

# **SUPREME COURT OF INDIA**

Madhukar

Vs.

State of Maharashtra

C.A.No.4470 of 2014

(Sudhansu Jyoti Mukhopadhaya and Kurian Joseph JJ.)

11.04.2014

## **JUDGMENT**

### **SUDHANSU JYOTI MUKHOPADHAYA, J.**

1. Leave granted.
2. This appeal has been preferred by the appellant against the judgment and order dated 23.04.2012 passed by the Division Bench of High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Writ Petition No. 4736 of 2011. By the impugned judgment and order, the High Court refused to grant pension to the appellant and dismissed the writ petition. Apart from the ground of delay, the High Court dismissed the case on merit on the ground that the resignation in the previous service was not tendered by appellant with prior permission.
3. The appellant was appointed on 21.6.1950 in the Food Department at Dongargaon in District of Durg; the then Madhya Prant Warhad State and worked till 20.12.1954. Thereafter, he was appointed as Assistant Master, Upper Division in Normal School at Kondagaon, District Jagdalpur where he functioned between 22.12.1954 and 19.8.1956. Since his posting on 20.8.1956 he worked as Assistant Direct Inspector of School, Nagpur where he continued upto 9.10.1956. Thereafter, he was posted as Superintendant, Chokhamela Hostel, Nagpur from 10.10.1956 to 26.06.1957. Between 29.06.1957 and 30.04.1958 he underwent B.T. Training at Akola held by Education

Department. Thereafter, the appellant was posted as Superintendent, Government Chokhamela Hostel, Nagpur on 1.5.1958 where he continued up to 10.12.1958. He was posted as Social Education Organiser at Mauda, District Nagpur between 11.12.1958 to 17.7.1960 when he tendered a resignation from the service. The resignation was accepted on 18.07.1960 by the Block Development Officer and it was forwarded to the Deputy Director of Education. After its acceptance, on 18.07.1960, he joined Hislop College, Nagpur as Lecturer in absence of any refusal of letter of resignation .

4. The Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as, the Rules, 1982) were not applicable to the teaching and non-teaching employees of the colleges. On 24.5.1983, the appellant retired from service as Assistant Professor (Marathi) from Hislop College, Nagpur. In between 1983 and 1986 pension of the appellant was finalized but the service of the appellant from 21.6.1950 to 18.7.1960 was not counted. The Government of Maharashtra by Government Resolution No.NGC 1284/106150/ 994/84)/VS-4 dated 11.3.1992 decided to count past government service for computation of pension in respect of all employees retiring on or after 1.10.1982. In view of such Resolution, though the appellant was entitled to get his past services counted for fixation of pension, the same were not considered. Being aggrieved, the appellant made representations followed by reminder dated 10.2.2000. On 30.11.2005, respondent No.4, the Administrative Officer, Higher Education, Nagpur Division, Nagpur recommended the appellants claim for re-fixation of pension to the respondent No.5, Senior Accounts Officer, Accountant General-II, Nagpur, Maharashtra. Respondent No.5 in turn rejected the said recommendation. On a representation made by the appellant, the Joint Director by his letter dated 30.12.2005 requested respondent No.2, the Director, Higher and Technical Education, Pune to take into consideration the services rendered by the appellant between 21.6.1950 and 18.7.1960 for computation of pension in view of Government Resolution dated 11.03.1992. In spite of such recommendation made by the Joint - Director, no action was taken. The appellant then preferred the writ petition before the High Court which was dismissed by the impugned judgment and order dated 23.04.2012.

5. Learned counsel for the appellant placed reliance on Rule 48(3) of the Rules, 1982 and submitted that an interruption between two spells one rendered under the Government and other under the College should be treated as automatically condoned. Further, according to him, the appellant is entitled for counting the earlier period from

21.06.1950 to 18.07.1960 for re-fixation of pension in terms of Government Resolution dated 11.3.1992.

6. On the other hand, according to respondents as per Rule 46(1) of the Rules, 1982 the service of the appellant prior to 19.07.1960 were liable to be forfeited; as resignation entails forfeiture of past service.

7. In the case in hand, the appellant has claimed fixation of pension by counting the earlier period of service in the light of Government Resolution dated 11.3.1992. No such claim has been made under Rules, 1982.

8. The Government of Maharashtra, from its Education and Employment Department issued Resolution dated 11.3.1992. Referring to its earlier Resolution No. NGC 1283/(865) vs-4 dated 21.7.1983 it was informed that pension scheme shall also be made applicable to teaching and non-teaching employees in non-agricultural universities and non-government colleges affiliated to it from 1.10.1982. For calculation of qualifying service under the said Resolution, the services rendered in grant-in-aid non-government colleges/higher secondary schools/secondary schools are also to be taken into account. In case, the employee working on the post of Lecturer/Professor in the colleges affiliated to it has accepted the appointment on the post of Lecturer/Professor in Government service, in that event, his service on the post of Lecturer/Professor in non-agricultural Universities and non- government colleges affiliated to the Universities are to be counted for determination of pension under Government Resolution No. SCT-1584/(1567) Admn.-2 dated 17.10.1986.

