

Ram Charan Vs. Uoi and Others

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Court : Delhi

Decided On : May-03-2012

Judge : Suresh Kait

Appeal No. : W.P.(C). 6205 OF 2000

Appellant : Ram Charan

Respondent : Uoi and Others

Judgement :

SURESH KAIT, J.

(Oral)

1. Vide the present petition, the relief sought by the petitioner is as under:-

(i) A writ of mandamus in the nature of the directions or any other appropriate writ directing the respondent no. 1 and 2 extend the pensionary benefit in regard to the service done by the petitioner with Indian Air Force for about 21 years service and accordingly released the pension and other benefits attached with the service of the petitioner with the Indian Air Force.

(ii) A writ in the nature of directions to the respondent no. 3 to count the service i.e. 20 years, 8 months and 3 days of the petitioner with the Indian Air Force in the service done by the petitioner with the respondent no. 3, as driver and accordingly

the benefits of the same should also be extended to him i.e. of pension, G.P.F. and other benefits which are payable to him according to the rules and regulations of Haryana State Electricity Board.

(iii) Issue a direction to the respondent no. 3 to revise the pension of the petitioner after taking into consideration the length of service rendered to the Indian Air Force prior joining the respondent no. 3 and release the same from the date of retirement of the petitioner from the service of Haryana State Electricity Board and also the other benefits as per rules.

(iv) Issue a direction to the respondent no. 2 to transfer all accounts of the petitioner to the Accounts Section of the respondent no. 3 regarding G.P.F, Gratuity and other accounts, and also the discharge certificate to facilitate the respondent no. 3 to make the arrangement of payment of pension to the petitioner.

2. Vide order dated 07.01.2009, passed by this court, the Director (Personnel) of Army Headquarter was directed to depute a competent person along with representative with the Superintending Engineer of MandP Circle, HSEB, Delhi within a period of 04weeks. The meeting was directed to be called in Army Headquarter. Both the officers were directed to sort out the question of payment of pensionary benefit to the petitioner including the period of service for which the said benefit is to be given to the petitioner. They were further directed to intimate about the date of holding the said meeting to the petitioner, who may, if they so desire, furnish the requisite documents to the respondents.

3. It was further directed that the report was to be submitted by Director (Personnel) in the form of an affidavit to this court.

4. Pursuant thereto, respondents No. 1 and 2 filed an additional affidavit, wherein, it was stated that the petitioner, while serving in the post of Lascar (Group D) in the office of respondent No. 2 applied for the post of a Driver in the office of respondent No. 3, on direct recruitment basis, in response to an open advertisement, in order to seek better employment.

5. On his selection, he was relieved of his duties on 04.11.1971. As he was a permanent employee, he was granted lien in his permanent post of Lascar, in the Air Force, for a period of 01year. However, he did not revert back to the said post during his period of lien and continued with his service in HSEB (respondent No. 3). As such service book and personal files etc. of the petitioner pertaining to his service in the Air Force were transferred to HSEB authorities on 15.12.1972, for retention and further necessary action along with a request to them that the submission of resignation of the petitioner from the post of Lascar in the Air Force should be expedited. In this connection, a copy of respondent No. 2 letter No. 31MCU/351/2/41/PC(NE) dated 15.12.1972 is annexed as Annexure AAR-I.

6. The petitioner subsequently vide his letter dated 10.09.1974, submitted his resignation from the post of Lascar in Air Force, with a request that his GPF A/c No. 116965 (pertaining to his Air Force service) should be treated as closed and that the balance amount held in the said account be paid to him immediately (incidentally final payment of his GPF balance with the respondent No. 2 has since been made to him). In this connection, a copy of petitioner's resignation letter dated 10.09.1974, addressed to respondent No.2, is annexed as Annexure AAR-II.

7. During the course of hearing held on 18.09.2009, the court look into record the submissions made by the counsel for the petitioner that the petitioner after putting 21years of service with respondent No. 2, had resigned from service and joined the services with respondent No. 3. In modification of the prayers made before this court earlier, through his application, the petitioner confined his claim to the pensionary benefits, whatever is available under the Rules, (for the services rendered by him in the Air Force).

8. At the request of respondents No. 1and 2 (Air Force Authorities), this court granted time to place on record the relevant rules to show as to whether a person resigning from service after 20 years service, would be entitled to any part of pensionary benefits or not. In this regard, the respondents No. 1 and 2 submitted that the grant of pension to civilian Government employees is governed by the provisions of CCS(Pension) Rules, 1972, as per which pension is admissible only in cases of retirement on superannuation, voluntary retirement, compulsory

retirement (as a result of penalty), retirement on medical grounds, etc. Rule 26 of the CCS (Pension) Rules 1972 relates to the aspect of qualifying service in the event of a Govt Servant resigning from his post, entails forfeiture of past service.

