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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
(CAMP: NAGPUR)

Original Application No: 255/92.

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DATE OF DECISION: DECEMBER 15, 1994.

Shri Nanaji Vithobha Hingurkar, Petitioner

Shri K. D. Deshpande, Advocate for the Petitioner

Versus

Union Of India & Others, Respondents

Shri R. P. Darda, Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M. S. Deshpande, Vice-Chairman.

The Hon'ble Shri M. R. Kolhatkar, Member (A).

1. To be referred to the Reporter or not ? ✓
2. Whether it needs to be circulated to other Benches of the Tribunal ? X

M. R. Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A).

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

NAGPUR CIRCUIT BENCH, NAGPUR.

O.A. NO.: 255/92.

Shri Nanaji Vithobha Hingurkar ... Applicant
Versus
Union Of India & Others ... Respondents.

CORAM :

Hon'ble Shri Justice M. S. Deshpande, Vice-Chairman.

Hon'ble Shri M. R. Kolhatkar, Member (A).

APPEARANCE :

1. Shri K. D. Deshpande,
Advocate for the applicant.
2. Shri R. P. Darda,
Advocate for the Respondents.

JUDGEMENT :

DATED :

15.12.94

¶ Per. Shri M. R. Kolhatkar, Member (A) ¶.

1. The applicant was employed in the Municipal Council Tumsar from 12.04.1954 to 25.05.1965. On 28.05.1965, he joined the Ordnance Factory under Central Government and retired from the same on 30.06.1990. The applicant had exercised an option for counting of the pre-retirement civil service, as qualifying for pension, in terms of Rule 19 of CCS (Pension) Rules, 1972. That service, being the service in the Municipal Council, extended over 11 years. It appears that reference was made by the Ordnance Factory to the Government of Maharashtra, by their letter dated 01.06.1981 at Annexure-4. However, there has been no reply to this letter. Subsequently, the Collector, Bhandara District, in which Tumsar Municipal Council falls, wrote a letter on 26.05.1987 at annexure-7, giving the following information :

"The Municipal Councils are wholly owned and Controlled by the State Government and it is being treated as public body and comes within the perview of Semi-Government. Similarly, services rendered under Municipal Council are government by the Maharashtra Civil Services Rule, which is treated as bye-laws for the Municipal Councils."

On the basis of this letter, the matter was again referred to the Accounts Department. However, the CDA Office vide annexure-6 intimated by the letter dated 22.04.1988 that there is no provision to count the services rendered in (Municipal Council) Local Self Government of Maharashtra towards pensionary benefits under Central Government. Though the issue was settled in 1988 itself, ~~the~~ applicant claims to have been informed about this, in response to lawyer's notice on 20.11.1990 vide annexure-1 that service in the Municipal Council is not reckonable as qualifying service for pension. This letter makes it clear that the applicant was informed about the factual position earlier. ^{original} The application has been filed on 16.10.1991 ^{impugning this letter} As the O.A. raises an important issue, we are deciding the matter without going into the question of limitation. The contentions of the applicant are as follows :-

Firstly, it is stated that the Municipal Councils are a State, within the meaning of Article 12 of the Constitution.

Secondly, it is stated that the Municipal Council Tumsar, has adopted Maharashtra Civil Service Rules as its bye-laws.

Thirdly, it is stated that the applicant was holding a lien in the Municipal Council before joining the Ordnance Factory service.

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Fourthly, it is stated that the employees of the Municipal Council, Amravati, were absorbed in the Water Supply Board of Maharashtra under orders of the Nagpur Bench of Bombay High Court.

Fifthly, the applicant refers to the Government of Maharashtra, Finance Department Resolution dated 19.07.1993, dealing with the subject - "counting of service for purpose of pension of Central Government/ State Government employees, moving over to State/ Central Autonomous Bodies and the employees of Central/State Autonomous Bodies moving over to State/Central Government and Central Autonomous Bodies. This order takes effect from 13.07.1992 and applied to the employees who were in service on that date and also to those who retired prior to that date, who were otherwise eligible for the benefit of counting of service.

The applicant also relies on the following case law :-

The case of Satheesan V/s. State of Kerala
[1990 (2) KLT 705] in which the Kerala High Court held that Members of Kerala Municipal Common Service are holding posts in the Civil Service of the State.

Lastly, the applicant relies on the Supreme Court Judgement in State of Gujarat V/s. Raman Lal Keshav Lal reported at AIR 1984 SC 161, decided on 27.01.1983, in which the Hon'ble Supreme Court held that the Members of Gujarat Panchayat Service are Government Servants.

2. The right to pension (and) therefore the related matter of definition of qualifying service for the purpose of pension, is a matter of Central Rules under Article 311. We, therefore, asked the Learned Counsel for the applicant, to show us the specific rule under which the