Considering the above aspects, the Government by resolution dated 11.3.1992 decided as follows:

3). Now the government issues the Order that, the previous services of teaching/non-teaching employees retiring from non- agricultural universities and grant-in-aid non-government affiliated colleges rendered on any of post in government service, to which the Government Pension Scheme is applicable, may be taken into account for the purpose of pension. Moreover, previous services of employees retiring from government posts to which the Government Pension Scheme is applicable, rendered in on teaching/non-teaching posts in non- agricultural universities and grant-in-aid non-government colleges affiliated to it, may be taken into account for the purpose of pension. This Order

will be applicable to the employees retiring on and after 1.10.1982. However, the benefit of previous service by condoning break in service will be granted only if there is compliance of Conditions contained in Rule 48(1) of Maharashtra Civil Services (Pension) Rules.

From the bare reading of the Resolution dated 11.3.1992, it is clear that the Resolution is applicable to the employees retiring on or after 1.10.1982.

9. Admittedly, the appellant retired from the Hislop College on 24.05.1983 i.e. after 1.10.1982; therefore, the appellant is entitled to the benefits in terms of Resolution dated 11.3.1992.

10. Rule 46 of the Rules, 1982 relates to forfeiture of service on resignation. Under Rule 46(1) resignation from a service or a post entails forfeiture of past services. Sub rule (4) of Rule 46 deals with the cases where the resignation shall not entail forfeiture of past services. But the said Rule 46 is not applicable to the appellant as he neither claimed the benefit of pension under the said Rules nor he was paid pension in terms of the said Rules.

11. As per paragraph 3 of Resolution dated 11.03.1992 the benefit of previous service by condoning break in service can be granted only if there is compliance of conditions contained in Rule 48(1) of the Rules, 1982, which reads as follows:-

48. Condonation of interruption in service.-(1)The appointing authority may, by order, condone interruptions in the service of a Government servant:

Provided that-

a) -

b) the interruptions have been caused by reasons beyond the control of the Government servant;

c) the total service pensionary benefit in respect of which will be lost, is not less than five years duration, excluding one or two interruptions, if any; and

d) the interruption including two or more interruptions, if any, does not exceed one year.

(2) The period of interruption condoned under sub-rule (1) shall not count as qualifying service.

(3) In the absence of a specific indication to the contrary in the service record, an interruption between two spells of civil service rendered by a Government servant under Government, shall be treated as automatically condoned and the pre-interruption service treated as qualifying service.

(4) Nothing in sub-rule (3) shall apply to interruption caused by resignation, dismissal or removal from service or for participation in a strike.

(5) The period of interruption referred to in sub-rule (3) shall not count as qualifying service.

12. As per Rule 48 (3) in the absence of a specific indication to the contrary in the service record, an interruption between two spells of civil service rendered by a Government servant under Government, shall be treated as automatically condoned and the pre-interruption services to be treated as qualifying service.

13. In the case of the appellant, there is notional break in service. He resigned from the Government service on 18.07.1960 and joined the post of Lecturer in Hislop College, Nagpur on the same day i.e. 18.07.1960. Further, higher authorities have recommended to add - the earlier period of service for determination of pensionary benefit. Being so, in absence of a specific direction to the contrary in the service record, the interruption between two spells of service rendered by the appellant under the Government shall be treated as automatically condoned; the earlier service rendered by appellant is to be counted towards qualifying service.

14. In view of the provisions of Rule 48 read with Government Resolution dated 11.3.1992, we hold that the appellant is entitled for counting the service earlier rendered between 21.06.1950 to 17.07.1960 for determination of pension. The High Court failed to notice the relevant provisions and wrongly held that the appellant is not entitled to get the benefits of his past services in view of Rule 46(1) of the Rules,

1982, which is not applicable in the case of the appellant. The High Court also erred in rejecting the claim on the ground of delay and failed to notice that the cause of action for grant of pension arises every month. In the present case what we find is that the appellant made representation at an appropriate stage and such request was accepted by respondent No.4, the Administrative Officer, Higher Education, Nagpur who recommended respondent No.5, the Senior Accounts Officer, Accountant General-II, Maharashtra to count the period and to take into consideration the fact that the appellant has rendered more than 33 years of service. Even the Joint Director - by his letter dated 30.12.2005 recommended to respondent No.2, Director, Higher and Technical Education, Pune to count the period from 21.06.1950 to 18.07.1960. Thereby, the appellant also explained the delay in moving the High Court.

15. For the reasons aforesaid, we set aside the impugned judgment and order dated 23.04.2012 passed by the Division Bench of High Court of Judicature at Bombay, Nagpur Bench, Nagpur and direct the respondents to count the period of service rendered by the appellant from 21.06.1950 to 18.07.1960 for the purpose of computation of pension and pay the consequential benefits including arrears of pension within three months from the date of this judgment. On failure, the respondents shall be liable to pay interest @ of 8% from the date of filing of the writ petition till the amount is paid.

16. The appeal is allowed with aforesaid observations and directions. No costs.