V. Ganapthy Vs State of Tamil Nadu and Others

Court: Madras High Court (Madurai Bench)

Date of Decision: Sept. 3, 2012

Acts Referred: Constitution of India, 1950 â€" Article 14

Citation: (2013) 28 MLJ 399

Hon'ble Judges: Vinod K. Sharma, J

Bench: Single Bench

Advocate: M. Saravanakumar, for the Appellant; M. Govindan, Special Government Pleader and P. Gunasekaran, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Vinod K. Sharma, J.
The petitioner prays for issuance of a Writ, in the nature of Certiorari, to quash the order No. 43450/Ni A

4(1)/2007 - 4 dated 14.2.2011, rejecting the request of the petitioner, for regularising his services from the date of initial appointment, and for

grant of consequential benefits, including pensionary benefits. The petitioner was appointed, as Chain Man on 20.11.1972, but his services were

terminated, for want of vacancy. He was reappointed after notional break. This process of termination and reappointment continued till 18.6.1991.

The service of the petitioner was regularized and on attaining the age of superannuation, the petitioner retired from service on 28.2.2011.

2. The petitioner, after retirement filed a representation, with the respondents, to regularize the services from the date of initial appointment and

recalculate the pensionary benefits due to him.

3. The request has been declined, on the ground, that the petitioner claimed the benefit of temporary service after lapse of over 15 years.

4. The impugned order does not suffer from any illegality as the respondents are right in not regularising the services of the petitioner from the date

of initial appointment on the ground of delay and latches.

5. Even otherwise, person is not entitled to regularization of service, having been appointed on temporary basis by backdoor method (In view of

the law laid down by the Hon''ble Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others,

6. However, the impugned part of the order, refusing to grant benefit of temporary service for pensionary benefit cannot be sustained in law. It is

now well settled law that the services rendered on temporary/ad hoc basis prior to regularization of service is to be counted for pensionary

benefits.

7. This claim of the petitioner is opposed by the learned counsel for the fourth respondent, on the ground, that according to Rule 11 of the Pension

Rules, there should not be any break in service, and further more, only 50% of the service can be counted for grant of pensionary benefits and not

the whole service.

8. On consideration, I find, that the petitioner is not entitled to the relief of regularization from the date of initial appointment, but, he is certainly

entitled to benefit of temporary service rendered prior to regularization by ignoring the notional breaks for the purpose of pensionary benefits.

9. The Rule 11 of the Pension Rules in allowing only 50% of the service rendered on temporary basis for the grant of pensionary benefit cannot

stand the test of Article 14 of the Constitution of India.

10. This view finds support from the Judgment of the Hon''ble Full Bench of Kesar Chand Vs. State of Punjab and Others, where sub-rule (ii) of

Rule 3.17 of the Punjab Civil Services Rules, Volume II, which provided that period of service of work charged establishment will not be counted

while determining qualifying service, was held to be violative of Article 14 of the Constitution of India, thus, was struck down.

11. Again, the Hon''ble Division Bench of Punjab and Haryana in Hari Chand v. Bhakra Beas Management Board and Others 2005 (2) SCT 95,

has been pleased to lay down as under:

3. Upon notice, written statement has been filed by the respondents, wherein it has been stated that since petitioner has accepted gratuity amount,

he is not entitled to press his claim towards pension. It has further been stated, that since qualifying service, rendered as a regular employee, was

less than 10 years, petitioner was not entitled to grant of pension. It has further been mentioned that in view of provisions of Section 3.17(A) of

Punjab Civil Services Rules, Part I Volume II (in short the Rules), service rendered as a daily wager could not have been counted towards

qualifying service. Averments, regarding length of service as daily wager and thereafter as regular employee, were virtually admitted in the written

statement.

4. Counsel for the petitioner has vehemently contended that his claim towards pension had wrongly been declined. As per law laid down by this

Court in Mohan Singh v. State of Haryana, (1991) 3 SCT 147, it was incumbent upon the authorities to count service rendered by the petitioner,

as a daily wager, towards qualifying service. To support his contention, he has further placed reliance upon a judgment of this Court in Joginder

Singh Vs. The State of Haryana and Others, Counsel prayed that in view of ratio of judgments, referred to above, writ petition be allowed and

authorities be directed to sanction pension in favour of the petitioner, counsel further undertakes that in case pension is granted to the petitioner, he

shall return amount of service gratuity and D.C.R.G. to the authorities within a reasonable time along with interest, as may be directed by this

Court.

