Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELALTE JURISDICTION

CIVIL APPEAL No. 1892 OF 2015
(ARISING OUT OF SLP(C) No. 21865/2014)

State of Madhya Pradesh & Others Appellant(s)

VERSUS

Hitkishore Goswami Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1. Leave granted.

2. This appeal is filed by the State of M.P. against the judgment/order dated 09.10.2013 passed by the High Court of M.P. in W.A. No.478 of 2013 which arise out of judgment/order dated 05.07.2013 passed by the Writ Court in W.P. No.1475/2009 (S).

3. By impugned judgment, the Division Bench of

the High Court dismissed the appeal filed by the State (appellant herein) and upheld the order of the Writ Court (learned Single Judge) which allowed the respondent's writ petition by issuing directions in the nature of mandamus against the appellant (State) in relation to respondent's pension case.

4. The question, which arises for consideration in this appeal is whether the Courts below were justified in allowing the respondent's writ petition and in consequence justified in issuing directions in the nature of writ of mandamus in relation to respondent's pension case.

5. Facts of the case lie in a narrow compass. They, however, need mention, which are taken from the list of dates and the pleadings of the parties infra.

6. The respondent was appointed as Lecturer (Botany) on 02.07.1963 in the School Education Department of the State. He was posted in the Government Higher Secondary School at Kannod, District

Dewas and later transferred to another Government Higher Secondary School at Agar (Malba).

7. In the year 1965, the respondent applied for the post of Lecturer in the Government Degree College, Narsinghgarh pursuant to the advertisement issued by the M.P. Public Service Commission (for short MPSC). The respondent was selected for the said post. He, therefore, tendered his resignation in December, 1965 from the post of lecturer to enable him to join the new service. The respondent's resignation was accepted.

8. The respondent, accordingly, on 03.01.1966 joined on the post of Lecturer in the Government Degree College, Narsinghgarh and worked till 30.04.1976. He was then sent on deputation as Reader on selection at Barkatulla University, Bhopal. The respondent continued to work there when his services were absorbed permanently on 29.08.1979 with effect from 01.05.1978. The respondent attained the age of superannuation and, accordingly, retired from the services on 31.5.2004.

9. The respondent then applied for assessing his pension and payment of gratuity (annexure-P-1) to the concerned authorities. In Column No. 7 of the Form, he mentioned the date of beginning of his service as **"3rd January 1966"**. However, later, the respondent joined an issue with the State that while calculating his pensionery benefits, the past period of his services, which he rendered as lecturer in the government schools from "**02.07.1963 to 02.01.1966"**, should also be counted. The State did not accept the prayer made by the respondent.

10. This gave rise to filing of the writ petition by the respondent against the State for determination of the question as to whether he was entitled to take benefit of his past services from **02.07.1963 to 02.01.1966** so as to include the said period in his total length of services for counting qualifying services to fix his pension and other retiral benefits payable to him.

11. The State contested the respondent's writ

petition on two grounds. In the first place it was contended that the claim made by the respondent is inordinately delayed and hence the writ petition was liable to be dismissed on the ground of delay and laches. The second ground was that since the respondent had voluntarily resigned from earlier services to enable him to join the new post of Lectureship in the Government Degree College and his resignation having been accepted by the State, he was not entitled to claim any benefit of earlier services for counting his qualifying services for fixing his pension and payment of other retiral benefits.

12. The Writ Court, by order dated 05.07.2013, did not accept the grounds taken by the State and, while allowing the respondent's writ petition, issued the following directions against the State:

> **"(i) The respondents shall count the services rendered by the petitioner from July 1963 to 3.1.1966 for the purpose of qualifying services for counting pension, gratuity and other retrial dues.**
>
> **(ii) While refixing and revising the pension and retrial dues the**

respondents shall consider whether petitioner is entitled for any benefit as per the circulars issued by the State Government, Annexure P-12 (cumulative).

(iii) The aforesaid exercise be positively completed within 60 days and revised pension and consequential benefits arising there to be paid to the petitioner within the aforesaid time. If it is not done within the aforesaid period, it will carry 6% interest till the date of actual payment."

13. The State felt aggrieved filed intra court appeal. By impugned order, the Division Bench dismissed the appeal and upheld the directions issued by the Writ Court. It is against this order; the State felt aggrieved and has filed this appeal, by special leave.