9. However, an exception has been made in the rules [Rule 26(2)] that a resignation shall not entail forfeiture of past service, when it has been rendered with proper permission to take-up another appointment under the Government. The procedure to be followed in the cases, when benefit of past service is allowed has been further amplified by GOI, Min of Finance OM No. F3(6)-E V(A)/71 dated 04.12.1971 and 20.05.1972 reproduced as GID no. (4) below Rule 26 of the *ibid* rules, as per which in cases of above type, the order accepting the resignation should clearly indicate that the employee is resigning to join another employment with proper permission and that the benefits of counting of past service under Rule 26(2) of the CCS(Pension) Rules, would be admissible to him. The contents of the order accepting the resignation should be noted in the service book of the concerned employee, under proper attestation.

10. In view of the submissions made herein above, it is very clear that pensionary benefits are admissible only when an employee retires from service and that in both types of cases of resignation, [i.e. tendered under Rule 26(1) or Rule 26(2) of the pension rules] pensionary benefits are not admissible to an employee for his past service, as per rules.

11. Only an exception has been made for a limited purpose [under Rule 26(2)] that when an employee tenders resignation to take up another appointment with proper permission, he is permitted to count his past service to regulate the consequential benefits, in the matter of pay fixation, carry forward of leave, pension etc in the new department.

12. In this connection, extracts of Rule 26 of CCS(Pension) Rules, 1972 and GID No. (4) containing the provisions of Ministry of Finance OM mentioned before, taken from Swamy's Pension Compilation are annexed as Annexure AAR-III.

13. The service books etc of the petitioner (pertaining to his Air Force Service) were forwarded to HSEB authorities way back in December, 1972. The

respondents No. 3 and 4 cannot be, therefore, absolved of their responsibility in regard to redressal of grievances of the petitioner, who had served with them for a period of over 24 years, before his retirement. While the petitioner has already been taking pension for his 24 years of service in HSEB, his pension should have been regulated, after taking into account his past Air Force service, to make him eligible for full pension on the basis of maximum qualifying service of 33years, as permissible under the rules.

14. Stand of the respondent no. 1 and 2 is that petitioner is not entitled to any part of pensionary benefits for his past (Air force) service, consequent to his resignation from service with respondent No. 2 and joining the services of respondent No. 3. He was only entitled to get the benefit of counting of past service, while computing his qualifying service for pension, after retirement from service, from respondent No. 3 and as already brought out in the detailed counter reply filed by respondents No. 1 and 2 that respondents No. 1 and 2 have been unnecessarily arrayed in the memo of parties to bring the present petition under the jurisdiction of this court.

15. I note that in the counter affidavit filed by the respondents No. 1 and 2 on 06.09.2001, it has been stated that the petitioner was serving the respondents and applied for resignation after one year of lien and joined Haryana State Electricity Board as Driver.

16. Admittedly, the petitioner resigned from respondents No. 1 and 2 on 10.09.1974 through proper channel and the contents thereof reads as under :-

“.....Reference to your letter No. PCU/351/2/41/10 dated 22nd May, 1974. I hereby tender my resignation from the post of lascar, held by me previously in your office. My GP Fund No. 11695 may please be considered as closed and the balance amount may kindly be paid in cash.”

17. Vide communication dated 20.11.1975, office of respondents No. 1 and 2 communicated to JCDA(Funds) Meerut for final settlement of GP Fund account in respect of the petitioner.

18. In Para 2 of that communication, it is stated that the individual had resigned from services in order to take up appointment in the office of Executive Engineer OP Division, HSEB Gurgaon with proper permission of this office and hence his further balance amounting to Rs.1,095 may be transferred to his present department.

19. More so, communication dated 17.03.1980 sent by officer of respondents No. 1 and 2 that the petitioner was a permanent Government employee w.e.f. 1.3.1951 to 4.11.1971 (AD) in the Indian Air Force, it is requested that his services be computed for pensionary benefits along with service, he has rendered with them, if the State Government provides such facilities.

20. The stand of respondent No. 3 HSEB is that the petitioner has joined the office of Executive Engineer(Operation), city division, HSEB Gurgaon, however the same is now under a separate authority namely Dakshin Haryana Bijli Vitran Nigam, after the bifurcation of the erstwhile HSEB. It is further submitted that vide a letter dated 18th May, 1976 being No. 31/MCU/351/2/41/PC a communication was sent by Flight Lt. No. 31, Movement control Unit, Air Force, c/o 56 CPO. The reply to the said letter was to be given by the Executive Engineer (operation), city Division, Gurgaon which is now under DHBVN and as such the answering respondent is not in a position to comment on the same.

21. Further submits that the representations made by the petitioner regarding his GPF Fund for the period of his service with the Air Force was sent vide this office memo No. CH.6/EP-102 dated 27.1.86 to Accounts Officer/Funds O/o CDA/Funds Meerut with its copy to respondent No. 2 and CAO/GPF HSEB, Hisar, now CAO/GPF HVPN Panchkula, however no credit of GPF has been received.

