concerned. The employer like universities, panchayats, municipalities and other autonomous bodies can take their own decisions to count the past State service/Central Government Service as qualifying service, for the terminal benefits of their employees who have got past state service.

4. If appointment is made based on notifications issued and the employee applies for one's own convenience, then for the past service in central or the state service, it is not obligatory on the part of the former employer to share the pro-rata pensionary liability of such employer.

5. Above guidelines will be in force from the date of the order. Cases which have already been settled/decided otherwise will bot be re-opened for any reason whatsoever.

VINOD RAI,

Principal Secretary

(Finance)

13. The Government of Kerala thereafter issued G.O.(P) No. 703/2002/Fin. dated Thiruvananthapuram, 12-11-2002 which is extracted below:

FINANCE (PENSION - B) DEPARTMENT

G.O.(P)703/02/Fin. Dtd. Trivandrum, 12th November, 2002

Abstract.- Pension -Reckoning of prior service under Central Government/Central Public Sector Undertakings put in by State Government Employees -Orders Issued.

Read:-

1. G.O.(P) No.383/89/Fin.29.8.1989

2. Letter No.3(20)/Pen.A/79 dated 31.3.1982 from the Govt. of India, Ministry of Home Affairs, Department of Pand AR, New Delhi

3. Circular No.74/99/Fin.dated 4.12.1999

ORDER

As per G.O. 1st cited Government have issued Orders/guidelines for reckoning the service rendered in Government of India Departments/Central Autonomous Bodies/State Government Departments/State Autonomous Bodies/Public Sector Undertakings, etc., for pensionary benefits consequent on permanent absorption after deputation in State Government Departments/State Autonomous Bodies and vice versa. As per the Circular dated 4.12.1999, the mobility and other details applicable have been further clarified. However, these Orders cover the cases of permanent absorption after deputation only. There are no rules regarding the reckoning of former service in Government of India/Central Public Sector undertakings followed by fresh appointments in the State Service, based on recruitment methods for new appointments.

In the letter read as 2nd paper above Government of India had earlier communicated their concurrence to share proportionate liability on a service-share basis for counting the service under them for pensioanry benefits under State Government. Both this has not been adopted in this State of so far.

Government have examined the matter in detail and are pleased to order that the employees of the State Government Departments who left the former service in Central Government/Central Public Sector Undertakings on their own volition for taking up appointment in State Government Departments will be allowed to reckon their prior service for all pensionary benefits along with the service in the State Government Department if the former employer remits the share of proportionate pro rata pensionary liability on a service-share basis.

These Orders will take effect, including monetary effect, only from the date of this Order and individual cases otherwise settled will not be re-opened

By Order of the Governor,

V.S.SENTHIL, Secretary

(Finance - Expenditure)

14. It is relying on the above quoted Government orders that Ext.P2 Board order was issued on 1.9.2005 whereby the Board decided to count the prior service rendered by its employees in Departments of Government of India/Central Autonomous Bodies subject to realisation of pro-rata pension liability from the Department of Government of India/Central Autonomous Body concerned. The Board did not, when it issued Ext.P2 Board order dated 1.9.2005, take note of the fact that G.O.(P) No.703/2002/Fin. dated 12.11.2002 was withdrawn and G.O.(P)No.369/87/Fin. dated 31.3.1987 was revived, with the issuance of G.O.(P) No.651/03/Fin. dated 6.12.2003. The Government order dated 6.12.2003 is extracted below :

FINANCE (PENSION - B) DEPARTMENT

G.O.(P)651/03/Fin. Dtd. Thiruvananthapuram, 6th December, 2003

Abstract.- Pension -Reckoning of prior service under Central Government/Central Public Sector Undertakings put in by State Government Employees - Modification - Orders Issued.

Read:-

1. Office Memorandum No.14(5)/86//TA/1029 dated 9.10.1986 of the Government of India

2. G.O(P)No.369/87/Fin. Dated 31.3.1987

3. G.O(P)No.703/02/Fin. Dated 12.11.2002

4. Letter No.P1/6-44/02-03/22 dated 29.11.2002 from the Accountant General (AandE), Kerala, Thiruvananthapuram

ORDER

In the Office Memorandum cited first Government of India have in consultation with the State Governments decided to dispense with the system of allocation of pension, Leave Salary and Contributory Provident Fund between Central and State Governments and among Departments of various State Governments w.e.f. 1.4.1987 and the State Government reiterated the decision of Government of India in the G.O. cited second.

In the G.O. 3rd read Government have ordered that the employees of State Government Departments who left the former service in Central Government/Central Public Sector Undertakings on their own volition for taking up appointment in State Government Departments will be allowed to reckon their prior service for all pensionary benefits along with the service in the State Government Departments if the former employer remits the share of proportionate pro-rata pensionary liability on a service share basis.

The Accountant General in his letter cited has pointed out the contradiction in the two Orders read above and has requested to modify the G.O. read as 3rd paper in tune with G.O. read as 2nd paper.

