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UNION OF INDIA AND ANR.

v.

S. DHARMALINGAM

OCTOBER 28, 1993

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[KULDIP SINGH AND S.C. AGRAWAL, JJ.]

*Service Law :*

*Central Civil Services (Pension) Rules, 1972 :*

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*Rules 3(q), 13, 26(2), 30(i)—Superannuation pension—Addition to 'qualifying service' in special circumstances—Eligibility—Held, benefit available to every Government servant appointed to a service of post referred to in r.30(1) irrespective of his already being in Government service before such appointment.*

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The respondent was employed as Investigator in the National Sample Survey with effect from May 8, 1956. He continued on the said post till 16-5-1960 when he was appointed to the post of Labour Officer, by way of direct recruitment. The respondent retired from service in August 1985. Though the period of service rendered by the respondent from May 8, 1956

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till May 16, 1960 was included in his qualifying service, his claim to benefit of addition in qualifying service under Rule 30 of the Central Civil Services (Pension) Rules, 1972 was not accepted. He moved the Central Administrative Tribunal, which allowed the claim.

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In appeal before this Court, it was contended by the appellants that Rule 30 was applicable only in cases where a person joined Government service on the service or post referred to in the said rule and did not apply to a person who was already in Government service, and was appointed to the service or post referred to in the rule; and if the benefit of the Rule is extended to such a person he would avail double benefit in the matter of

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computation of his qualifying service, which was not envisaged by Rule 30.

Dismissing the appeal, this Court

**HELD :** 1.1. Addition to qualifying service under sub-rule (1) of rule 30 of the Civil Services (Pension) Rules, 1972 is available to every Government servant who is appointed to a service or post referred to in sub-rule

(1) of Rule 30 after 31st March, 1960, irrespective of the fact whether he was already in government service or was joining Government service for the first time, at the time of appointment to the service or post referred to in Rule 30. [450-A-B] A

1.2. Rule 30(1) seeks to confer a benefit in the matter of addition to qualifying service on a Government servant who is appointed to a service or post fulfilling the conditions laid down in clauses (a) and (b) of sub-rule(1) of Rule 30 of the Rules after March 31, 1960. The benefit is, however, limited to the actual period not exceeding one-fourth of the length of his service or the service or post referred to in Rule 30 or the actual period by which his age at the time of recruitment exceeded 25 years or a period of five years whichever is less. This would show that the intention underlying the said provision is to compensate the Government servant for the time taken by him in securing the additional qualifications or experience which are essential for appointment to the service or post. There is no reason for subjecting a person who is already in Government service at the time of his appointment to a service or post referred to in Rule 30 to a differential treatment and denying him the benefit available to other persons not in Government service at the time of such appointment. The language used in Rule 30 does not make such an invidious distinction. [450-C, E-H, 451-B] B C D

1.3. The respondent would not be availing a double benefit on account of the period of his earlier service from May 8, 1956 to May 16, 1960 being counted as part of his 'qualifying service' as defined in rule 3(q) of the Rules. [451-E] E

1.4. Keeping in view the provisions of Rules 3(q), 13, 26(2) and 30 of the Central Civil Services (Pension) Rules, 1972 the period of service rendered by the respondent from May 8, 1956 to May 16, 1960 has to be treated as part of his qualifying service and, in the absence of any rule to the contrary, it cannot be excluded from the qualifying service of the respondent. [452-C-D] F G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 503 of 1993.

From the Judgment and Order dated 12.7.88 of the Central Administrative Tribunal, Madras Bench in O.A. No. 182/87. H

A V.C. Mahajan, Ms. Niranjana Singh, Anil Katiyar and C.V.S. Rao for the Appellants.

K.K. Venugopal and Pramod Dayal for the Respondent.

The Judgment of the Court was delivered by

B S.C. AGRAWAL, J. This appeal, by special leave, raises the question whether the benefit of addition to his qualifying service under Rule 30 of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as 'the Rules') can be availed by a person who was already employed as a Government servant when he was appointed to the service or post referred to in Rule 30.

C The respondent was employed as Investigator in the National Sample Survey with effect from May 8, 1956. While thus employed he was selected for the post of Labour Officer, by way of direct recruitment through the Union Public Service Commission, and having been appointed on the post of Labour Officer; he joined the said post on May 16, 1960. The respondent has retired from service in August, 1985. The period of service from May 8, 1956 till May 16, 1960, when he was working as Investigator in the National Sample Survey was included in his qualifying service. He, however, claimed further benefit of addition in qualifying service under Rule 30 of the Rules which claim of the respondent was not accepted by the authorities and thereupon he moved the Central Administrative Tribunal (for short 'the Tribunal'). The said application of the respondent was allowed by the Tribunal by order dated July 12, 1988. The Tribunal has directed the appellants to give to the respondent the benefit of addition of computed number of years to his qualifying service as permissible under Rule 30(1) of the Rules. Feeling aggrieved by the said decision of the Tribunal, the appellants have filed the present appeal.

F Rule 30(1) of the Rules, as it stood at the relevant time, provided as under :

G "30 ADDITION TO QUALIFYING SERVICE IN SPECIAL CIRCUMSTANCES

H (1) A Government servant appointed to a service or post after the 31st March, 1960, shall be eligible to add to his service qualifying for superannuation pension (but not for any other class of pension)

the actual period not exceeding one-fourth of the length of his service or the actual period by which his age at the time of recruitment exceeded twenty-five years or a period of five years, whichever is less, if the service or post to which the Government servant is appointed is one -

(a) for which post-graduate research, or specialist qualification or experience in scientific, technological or professional fields, is essential; and

(b) to which candidates of more than twenty-five years of age are normally recruited :

Provided that this concession shall not be admissible to a Government servant unless his actual qualifying service at the time he quits Government service is not less than ten years :

Provided further that this concession shall be admissible only if the recruitment rules in respect of the said service or post contain a specific provision that the service or post is one which carries the benefit of this rule."

