

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Application No.252 of 2005

Date of Decision 13 .9. 2006.

B.N.Singh

-Applicant

Shri Vivek Agarwal

On behalf of Shri K.S.Chouhan

Advocate for the applicant

VERSUS

Union of India and others

- Respondents

Shri S.K.Mishra

-Advocate for the respondent no.1

Coram:

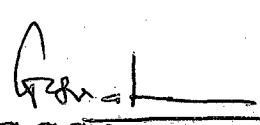
Hon'ble Dr.G.C.Srivastava,Vice Chairman(A)

Hon'ble Shri A.K.Gaur, Judicial Member

1. Whether Reporters of local papers may be allowed to see the order? - Yes / ~~No~~

2. To be referred to the Reporter or Not? Yes / ~~No~~

3. Whether it needs to be sent to the Principal Bench for circulation to other Benches of the Tribunal ? Yes / ~~No~~


Dr.G.C.Srivastava)
Vice Chairman

(P)

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Application No.252 of 2005

Jabalpur this the 13th day of September, 2006.

Hon'ble Dr.G.C.Srivastava,Vice Chairman
Hon'ble Shri A.K.Gaur, Judicial Member

B.N.Singh S/o late Ram Bahadur Singh, Aged about 68 years, Retired IAS Officer from the post of Additional Secretary, Government of Madhya Pradesh, Mantralaya, Vallabh Bhawan, Bhopal R/o E-3/HIG-1, Habibganj Naka, Arera Colony, Bhopal 462 016

-Applicant

(By Advocate – Shri Vivek Agarwal on behalf of Shri K.S.Chouhan)

V E R S U S

1. Union of India Through: The Secretary, Govt. of India, Ministry of Personnel, Public Grievances & Pension (Department of Personnel & Training), Lok Nayak Bhawan, Khan Market, North Block, New Delhi.

2. State of Madhya Pradesh, Through: The Secretary, Govt. of Madhya Pradesh, General Administration Department, Mantralaya, Bhopal (M.P.).

3. The Secretary, Government of M.P., Department of Cooperative Societies, Mantralaya, Bhopal.

-Respondents

(By Advocate – Shri S.K.Mishra for respondent no.1
None for other respondents.)

O R D E R

By Dr.G.C.Srivastava,VC.-

Through this Original Application, the applicant, a retired IAS officer, has challenged the decision taken by the Ministry of Personnel, Public Grievances and Pension vide letter dated 9th July,

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2004 (annexure A/1) rejecting inter alia the request of the applicant for counting of his services as lecturer in Shyam Sunder Agrawal (for short 'SSA') College for the period from 26.7.1962 to 3.10.1963 as qualifying service for pension. The applicant has prayed for the following main relief:

"8.1.1. That the period (from 26-7-1962 to 3-10-1963) be allowed to be counted as qualifying service for pension."

2. The case of the applicant is that he was appointed as Statistical Assistant (Executive) in the Government of Madhya Pradesh on 25.1.1961, but subsequently resigned this position to join a private college, namely, SSA College, Sehora, Jabalpur as lecturer. He worked as lecturer from 26.7.1962 to 3.10.1963, after which he again resigned to join Government of Madhya Pradesh as Assistant Registrar, Cooperative Societies on 4.10.1963 on selection through the State Public Service Commission. Thereafter, he was selected for induction in the Indian Administrative Service in 1988. In 1998, the applicant made an application to the Department of Cooperation, Govt. of M.P. for adding his services from 26.7.1962 to 3.10.1963 to the qualifying service for retiral benefits on the ground that during this period he had worked in SSA College, which was subsequently taken over by the Government of Madhya Pradesh, and as per provisions of the Madhya Pradesh Education Services (Collegiate Branch) Recruitment Rules, 1967, as amended retrospectively with effect from 1.1.1971, the teaching staff of non-governmental colleges, which were taken over by the Government, were allowed to count their services rendered in these colleges for the purposes of pension. This request was acceded to and an order was issued in April/May, 2000 (annexure A/4) permitting addition of this period to the qualifying service. Subsequently, however, this order was cancelled in November, 2001 (annexure A/5) on the ground that the request of the applicant could not have been considered by the co-

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operative department, as the applicant had been inducted in one of the all India services. Thereafter, the applicant submitted a representation to the State Government and subsequently to the Ministry of Personnel, Public Grievances & Pension, Govt. of India, for including the aforesaid period in the qualifying service. This request was rejected by the Ministry of Personnel, Public Grievances and Pension on 17/18.12.2003 (enclosure to annexure A/7) and thereafter on 9.7.2004 (annexure A/1), which is the impugned order.

3. The contention of the applicant is that in a similar case relating to one **Dr D.C.Jain**, the services rendered in a private college, which was subsequently taken over by the Government, were counted as qualifying service through the order passed by the Government of Madhya Pradesh on 22.9.2004 (annexure A/3) at the intervention of the Hon'ble High Court in Writ Petition No.13442/2003 (annexure A/2).

4. Opposing the prayer of the applicant, the respondents submitted in their written reply that the decision of the Hon'ble High Court of Madhya Pradesh in D.C.Jain's case (supra) is not applicable to the applicant as the applicant was an IAS officer and counting of qualifying service in his case was to be done under rule 8 of the All India Services (Death-Cum-Retirement Benefits) Rules, 1958 (hereinafter referred to as 'the DCRB Rules'). Rule 8(2) of the DCRB Rules provides as follows:

"Any period of service under the Central or a State Government rendered by a member of the Service prior to his appointment to the Service shall count as qualifying service under these rules to the extent to which such service would have counted as qualifying service for pension under the rules applicable to him prior to his appointment to the Service provided that the service is otherwise continuous.

