

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. No. 139/SK/96

Present : Hon'ble Mr. Justice G.L. Gupta, Vice-Chairman.
Hon'ble Mr. B.P. Singh, Administrative Member.

Sri Surajit Panigrahi,
S/o Sri Pitabas Panigrahi,
working on deputation under the
Govt. of Sikkim as Accounts Officer,
Pay & Accounts Office Gangtok,
Sikkim.

- v e r s u s -

1. Comptroller & Auditor General of India,
10, Bahadursaha Zafar Marg,
New Delhi-2.
2. Accountant General (Audit) Sikkim
Secretariat Building Gangtok,
Pin-737 101.
3. Chief Secretary, Govt. of Sikkim,
Secretariat Building, Gangtok.
4. Secretary, Deptt. of Education,
Govt. of Sikkim, Gangtok.

...Respondents.

For the applicant : Mr. S.K. Dutta, counsel.

For the respondents : Mr. M.S. Banerjee, counsel.
Mr. A. Bandyopadhyay, counsel.
Mr. U. Dutta Sen.

Date of order: 24.09.2002

24.09.02

O R D E R

B.P. Singh, AM

Sri Surajit Kumar Panigrahi, Accounts Officer, Pay and Accounts Office, Gangtok, Sikkim has filed this O.A. against the order dated 8.1.1996 regarding non-counting of the past contract service under the State Govt. and prayed for the following reliefs:-

"8.

- a) An order directing the respondents to count the past service of the applicant under the Govt. of Sikkim for the purpose of pensionary benefits.

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- b) An order directing the respondents to extend the benefits of pay protection on his appointment as Auditor in the Office of Accountant General (Audit) Gangtok, Sikkim.
- c) An order quashing and/or setting aside letter dated 8.1.96 issued by the Audit Officer (Admn), Office of the Accountant General (Audit) Gangtok.
- d) An order directing the respondents to extend all consequential benefits to the applicant."

2. The fact of the case as it appears from the O.A. is that the applicant was initially appointed as a Graduate Teacher vide order dated 10.09.1985 and joined the said service on 12.09.85. Subsequently the applicant was further placed in the Post Graduate Teacher (PGT) scale w.e.f. 1.08.86 vide Annexure-A/1 collectively. Both the appointments were on contract basis initially for three years under the terms and conditions stated in Annexure-A/1 collectively.

2.1. The applicant applied for the post of Auditor in the Office of the Accountant General (Audit) Gangtok under intimation to his Department. He was selected on the post and joined as Auditor after resigning from the Education Department of the Govt. of Sikkim. His resignation was accepted on 25.03.1989 and the applicant joined as Auditor on 27.03.1989. After his resignation the applicant received gratuity and leave encashment from the Department of Education, Govt. of Sikkim. It was thus clear that there was no forfeiture of the service of the applicant in the Department of Education, Govt. of Sikkim.


2.2. The applicant further states that as per Govt. of India communication dated 9.10.86 the applicant was entitled to the benefit of his past service on appointment in the Office of Accountant General (Audit) Gangtok for the purpose of pensionary benefit. The applicant made representation dated 14.1.1993 to the Accountant General, Gangtok



for counting of his past service rendered in the State Government of Sikkim for the purposes of pension. A number of correspondence was exchanged between the applicant and the office of Accountant General (Audit) Gangtok and the applicant complied with all the requirements. The applicant made further representation. His representations were turned down for counting of past service vide order dated 8.1.96 enclosed as Annexure-A/2 collectively.

2.3. The applicant further states that he is not only entitled for the benefit of counting of past service for pension purposes but also entitled for re-fixation of his pay as Auditor after giving him protection of the last pay drawn in the Department of Education, Govt. of Sikkim. Since the representation and claim of the applicant were ultimately turned down, the applicant being aggrieved with the same filed the present O.A.