5. Prayer made by counsel for the petitioner has vehemently been opposed by counsel appearing for the respondents. Counsel, by placing reliance

upon provisions of Rule 13.17(A) of Rules, has argued that it is not possible to count service, rendered as a daily wager, towards qualifying

service. He prayed that since petitioner had accepted gratuity amount, he is estopped to claim pension.

6. After hearing counsel for the parties, this Court is of the opinion that the writ petition deserves to be allowed.

In view of pleadings on record, factual position is not in dispute. Petitioner had served respondents as a daily wager and thereafter as a regular

employee for the period of more than 12 years. Qualifying period to get pension is only 10 years. If service rendered by the petitioner as daily

wager is counted towards qualifying service, he will become eligible to get pension. A similar question came up for consideration before this Court

in Mohan Singh v. State of Haryana (supra). After analysing facts of that case and by placing reliance on a Full Bench judgment of this Court in

Kesar Chand Vs. State of Punjab and Others, , it was opined that the period of work-charge service is required to be counted towards qualifying

service. In the above-mentioned case, it was observed as under:

Even otherwise Full Bench of this Court in Kesar Chand v. State of Punjab (supra), had held that under Rule 3.17 of the Punjab Civil Services

Rules, Volume II, period of service of a work-charged employee before their regularisation has to be computed towards qualifying service. In

Kesar Chand v. State of Punjab (supra) sub-rule (ii) of Rule 3.17 of the Punjab Civil Services Rules, Volume II, which provided that the period of

service of work-charged establishment will not be counted while determining qualifying service, was struck down being violative of Article 14 of

the Constitution.

Similarly, in Joginder Singh v. State of Haryana and Others (supra), a single Bench of this Court, while dealing with similar situation, has interpreted

Rule 13.17(A)(f) and (g) of Rules and has opined as under:

It will be evident from the aforesaid rule that it provides for the method by which the qualifying service is to be determined. Sub-clause (i) of

Clause (f) of Rule 3.7-A of the said Rules provides that even persons paid from contingencies are entitled to count half of their service as qualifying

service provided the four conditions laid down in sub-clause (i) are fulfilled. It is the admitted position that the petitioner had worked for about 23

years in the respondent department but for two breaks that were not due to any default on his part. It will also be seen that the stipulation in sub-

clause (i) that half the period of service is to be counted towards qualifying service is to be read alongwith the subsequent four conditions in the

same rule. These conditions read together clearly show that a person claiming qualifying service should have been working as a whole-time

employee against a job for which a regular post should have been sanctioned with the payment of salary being made on a monthly or daily basis

and that the service paid from contingency should have been continuous and without any break. To my mind, the facts of the case clearly spell out

that the petitioner fulfilled these four conditions. I am also of the opinion that the stipulation in sub-clause (i) of Clause (f) of Rule 3.17-A that only

half the period of service is arbitrary and no logic or reason can be spelt out in it. In Kesar Chand v. State of Punjab and Others (supra) this Court

while considering Rule 3.17 of the Punjab Civil Service Rules Vol. II which provided that if work-charged service was followed by regular

employment, the period of work-charge service could not be taken into account for the purpose of determining the qualifying service was quashed

being arbitrary and unjust.

12. Rule 11 of the Pension Rules and the Government Order restricting the benefit of service rendered on temporary service to 50% only,

therefore cannot be held to be constitutionally valid, as it is hit by Article 14 of the Constitution of India. Consequently, this writ petition is partly

allowed. While declining the relief of regularization of service from the date of initial appointment, the respondents are directed to take into

consideration the temporary service rendered by the petitioner for grant of pensionary benefits, but not for any other purpose. The respondents are

also directed to re-fix the pension of the petitioner, by giving him benefit of temporary with all consequential benefits.

The needful be done within one month from the date of receipt of certified copy of this order.

No costs.

Consequently, the connected M.P. (MD) No. 1 of 2012 is closed.