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Provided that temporary or officiating service, followed without interruption by confirmation in the same or another post, shall count in full as qualifying service except in respect of periods of temporary or officiating service in non-pensionable establishment”.

It was averred that since SSA College was a private college, services rendered in that college cannot be treated as service rendered under the State Government or the Central Government. It was further stated that after taking over by the State Government, the said college became an autonomous body under the State Government of Madhya Pradesh and not under the Central Government. Hence as per Rule 8(2-A) of the DCRB Rules, the services rendered in this college could not be counted towards qualifying services. Rule 8(2-A) of the DCRB Rules reads as follows:

“The period of service rendered under an autonomous body, wholly or substantially owned or controlled by the Central Government and taken over by it, by a member of the service who left the service of that body at any time prior to its take over by the Central Government and who later on joined Government Service with or without break, shall count as qualifying service for pension under these rules to the extent and subject to the conditions under which such service is counted as qualifying service for pension under the Central Civil Service (Pension) Rules, 1972 or under any orders issued by the Central Government in this behalf”.

5. In his rejoinder, the applicant submitted that since the services rendered by the applicant in SSA College was before the applicant joining the State service and prior to his induction in the IAS, it is for the State Government to take a decision regarding counting of this service towards qualifying service and the Department of Co-operation, had rightly issued the order treating this period as a part of qualifying service. It was, therefore, submitted that the respondents had wrongly nullified the said order.

6. We have heard the arguments advanced by the learned counsel of parties and have also gone through the pleadings on record.

7. It is an admitted fact that the applicant had served in a private college, which was subsequently taken over by the Government of Madhya Pradesh and if he had continued as a State Government employee, this period would have been counted towards his qualifying service. The only reason why he has not been given this benefit is that he was subsequently inducted into the IAS. The Ministry of Personnel, Public Grievances & Pension, however, took a view in its letter dated 17.12.2003 (enclosure to annexure A-7) that "[S]ince your aforesaid services in a private college were not under the State Government, it cannot be counted as qualifying service for pension along with the IAS" on the ground that rule 8(2) of the DCRB Rules provides that "any period of service under the Central or a State Government rendered by a member of the Service prior to his appointment to the Service shall count as qualifying service under these rules to the extent to which such service would have counted as qualifying service for pension under the rules applicable to him prior to his appointment to the service provided that the service is otherwise continuous". Having taken shelter behind this rule, the Ministry of Personnel, Public Grievances & Pension, overlooked the fact that if the applicant would have continued in the State Service, he would have got the benefit of the services rendered in the private college on the analogy of D.C.Jain's case (supra). It was in fact on this analogy that the Department of Cooperat^on, Govt. of M.P. had issued the order in April-May, 2000 (annexure A/4) permitting counting of this period in the qualifying service. We fail to understand as to why the fact that he was subsequently inducted in the IAS would render him ineligible for this benefit. Rule 8(2) ibid clearly says that if any period of service would have counted as qualifying

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service for pension under the State Service, this will also count as a qualifying service even after appointment to the IAS. Undisputedly as Assistant Registrar of the Co-operative Societies, the applicant was eligible to count this service in SSA College, as a part of his qualifying service. Hence, it would be illegal to deprive him of this benefit after induction in the IAS.

8. The argument of the learned counsel for the respondents that the SSA College having been converted into an autonomous body under the State Government and not under the Central Government, he cannot get the benefit of this service being an IAS officer. This argument is self evidently fallacious, because this would have mattered, if the applicant would not have been under the State Government before induction in the IAS. The applicant sought for counting of his service in this college (which admittedly came under the State Government) because of his subsequent appointment within the State Government. In fact, on the analogy of the argument advanced by the learned counsel for the respondent, the services rendered by the applicant in an autonomous body under the State Government should be counted towards qualifying service in addition to the service rendered directly under the State Government.

9. In view of the aforesaid discussion, we are firmly of the view that the Ministry of Personnel, Public Grievances and Pension has wrongly rejected the request of the applicant for counting the period spent by him as lecturer in SSA College from 26.7.1962 to 3.10.1963 towards qualifying service for pension. This decision of the respondents is legally untenable and is liable to be quashed. We accordingly quash and set aside this decision.

10. In the result, this Original Application is allowed. The respondents are directed that in conformity with the order passed

by the Department of Cooperation vide letter no.F-1(A)38/98/15-II dated 28.4.2005/26.5.2005(annexure A/4) the services rendered by the applicant in SSA College from 26.7.1962 to 3.10.1963 be added to his qualifying service for the purpose of pension and retiral benefits. No costs.

(A.K. Gaur)
Judicial Member

(Dr. G.C. Srivastava)
Vice Chairman

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पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....
पतिनिधि अवधिगत -
(1) सचिव, उच्च न्यायालय नगर एसोसिएशन, जबलपुर
(2) आदेशक श्री/श्री.मती/शु.....के काउंसल
(3) प्रवर्ती श्री/श्री.मती/शु.....के काउंसल
(4) वंशपाल, को.प्र.अ., जबलपुर न्यायाधीश
सूचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार

Vikram Agrawal Adv
Bhopal
S.K. Mishra Adv
Jagdish K. Agrawal
Adv. Adv. Adv.
Adv.

ISSUED
ON 14.9.06
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