3. The applicant has stated in the application that denial of the protection of pay as well as benefit of past service under the Govt. of Sikkim were illegal and arbitrary. The application was entitled for counting his past service under the Govt. of Sikkim towards the qualifying service for all retiral benefits. The applicant has further stated that the action on the part of the respondent authorities is discriminatory and arbitrary and against the provisions of Arts. 14 and 16 of the Constitution. The applicant has further stated that service of the applicant under the Govt. of Sikkim was a temporary service as per his service record and, therefore, the same should have been counted for the purpose of the pensionary benefit and protection of pay.

4. This case has chequered background of litigation. The O.A. No. 139/SK/1996 was initially disposed of at the stage of admission on 6.5.1997. While disposing the said O.A. the Tribunal found that the service of the applicant had since been  regularised by the State Govt. vide their order dated 19.4.97. Therefore, on the basis of the said order of regularisation it was ordered that the applicant was entitled for pay

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protection as well as for the benefit of past service for pensionary purposes.

4.1. A review petition No. 49/SK/97 with M.A. 352/SK/97 for condonation of delay were filed by the respondents in the O.A. The same was dismissed on 29.1.1998.

4.2. The applicant filed CPC No. 123/SK/97 on 9.9.97 which was dropped on 17.12.1998 as in the meantime, Hon'ble High Court, Sikkim set aside the order dated 6.5.1997 in the O.A. and dated 29.1.98 in the Review Petition.

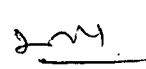
4.3. The respondents in the O.A. filed writ petition No. 112/1998 before the Hon'ble High Court, Sikkim against the order dated 6.5.97 in the O.A. and dated 29.1.1998 in the R.A. The Hon'ble High Court of Sikkim passed order on 24.9.98 allowing the petition and setting aside the orders dated 6.5.97 and 29.1.98.

4.4. The applicant in the O.A. filed a review application by writ petition No. 522/1998 against the Hon'ble High Court's order dated 24.9.98 before the Hon'ble Sikkim High Court which was dismissed on 5.9.2000.

4.5. The applicant in the O.A. further filed Special Leave Petition before the Hon'ble Supreme Court vide S.L.P. (C) No. 21389/2000 against the order dated 5.9.2000. The Hon'ble Supreme Court dismissed the S.L.P. on 8.1.2001.

4.6. M.A. NO. 1/SK/2001 was filed on 4.1.2001 by the respondents in the O.A. for extension of time to reply on behalf of respondent Nos. 3 and 4 in the O.A. The application was disposed of on 14.1.2001 as the reply was filed in the meantime.

4.7. Another M.A. No. 2/SK/2000 was filed on 27.09.2000 to recall the order dated 29.8.2000 in the O.A. The order was recalled vide order dated 18.3.2002 and M.A. was disposed of.



5. The order of regularisation of the applicant dated 19.4.97 was rescinded vide order dated 30.9.97 which was challenged by the applicant before the Hon'ble High Court at Sikkim in Writ Petition No. 52/97 in which the Hon'ble High Court passed interim order on 3.10.97 restraining the respondents from giving effect/further effect to the impugned order dated 30.9.97 till further order. This Writ petition was decided on 22.06.1998 declaring the order dated 30.9.97 inoperative and quashing the same. The Hon'ble High Court held that the order dated 19.4.1997 had given a very valuable right to the writ petitioners which could be revoked only after giving proper opportunity to him to place his case and to meet the objection of the Government. The said order was, however, revoked vide order dated 26.9.98 by the competent authority after compliance with the above direction of the Hon'ble High Court.

6. The applicant challenged the order dated 24.9.98 by filing a writ petition No. 522/98 before the Sikkim High Court. The writ petition was dismissed vide judgment and order dated 6.9.2000 that the office memorandum dated 19.4.1997 is no longer in force and the applicant while appointed as Auditor in the Office of the Accountant General (Audit) Sikkim, Gangtok had no lien on any post under the Govt. of Sikkim and as such his past service cannot be counted for the purpose of pay protection and other retirement benefits.

