

MANU/MH/0746/2000

Equivalent Citation: (2000)IILLJ674Bom

IN THE HIGH COURT OF BOMBAY

O.O.C.J. W.P. No. 729/1990

Decided On: 09.02.2000

Appellants: **Salve B.S.**

Vs.

Respondent: **Union of India (UOI) and Ors.**

Hon'ble Judges/Coram:

N.J. Pandya and Ranjana Prakash Desai, JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: S.C. Naidu and Manish Desai, Advs., i/b., C.R. Naidu & Co.

For Respondents/Defendant: R.M. Sawant, Adv. for Respondent Nos. 1 to 3 and V.M. Jayakar, Adv. for Respondent No. 4

Case Note:

Labour and Industrial - continuity in service - Article 226 of Constitution of India and Labour Law - petitioner opted for Central Service after resigning from State service - claim to consider service rendered in State service while computing service of petitioner in Central service - circular in which petitioner place reliance requires continuity of service as precondition for considering service in State Government while computing pensionary benefits - records does not reveals that resignation was due to technical difficulty - break in between State service and subsequent Central service of petitioner - scheme by which Central and State Governments agreed to consider service rendered by its employees in State or Centre while computing pensionary benefit come into effect after retirement of petitioner - petitioner not entitled for inclusion of his service in State Government while computing pensionary benefits.

JUDGMENT

Ranjana Prakash Desai, J.

1. The petitioner has by way of this petition prayed inter alia, for a direction or order directing the Government of Maharashtra to forthwith enter into a reciprocal arrangement with the Central Government for extension of various benefits like counting of service in case of employees who, after having worked under the State Government or State Autonomous Bodies or State Statutory Bodies, have been absorbed in the services of the Central Government or Central Autonomous Bodies and for a direction to the State of Maharashtra to consider the case of the petitioner favourably and to deposit the pension equivalent to Rs. 2,800/- approximately, or thereabouts with the Central Government for the 19 years of service rendered by the

petitioner in the Sales Tax Department under the Government of; Maharashtra for counting of his service for the purpose of pension to be received by him from the Central Government/Corporation.

2. Briefly stated, the facts set out in the petition, are as under:

The petitioner joined the Sales Tax Department under the Government of Maharashtra as a Junior Clerk on January 23, 1952. The petitioner was promoted as; Sales Tax Inspector in May 1962 and worked in that capacity till February 15, 1971. Around March 1970, he made an application to the Additional Commissioner of Sales Tax, Bombay for being considered as a candidate to appear for an interview held by the Union Public Service Commission for filling up the vacancy of Assistant Regional Director/Manager (Grade I) in the Employees' State Insurance Corporation (Corporation for short), a Corporation run, managed and controlled by the Central Government. His application was accepted and he was permitted to appear for the interview held by the Union Public Service Commission. The petitioner was declared successful and he was directed to join the services of the Corporation forthwith. According to the petitioner, as per the prevailing practice he relinquished his post as Sales Tax Inspector from the afternoon of February 15, 1971 and joined the services of the Corporation from the forenoon of February 16, 1971.

3. While in the service of the Corporation, the petitioner received promotion from time to time. The petitioner was last posted as Director (Grade-I region) in which capacity he worked till he opted for voluntary retirement on June 30, 1988. Thus, the petitioner has put in 19 years of services in the Sales Tax Department under the Government of Maharashtra from January 23, 1952 to February 15, 1971 and he has put in 16 years and 4 months of service in the Corporation from February 16, 1971 to June 30, 1988. It is the case of the petitioner that, he has put in a combined service of 35 years i.e. from 1952 to June 30, 1988.

4. According to the petitioner upon his retirement, he has been paid pension by respondent No. 4 on the basis of the services rendered by him with the Corporation only and the services rendered by him under the State Government have been totally ignored. He contends that, upon his relinquishing the post of the Sales Tax Inspector with the State Government, he has not been paid any terminal benefits such as gratuity, pension etc. for the services rendered with the State Government. Hence the petition.