Shri V.C. Mahajan, the learned Senior counsel appearing for the appellants, has urged that Rule 30 is applicable only in cases where a Government servant joins Government service on the service or post referred to in the said rule and it does not apply to a person who is already in service and has been appointed to the service or post referred to in the rule while employed as a Government servant. The submission of Shri Mahajan is that if the benefit of Rule 30 is made available to a person who prior to his appointment to a service or post referred to in rule 30 was already employed with the Government he would avail double benefit in the matter of computation of his qualifying service which is not envisaged by Rule 30.

Since the respondent has failed to appear in spite of service and the question involving interpretation of Rule 30(1) of the Rules is likely to affect a large number of persons, the Legal Aid Society of the Supreme Court was requested to nominate a senior counsel to assist the court and in pursuance of the said request, Shri K.K. Venugopal has appeared and made his submissions.

- A Shri Venugopal has urged that the benefit of addition to qualifying service under Rule 30 of the Rules is available to every person who is appointed to a service or post after 31st March, 1960 if the conditions laid down in clauses (a) and (b) Rule 30(1) are fulfilled and the applicability of the said rule is not dependent on the employee being appointed for the first time in Government service. Shri Venugopal has further urged that
- B there is no question of a double benefit being availed by the person who is already employed as a Government servant and is appointed to a service or post referred to in Rule 30(1). He only avails the additional benefit given to all government servants fulfilling the conditions prescribed in Rule 30(1).
- C From a perusal of rule 30(1) it is evident that it seeks to confer a benefit in the matter of addition to qualifying service on a Government servant who is appointed to a service or post fulfilling the conditions laid down in clauses (a) and (b) of sub-rule (1) of rule 30 of the Rules after March 31, 1960. Clause (a) envisages that the service or post should be one
- D for which post-graduate research, or specialist qualification or experience in scientific, technological or professional fields, is essential. Clause (b) postulates that such service or post is one to which candidates of more than twenty-five years of age are normally recruited. The benefit in the matter of addition to qualifying service is, however, limited to the actual period not exceeding one-fourth of the length of his service or the service or post
- E referred to in Rule 30 or the actual period by which his age at the time of recruitment exceeded 25 years or a period of five years whichever is less. This would show that the intention underlying the said provision is to compensate the Government servant for the time taken by him in securing the additional qualifications or experience which are essential for appointment to the service or post. This benefit is available to every Government
- F servant who fulfils the requirements of the rule and there is nothing in sub-rule(1) of rule 30 to exclude the applicability of the said provision to a person who is already in Government service at the time of his appointment to a service or post referred to in Rule 30. To hold that the benefit under Rule 30 cannot be availed of by a person who is already in Govern-
- G ment service at the time of his appointment to a service or post referred to in sub-rule (1) of Rule 30 would lead to anomalous consequences. A person who after employment in Government service for one year is appointed to a service or post referred to in sub-rule (1) of Rule 30, would be entitled to addition of only one year to his qualifying service if the
- H benefit of Rule 30 is denied to him while a person who is not employed as

a Government servant at the time of his appointment to a service or post referred to in Rule 30 would be entitled to addition to a period extending upto 5 years to his qualifying service. There appears to be no reason for subjecting a person who is already in Government service at the time of his appointment to a service or post referred to in Rule 30 to a differential treatment and denying him the benefit available to other persons who is not in Government service at the time of such appointment. The language used in Rule 30 does not make such an invidious distinction. In our view, therefore, addition to qualifying service under sub-rule (1) of rule 30 is available to every Government servant who is appointed to a service or post referred to in sub-rule (1) of Rule 30 after 31st March, 1960, irrespective of the fact whether he was already in Government service or was joining Government service for the first time, at the time of appointment to the service or post referred to in Rule 30.

Shri Mahajan has next contended that even if the benefit of sub-rule (1) of rule 30 is extended to the respondent, the same should be confined to the period under sub-rule(1) of rule 30 and the earlier period of his employment in Government service from May 8, 1956 to May 16, 1960 should be excluded from the qualifying service or otherwise the respondent would be availing double benefit of addition to his qualifying service. We are unable to appreciate this contention. There is no question of the respondent availing a double benefit on account of the period of his earlier service from May, 8, 1956 to May 16, 1960 being counted as part of his qualifying service because during that period he was serving as an Investigator in the National Sample Survey and no rule has been shown to us whereunder the said period cannot be counted as part of his qualifying service. The expression 'qualifying service' has been defined in rule 3(q) of the Rules to mean "service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules". Rule 13 which deals with commencement of qualifying service prescribes as under :

### "13. COMMENCEMENT OF QUALIFYING SERVICE

Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity :

A        Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post: "

Reference, in this context, may also be made to sub-rule (2) of rule 26 which reads as under :

B        "A resignation shall not entail forfeiture of past service if has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies."

C        Keeping in view the provisions of the Rules referred to above the period of service from May 8, 1956 to May 16, 1960 when the respondent was working as Investigator in the National Sample Survey has to be treated as part of his qualifying service and it cannot be excluded from the qualifying service of the respondent on the ground that he would be  
D        availing the addition to his qualifying service under sub-rule (1) of Rule 30.

The Tribunal has rightly held that the respondent is entitled to avail the benefit of addition to his qualifying service under rule 30(1) of the Rules. The appeal, therefore, fails and is accordingly dismissed but without  
E        any order as to costs.

R.P.

Appeal dismissed.