

PETITIONER:
R.L. MARWAHA

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT 12/08/1987

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
SINGH, K.N. (J)

CITATION:
1987 SCR (3) 928 1987 SCC (4) 31
JT 1987 (3) 292 1987 SCALE (2) 245

ACT:

Pensionary benefits to Central Government employees permanently absorbed in Central autonomous bodies and vice versa-Counting of service rendered prior to such absorption for computing qualifying service for purposes of pension--Applicability of Central Government order dated 29th August, 1984 to persons who retired from service prior to that date.

HEADNOTE:

The petitioner who had served in a temporary capacity in a pensionable establishment of the Central Government for 3 years prior to his absorption in an autonomous body sponsored by the Central Government, retired from the service of that body in 1980, and was not allowed to count his service under the Central Government for purposes of pensionary benefits, since, according to the then existing orders, that benefit was confined only to such Central Government employees who were permanent at the time of their absorption in the autonomous body.

By an order dated 29th August, 1984, the Central Government decided inter alia that where a Central Government employee borne in a pensionable establishment is allowed to be absorbed in an autonomous body, the service rendered by him under the Government shall be allowed to be counted towards pension under the autonomous body irrespective of whether the employee was temporary or permanent in Government, subject, however, to the condition that the pensionary benefits would accrue only if the temporary service is followed by confirmation. In paragraph 7 of the said order it was stated that the order would take effect from the date of its issue.

The petitioner questioned the validity of the condition imposed in paragraph 7 of the order dated 29th August, 1984 making it applicable only to such of the employees of the Government/autonomous bodies who retired from service after the date of the issue of the order.

Allowing the petition,
929

HELD: Paragraph 7 of the Government order dated 29th August, 1984 cannot be used against persons in the position of the petitioner to deny them the benefit of the past

service for purposes of computing the pension. [936C-D]

2. There has been a continuous mobility of personnel between Central Government departments and autonomous bodies both ways and the Government thought that it would not be just to deprive an employee who is later on absorbed in the service of the autonomous body the benefit of the service rendered by him earlier in the Central Government for purposes of computation of pension and similarly the benefit of service rendered by an employee who is later on absorbed in the Central Government service the benefit of the service rendered by him earlier in the autonomous body for purposes of computation of pension. If that was the object of issuing the Government Order dated 29th August, 1984, then the benefit of that order should be extended to all pensioners who had rendered service earlier in the Central Government or in the autonomous body as the case may be with effect from the date of the said Government order. [935A-C]

3. Now let us take the case of a person who had rendered service under the Central Government between January 1, 1953 and July 1, 1955 but who has retired from service of an autonomous body in 1985. There is no dispute that such a person gets the benefit of the service put in by him under the Central Government for purposes of his pension. But another pensioner who has put in service under the Central Government during the same period will not get similar concession if he has retired prior to the date of the Government order if Paragraph 7 of that order is applied to him. The result will be that whereas in the first case there is pensionary liability of the Central Government in the second case it does not exist although the period of service under the Central Government is the same. The discrimination arises on account of the Government order. [935C-E]

4. There is no substance in the plea that this concession being a new one it can only be prospective in operation and cannot be extended to employees who have already retired. It is true that it is prospective in operation in the sense that the extra benefit can be claimed only after 29th August, 1984. But it certainly looks backward and takes into consideration the past event that is the period of service under the Central Government for purposes of computing qualifying service because such additional service can only be the service rendered prior to the date of issue of the Government order. By doing so the Government order will
930

not become an order having retrospective effect. It still continues to be prospective in operation. Whoever has rendered service during any past period would be entitled to claim the additional financial benefit of that service if he is alive on 29th August, 1984 under the Government order but with effect from 29th August, 1984. [935H; 936A-C]

5. The respondents have not furnished any acceptable reason in support of their case, except saying that the petitioner was not entitled to the benefit of the Government order because the order says that it would not be applicable to those who had retired prior to the date on which it was issued. In the absence of any explanation which is worthy of consideration it has to be held that the classification of the pensioners who were working in the Government/autonomous bodies into two classes merely on the basis of the date of retirement is unconstitutional as it bears no nexus to the object to be achieved by the order. [935F-G]

ORIGINAL JURISDICTION: Writ Petition No. 3739 of 1985.

(Under Article 32 of the Constitution of India).

A.K. Goel and Ajit Pudiserry for the Petitioner.

B. Datta, Additional Solicitor General, P.P. Singh and Miss A. Subhashini for the Respondents.

The Judgment of the Court was delivered by

VENKATARAMIAH, J. The question involved in this case is whether an employee of an autonomous body established under the auspices of the Central Government is entitled to claim the benefit of the period of service rendered by him in a pensionable post under the Central Government prior to his service being absorbed in the autonomous body for computing qualifying service for purposes of pension.