5. We have heard, Mr. Naidu, learned Counsel appearing for the petitioner. Shri R.M, Sawant, learned Government Pleader appearing for respondents Nos. 1 & 3. We have been taken through the petition and the annexures thereto.

6. The basic contention of Mr. Naidu is that the State Government has wrongly refused to share on reciprocal basis proportionate pensionary liability in case of the employees who migrate from the service of State Government to the services of the Central Government or Central Autonomous bodies. This scheme floated by the Central Government would apply to only those States who have agreed to join it. The scheme therefore becomes an arrangement on reciprocity. As a result of joining of the scheme, on the part of a State Government, on and from that date it undertakes the additional liability qua its employees as per the said scheme. According to Mr. Naidu while all other Governments have accepted this and are party to the reciprocal

agreement the State of Maharashtra adopted an adamant approach. While the Central Government had repeatedly called upon the State Government, to enter into the reciprocal arrangement the State Government refused to do so thereby denying persons like the petitioner, their valuable right to pension. This approach of the State Government has resulted in hostile discrimination against the Maharashtra State Government Employees who have migrated to the service of the Central Government or the services of the Central Autonomous Bodies. It has caused great hardship.

7. Mr. Naidu tried to make good his submission by taking us through the various Government circulars and correspondence which is annexed to the petition. We will therefore refer to the same. Vide his representation dated October 22, 1982, the petitioner requested respondent No. 4 to take action so that the previous services rendered by him with the Sales-tax Department can be taken into account. The petitioner informed respondent No. 4 that his case was squarely covered by circular dated March 31, 1982 from the Ministry of Home Affairs (Department of Personnel and Administrative Reforms). A copy of this circular is annexed to the petition. The following portion of the circular is significant:

"The Government of India have been considering in consultation With the State Governments, the question of sharing on a reciprocal basis, the proportionate pensionary liability in respect of those temporary employees who had rendered temporary service under the Central Government/State Governments prior to securing posts under the various State Governments/Central Government on their own volition in response to advertisements or circulars, including those by the State/Union Public Service Commission, and who are eventually confirmed in their new posts".

The circular further reads as under:

"It has since been decided in consultation with the State Governments that proportionate pensionary liability in respect of temporary service rendered under the Central Government and the State Governments, to the extent such service would have qualified for grant of pension under the rules of the respective Government, will be shared by the Government concerned on a service-share basis, so that the Government servants are allowed the benefit of counting their qualifying service both under the Central and the State Governments for grant of pension by the Government from where they eventually retire."

The circular sets out three categories of Government servants claiming benefit of combined service. Category (2) in which the petitioner claims to fall reads as under:

"Those who while holding temporary posts under Central/State Governments apply for posts under State/Central Government through proper channel/with proper permission of the administrative authority concerned."

The circular further recites that, where an employee in category (2) is required for administrative reasons for satisfying a technical requirement, to tender resignation from the temporary post held by him before joining the new appointment, a certificate to the effect that such resignation had been tendered for administrative reasons and/or to satisfy a technical requirement, to join with proper permission, the new posts, may be issued by the authority accepting the resignation. It is the contention of the petitioner that his resignation was tendered for administrative reasons to satisfy a technical requirement.

8. It is pertinent to note that this circular is with regard to temporary employees. The Corporation by its letter dated November 23, 1982 replied to the petitioner that his case could not be considered under this circular. A reference was however made to instructions issued in circular dated January 20, 1965 and respondent No. 4 directed that the petitioner's case be reviewed with reference to the instructions issued in circular dated January 20, 1965. A copy of this circular is also relied upon by the petitioner. This circular states that, the standing committee at its meeting held on February 24, 1964 had approved that the benefit of past service rendered by Corporation employees under Government prior to joining the services of the Corporation may be allowed for purposes for retirement benefits in the Corporation to employees falling in categories (a) and (b). Category (b) reads:

"Employees who did not come over to the Corporation on deputation in the first instance but had to resign from their previous Government service before joining the Corporation".