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counting of the Municipal Council Service is allowed as qualifying service. While the applicant has quoted the Government of India, Department of Personnel Orders dated 31.03.1982, which indicate that the State Government Service could be counted for pension under the Central Government, the further step of showing that the service under the Municipal Council is service under State Government, could not be established by the applicant. No doubt, he has relied on the Government of Maharashtra Resolution dated 19.07.1993 which shows that the Government of Maharashtra has entered into reciprocal arrangement for counting of service of its employees, but this relates to only the State Government and the Autonomous Bodies under the State Government. The applicant has not been able to show to us that the Government Resolution dated 19.07.1993 extends also to a Local Body, which evidently, the Municipal Council is. In this connection, we are unable to attach importance to the contention of the applicant that the Local Body is a State within the meaning of Article 12. There, the reference to State is in the context of State as a juridical public body amenable to Court Jurisdiction. But this meaning of State is quite distinct from State as a Constituent Unit of Union of India like Maharashtra, Kerala, Gujarat, etc. The fact that the Municipal Council had chosen to adopt Maharashtra Civil Service Rules as its bye-laws, only shows that the Municipal employees will be governed by the same rules, as the Maharashtra Government employees. It does not convert the Municipal employees into Maharashtra Government employees. The fact that the lien of the service was kept in the Municipal Council, has also no significance in this connection. The fact that the employees of Amravati Municipal Council were directed to be absorbed by an Order of Nagpur Bench of the Bombay High Court, does not tell us anything

about the status of the Amravati Municipal employees as Government servants nor has the applicant cared to enclose a copy of the order. We are, therefore, left with case law. So far as the Kerala Judgement is concerned, that was a judgement in which Kerala Municipal Common Service Rules ~~was~~ fell to be interpreted. Whatever might have been said about the employees governed by the Municipal Common Service Rules ^{in Kerala} does not lead to any conclusion regarding employees of Tumsar Municipal Council as State Government employees. Lastly, in the Supreme Court judgement quoted by the Counsel for the applicant, the Supreme Court itself has observed that it is neither politic nor possible to lay down any definitive test to determine when a person may be said to hold a civil post under the Government. The Supreme Court was led to hold regarding members of Gujarat Panchayat Service being Government servants because of the ^{demonstrated} possibility of allocation to Panchayat Service from a State Service and vice-versa. We are not being shown that such a situation exists in the case of Municipal Councils of Maharashtra and in particular, that the employees of the Tumsar Municipal Council were liable to transfer to Government of Maharashtra and vice-versa.

3. In view of this discussions, we hold the application as devoid of merits and we are, therefore, disposing of the same, by passing the following order :

ORDER

O.A. is dismissed. No order as to cost.

M. R. Kolhatkar
 (M. R. KOLHATKAR)
 MEMBER (A).

M. S. Deshpande
 (M. S. DESHPANDE)
 VICE-CHAIRMAN.

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Review Petition No.47/95
Original Application No. 255/92.
Transfer Application No.

Date of Decision : 31-3.1995

Shri Nanaji Vithoba Hingurkar.

Petitioner

Advocate for the
Petitioners

Versus

Union of India & Ors.

Respondents

Advocate for the
respondents

C O R A M :

The Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,

The Hon'ble Shri M.R.Kolhatkar, Member(A).

- (1) To be referred to the Reporter or not ? X
- (2) Whether it needs to be circulated to X
other Benches of the Tribunal?

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A).

(13)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, BOMBAY.

Review Petition No.47/95
in
Original Application No.255/92.

Shri Nanaji Vithoba Hingurkar. ... Applicant
V/s.

Union of India & Ors. ... Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,
Hon'ble Shri M.R.Kolhatkar, Member(A).

ORDER ON REVIEW PETITION BY CIRCULATION

{Per Shri M.R.Kolhatkar, Member(A)} Dt. 31/3/1995.

This is a review petition against our Judgment dt. 15.12.1994 by which we had dismissed the relief claimed by the applicant to count his service in Tumsar Municipal Council for the purposes of pension in a Central Government department. Several grounds for review have been urged, the majority of which are repetition of grounds taken in the O.A. which we have already considered. The applicant, however, has relied on following additional case law in support of his case which we considered ^{on the} ^{footing that} he could not cite ^{them earlier} even after due diligence. In T.S. Thiruvengadam V/s. Union of India (1993) 24 ATC 102), The issue involved was ^{whether} ~~that~~ the revised benefits ^{were} ~~under~~ pension scheme ^{to} be made available to only those who were absorbed in public undertakings after a particular date. The Court held that the denial of the revised benefits to those who were absorbed prior to that date violates Articles 14 and 16 of the Constitution. This case does not help the applicant as it does not say anything regarding service in a local body being service in Central Government. The next case cited is R.L.Marwaha V/s. UOI & Ors. (I(1988) ATLT (SC)(SN) 48). In that case it was

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held that ^{the} petitioner who was an employee of an autonomous body established under the auspices of Central Government was entitled to get benefit of period of service rendered by him in a pensionable post under Central Government prior to his service being absorbed in autonomous body for computing qualifying service for purpose of pension. This case again does not help the applicant. The next case cited is Hanumansingh Laxmansingh Thakur V/s. Municipal Council, Malkapur & Ors. (1989 Mh.L.J. 511). This was a case in which it was held that the age of retirement of a Teacher in Municipal Council will be 60 years ~~contrary~~ in spite of a Bye-law to the contrary providing 58 years as the age of retirement. It was held that the Municipal Council being State within the meaning of Article 12 of the Constitution ^{was} amenable to writ jurisdiction. This case also does not help the applicant as we have already considered the matter and pointed out that the definition of State in Article 12 has nothing to do with treating employment under local body as employment under the State Government.

2. We are of the view, therefore, that the Review Petition has no merit, which is liable to be dismissed. We are, ^{particularly} ~~therefore~~, of the view that the Review Petitioner has made out no case for review of our Judgment in terms of rules under Order 47 of CPC and ^{as such} ~~the same~~ is liable to be dismissed, which we accordingly dismiss. There will be no orders as to costs.

M.R. Kolhatkar
(M.R. KOLHATKAR)
MEMBER (A)

M.S. Deshpande
(M.S. DESHPANDE)
VICE-CHAIRMAN