7. It is thus clear that the order of the Hon'ble High Court of Sikkim dated 24.9.98 in Writ Petition No. 112/98 is yet to be complied with by the Tribunal. The relevant directions of the Hon'ble High Court are reproduced as under:

" We simply note that Tribunal committed gross error in taking up the matter of granting of the petition by itself on the date which was fixed only for hearing on the point of admission. The learned Tribunal also committed error in acting upon the copy of the order dated 19.04.1997 without making it a part of the pleading.



14. We feel that this is a fit case to refer to the matter back to the Tribunal with a direction to decide the case on merit after giving an opportunity to the petitioner before the Tribunal to incorporate the factum of the letter of regularisation in the pleading in appropriate manner and to give all the Respondents a chance to meet the same point.

15. Therefore, we allow this petition and set aside the orders passed on ^{22/4}06-05-1997 in O.A. No. 139 of 1996. The order dated 29.01.1998 passed in R.A. No. 49 of 1997 automatically loses its force. We remand the case to the Tribunal with a direction to rehear and dispose of the matter in the manner as indicated in the body of this judgment. Parties are left to bear their respective costs."

From the above it is clear that the matter is to be reconsidered and decided on merit by the Tribunal after giving an opportunity to the petitioner to incorporate the fact of the letter of regularisation dated 19.4.1997 in the pleadings in appropriate manner and giving the respondents a chance to meet the same.

8. The applicant filed an application dated 30.4.2002 before the Registrar of this Tribunal which was received on 3.5.2002 in the office praying for disposal of the O.A. No. 139/SK/1996 without amendment on merit after remand of the same by the Hon'ble High Court of Sikkim. The applicant stated that various writs were filed by the either party before the Hon'ble High Court Sikkim relating to order of regularisation dated 19.4.1997 and cancellation order dated 30.9.97. The applicant filed writ Petition No. 52/97 in which interim order was passed and finally the writ was decided on 22.6.1998 setting aside the order dated 30.9.97 and directing the respondents to revoke the order dated 19.4.97 after giving appropriate opportunity to the applicant to place his case and meeting the objection of the Government. The respondent authorities acted accordingly. After giving due opportunity to the applicant, the respondents passed order on 26.9.98 revoking the order dated 19.4.97.

The said order was challenged by the applicant before the Hon'ble High Court Sikkim in Writ petition No. 522/98 in which a very detailed

judgment was passed on 5.9.2000 a copy of which is enclosed as Annexure-R/7 to the reply dated 29.9.2000 of respondent Nos. 1 and 2. It was held by the Hon'ble High Court that the applicant is not entitled for the benefit of past service and pay protection as prayed for by him. The applicant in view of the above has stated in paragraphs 6 and 8 of the application dated 30.4.2002 that the amendment in the pleading is not warranted. The above paragraphs are reproduced as under:-

" That because of the revocation of the order dated 26.09.1998 by the Commissioner-cum-Secretary, Education Department, the applicant has not been able to incorporate the factum of the order of regularisation dated 19.04.97 in the pleading of the O.A. 139/96 in terms of the direction of the Hon'ble High Court.

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8. That the applicant submits that, in view of the facts stated above, amendment of the pleading in O.A.No. 139/96 as per the Judgment of the Hon'ble High Court is not warranted. The application may be decided on merit on the basis of the pleading already made."

~~From~~ From the above it is clear that in view of the final decision of the Hon'ble High Court of Sikkim in O.A. No. 522/1998 the applicant is not able to incorporate the fact of the order of regularisation dated 19.4.1997 in the pleadings of the O.A. and, therefore, amendment of the pleadings is not warranted. The application may be decided on merit and on the basis of the pleadings already made.