It however states that the benefit of past service rendered under Government in the said categories and also in other similar cases in future will be subject to the fulfilment of two conditions. The said two conditions are as under:

(i) that the employee concerned joined/joins the Corporation without any break in service from his previous Government employment; and

(ii) the parent Government department concerned is prepared to re-imburse to the Corporation in respect of the period of service rendered by such an employee under Government, appropriate amount as calculated in terms of Ministry of Finance Memo No. F.2(33)- EVA/60 dated November 10, 1969.

All Regional Directors were requested to bring the contents of this memo to the notice of all the employees in their region for their information. It also stated that the employees, who are affected by this decision may, if they so desire make representation to their parent Government Department so as to make them agree to the lump-sum payment of Provident Fund contributions plus 2% interest in respect of their service under the Government, to the Corporation in terms of Ministry of Finance Memorandum dated November 10, 1960. The circular further recites that where the parent department of an employee is agreeable to the payment of the stipulated amount to the Corporation and the employee concerned has joined the Corporation his case may be referred to the Headquarters office for consideration and approval of the Director General with full particulars.

9. A copy of the said memorandum is also annexed as Annexure 'A' to the said memorandum dated January 20, 1965. This memorandum issued by the Ministry of Finance (Department of Expenditure) to all ministries concerns grant of retirement benefits to government servants on their permanent transfer to Government Companies/ Corporations. It says that where the permanent transfer from government service to an autonomous body is in public interest and the transfer is to a Government or quasi Government Corporation and not to a private institution, then an amount equal to what Government would have contributed had the officer been on Contributory Provident Fund terms under Government together with simple interest thereon at two per cent for the period of his pensionable service under government may be credited to his Contributory Fund Account with the autonomous body as an opening balance on the date of permanent absorption and Government's liability in respect of the officer's pensionable service under them will be treated as extinguished

by this payment. It is clarified that this decision will apply only where the permanent transfer from the Government service to an autonomous body is in public interest and that the concession may not be claimed as a matter of right but may be sanctioned at the discretion of Government in individual cases where it is merited.

10. While he was posted at Calcutta, the petitioner received a memorandum dated June 8, 1993 issued by the Deputy Regional Director of the Corporation asking for necessary information. By his letter dated June 22, 1983, the petitioner forwarded the said information with a request to consider his previous service with Sales Tax Department for computation of pension. The Additional Commissioner of Sales Tax by his letter dated July 15, 1983 forwarded to the Regional Director of the Corporation the necessary details as regards the petitioner's service with the State Government. A certificate was also forwarded. Copy of this letter was sent to the petitioner. In July 1983, when he was posted at Calcutta as Joint Regional Director, the Regional Director, Calcutta addressed a letter to respondent No. 4 requesting him to give directions in respect of the petitioner's representation for counting the services rendered by him with the State Government. In response to this, the Regional Director was informed vide letter dated August 29, 1983 that the petitioner should make a representation to the parent department i.e. Sales Tax Department, Government of Maharashtra. Pursuant to the said communication, the petitioner made a representation dated September 3, 1983. By letter dated March 21, 1984 the Government of Maharashtra informed respondent No. 4 that the Government was not agreeable to pay an amount of Rs. 2,800/- approximately, which was the amount secured under the circular dated January 20, 1965 in order to enable the Corporation to take into account the period of service rendered by the petitioner in the State Government for the purpose of computation of pension.

11. It appears that Standing Committee of the Corporation in its meeting held on May 11, 1984 approved that the benefit of past service rendered under a Government to employees who were taken on deputation whose services were transferred or lent to the Corporation might be allowed subject to the conditions that the employee concerned joined the Corporation without any break in service from his previous Government employment and that the parent Government department is prepared to reimburse the Corporation in respect of the period of service rendered by such an employee under the Government, appropriate amount as calculated in terms of the Ministry of Finance Memorandum dated November 10, 1960.

