

GAHC010234252022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/7416/2022

ASHOK SINGH
S/O- LT. SHANKAR SINGH,
R/O- VILL- HARIVALLABHPUR,
P.O.- LAMAHI, VARANASHI,
UTTAR PRADESH,
PIN- 221007.

VERSUS

UNION OF INDIA AND 4 ORS
REPRESENTED BY THE SECRETARY,
MINISTRY OF HOME AFFAIRS,
NEW DELHI- 110001.

2:TEZPUR UNIVERSITY
NAPAAM
TEZPUR

PIN- 784028
SONITPUR

ASSAM.

3:VICE-CHANCELLOR
TEZPUR UNIVERSITY
NAPAAM
TEZPUR

PIN- 784028
SONITPUR

ASSAM.

4:CHAIRMAN OF THE TEZPUR UNIVERSITY MANAGEMENT BOARD
NAPAAM
TEZPUR
PIN- 784028

SONITPUR
ASSAM.

5:REGISTRAR
TEZPUR UNIVERSTIY
NAPAAM
TEZPUR
ASSAM

PIN- 784028
ASSAM

Advocate for the Petitioner : MR. D P CHALIHA
Advocate for the Respondent : DY.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 09.01.2024

Heard Mr. D. P. Chaliha, learned senior counsel assisted by Ms. M. Roy, learned counsel for the petitioner. Also heard Mr. K. Gogoi, learned CGC appears for respondents.

2. The petitioner while serving as an Assistant Registrar in the Indian School of Mines at Dhanbad, in response to Advertisement No. F.13/1/1/97 dated 09/03/1999, issued by the Tezpur University advertising for the post of Deputy Registrar, the petitioner applied for and was selected for appointment as Deputy Registrar. He joined the Tezpur University on 30.06.2000 after his release from his earlier service, namely, the Indian School of Mines at Dhanbad on 27.06.2000. The petitioner was put on probation initially from the date of his

joining and subsequently confirmed in his post. Prior to his services in the Indian School of Mines at Dhanbad, the petitioner served in the office of the Accountant General, Uttar Pradesh from 16.11.1981 to 25.08.1993 and thereafter, in the geological survey of India from 26.08.1993 to 15.07.1994. These organizations being Government of India organizations, the petitioner thus had rendered his services as Central Government employee.

3. Pursuant to his confirmation as Deputy Registrar in the Tezpur University, petitioner sought for transfer of his pre retirement benefits from the previous employer so that the said service can be counted for combining pension and other admissible benefits under the Government of India Pension Rules of 1972. During his service as Deputy Registrar at Tezpur University, pursuant to an advertisement issued by the North East Regional Institute of Science and Technology, Nirjuli, Itanagar, Arunachal Pradesh, petitioner applied for the post of Registrar at North East Regional Institute of Science and Technology, Nirjuli, Itanagar, Arunachal Pradesh. Petitioner was thereafter selected for appointment as Registrar, North East Regional Institute of Science and Technology, Nirjuli, Itanagar, Arunachal Pradesh. Pursuant to his selection as Registrar, North East Regional Institute of Science and Technology, Nirjuli, Itanagar, Arunachal Pradesh, petitioner applied for a lien of two years with extraordinary leave to enable him to join in his new appointment. However, he was granted extraordinary leave with lien with effect from 15.02.2006 for a period of one year only. The said period of extraordinary leave was subsequently extended for a period of three months. The petitioner was finally released by the Tezpur University from service on 14.05.2007 as he intended to continue in his service as Registrar, North East Regional Institute of Science and Technology, Nirjuli, Itanagar, Arunachal Pradesh. Petitioner therefore, submitted 'Technical

Resignation' under FR-22 read with para 26 (2) of CCS, Pension Rule, 1972 with effect from 14.05.2007. The said order was approved by the Vice Chancellor, Tezpur University. In terms of the said order, it was stated that the benefit of counting of past service at Tezpur University for retirement benefits is admissible to the petitioner under the Rule as stated above. During his service at North East Regional Institute of Science and Technology, Nirjuli, Itanagar, Arunachal Pradesh for the period the petitioner was on lien from 15.02.2006 to 14.05.2007, the North East Regional Institute of Science and Technology, Nirjuli, Itanagar, Arunachal Pradesh, remitted the amounts in favour of the Tezpur University with regard to the leave request, gratuity and pension contribution in favour of the petitioner pertaining to the lien period and the said amounts have been duly deposited in the account maintained by the Tezpur University.

4. The petitioner also intimated the Tezpur University that since the North East Regional Institute of Science and Technology, Nirjuli, Itanagar, Arunachal Pradesh does not have pension-cum-gratuity scheme and it only has CPF-cum-gratuity scheme, as such under the provisions of the retirement benefit Rules, he opted for pension-cum-gratuity from Tezpur University in full and thereafter started service at North East Regional Institute of Science and Technology, Nirjuli, Itanagar, Arunachal Pradesh afresh.