9. The respondent authorities have filed fresh reply in opposition on 29.9.2000 on behalf of the respondent Nos. 1 and 2 and on 3.1.2001 on behalf of respondent Nos. 3 and 4. In both these replies a number of enclosures supporting their pleadings are enclosed.

10. It is thus clear that the present O.A. is to be considered and decided on merit as per order dated 24.9.98 in Writ Petition No.112/98 passed by the Hon'ble High Court of Sikkim, the relevant portions of

which are already reproduced above and the statement of the applicant made in his application to the Registrar dated 30.4.2002.

11. We have heard Sri S.K. Dutta, Id. counsel for the applicant and Sri M.S. Banerjee, Id. counsel leading Sri A. Bandyopadhyay and Ms. U. Dutta Sen for the respondents. We have gone through the O.A. and replies to the O.A. with enclosures, copies of various judgments passed by the Hon'ble High Court of Sikkim and Hon'ble Supreme Court as well as by this Tribunal. We have also gone through the written arguments filed on behalf of the petitioner as well as his application dated 30.4.2002 addressed to the Registrar of this Tribunal.

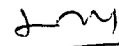
12. The Id. counsel for the applicant Sri S.K. Dutta has reiterated the facts and the grounds stated in the O.A. He has submitted that since the applicant submitted the technical resignation from the post of PGT to join as Auditor under the respondent No.2, he is entitled for counting of his past service for pensionary benefit and protection of his pay on his appointment as Auditor. The Id. counsel has argued that after technical resignation by the applicant he was granted gratuity as well as leave encashment etc. and, therefore, for all practical purposes he was a temporary Govt. servant against a regular post under the Govt. of Sikkim. The Id. counsel has further submitted that the appointment of the applicant on contract basis was ordered by the Govt. of Sikkim because of special circumstances prevailing in Sikkim. The applicant was for all practical purposes a temporary govt. servant against the regular post. If this was not there, he would not have been paid gratuity and leave encashment etc. on his technical resignation. The Id. counsel, therefore, has submitted that a great injustice has been done by the respondent authorities by not counting the past service under the State Govt. and granting pay protection to the applicant on his appointment as Auditor after technical resignation. The Id. counsel has, therefore, submitted that the said order dated 8.1.96 enclosed with the O.A. as Annexure-A/2 collectively requires to be quashed by granting the prayer

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cited above.

13. Sri M.S. Banerjee, Id. counsel for the respondents drew our attention to the reply dated 29.9.2000 filed on behalf of respondent Nos. 1 and 2 and reply dated 3.1.2001 filed on behalf of respondent Nos. 3 and 4. The Id. counsel submitted that the applicant was appointed initially as Graduate Teacher and subsequently as PGT on contract basis for three years in accordance with the terms and conditions laid down in the Govt. notification No. 250/Genl./Estt. dated 4.2.81. While working on such post the applicant was selected for the post of auditor under the Central Govt. through a competitive examination held by the Staff Selection Commission. The applicant was offered appointment on the post of auditor as a fresh recruit where he joined on 27.03.1989. The applicant resigned from his contract service with the Govt. of Sikkim on 25.3.1989. When the applicant resigned from contract service & joined as an Auditor he did not have any lien on any post with the Govt. of Sikkim.

13.1. The Id. counsel has further submitted that the applicant worked as an auditor for about four years when he made a representation dated 14.1.1993 to the Accountant General, Sikkim for giving him benefit of the past service. He made another representation on 18.5.1995 to the Chief Pay & Accounts Officer, Govt. of Sikkim for the same purpose. Vide memo dated 18.1.1996 the Audit Officer (Admn), Office of Accountant General (Audit) Sikkim intimated the applicant that there was no provision for counting of contract service rendered in a State Govt. for pension. The applicant being aggrieved by the said memorandum filed O.A. No. 139/SK/1996 which after a chequered history of litigation is before us for re-consideration and decision on merit as per order dated 24.9.98 in Writ Petition No. 112/98 of the Hon'ble High Court Sikkim. The applicant prayed for counting of the past service for pensionary benefit and benefit of pay protection on his appointment as an Auditor as he was for all practical purposes a temporary Govt. servant against a regular post under the Govt. of Sikkim and joined the post of an Auditor after technical resignation from the post of Post Graduate Teacher and