12. Circular dated March 8, 1982 issued by the Government of Maharashtra indicates that the Government of Maharashtra has accepted the proportionate pensionary liability in respect of the employees working under it in the Civil Supplies Department and who has secured employment in the Corporation or in the Provident Fund Authority both autonomous bodies managed and run by the Central Government.

13. Relying on all these documents, the petitioner contends that this policy of the Government of Maharashtra of refusing or neglecting to enter into the reciprocal arrangement is improper and has resulted in clear discrimination of the employees like the petitioner. The refusal of the State Government is violative of Article 14 of the Constitution of India. The Government of Maharashtra has accepted the policy of pick and choose. The services in the Central. Autonomous Body are uniform as also the pension receivable by the employees employed in the Central Autonomous Body and there should not be any discrimination in respect of the computation of the period of service in respect of the employees in the State Government departments vis-a-vis pension benefits upon migration to the Central Government or a Central

Autonomous Body. In short, the petitioner has tried to make out a case of discrimination. Alternatively the petitioner contends that he should have been permitted to pay the contribution directly so that he can get the benefit and take up the matter with the State Government.

14. Though on this petition rule was issued as far back as on June 6, 1990, the State Government has not cared to file affidavit. In our opinion, the State Government has adopted a very casual approach in the matter which can have serious implications. We are amazed at the absolutely callous inaction and inertia of the State Government and we deprecate it. Since the petition pertains to pensionary benefits and is admitted as far back as on June 6, 1990, with the assistance of the learned Counsel we decided to proceed with the matter.

15. Apart from the other grounds on which we are inclined to decide against the petitioner what strikes us is the delay on his part in approaching the Court. As far back as on March 21, 1984, the petitioner was informed by the State Government that it was not agreeable to reimburse to the Corporation the amount of Rs. 2,800/- thus making it known to the petitioner that the State Government was not inclined in his favour. Yet the petitioner taking up the said challenge was filed as late as on February 21, 1990. In our opinion the petitioner is guilty of laches and that disentitles him from getting any reliefs.

16. The contention of the petitioner that, his resignation was tendered for administrative reasons and/or to satisfy a technical requirement is not borne out by the certificate issued by the Additional Commissioner of Sales Tax, Maharashtra State, Bombay, which reads as under:

"Certified from the records of this office that Shri B.S. Salve was in service of this Department as Sales Tax Inspector from January 23, 1952 to February 15, 1971 and he resigned with effect from February 15, 1971 (AN)".

There is no indication in the certificate that, his resignation was for administrative reasons and/or to satisfy a technical requirement. There is no manner of doubt that he voluntarily resigned from the services of the State Government. He has not joined the Corporation without any break. It is significant to note that all the circulars on which he has relied upon assuming they help the petitioner make the service without break a condition precedent. The petitioner's case falls short of this requirement.

17. We are also not impressed by the petitioner's contention that the State Government had adopted a policy of pick and choose which is evident from the circular dated March 8, 1982 issued by it whereby it has accepted such liability in case of employees working in Civil Supplies Department. This circular states that on abolition of number of posts in the former Civil Supplies Department due to de-control policy of the Government, persons working in the department were found to be surplus to the requirement and under the alternative employment scheme they were absorbed in number of offices in State Government and Central Government. Under Rule 43(A) of the Revised Pension Rules Ex-Civil Supplies Department persons absorbed in the State Government Offices/Departments were held eligible for counting their Ex-Civil Supplies Department Services for the purpose of pensionary benefits on their retirement from Government service. However, there were no specific orders making this benefit available to the Ex-Civil Supplies Department persons absorbed in the Regional Office, Maharashtra Employees State Insurance Corporation and in the Office of the Commissioner Provident Fund. It is against this

background that the State Government decided to allow these persons the benefit of counting their services in the Ex-Civil Supplies Department for the purpose of pensionary benefit in the Office of the Commissioner Provident Fund and Employees State Insurance Corporation, after obtaining concurrence of the Central Government. In the petitioner's case, the petitioner has voluntarily resigned from the service of the State Government. There is a break in the service. The argument that there is any discrimination is not tenable as the petitioner's case stands on a different footing.

