

High Court Of himachal Pradesh

Judgment Date:

03-05-2010

Milap Chand

..Petitioner

The State Of H.p. And Ors.

..Respondent

Bench:

{ HON'BLE JUSTICE V.K. SHARMA }

Citation:

(2010) 2 HIMLR 827 ; LQ/HimHC/2010/690 ;

V.K. Sharma, J.

1. Some undisputed facts giving rise to the present petition may be noticed thus:

The petitioner, who had earlier rendered military service for about five years, was on retirement from the said service re-employed in a civil service under the respondents, particularly respondent No. 2, the Deputy Commissioner, Kangra at Dharamshala, as a clerk on 07.03.1970. He was confirmed as such vide an order dated 15.02.1980, Annexure A-4. Thus, apart from the aforesaid military service of approximately five years, he after rendering 30 years civil service, ultimately retired on 31.03.2001.

2. Against the above backdrop, he is seeking benefit of Rule 19 of the CCS Pension Rules by way of counting the aforesaid military service for the purpose of pension. It is also not in dispute that since the military service was of short tenure, he was not granted any pension for the same. Sub Rules (1) and (2)(a) of Rule 19 ibid alone are relevant for the present controversy and as such are extracted below for ready reference:

19.

(1) A Government servant who is re-employed in a civil service or post before attaining the age of superannuation and who, before such re-employment, had rendered military service after attaining the age of eighteen years, may, on his confirmation in a civil service or post, opt either--

(a) to continue to draw the military pension or retain gratuity received on discharge from military service, in which case his former military services shall not count as qualifying service; or

(b) to cease to draw his pension and refund--

(i) the pension already drawn, and

(ii) the value received for the commutation of a part of military pension, and

(iii) the amount of [retirement gratuity] including service gratuity, if any,

and count previous military service as qualifying service, in which case the service so allowed to count shall be restricted to a service within or outside the employee's unit or department in India or elsewhere which is paid from the Consolidated Fund of India or for which pensionary contribution has been received by the Government: Provided that--

(i) the pension drawn prior to the date of re-employment shall not be required to be refunded,

(ii) the element of pension which was ignored for fixation of his pay including the element of pension which was not taken into account for fixation of pay on re-employment shall be refunded by him.

(iii) the element of pension equivalent of gratuity including the element of commuted part of pension, if any, which was taken into account for fixation of pay shall be set off against the amount of [retirement gratuity] and the commuted value of pension and the balance, if any, shall be refunded by him.

Explanation-- In this clause, the expression "which was taken into account" means the amount of pension including the pension equivalent of gratuity by which the pay of the Government servant was reduced on initial re-employment, and the expression "which was not taken into account" shall be construed accordingly.

(2) (a) The authority issuing the order of substantive appointment to a civil service or post as is referred to in Sub-rule (1) shall along with such order require in writing the Government servant to exercise the option under that Sub-rule within three months of date of issue of such order, if he is on leave on that day, within three months of his return from leave, whichever is later and also bring to his notice the provisions of Clause (b).

3. The precise grievance raised by the petitioner is that the requisite option in terms of Sub Rule 2(a) of Rule 19 ibid was not obtained from him by the respondents. Such option was required to be obtained so as to ascertain whether the petitioner wanted the past military service rendered by him counted for the purpose of pension payable under the civil service or not. Taking into consideration the facts and circumstances of the case, no fault can be found against him in this regard.

4. In view of the above, the prayer of the petitioner for counting the aforesaid military service rendered by him for a period of about five years, is ordered to be counted towards pension, meaning thereby that in addition to the aforesaid 31 years of civil service the military service of about five years rendered by the petitioner shall also be liable to be taken into consideration for the purpose of grant of pension for the civil service under Rule 49(2)(a) of the Rules ibid.

5. In view of the above, the petition is allowed and the respondents are directed to re-process the pension case of the petitioner in terms of this judgment and pay the consequential financial benefits to him within a period of three months from today.

6. The petition stands disposed of in the above terms. Pending CMP, if any, shall also stand disposed of as infructuous.