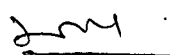
after technical resignation was accepted the applicant was paid gratuity as well as leave encashment and other benefits. At the time of hearing of the O.A. 139/SK/1996 on 6.5.1997 the applicant also produced an order dated 19.4.97 issued by the Additional Secretary, Govt. of Sikkim by which the service of the applicant rendered on contract basis was regularised. The Tribunal took note of said communication and disposed of the O.A. on 6.5.97 at the stage of admission directing the respondent authorities to grant the benefit of past service for pensionary purpose as well as pay protection. This order was set aside by the Hon'ble High Court of Sikkim in the order dated 24.9.98 in W.P. No. 112/98 filed by the respondent authorities in the O.A. The respondent in the O.A. filed Review petition before the Tribunal which was dismissed. Applicant in the O.A. filed writ petition before the Hon'ble High Court which was dismissed on 5.9.2000. The applicant further filed an S.L.P. before the Hon'ble Supreme Court which was also dismissed on 8.1.2001. Thus the order dated 24.9.98 in W.P. No. 112/98 remains to be complied with by the Tribunal and the same is being heard.

13.2. The Id. counsel submits that during the pendency of the Review application before the Tribunal the memorandum dated 19.4.97 regularising the service of the applicant was rescinded vide order dated 30.9.97 on the ground that the case of the applicant cannot be treated at par with other contract teachers. The said order was challenged by the applicant before the Hon'ble High Court of Sikkim in Writ Petition No. 52/97 in which the High Court passed an interim order dated 3.10.1997 restraining the respondents of the said writ application from giving effect or further effect to the order dated 30.09.97 till disposal of the said writ petition. The said writ petition was decided on 22.6.1998 declaring the order dated 30.9.97 as inoperative and quashing the same. The Hon'ble High Court held that order dated 19.4.1997 had given a very valuable right to the writ petitioner which could be revoked only after giving him proper opportunity to place his case and to meet the objection of the Govt.

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Accordingly a show cause notice dated 3.7.98 was issued to the applicant and subsequently by order dated 26.9.98 the office memorandum dated 19.4.97 was again revoked. This order was challenged by the applicant before the Hon'ble High Court of Sikkim in Writ Petition No. 522/98. Thus it is clear that entire issue relating to grant of benefit of past service for pensionary purposes and protection of pay to the applicant for the period of contract service under the Govt. of Sikkim was placed for detailed consideration of the Hon'ble High Court. During the consideration of the above issue the regularisation order dated 19.4.97 and fresh cancellation order dated 26.09.98 were also critically examined by the Hon'ble High Court of Sikkim with a view whether any breach of the principles of natural justice resulting in any prejudice to the applicant was committed. The Hon'ble High Court passed the judgment and order in the writ petition No. 522/1998 on 5.09.2000 holding that memorandum dated 19.4.97 was no longer in force and the applicant when appointed as Auditor in the Office of Accountant General (Audit), Sikkim had no lien on any post under the Govt. of Sikkim. As such the past service cannot be counted for the purposes of pay protection and other retiral benefits. Thus the order of the Hon'ble High Court dated 24.9.98 in W.P. No. 112/98 has been in detail considered by the Hon'ble High Court in the subsequent writ Petition No. 522/98 and after detailed examination of the entire matter the Hon'ble High Court dismissed the writ by passing the decision on 5.9.2000 as under:-

" In the instant case, the petitioner had resigned from service under the State Government with effect from 25th March, 1989 to join service in the Office of the Accountant General. His case was not covered by the judgment of the High Court rendered in Writ Petition No. 27 of 1994 and the connected Writ Petitions. Adequate opportunity was granted to the petitioner to present his case by respondent No.2 before passing the impugned order dated 26.09.1998. Even thereafter, opportunity was granted to him but he did not choose to avail of it. The petitioner could not show that any prejudice was caused to him on account of the alleged violation of the principles of natural justice. Therefore, the Review Application as also the Writ Petition must fail."