Government have examined the matter in detail and in modification of the Orders issued in the G.O. 3rd cited are pleased to order that in the case of prior service rendered by Central Government employees in State Government and vice versa, the liability of Pension including Gratuity, will be borne in full by the Central Government/State Government to which the Government servant permanently belongs at the time of retirement and no recovery of proportionate pension will be made from Central Government/State Government under whom he had served. But in the case of employees who left the former service in the Central Public Sector Undertakings the Orders issued in G.O dated 12.11.2002 will stand.

Government further clarify that the Orders issued in the G.O. read as 2nd paper is revived.

By Order of the Governor,

V.M.VENUGOPALAN,

Additional Secretary (Finance)

15. By the order dated 6.12.2003, the Government of Kerala directed that liability for pension including gratuity in the case of employees in State service who had rendered prior service in Central Government will be borne exclusively by the State Government to which the Government servant permanently belongs at the time of retirement and no recovery of proportionate pension will be made from Central Government under whom he had served. The Government also directed that in the case of employees who had formerly served in Central Public Sector Undertakings, the Government order dated 12.11.2002 shall continue to operate. The Government also ordered that G.O. (P)No.369/87/Fin. dated 31.3.1987 is revived.

16. The effect of the Government order dated 6.12.2003 is that the liability for pension including gratuity in the case of a State Government employee who had formerly served the Central Government is that of the State Government Department to which the Government servant belongs at the time of his retirement and no recovery of proportionate pension can be made from the Central

Government under whom he had served earlier. In view of the decision taken by the Government of India as per Office Memorandum dated 9.10.1986 to dispense with the system of allocation of leave salary and pension between Central and State Governments and the consequential orders dated 31.3.1987 and 6.12.2003 issued by the Government of Kerala, no liability can be fastened on the Central Government to pay pro-rata pension contribution. Ext.P2 Board order cannot therefore be relied on to hold that the Government of India is liable to pay pro-rata pension contribution in respect of the service rendered by the petitioner in All India Radio during the period from 24.7.1992 to 31.3.1994. All that the Government of Kerala directed in G.O.(P) No.383/89/Fin. dated 29.8.1989 was to reckon the service rendered in Government of India Departments, Central Autonomous Bodies, State Autonomous Bodies, State Public Sector Undertakings for pensionary benefits consequent on permanent absorption after deputation of employees in State Government Departments/State Autonomous Bodies and vice versa. The petitioner was not absorbed in the service of the Kerala State Electricity Board after deputation from Central Government service. Therefore even on the terms of G.O.(P) No.383/89/Fin. dated 29.8.1989, the petitioner cannot claim that the service rendered by him in All India Radio should be reckoned for the purpose of grant of pensionary benefits. In the absence of any such right in the petitioner, merely for the reason that Ext.P2 Board order permits him to have his service in All India Radio reckoned as service qualifying for pension if pro-rata pension contribution is paid by the Government of India/All India Radio, the Government of India cannot be held liable to pay pro rata pension contribution to the Board. As stated earlier, it was without noticing the fact that as per G.O.(P)No.369/87/Fin. dated 31.3.1987 and G.O.(P)No.651/03/Fin. dated 6.12.2003, the pension liability in respect of a former Central Government employee who later joined State Government service will be that of the department to which the Government servant permanently belongs at the time of his retirement, that the Board issued Ext.P2 order dated 1.9.2005 interalia stipulating that its employees who have rendered prior service in the Government of India Departments/Central Autonomous Bodies can reckon their past service for pensionary benefits subject to realisation of pro rata pension liability from the concerned Department of the Government of India/Central Autonomous Body.

17. There is yet another reason why the petitioner cannot claim or be granted pensionary benefits for the service rendered by him in All India Radio. Employees of the Kerala State Electricity Board are governed by the Kerala Service Rules. Rule 20 of Part III of the Kerala Service Rules sets out the different services which can be reckoned as qualifying service for pension and death - cum - retirement gratuity. Rule 20 of Part III of the Kerala Service Rules is extracted below:

20. Local Funds and Trust Funds. - Service paid from a Local Fund does not qualify for pension except under special orders of Government. Provided that the past service put in by Government employees and Aided School/Aided College Teachers in Panchyath/Municipal Common Service and Universities prior to their entry in State Government Service or Aided School/Aided College Service shall be reckoned as qualifying service for Pension and Death- cum-Retirement Gratuity from Government.

Note: The above proviso shall not be applicable for appointments to or from Public Sector Undertakings, Autonomous Bodies or similar bodies, as they are constituted under Companies Act or by separate legislation of the Central/State Government. In the case of prior service in Universities, only such service in any of the following Universities shall be considered for this benefit.

(i) Kerala University

(ii) Calicut University

(iii) Mahatma Gandhi University

(iv) Sree Sankara University

(v) Kannur University

(vi) Cochin University of Science and Technology

(vii) Kerala Agricultural University

The cases where payment towards pro-rata pension liability have already been made by a former employer as per the rules prior to the 19th day of November, 2009 shall not be re-opened and in all other cases including cases where payment have become due but not paid, such payments shall not be made.