The petitioner R.L. Marwaha entered the service of the Central Government on a temporary basis on 4.10.1950 and worked as an Upper Division Clerk in the pay scale of Rs.80-5-120-8-200-10/2-220 in the office of the Settlement Commissioner (Claims Wing) under the Ministry of Rehabilitation, Union of India and he continued to hold that post upto 23.11.1953 (F.N.). He, having been appointed in the Indian Council of Agricultural Research (hereinafter referred to as 'the ICAR'), which is an autonomous body sponsored by the Central

931

Government, to a higher post of Assistant in the scale of pay of Rs. 160-450 joined the service of the ICAR as a fresh entrant on the same date that is 23.11.1953 (F.N.). He was not allowed to carry forward the leave that he had earned and was declared quasi-permanent as an Assistant in the ICAR with effect from 17.1.1957. The post held by the petitioner under the Central Government before he entered the service of the ICAR was a pensionable post and the post or posts held by him in the ICAR were also pensionable posts. The petitioner retired from the service of the ICAR on September 30, 1980 after attaining the age of superannuation, i.e., 58 years. On retirement the petitioner was accorded pensionary benefits reckoning his qualifying service from 23.11.1953 to 30.9.1980. The petitioner, as some others who had also retired from the service of the ICAR had been agitating before the authorities to count the period of service put in by him between 4.10.1950 and 23.11.1953 in the Central Government as part of the qualifying service and to compute his pensionary benefits on that basis. The petitioner had applied to the ICAR even before his retirement requesting it to count his service in the Central Government as part of his qualifying service for pension. The petitioner received a reply from the ICAR stating that according to the then existing policy the Government had not accepted any pensionary liability in cases like that of the petitioner and that there were no rules authorising the ICAR to accept the charge of pensionary liability in respect of the period of his service rendered in the Central Government.

Under the orders which were in force in 1984 the position as regards counting of service rendered elsewhere was as follows:

(i) Service rendered outside Central Government did not count for pension in Central Government.

(ii) In the case of scientific employees of autonomous bodies financed or controlled by the Government, however, such employees were allowed to count their previous service in such autonomous bodies or permanent absorption under the Central Government subject to certain conditions.

(iii) In respect of personnel other than scientific employees who were permanent in Central Government in the event of their subsequent permanent absorption in public

sector undertakings or any autonomous body proportionate retirement benefits for the service rendered in Government till the date of permanent absorption were allowed as per rules in force at the time of absorption.

932

(iv) No such benefit as provided in para (iii) above was allowed to temporary employees going over to autonomous bodies or undertakings.

In the meanwhile Central autonomous/statutory bodies had also introduced pension schemes for their employees on the lines of the pension scheme available to the Central Government employees. Therefore such autonomous/statutory bodies also started urging that the service rendered by their employees under the Central Government or other autonomous bodies before joining any autonomous body may be allowed to be counted in combination with service in the autonomous body concerned for the purpose of pension subject to certain conditions. There was also a demand for making similar provisions for employees of autonomous bodies going over to the Central Government. In other words, the demand was that the benefit of pension based on the combined service should be introduced. After a careful consideration of all relevant matters the Central Government passed an order being No. O.M. No. 28 10 84-Pension Unit dated 20th August, 1984 Ministry of Home Affairs, Department of Personnel and Administrative Reforms and issued it on 29.8.1984. That part of the Government order which is relevant for purposes of this case is set out in Paragraph 3(A)(i) thereof and it is as follows:

"No. 28/10/84-Pension Unit
Government of India Bharat Sarkar
Ministry of Home Affairs Grih Mantralaya
Department of Personnel and Administrative Reforms
(Karmik Aur Prashasnik Sudhar Vibhag)
New Delhi, the 29th August, 1984.

OFFICE MEMORANDUM

Sub: Mobility of personnel between Central Government Departments and Autonomous Bodies--Counting of service for pension.

.....
3. This matter has been considered carefully and the President has now been pleased to decide that the cases of Central Government employees going over to a Central autonomous body or vice versa and employees of the Cent-
933

ral autonomous body moving to another Central autonomous body may be regulated as per the following provisions:-

(A) In case of Autonomous bodies where pension scheme is in operation.

(i) Where a Central Government employee borne on pensionable establishment is allowed to be absorbed in an autonomous body, the service rendered by him under the Government shall be allowed to be counted towards pension under the autonomous body irrespective of whether the employee was temporary or permanent in Government. The pensionary benefits will, however, accrue only if the temporary service is followed by confirmation. If he retires as a temporary employee in the autonomous body, he will get terminal benefits as are normally available to temporary employees under the Government. The same procedure will apply in

the case of employees of the autonomous bodies who are permanently absorbed under the Central Government.

The Government/autonomous body will discharge its pension liability by paying in lump sum as a one-time payment, the pro-rata pension/service gratuity/terminal gratuity and DCRG for the service upto the date of absorption in the autonomous body/Government, as the case may be. Lump sum amount of the pro-rata pension will be determined with reference to commutation table laid down in CCS (Commutation of Pension) Rules, 1981, as amended from time to time."

Paragraph 7 of the said Government order, however, stated that the order would take effect from the date of issue of the revised policy and will be applicable to those employees who retired from Government/autonomous body service on or after the issue of the said order. Since the petitioner had retired on 30.9.1980 he was not accorded the benefit of that order.