14. Learned Counsel for the appellant (State) while assailing the legality and correctness of the impugned order reiterated the same grounds as were urged before the courts below and made two-fold submissions. In the first place, he contended that the courts below erred in entertaining and eventually allowing the respondent's writ petition by issuing the

impugned directions. It was his submission that once the respondent voluntarily tendered his resignation from his earlier service, which on its acceptance, enabled him to join the new service as Lecturer in the Government Degree College, the period spent in past services was not available for being counted nor it could be a part of the qualifying service while fixing his pension. In other words, the submission was that acceptance of respondent's resignation by the State (competent authority) resulted in severance of his relationship with the State so far as that particular service/employment was concerned because it brought to an end the said services/employment for all purposes. It was for this reason the learned counsel for the State urged that the period spent in such services was not available to the respondent while counting the qualifying service for fixing his pension. This submission urged by the learned counsel was not decided by the High Court in its proper perspective. His second

submission was that when the respondent himself mentioned in his Pension Form (Annexure-P-1) that his date of beginning in the service for assessing the pension was **"03.01.1966"**, then in such circumstances he had no right to turn around and request the State to count his services rendered prior to **03.01.1966**.

15. In contra, learned counsel for the respondent supported the impugned order and contended that no case is made out to interfere with the impugned order and hence, the same should be upheld by dismissing the appeal.

16. Having heard the learned counsel for the parties and on perusal of the record of the case, we find force in the submissions of the learned counsel for the State.

17. In our considered opinion, the respondent was not entitled to claim the benefit of his past services which he rendered from **"02.07.1963 to 02.01.1966**" as Lecturer in the Government Schools

while determining his qualifying service for fixing his pension etc.

18. It was for the reason that respondent having voluntarily tendered his resignation from the said service without there being any condition much less a condition to enable him to claim any kind of its benefit in the event of his joining other services with the State, no benefit of such past services was available to the respondent.

19. In our considered opinion, the effect of tendering the resignation by the respondent - may be for any reason was that the relationship between the parties insofar as that particular employment was concerned got severed for all purposes leaving no benefit to remain in respondent's favour. It had no connection with respondent's subsequent employment which began from **"03.01.1966"**.

20. Indeed, in order to claim continuity in the service for claiming any benefit arising therefrom, it

was necessary for the respondent to have shown any specific rule or condition recognizing such right in his favour. The respondent, however, was not able to show any such rule or/and condition in his favour.

21. It is a trite law that a right to claim pension is governed by the statue. An employee has, therefore, no right to claim any benefit in relation to pension dehores the statute.

22. Learned counsel for the respondent, however, vehemently urged that keeping in view the respondent's unblemished service record with the State, it can safely be taken that there was no break in the service, which entitled the respondent to claim benefits flowing from his past and present services including its continuity qua State.

23. We find no merit in this submission in the light of our finding recorded in the preceding paragraph.

24. In the light of foregoing discussion, we are of

the considered opinion that the courts below erred in directing the State to give benefit to the respondent of his services which he had rendered from "**02.07.1963 to 02.01.1966"** for fixing his pension without properly examining the effect of his tendering resignation on the issue raised in the writ petition.

25. In our opinion, the respondent was, therefore, entitled to get the benefit of his services rendered from **"03.01.1966"** onwards as mentioned by him in the Form (Annexure- P-1) for assessing his pension, gratuity and other retiral benefits etc.

26. Since we have dismissed the respondent's writ petition on merits hence, it is not necessary to deal with another question in relation to delay and laches in filing the writ petition raised by the appellant (State) which was decided by the courts below in respondent's favour. In any event, we are inclined to uphold the finding of courts below on this issue and, accordingly, hold that writ petition was not liable for dismissal on

the ground of delay and laches on the part of respondent.

27. In view of foregoing discussion, we allow the appeal, set aside the impugned judgment and orders and in consequence dismiss the writ petition filed by the respondent.

28. We direct the appellant (State) to finalize the claim of the respondent for fixing his pension and other retiral benefits in the light of what is held above, as per rules, and pay the same to the respondent within three months from the date of this judgment. No costs.

.....J.
[FAKKIR MOHAMED IBRAHIM KALIFULLA]

.....
.....J.
[ABHAY MANOHAR SAPRE]

New Delhi;
February 16, 2015.