SUPREME COURT OF INDIA

Visitor

Vs.

K.S. Misra

(G. P. Mathur and D.K. Jain JJ.)

06.09.2007

JUDGMENT

G. P. MATHUR, J.

1. Leave granted.

2. This appeal, by special leave, has been preferred against the judgment and order dated 10.2.2006 of Allahabad High Court, by which it was directed that the past service rendered by the respondent K.S. Misra in Benaras Hindu University shall be counted for the purpose of payment of pension and other retiral benefits.

3. The respondent was appointed in the English Department of Benaras Hindu University on 10.8.1960, where he worked till 20.10.1979. He thereafter proceeded abroad and joined University of Yemen. After working there for nearly seven years, he came back to India and joined Shillong University on contract basis from where he resigned and joined Aligarh Muslim University on 14.4.1987. He was permanently absorbed on 1.6.1988 and finally retired from the university on 31.7.1997. His request for counting service rendered in Benaras Hindu University for the purpose of payment of pension was declined by Aligarh Muslim University. The respondent then filed a writ petition in Allahabad High Court, which was allowed by the order under challenge and it was directed that on the respondent's depositing Rs.16,944.47, the amount of gratuity received from Benaras Hindu University and the interest which may have become due till date, the service rendered by him in Benaras Hindu University shall be taken into consideration and shall be counted for the purpose of payment of pension.

4. In order to appreciate the controversy involved, it is necessary to take note of the relevant statute of the University dealing with the subject viz. Statute 61(6)(iv), which is reproduced below :- "Statute 61(6) (iv) & (v) iv. The University employees who have already been sanctioned or received pro-rata retirement benefits for their past service from their previous employer mentioned in sub-clause (i) and (ii) will have the option either :

a. to retain such benefits and in that event their past service will not qualify for pension or other retirement benefits in the University, or b. to have the past service counted as qualifying service for pension in the University in which case the pro-rata retirement benefits or their terminal benefits if already received by them will have to be deposited along with interest thereon (at such rate and in such manner as may be prescribed by the Executive Council) from the date of receipt of those benefits till the date of deposit with the University. The right to count previous service shall not revive until the whole amount has been refunded. In other cases where pro-rata retirement benefits

have not been drawn the previous authority shall make the payment to the University.

c. The option under this clause shall be exercised within a period of one year. If no option is exercised by such employees within the prescribed time limit they will be deemed to have opted for retention of the benefits already received by them.

The option once exercised will be final.

d. Where no terminal/retirement benefits have been received, previous service will be counted as qualifying service for retirement benefits under the University rules only if the previous employer accepts the pension liability for the service in accordance with the principles laid down in this clause. In no case pension contribution/liability shall be accepted from the employee concerned.

v. Provisions of the above amendments will be applicable only where the transfer of the employees from the other organization to the University and vice versa was/is with the consent of that organization including the cases where the individual had secured employment directly on his own volition provided he had applied through proper channel with the permission of the administration/authority concerned."

5. The Executive Council of the University amended Rule 6A of the General Rules and Regulation of the Council relating to sanction for payment of pension and gratuity on 29.3.1989 and the amended provision reads as under :

"Rule 6A Condonation of interruption in service for determining pensionary benefits :

a. In the absence of a specific order of the appointing authority to the contrary, an interruption between two spells of service rendered by a University employee, shall be treated as automatically condoned, and pre-interruption service treated as qualifying service;

b. Nothing in Clause (a) shall apply to interruption caused by dismissal or removal from service, or by resignation from service;

c. The period of interruption referred to in Clause (a) shall not count as qualifying service."

6. A perusal of Statute 61(6)(iv) would show that two options are open to an employee of the University who has rendered service in some other institution or university prior to joining the Aligarh Muslim University. The first option is that the employee who has already received retirement benefits for his past service from his previous employer may retain such benefits and in that event his past service shall not qualify for pension and other retirement benefits in the Aligarh Muslim University. The second option is that the employee will have to deposit with the University the retirement or terminal benefits along with interest with the Aligarh Muslim University and this has to be done within one year of joining the University. If the second option is not exercised within prescribed time viz. one year, the employee shall be deemed to have opted for the first option viz. for retention of the benefits already received by him and in such a case the past service rendered by him shall not be counted. Statute 61(6)(v) lays down that the aforesaid provision will be applicable only where the transfer of the employee from other organization to the Aligarh Muslim University or vice-versa is with the consent of that organization including a case where the employee has secured employment on his own volition provided he has applied through proper channel and with the permission of the administration/authority concerned. Rule 6A of the General Rules and Regulations of the Council relating to sanction of payment of pension and gratuity indicates that in

absence of a specific order of the appointing authority to the contrary, an interruption between two spells of service rendered by a University employee shall be treated as automatically condoned and past service shall be treated as qualifying service. However, this clause will not apply in case of resignation from service.

7. In the rejoinder affidavit which was filed by the respondent in the High Court, a plea was taken for the first time that on 21.8.1989 he had exercised his option for counting the service rendered by him in Benaras Hindu University and had also offered to deposit the retirement benefits along with interest with the Aligarh Muslim University. Since this plea was taken in the rejoinder affidavit, the appellant herein got no opportunity to rebut the same. This plea seems to have been accepted by the High Court. Learned counsel for the appellant has placed before us a copy of the option exercised by the respondent on 28.1.1989 and it reads as under :- " 28.1.1989 The Asstt. Finance Officer (Provident Fund Section) AMU, Aligarh Dear Sir, I am sending herewith my option-for-pension form duly completed for your record and necessary action.