In this writ petition the petitioner has questioned the validity of the condition imposed in paragraph 7 of the said order making the order applicable only to such of the employees of the Government/autonomous bodies who retired from service after the date of the issue

934

of the order. The petitioner's contention is that it was not open to the Government to deny the benefit of the order to those employees who had retired prior to the date of the order as it would bring into existence two classes of pensioners---one class of pensioners who had retired prior to the date of the Government order and another class of pensioners who had retired subsequent to the date of the Government order and that such classification was not warranted under Article 14 of the Constitution as there was no nexus between the classification and the object to be achieved by the Government order.

The writ petition is resisted by the respondents--the Union of India and the ICAR. It is pleaded on behalf of the respondents that the petitioner was not entitled to count the period of service rendered by him under the Government of India as a part of his qualifying service for purposes of pension since he was only a temporary Government servant when he was working in the office of the Settlement Commissioner, that he had joined the service of the ICAR as a fresh entrant and that there was no Government policy which entitled the petitioner to count the period of his Government service as part of qualifying service for pension before the Government order dated 29.8.1984 was passed. The fact that the petitioner was a temporary Government servant when he was working in the Central Government is immaterial because the Government order itself says that the service rendered by a Central Government employee under the Government would be allowed to be counted towards pension under the autonomous body irrespective of whether the employee was temporary or permanent in Government provided he is later on confirmed in the autonomous body. This condition is satisfied in this case. It is admitted that the petitioner was treated as a new entrant when he joined the service of the ICAR on the same day on which he ceased to be the employee of the Central Government. But the fact that the petitioner joined the service of the ICAR as a new entrant cannot again be an impediment for extending the benefit of the Government order dated August 29, 1984 because every employee who

leaves the service of the Central Government to join the service of the ICAR has to be treated as a new entrant at the ICAR because it is not a department of the Central Government but a registered body. In fact there cannot be a transfer to the ICAR from the Central Government. There is no substance in this contention of the respondents.

There is no dispute that the ICAR though it is a body registered under the Societies Registration Act, 1960, is a body which is sponsored, financed and controlled by the Central Government. There

935

has been a continuous mobility of personnel between Central Government departments and autonomous bodies, like the ICAR both ways and the Government thought, and rightly so, that it would not be just to deprive an employee who is later on absorbed in the service of the autonomous body, like the ICAR the benefit of the service rendered by him earlier in the Central Government for purposes of computation of pension and similarly the benefit of service rendered by an employee who is later on absorbed in the Central Government service the benefit of the service rendered by him earlier in the autonomous body for purposes of computation of pension. If that was the object of issuing the notification then the benefit of such notification should be extended to all pensioners who had rendered service earlier in the Central Government or in the autonomous body as the case may be with effect from the date of the said Government order. Now let us take the case of a person who had rendered service under the Central Government between January 1, 1953 and July 1, 1955 but who has retired from service of the ICAR in 1985. There is no dispute that such a person gets the benefit of the service put in by him under the Central Government for purposes of his pension. But another pensioner who has put in service under the Central Government during the same period will not get similar concession if he has retired prior to the date of the Government order if Paragraph 7 of that order is applied to him. The result will be that whereas in the first case there is pensionary liability of the Central Government in the second case it does not exist although the period of service under the Central Government is the same. This discrimination arises on account of the Government order. There is no justification for denying the benefit of the Government order to those who had retired prior to the date on which the Government order was issued. The respondents have not furnished any acceptable reason in support of their case, except saying that the petitioner was not entitled to the benefit of the Government order because the order says that it would not be applicable to those who had retired prior to the date on which it was issued. In the absence of any explanation which is worthy of consideration it has to be held that the classification of the pensioners who were working in the Government/ autonomous bodies into two classes merely on the basis of the date of retirement as unconstitutional as it bears no nexus to the object to be achieved by the order.

We do not also find much substance in the plea that this concession being a new one it can only be prospective in operation and cannot be extended to employees who have already retired. It is true that it is prospective in operation in the sense that the extra benefit can

936

be claimed only after 29.8.1984 that is the date of issue of the Government order. But it certainly looks backward and takes into consideration the past event that is the period of service under the Central Government' for purposes of

computing qualifying service because such additional service can only be the service rendered prior to the date of issue of the Government order. By doing so the Government order will not become an order having retrospective effect. It still continues to be prospective in operation. Whoever has rendered service during any past period would be entitled to claim the additional financial benefit of that service if he is alive on 29.8.1984 under the Government order but with effect from 29.8.1984.

In the result we hold that paragraph 7 of the Government order cannot be used against persons in the position of the petitioner to deny them the benefit of the past service for purposes of computing the pension.

We, therefore, direct the respondents to revise the pension payable to the petitioner in accordance with the Government order by giving him the benefit of the service rendered by him in the Central Government while computing his qualifying service for pension. We, however, make it clear that the petitioner is entitled to recover the difference between the pension which he is entitled to get in accordance with the Government order and the pension which is already disbursed to him with effect from 29.8.1984, i.e., the date of the Government order only and he is not entitled to get any relief in respect of the period prior to August 29, 1984.

The writ petition is accordingly allowed. No costs.

Petition allowed.

H.L.C.

937