18. In our opinion the Government of Maharashtra had taken a policy decision not to be a party to any reciprocal arrangement. In the facts of this case we are unable to come to a conclusion that the said decision was in any way arbitrary or discriminatory. The case of hostile discrimination has not been made out and a mandatory direction as is sought in the present petition cannot be issued. The petitioner's request that he may be allowed to contribute in terms of the Government of India orders dated November 10, 1960, in respect of his past service has been turned down by the Government. In the facts to the case we are unable to grant his alternate prayer that he may be allowed to pay his contribution.

19. The learned Counsel for the petitioner has, however, drawn our attention to Office Memorandum described as No. 12(10)/84-P&PW-Vol.II dated February 7, 1986. From this memorandum it appears that the Government of Maharashtra has now accepted the reciprocal arrangement. This Office Memorandum indicates that so far as the State of Maharashtra is concerned, the reciprocal arrangement will be applicable with effect from July 13, 1992. It is pertinent to note that the petitioner had retired from the services of the Corporation on June 30, 1988. At that time, the reciprocal arrangement, which was in existence was as per circular dated February 7, 1986, to which the Government of Maharashtra was not a party and, therefore, obviously, the petitioner's case will not be covered by it. Therefore, in our opinion, assuming that the State Government has accepted the reciprocal arrangement, the benefits thereof cannot be availed by the petitioner. The petitioner has retired on June 30, 1988. Even if he claims that he is the employee of State of Maharashtra, he being not on the roll of the State of Maharashtra as its employee on the date that the State decided to join the scheme, there is no question of any discrimination practiced against him as per Article 14.

20. Shri Naidu contends that the reciprocal arrangement was accepted by the Government of Maharashtra on July 13, 1992. If only those who retire after July 13, 1992 are to get the benefit of the reciprocal arrangement, the date July 13, 1992 operates as a cut-off-date. This cut-off-date has made an unjust classification between persons similarly situated. Persons like the petitioner who have retired prior to July 13, 1992 are deprived of this benefit and hence this action of the State Government is violative of Article 14 of the Constitution of India. In support of this submission he has placed reliance on the judgment of the Supreme Court in All India Reserve Bank of India Retired Officers Association and Ors. v. Union of India and Ors. MANU/SC/0151/1992 : AIR1992SC767 . He has laid stress on the following observations of the Supreme Court.

"There is no doubt that whenever any rule or regulation having statutory flavour is made by an authority which is a State within the meaning of Article 12 of the Constitution, the choice of the cut-off-date which has necessarily to be introduced to effectuate such benefits is open to scrutiny by the Court and must be supported on the touch stone of Article 14. If the choice of the date results in classification or division of members of a homogenous group it

would be open to the Court to insist that it be shown that the classification is based on an intelligible differentia and/or rational consideration which bears a nexus to the purpose and object thereof.

In our opinion, in the facts of the present case the State cannot be said to be imposing any cut-off date on its employees. The petitioner who was the erstwhile employee of the State of Maharashtra voluntarily resigned from the service of the State on February 15, 1971 and joined the Corporation and accepted a new service condition. Thereby he gave up his claim on the State of Maharashtra. Thus he being not the State employee on the relevant date i.e., July 13, 1992 obviously the principle made applicable to the concept of cut-off date will not be attracted in the case of the petitioner. This contention of the petitioner must fail. No other submissions were urged by the petitioner.

21. In this view of the matter, we find no substance in the petition. The petition is dismissed as such.

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