Yours truly, Sd/- (Dr. K.S. Misra) Professor in English OPTION Having understood the comparative advantages and disadvantages of pensionary and Provident Fund benefits as applicable in my case :

(i) I opt for the Liberalised Pension Rules including the benefit of the Family Pension Scheme for Central Government Employees, 1964 introduced vide the Ministry of Finance Office Memo No.F.9(16)-EV (A)/63 dated the 31st December, 1963 on the terms and conditions laid down in that Ministry's O.M. No.F.2(14)- EV(B)/63 dated the 14th January, 1964."

The aforesaid document shows that the respondent had exercised his option for Liberalized Pension Scheme including the benefit of the Family Pension Scheme for Central Government Employees by his letter dated 28.1.1989 and it had nothing to do with the option regarding counting of past service. Therefore, the option exercised by him on 28.1.1989 has no relevance to the controversy in hand.

8. On 5.8.1993 the respondent made an application to the University for giving him benefit of the past service rendered in Benaras Hindu University. The University gave a reply on 11.10.1993 that he had not applied to the University through proper channel or with the consent of the previous employers and his case was not covered by relevant provisions of the Statute and consequently his past service could not be counted. The factual position which emerges is that the respondent did not exercise his option at any point of time for counting his past service. Further, he had resigned his service in Benaras Hindu University and had worked thereafter for nearly seven years in Yemen University. He had not applied in the University through proper channel or with the consent of the previous employer.

9. The High Court in the impugned order has held that the time limit provided in Statute 61(6)(iv) is merely directory in nature and not mandatory and after holding so has granted relief to the respondent. In our opinion the view taken by the High Court is clearly erroneous in law. Sub-clause (c) of Statute 61(6)(iv) lays down that the option under this clause shall be exercised within a period of one year and if no option is exercised within the prescribed limit, the employee shall be deemed to have opted for retention of the benefits already received by him. This clause provides for the consequences which will ensue in the event of non-exercise of option within the prescribed period of one year.

10. A Three-Judge Bench in Balwant Singh & Ors. v. Anand Kumar Sharma & Ors. (2003) 3 SCC 433 has explained in what circumstances the duty cast upon a private party can be said to be mandatory and para 7 of the report reads as under :

7. Yet there is another aspect of the matter which cannot be lost sight of. It is a well settled principle that if a thing is required to be done by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefor are specified. In Sutherland, Statutory Construction, 3rd edition, Vol. 3 at p. 107, it is pointed out that a statutory direction to private individuals should generally be considered as mandatory and that the rule is just the opposite to that which obtains with respect to public officers. Again, at p. 109, it is pointed out that often the question as to whether a mandatory or directory construction should be given to a statutory provision may be determined by an expression in the statute itself of the result that shall follow non-compliance with the provision. At page 111 it is stated as follows:

"As a corollary of the rule outlined above, the fact that no consequences of non-compliance are stated in the statute, has been considered as a factor tending towards a directory construction. But this is only an element to be considered, and is by no means conclusive."

Therefore, in accordance with the law laid down in the above authority, the provisions of Statute 61(6)(iv) (b) and (c) should be treated as mandatory as it is a private party who has to do a particular act within a specified time.

11. The problem can be looked from another angle. If the view taken by the High Court that the provision is directory is accepted as correct, it would in effect amount to making the provisions of sub- clause (c) of Statute 61(6)(iv) otiose. In such a case the consequences provided therein that if no option is exercised within the prescribed time limit, the employee shall be deemed to have opted for the retention of the benefits already received by him would never come into play. It is well settled principle of interpretation of statute that it is incumbent upon the Court to avoid a construction, if reasonably permissible on the language, which will render a part of the statute devoid of any meaning or application. The Courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intent is that every part of the statute should have effect.

The legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the Legislature will not be accepted except for compelling reasons. It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the staute.

(See Principles of Statutory Interpretation by Justice G.P. Singh Ninth Edition page 68).

The provisions of sub-clause (c) of Statute 61(6)(iv) should be interpreted in a manner which makes the provision workable and not redundant or otiose. It is, therefore, not possible to accept the view taken by the High Court that the provision is directory as in such a case this clause will never come into operation if the employee exercises his option at any point of time before his retirement.

12. The High Court has also relied upon a decision rendered by another Division Bench of the same Court in a writ petition filed by Dr. Rameshwar Tandon against Aligarh Muslim University. Dr.

Tandon was permanent Lecturer in Economics in Institute for Social and Economic Change, Bangalore and he was appointed as Reader of Economics in Aligarh Muslim University on 31.5.1991. His representation for counting his past service was rejected on the ground that he had not exercised the option within the prescribed time and had failed to deposit the gratuity amount. Dr. Tandon soon after joining the University on 31.5.1991 had written a letter to the Institute on 29.9.1991 requesting them to send the provident fund account directly to the University and had sent a copy of the letter to the University. The provident fund was received by the University, but was delayed by two years and the University demanded interest. The Institute sent the interest also which was deposited with the University. It was on these facts that the High Court took the view that Dr. Tandon had done everything under his command for complying with the provision of the Statute and the University after accepting the provident fund amount and the interest was estopped from raising the plea that he had not exercised his option within time.

In our opinion, Dr. Tandon's case is entirely distinguishable on facts.