(2004) 6 ALD 557

Andhra Pradesh High Court

Case No: Writ Petition No. 6756 of 2003

Mohammed Abdul Huq		APPELLANT
	Vs	
Secretary to the Govt., Education Dept. and Others		RESPONDENT

Date of Decision: Oct. 4, 2004

Acts Referred:

- Andhra Pradesh Private Aided Educational Staff (Regulation of Pay) Act, 2000 - Section 2
- Andhra Pradesh Revised Pension Rules, 1980 - Rule 14, 14(2), 43

Citation: (2004) 6 ALD 557

Hon'ble Judges: V. Eswaraiah, J

Bench: Single Bench

Advocate: K.V.N. Bhupal, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V. Eswaraiah, J.

1.The writ petitioner was appointed as Physical Education Teacher on 29.9.1996 at L.R.G. High School, Anantapur. The said post was admitted to grant-in-aid as per the orders of the Government G.O. Ms. No.1214 Education (F1) Department, dated 29.12.1978 with effect from 1.7.1978. Pursuant to the said orders of the Government, the District Educational Officer, Anantapur issued proceedings in Rc.No.14383/B1/90, dated 9.9.1992 approving the post facto appointment of the petitioner by the management, prior to admission of the petitioner to grant-in- aid and prior to G.O. Ms. No.1214 Education (F1) Department, dated 29.12.1978 with effect from 29.6.1966. The petitioner filed an application seeking permission for his voluntary retirement and the same was considered and he was permitted to retire from service with effect from 31.10.1991. After his

retirement, the petitioner got his retiral benefits. Thereafter, the petitioner filed a representation to pay the revised pension as well as the family pension by taking into consideration the unaided service rendered by him in an unaided post from 29.6.1966 onwards. Pursuant to the said representation, the Correspondent of the School viz., 4th respondent recommended the case of the petitioner and the District Educational Officer in turn vide his proceedings Rc.No.110, dated 15.10.2002 requested the Accountant General, A.P. Hyderabad-second respondent to consider the case of the petitioner by taking the unaided service rendered in unaided post with effect from 29.6.1966. Pursuant to the said letter dated 15.10.2002, the second respondent passed the impugned order dated 10.1.2003 stating that the petitioner did not put in a minimum qualifying service of 20 years and that the petitioner was working in the unaided post and his post was admitted into grant-in-aid only with effect from 1.7.1978 and he took voluntary retirement on 21.10.1991 and his qualifying service rendered in the aided post is only 13 years 4 months. As per Rule 43 of A.P. Revised Pension Rules, 1980, a Government Servant shall have the option to retire from service voluntarily after he has put in not less than twenty years of qualifying service. The petitioner did not put in the minimum of twenty years qualifying service in the aided post and therefore he is not entitled to retire on voluntary basis. Further as per the Act 9 of 2000 and subsequent clarification issued by the Government is relating to the protection of pay of aided school teachers for P.G.T. drawn by them to unaided service and for counting of increments and pay finalisation only, but not for the payment of pension. Therefore, the petitioner is not entitled for pensionary benefits under the voluntary retirement scheme. Questioning the said proceedings of the Accountant General of A.P., Hyderabad dated 10.1.2003, the petitioner filed the present writ petition.

2. The short question that arises for consideration is whether the petitioner is entitled for the pension under Rule 43 of A.P. Revised Pension Rules, 1980 (for short "the Rules").

3. As per Rule 43 of the Rules that a Government Servant is entitled to opt to retire from service voluntarily after he has put in not less than twenty years of qualifying service. As per Rule 14 of the Rules that the service of a Government Servant shall not qualify unless his duties and pay are regulated by the Government, or under conditions determined by the Government. As per Rule 14(2) of the Rules, the expression service means the service under the Government and paid by the Government from the consolidated fund of the State but does not include the service in a non-pensionable establishment unless such service is treated as qualifying service by the Government. As per note mentioned in Rule 14(2) of the Rules, the services rendered by an employee for unaided period in a teaching or non-teaching in aided educational institution shall not qualify for pension. The said note mentioned in Rule 14(2) of the Rules was came into force pursuant to the orders of the Government vide G.O. Ms. No.242, Finance and Planning Department, dated 3.11.1998. Admittedly, the Revised Pension Rules, 1980 have no application to the aided teachers working in the privates schools or colleges, but they are applicable pursuant to the A.P. Private Aided Educational Staff (Regulation of Pay) Act, 2000 (Act

No.9 of 2000) which came into force with effect from 10.1.1980. However, insofar as the commencement and retrospective effect from 10.1.1980 is concerned, this Court set the same aside but the other provisions were not at all interfered with. That being so, as per Section 2 of the A.P. Private Aided Educational Staff (Regulation of Pay) Act, 2000, eligible service for Government schemes and pensions in respect of the employees of the private aided educational institutions shall be from the date of approval of his appointment in a post duly admitting to grant-in-aid. Admittedly, the post of the petitioner was admitted into grant-in-aid by G.O. Ms. No. 1214 Education (F1) Department, dated 29.12.1978. However, the said post was admitted to grant-in-aid with effect from 1.7.1978. Therefore, the actual date of approval of his appointment to the grant-in-aid post is only with effect from 1.7.1978. The petitioner admittedly retired from service on 21.10.1991. Thus, the petitioner admittedly was not having 20 years of service in an aided post.

4. That being so, even if there is any order or a decided claim, the same stands abated u/s 3 of the A.P. Private Aided Educational Staff (Regulation of Pay) Act, 2000. As per Section 3(2) of the said Act no claim or other proceedings shall be maintained or continued in any Court against the Government or any person or authority whatsoever for extending the benefit of Automatic Advancement Scheme, Career Advancement Scheme and Pension by reckoning the service rendered by any employee of private aided educational institutions prior to the date of approval of appointment in a post duly admitted to grant-in-aid. The post of the petitioner was admitted to grant-in-aid only with effect from 1.7.1978 and approved by the District Educational Officer after the retirement of the petitioner vide proceedings dated 9.9.1992. Therefore, I am of the considered opinion that the petitioner is not entitled for the pensionary benefits by reckoning the period during which he has served in the unaided post from 29.6.1966 till the date of admitting his post i.e., 1.7.1998 and if that period is excluded he has served less than 20 years of service and therefore he is not entitled for any pensionary benefits. The petitioner is not questioning the validity of the Act 9 of 2000 as amended by Act 5 of 2002 and therefore he is not entitled for any relief as claimed in the writ petition. The writ petition is devoid of any merits.