22. The petitioner resigned from respondents No. 1 and 2 with benefit of one year lien and joined Haryana State Electricity Board as Driver. The officers of respondents No. 1 and 2 sent numerous communications to HSEB, Haryana, but the grievances of petitioner could not be resolved

23. As referred above, this court vide its order dated 07.09.2009, tried to resolve the issue and directed all the respondents to sit together and resolve the same.

However, they both have failed to do so.

24. I have no hesitation to say that they could not even understand, what is the relief sought by the petitioner. The petitioner initially worked for more than 20 years 08 months and 02 days with respondents No. 1 and 2 and thereafter, he rendered 24 years of service with respondent no. 3 HSEB, however the period taken into consideration for calculation of pensionary benefits are 24 years for which, he served with HSEB only, and approx. 21 years of service which he rendered to respondents No. 1 and 2 have been ignored, which is bad in law.

25. In my considered opinion, the petitioner has completed more than 33 years of service in serving the Government, which is a mandatory requirement under the Rules for availing full pensionary benefits. Rule 26 of the CCS(Pension) Rules, 1972 is applicable even to Boards and Corporations created by the State Governments.

26. The stand of HSEB is that the petitioner has been granted pension of his 24 years which he served with respondent no. 3 HSEB, as there was no scheme to count his past service which he rendered with respondents No. 1 and 2.

27. The issue involved in the instant petition is whether a person resigning from service after putting 20 years of service and joined another Govt. Service through proper channel, would be entitled to pensionary benefits for the previous service, he rendered?

28. In such a case, when a person served with one Department for more than 20 years and thereafter joined another service of the State Government with due permission, in that case he is governed by the provisions of CCS (Pension) Rules, 1972 as per which pension is admissible only in cases of retirement on superannuation, voluntary retirement, compulsory retirement (as a result of penalty), retirement on medical grounds etc.

29. Rule 26 of the CCS (Pension) Rules, 1972 relates to the aspect of qualifying service in the event of Govt. Servant resigns from his post. As per the main Rules, [Rule 26 (1)], resignation from a service or post, entails forfeiture of past service.

However, exception has been made in the rules, [Rule 26(2)] that a resignation shall not entail forfeiture of past service when it has been rendered to take up with proper permission another appointment under the Government. The procedure to be followed in these cases, when the benefit of past service is allowed has been further amplified by Govt. of India, Ministry of Finance OM No. F3(6)-E V9A)/71 dated 04.12.1971 and 20.05.1972, as per which in cases of above type, the order accepting the resignation should indicate that the employee has resigned to join another employment with proper permission and that the benefit of counting past service under Rules 26 (2) of the CCS (Pension) Rules, would be admissible to him.

30. In the case in hand, the petitioner served more than 20 years with respondent no. 1 and 2 and thereafter, he applied through proper channel with due permission to respondent no. 3. He continued there for about 24 years and accordingly, respondent no. 3 has been paying the pension of the service rendered with them only, which, in my considered opinion is not correct one. The only stand taken by the respondent no. 3 HSEB is that they have no provision to count the past service in such cases. Therefore, they have been paying pension for the service rendered with them. To this effect no proof has been placed on record. Therefore, I find no force in the submission made by Id. Counsel appearing on behalf of respondent no. 3.

31. I also find no force in the submission made by Id. Counsel appearing for respondent no. 3 and 4 that the original documents pertaining to the petitioner are with respondent No. 3 and the same are very much essential for computation of pensionary benefits.

32. Undisputedly, the R-1 and R-2 had already sent all the documents to R-3, as proved by correspondence made by them with R-3. Even, during proceedings, R-1 and R-2 have not denied the authenticity of the same.

33. In the light of above discussion and in the interest of justice, since the Haryana State Electricity Board is no more in existence, therefore, I hereby direct Chairman, Dakshin Haryana Bijli Vitran Nigam to count the past service rendered by the petitioner with respondent no. 1 and 2 and compute the pensionary

benefits, thereafter, be released in favour of the petitioner.

34. I wonder that the bifurcation of erstwhile HSEB to separate division namely Dakshin Haryana Bijli Vitran Nigam took place way back in 1998 and the documents should have been transferred during such a long period. Accordingly, the Chairman Dakshin Haryana Bijli Vitran Nigam is directed to do the needful, failing which respondent No. 3 shall pay 8% interest additionally, if he fails to do so within a period of 06 weeks from the receipt of this order. Further 4% interest shall be paid to the petitioner till the date of realization of the pensionary benefits to him.

35. The learned counsel for HSEB disputes the passing of the above order at this stage on the issue of jurisdiction and submits that since the relief pertains to Haryana, Delhi High Court do not have any jurisdiction to hear this matter.

36. When the petitioner is fighting for such a long period, the issue of jurisdiction cannot restrain this Court Under Article 226 of the Constitution from issuing such direction. Even otherwise, the petitioner has sought relief against R-1 and R-2 whose jurisdiction falls before this Court and R-3 and R-4 whose jurisdictions falls under the High Court of Punjab and Haryana, therefore, this Court has jurisdiction.

37. With the above observations, the petition stands allowed.

38. No order as to costs.

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