13.3. The Id. counsel in view of the above decision of the Hon'ble High Court in Writ petition No. 522/98 submitted that there is nothing to be further considered by this Tribunal in the case in reference to order dated 24.9.98 in WP No. 112/98. The Hon'ble High Court had already come to the conclusion in the decision dated 5.9.2000 in Writ Petition No.522/98 that the Office order dated 30.9.97 cancelling the order dated 19.4.97 by which the applicant was regularised under the Govt. of Sikkim cannot be faulted on any ground and, therefore, the same stands. Since there is no provision in the rule for giving benefit of contract service for the purpose of pay protection and pensionary benefits, the prayer of the applicant cannot be accepted. Thus there being no merit in the case the application should be dismissed without granting any relief.

14. From the above discussion the undisputed facts of the case are that the applicant was appointed as Graduate Teacher/PGT on contract basis for three years under the terms and conditions of the Sikkim Govt. notification No. 250/Genl/Estt. dated 4.2.1981. While working as such the applicant applied for the post of Auditor under the respondent authorities and was selected for the same which he joined on 27.3.89 as a fresh recruit after resigning from the post of Teacher. The applicant worked on contract service w.e.f. 12.9.85 to 25.3.89. According to the terms and conditions for contract appointment the applicant was eligible for DCRG and leave encashment for the contract service period of over three years and he was granted the same. The contract service of the applicant from the period 12.9.85 to 25.3.89 was treated regular service vide order dated 19.4.97 issued by the Govt. of Sikkim. The said order was subsequently rescinded by the Govt. of Sikkim vide office order dated 30.9.97. On intervention of the Hon'ble High Court the order dated 30.9.97 was directed not to be given effect till the applicant was given an opportunity to place his case against the proposal of cancellation. The applicant was given opportunity against the said proposal and

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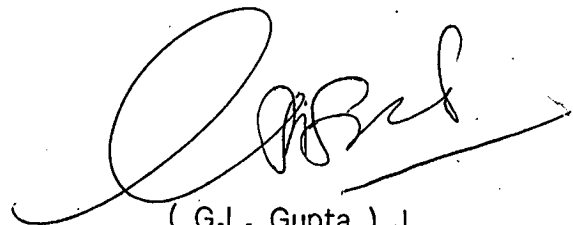
ultimately vide order dated 26.9.98 the memorandum dated 19.4.97 regularising the service of the applicant was quashed. The applicant filed writ petition No. 522/98 against this order which was decided on 5.9.2000 by the Hon'ble High Court of Sikkim. The Hon'ble High Court found no fault with the said order dated 26.9.98. Thus after the prolonged litigation the final position emerged that the period of contract service of the applicant as Teacher under Govt. of Sikkim continued to be contract service and there being no provision in the rules for counting of the period of contract service for the purposes of pensionary benefits and pay protection the applicant was not granted the benefit of counting of post services for pensionary purposes and protection of pay. Thus the issue has reached finality after the decision of the Hon'ble High Court of Sikkim. The benefit of contract service for pensionary purposes and pay protection is thus not admissible to the applicant and the order dated 8.1.1996 (Annexure-A/2) issued by the Respondents cannot be faulted. On the basis of these we hardly find any substance in the application.

15. In view of the above discussions and observations, we do not find any merit in the case and dismiss the application without any order as to costs.



(B.P. Singh)
Member (A)

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(G.L. Gupta) J.
Vice-Chairman.

a.k.c.