
(1990) 01 GAU CK 0013

Gauhati High Court

Case No: None

Amalendu Sen

APPELLANT

Vs

Assam Administrative Tribunal

RESPONDENT

Date of Decision: Jan. 1, 1990

Acts Referred:

- Assam Services (Pension) Rules, 1969 - Rule 64(b), 64(b)

Citation: (1990) 1 GLJ 375

Hon'ble Judges: B.L.Hansaria, J and J.M.Srivastava, J

Bench: Division Bench

Advocate: B.C.Das, D.C.Chakraborty, B.K.Das, Advocates appearing for Parties

Judgement

B. L. Hansaria, J.

1. The petitioner is a highly qualified Chemical Engineer. He has to his credit a Ph. D. degree in Chemical Engineering from London University in addition to some other diplomas such as, Post Graduate Diploma in Fuel Technology, Corporate Membership of Institute of Fuel, London. He has done research work not only in London but in other Research Laboratories also, such as, Central Research Laboratory of Mining Association of West Germany; National Laboratory of West Germany and National Laboratory, Government of France. Such a highly qualified person who had served this State also for a pretty long time is fighting for his pensionary benefit after he had given his best during his hey days. It was held in D. S. Nakara vs. Union of India, (1983) 1 SCC 305 that pension cannot be regarded as bounty. It is a well earned property and this Court as custodian of the fundamental and legal rights of the people would do all that is possible and admissible to see that a person like the petitioner is not denied the pensionary benefit.

2. The petitioner entered the service of the State as Assistant Professor of Chemistry in the HRH Prince of Wales Institute of Engineering and Technology, Jorhat. This was in 1949. Thereafter, he went to London sometime in 1955 for higher studies

specially in Chemical Engineering. This was allowed by the Principal of the Institute. The extra ordinary leave granted for this purpose was however for 2 years but the petitioner overstayed and returned back only in 1960. He then found that his post which he was occupying prior to going on leave had been occupied by somebody else. He made several representations to the Government and ultimately at the intervention of the then Chief Minister Shri B. P. Chaliha, he joined the Regional Research Laboratory at Jorhat. Thereafter, he was brought back to the State service and he joined the Assam Engineering Institute as Head of the Department in the year 1968. Ultimately, he came to be superannuated on 31. 5. 77. If the service is counted only from 1968 onwards, the petitioner rendered about 9 years of service which is short by one year for the purpose of pension inasmuch as for earning pension a minimum service of 10 years is said to be required.

3. The petitioner's case is that he would have served the Government for the necessary qualifying period if his date of birth would not have been taken as 1. 6, 22 but would have been reckoned as 1.8.22, These two months difference is material because the age of retirement on superannuation was enhanced from 55 years to 58 years with effect from 1.7.77. The Government however did not accept 1.8.22 as the date of birth of the petitioner because as per the Matriculation Certificate the date of birth came to be reckoned as 1. 6.22. The petitioner's case is that as per the admission register of the school where he had studied the date of birth was 1.8.22. In this regard the petitioner made a representation on 14. 10. 68 which was not acceded to. From the facts enumerated in the judgment of the learned Administrative Tribunal we find that this matter was not pursued further by the petitioner.

4. Sitting as a writ Court we are not inclined to entertain the grievance of the petitioner relating to the date of birth because the employer had acted on the date of birth as recorded in the Matriculation Certificate and the service records which were duly verified by the petitioner. This being the position, we do not think if the petitioner can be given any relief in this regard because of anomaly in the date of birth. But then the other contention advanced by Shri Das has impressed us. The same is that the petitioner had obtained his lien on the post he was holding before he went to London for higher studies. That the petitioner was holding his lien on the post has been averred in para 4 of the writ petition which has not been countered in the affidavit filed on behalf of the respondents 2 to 4. We therefore accept the position that before leaving for U. K. (the petitioner was holding a lien on the post in question. This being the position, it is contended by Shri Das that the petitioner continued to hold lien inasmuch as the same had neither been suspended pursuant to the provisions contained in FR 14 nor terminated as visualised by FR 18. In such a situation the lien must be held to have continued. In this connection Shri Das has referred us to T. S. Sharma vs. Prithvi Singh, (1976) 1 SCC 226. Because of no termination of the lien of the petitioner it can well be held that the petitioner continued to have lien over his earlier post. This is however not the end of the

""difficulty of the petitioner inasmuch as we have noticed that if there be interruption in the service of the petitioner the same would entail forfeiture of past service. Rule 64 of the Assam Services (Pension) Rules, 1969, for short the Rules, deals with interruption which reads as below :

"54 Interruptionsad interruption in the service of an officer entails forfeiture of his past service except in the following cases:

a) Authorised leave of absence.

b) Unauthorised absence in continuation of authorised leave of absence so long as the office of the absentee is not substantively filled; if his office is substantively filled, the past service of the absentee is forfeited.

5. The present is a case attracting subrule (b) of Rule 64 which has stated that unauthorised absence in continuation of authorised leave of absence will not be regarded as interruption so long as the office of the absentee is not substantively filled. As we have already noted that the petitioner had acquired a lien over the post it is clear that any other person who had been appointed to that post could not have been so done substantively inasmuch as FR 12 states that two or more Government servants cannot be appointed substantively to the same permanent post at the same time. For these reasons we are of the view that unauthorised absence of the petitioner in continuation of authorised leave cannot be regarded as interruption within the meaning of Rule 64 of the Rules.

6. This being the state of affairs we are of the opinion that the petitioner's service rendered from 1949 to 1955 as Assistant Professor of Chemistry in the Prince of Wales Institute of Engineering and Technology, Jorhat has also to be counted and taken note of for the purpose of determining the period of qualifying service.

7. In the result, we direct the respondents to treat the service of the petitioner rendered between 1949 to 1955 also for the purpose of his pensionary benefit. Necessary order in this regard shall be passed within a period of 3 months from today and payment of the pensionary benefit shall be made within 3 months thereafter.

8. The petition is allowed accordingly.