18. Rule 20 of Part III of the Kerala Service Rules does not contemplate reckoning of the petitioner's service in All India Radio/Central Government Department as service qualifying for pension on his retirement from the Kerala State Electricity Board. Rule 20 of Part III of the Kerala Service Rules also does not contemplate payment of pension to State Government employees for the service rendered by them in the Kerala State Electricity Board. The claim of State Government employees, who had before their appointment in State Government service served in the Kerala State Electricity Board to reckon their service in the Kerala State Electricity Board for pension, was considered and rejected by a Division Bench of this Court in Babu P.K. v. The Chief Engineer, KSEB and Others (2007 (1) KLJ 35). The Division Bench held that rule 20 of Part III of the Kerala Service Rules does not authorise the counting of service in the Kerala State Electricity Board for the purpose of grant of pension on retirement from Government service and that even the proposed amendment to rule 20 (which was later brought about) does not indicate that service in the Kerala State Electricity Board can be counted for the purpose of grant of pension upon retirement from Government service. In the light of the stipulations in rule 20 of Part III of the Kerala Service Rules, which governs employees of the Kerala State Electricity Board as well, the petitioner cannot claim that his service in All India Radio should be reckoned for the purpose of computing his pensionary benefits.

19. The petitioner was appointed in All India Radio by order dated 27.7.1992. He thereafter applied for appointment as Cashier in the Board pursuant to a notification issued by the Kerala Public Service Commission and was selected and appointed. He thereupon submitted a letter of resignation and that was accepted by Ext.R1(b) office order dated 30.3.1994 which reads as follows:

No.3/2/94-Admn.IV(Pt.I)

Government of India

Ministry of Information and Broadcasting

....

ShastriBhavan

New Delhi, the 30th March, 94

OFFICE ORDER

Consequent upon his selection for appointment as Cashier in Kerala State Electricity Board, the resignation tendered by Shri.Dileeb.B temporary LDC of the CSCS Cadre of this Ministry posted in DG:AIR is hereby accepted with immediate effect.

(M.R.THAPLIYAL)

Under Secretary to the Govt. of India

Phone:387373

Copy to:-

1. Sri.Dileeb B.LDC

2. DG:AIR(Sri.N.K.Gupta, DDA), w.r.t their I.D.No.A- 22015/3/94- S.V(Part)/290 dated 29.3.1994

3. Kerala State Electricity Board (Dy.Chief Engineer, (Elc.), Electrical Circle Quilon, w.r.t their Memo No.EB 316/Cashier/93-94/328, dated 21.3.1994.

4. Office order/Reference/CR folders (Spare copies -5)

(M.R.THAPLIYAL)

Under Secretary to the Govt. of India

20. The petitioner was thereafter relieved from service by Ext.R1(c) order dated 31.3.1994 and he joined service in the Board as Cashier on 4.4.1994. Sub rule (1) of rule 26 of the Central Civil Services (Pension) Rules, 1972 stipulates that resignation from a service or a post, unless it is allowed to be withdrawn in public

interest by the appointing authority, entails forfeiture of past service. Sub rule (2) of rule 26 stipulates that a resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies. Sub rule (3) of rule 26 stipulates that interruption in service in a case falling under sub- rule (2), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him. Sub rule (7) of rule 26 stipulates that a resignation submitted for the purpose of Rule 37 shall not entail forfeiture of past service under the Government. Rule 37 of the Central Civil Services (Pension) Rules, 1972 stipulates that a Government servant who has been permitted to be absorbed in a service or post in or under a Corporation or Company wholly or substantially owned or controlled by the Central Government or a State Government or in or under a Body controlled or financed by the Central Government or a State Government, shall be deemed to have retired from service from the date of such absorption and subject to sub rule (3), he shall be eligible to receive retirement benefits if any, from such date as may be determined, in accordance with the orders of the Central Government applicable to him. Sub rule (3) of rule 37 stipulates that where there is a pension scheme in a body controlled or financed by the Central Government in which a Government servant is absorbed, he shall be entitled to exercise option either to count the service rendered under the Central Government in that body for pension or to receive pro-rata retirement benefits for the service issued by the Central Government. The petitioner was not permitted to be absorbed in the service of the Kerala State Electricity Board. Therefore rule 37 of the Central Civil Services (Pension) Rules, 1972 has no application. The petitioner's case is also not covered by any of the exceptions set out in rule 26 of the Central Civil Services (Pension) Rules, 1972. His resignation from All India Radio was accepted and was not withdrawn. His resignation was not submitted, to take up, with the permission of the proper authority, another appointment under the Central Government. Therefore, rule 26(1) of the Central Civil Services (Pension) Rules, 1972 operates with full force. On the terms of rule 26(1) of the Central Civil Services (Pension)

Rules, 1972, the service rendered by the petitioner in All India Radio during the period from 24.7.1992 to 31.2.1994 stood forfeited on his resignation being accepted and therefore, he cannot claim any service benefit for that period.

I accordingly hold that the challenge to the impugned orders and the claim made by the petitioner based on Ext.P2 Board order that he is entitled to pro-rata pension contribution from All India Radio is without any merit. The writ petition fails and is dismissed. No costs.