

SUPREME COURT OF INDIA

Brahma Singh

Vs.

Union of India

WP(Civil)No.59 of 2019

(L.Nageswara Rao and Deepak Gupta,JJ.,)

05.02.2020

JUDGMENT

Deepak Gupta,J.,

1. The short issue involved in this case is whether the service rendered by the petitioners in the Supreme Court Legal Aid Committee and Supreme Court Legal Services Committee prior to the promulgation of the Supreme Court Legal Services Committee Rules, 2000 is to be counted while calculating their qualifying service for determination of pension.

2. The petitioners are serving and retired employees of the Supreme Court Legal Services Committee in various capacities. They claim that the entire service rendered by them should be treated as qualifying service for the purpose of fixing the retiral benefits. The respondent no.1-Union of India has rejected their claim on 11.09.2017 and 08.12.2017, leading to the filing of this petition. The case of the petitioners is that their claim is squarely covered by the judgment already rendered in their favour in Writ Petition (Civil) No.267 of 2008 wherein considering the effect of the Rules which are now under consideration, their entire service was taken into consideration for fixing the pay and allowances and they were given complete benefit of Rule 6 of The Supreme Court Legal Services Committee Rules,2000. According to the Union of India, the benefit can be given only from the date of promulgation of the Rules and not prior to that. Some of the petitioners joined in the Supreme Court Legal Aid Committee as far back as in 1981 and the service not taken into consideration is more than 18 years and 8 months.

3. The Supreme Court Legal Aid Committee was constituted by the Ministry of Law & Justice under executive instructions on 10.07.1981. Para 7 of the said instructions provides that the Supreme Court Legal Aid Committee shall be entitled to make necessary arrangements for staff and other facilities necessary for the discharge of its functions. These instructions were issued with the concurrence of the Ministry of Finance, Department of Expenditure. Therefore, the posts were sanctioned posts though no rules were framed for filling up the same. Pursuant to these instructions, the petitioners were appointed in different capacities in the Supreme Court Legal Aid Committee. In 1987, the

Parliament enacted the Legal Services Authorities Act, 1987. The National Legal Services Authority was constituted under Section 3. Sub-section (5) and (6) of Section 3 provide that the Central Authority can appoint officers and other employees. The appointment of such employees and their pay and allowances are to be prescribed by the Central Government in consultation with the Chief Justice of India. Section 3A of the Legal Services Authorities Act provides for the constitution of the Supreme Court Legal Services Committee and sub-section (5) and (6) are identical to sub-section (5) and (6) of Section 3. Rule 9 of The National Legal Services Authority Rules, 1995 provides that the conditions of service and salary and allowances of officers and other employees of the Central Authority shall be at par with the Central Government employees holding equivalent posts and it further provides that in all matters like age of retirement, pay and allowances, the rules applicable to the employees of the Central Government shall also apply to the employees of the Central Authority. The Central Authority framed the Supreme Court Legal Services Committee Regulations, 1996 and Regulations 3(1) and 3(2) thereof read as follows;

“3. General effect of vesting. - On and from the date of commencement of these regulations, -

(1) All the assets, liabilities, rights, title and interest of the erstwhile Supreme Court Legal Aid Committee stand transferred to, and vest in, Supreme Court Legal Services Committee;

3(2) The staff, who have been serving under the erstwhile Supreme Court Legal Aid Committee shall be deemed to be working for the Supreme Court Legal Services Committee;”

4. The Supreme Court Legal Services Committee Rules, 2000 were framed by the Central Government in consultation with the Chief Justice of India and came into effect on 03.07.2000. Rule 6 is relevant for our purpose and reads as follows:

“6. The conditions of service and the salary and allowances payable to the officers and employees of the Supreme Court Legal Services Committee under sub-section (6) of section 3A.- (1) The officers and other employees of the Supreme Court Legal Services Committee shall be entitled to draw pay and allowances in the scale of pay indicated against each post in the Schedule to these rules or at par with the Central Government employees holding equivalent posts.

(2) In all matters like age of retirement, pay and allowances, benefits and entitlements and disciplinary matters, the officers and employees of the Supreme Court Legal Services Committee shall be governed by the Central Government rules as are applicable to persons holding equivalent posts.

(3) The officers and other employees of the Supreme Court Legal Services Committee shall be entitled to such other facilities and benefits as may be notified

by the Central Government from time to time.

Explanation. - The words “benefits”, “allowances”, “entitlements”, “facilities” occurring in these rules shall be deemed to include, the entitlement to gratuity, provident fund, housing, medical benefits, pension, group insurance, and all other benefits as are available to employees of the Central Government holding equivalent posts.”

Sub-rule (2) of Rule 6 of the Supreme Court Legal Services Committee Rules clearly states that in all matters like age of retirement, pay and allowances and benefits on retirement the officers and employees of the Supreme Court Legal Services Committee shall be governed by the Central Government rules.

5. Earlier, the petitioners had approached this Court by filing Writ Petition (Civil) No. 267 of 2008 whereby they had claimed that they were entitled to pay and allowances and other benefits under Rule 6 quoted hereinabove. That writ petition was allowed and the respondents were directed to give full benefit of Rule 6 of the Supreme Court Legal Services Committee Rules by fixing the pay and allowances of the petitioners and other similarly situated employees in the pay scales specified in the Schedule appended to the Rules or at par with the Central Government employees holding equivalent posts. They were also directed to pay arrears from the date of promulgation of the Rules i.e. 03.07.2000.

6. The Union of India has raised a two-fold submission. It is first submitted that the service of the petitioners rendered prior to 03.07.2000 cannot be taken into consideration while quantifying the qualifying service or determining their retiral benefits. It is secondly contended that this plea could have been taken in the earlier writ petition and, in fact, such a plea was raised but finally the Court did not grant this relief and, therefore, they cannot file the second petition.

7. From the facts narrated above, it is apparent that the Supreme Court Legal Aid Committee was created under administrative instructions of the Government. Thereafter, the Legal Services Authorities Act, 1987 came into force. The services of the officers and employees were governed by Rule 3A and after 2000, they are governed by the Supreme Court Legal Services Committee Regulations, 2000. They have been rendering service uninterruptedly as employees of the Supreme Court Legal Services Committee and no distinction can be made between the service prior to 03.07.2000 and the service rendered thereafter. The petitioners have been regular employees of the Supreme Court Legal Services Committee and their entire service must be counted for determining their pension and other retiral benefits. This entire service is to be treated as their qualifying service in accordance with the Rules.

8. As far as the second submission made on behalf of the Union of India is concerned, we have carefully gone through the earlier order and the writ petition. Though it is correct that in the writ petition there was a general claim to grant all the benefits under Rule 6 which

would include retiral benefits but it appears that the Court did not go into the same. There is no rejection of the plea and as such we are of the considered view that this petition is maintainable and cannot be rejected on this hyper-technical ground. In relation to applicability of Order II Rule 2 of the Civil Procedure Code, 1908 this Court has held in *Devendra Pratap Narain Rai Sharma v. State of Uttar Pradesh and Others*¹ as follows:

“12. ...The bar of O.2 R. 2 of the Civil Procedure Code on which the High Court apparently relied may not apply to a petition for a high prerogative writ under Art. 226 of the Constitution, but the High Court having disallowed the claim of the appellant for salary prior to the date of the suit, we do not think that we would be justified in interfering with the exercise of its discretion by the High Court.”

Placing reliance on the case of *Devendra Pratap Narain Rai Sharma* (supra), this Court in *Gulabchand Chhotalal Parikh v. State of Gujarat*² in relation to Order II Rule 2 held as follows:

“23. .By its very language, these provisions do not apply to the contents of a writ petition and consequently do not apply to the contents of a subsequent suit.”

9. In view of the above, we allow the petition and direct that the entire service rendered by the petitioners in the Supreme Court Legal Aid Committee and the Supreme Court Legal Services Committee shall be treated as qualifying service for the purpose of pension and shall be taken into consideration for calculating their retiral benefits. Pending application(s), if any, stand(s) disposed of.

Judgment Referred.

¹*AIR 1962 SC 1334*

²*AIR 1965 SC 1153*