5. It is stated that the petitioner has completed about 25 years of service under the Central Government and autonomous bodies under the Central Government and he is therefore entitled to full pension under the CCS pension Rules, 1972. It is submitted by the petitioner that pro-rata pension amounting to Rs.5,79,752/- was issued by the Indian Institute of Technology (Indian School of Mines, Dhanbad) by communication address to the Registrar, Tezpur University. However, the Tezpur University authorities failed to release the pensionary

benefits and instead intimated the petitioner that his pensionary benefits with pro-rata benefits for the length of service rendered under Tezpur University will be transferred to North East Regional Institute of Science and Technology, Nirjuli, Itanagar, Arunachal Pradesh on its acceptance. This was communicated by letter dated 15.03.2021. The representations addressed by the petitioner to the Vice-chancellor-cum-chairman of the Tezpur University Management Board ventilating his grievances had remained pending and was not disposed of. Having no alternative, the petitioner has approached his court.

6. Mr. K. Gogoi, learned CGC appears for respondent, Tezpur University. It is submitted that the Tezpur University has already filed its counter affidavit. It is the case of the respondents that the petitioner had applied for the post of Registrar at North East Regional Institute of Science and Technology, Nirjuli, Itanagar, Arunachal Pradesh in pursuance to the advertisement for the post of Registrar on his own volition. He was granted lien to join the post of Registrar, at North East Regional Institute of Science and Technology, Nirjuli, Itanagar, Arunachal Pradesh. The said lien was subsequently relinquished by the petitioner by submitting 'technical resignation'. Since he had submitted 'Technical resignation', the Tezpur University is required to grant pro-rata pensionary benefit to the petitioner and submit the same to North East Regional Institute of Science and Technology, Nirjuli, Itanagar, Arunachal Pradesh as per relevant rules of the Government of India. It is further submitted on behalf of the respondents that inspite of rendering 18 years of service by the petitioner at Indian School of Mines, Dhanbad, monthly pension and retirement gratuity to the petitioner was not granted by Indian School of Mines, Dhanbad. Rather they had also granted pro-rata pension as the petitioner had submitted 'technical resignation' in Indian School of Mines, Dhanbad also pursuant to his selection

and appointment in Tezpur University as Deputy Registrar. The respondents submit that there is no doubt the petitioner is entitled to pension but the same will have to be adjudicated on a pro-rata basis and transferred to North East Regional Institute of Science and Technology, Nirjuli, Itanagar, Arunachal Pradesh for being paid to the petitioner. Such steps have already been initiated by the Tezpur University and therefore, the claim of the petitioner made in the writ petition is not maintainable and the same should therefore be dismissed as being devoid of merit.

7. The writ petitioner reiterated his contentions and claims while disputing the contentions of the respondent authority by filing a rejoinder affidavit in response to the counter affidavit filed by the respondents. The Respondent department has pressed into service judgment of the Division bench of Delhi High Court rendered in *Subhash Chander Garg –Vs- Govt. of NCT of Delhi and Others* reported in *IndLawLib/799263*.

8. Learned counsels for the parties have been heard. Pleadings on record have been carefully perused. The Office Memorandum dated 29th of August, 1984 enclosed to the counter affidavit filed by the Tezpur University is relevant for the purposes of this case. This Office Memorandum is issued by the Government of India Ministry of Home Affairs regarding mobility of personnel between Central Government departments and autonomous bodies—counting of service for pension. Clause 3 of the said Office Memorandum which is relevant for the present proceedings is extracted below for convenience:-

“3. This matter has been considered carefully and the President has now been pleased to decide that the case of Central Government employees going over to a Central autonomous body or vice-versa and employees of the Central autonomous body moving to another Central autonomous body may be

regulated as per the following provisions:-

(a) In case of Autonomous Bodies where Pension Scheme is in operation.

(i) Where a Central Government employee borne on pensionable establishment is allowed to be absorbed in an autonomous body, the services rendered by him under the Government shall be allowed to be counted towards pension under the autonomous body irrespective of whether the employee was temporary or permanent in Government. The pensionary benefits will, however, accrue only if the temporary service is followed by confirmation. If he retires as a temporary employee in the autonomous body, he will get terminal benefits as are normally available to temporary employees under the Government. The same procedure will apply in the case of employee of the autonomous bodies who are permanently absorbed under the Central Government.

The Government/autonomous body will discharge its pension liability by paying in lumpsum as a one-time payment, the pro-rata pension/service gratuity/terminal gratuity and DCRG for the service upto the date of absorption in the autonomous body/Government, as the case may be. Lumpsum amount of the pro-rata pension will be determined with reference to commutation table laid down in CCS (Commutation of Pension) Rules, 1981, as amended from time to time.

(ii) A Central Government employee with CPF benefits on permanent absorption in an autonomous body will have the option either to receive CPF benefits which have accrued to him from the Government and start his service afresh in that body or choose to count service rendered in Government as qualifying service for pension in the autonomous body by foregoing Government's share of CPF contributions with interest, which

will be paid to the concerned autonomous body by the concerned Government Department. The option shall be exercised within one year from the date of absorption. If no option is exercised within stipulate period, employee shall be deemed to have opted to receive CPF benefits. The option once exercised shall be final.

(b) Autonomous body where the Pension Scheme is not in operation.

(i) A permanent Central Government employee borne on pensionable establishment, on absorption under such autonomous body will be eligible for pro-rata retirement benefits in accordance with the provisions of the Ministry of Finance O.M. No.26(18)EV(B)/75 dated the 8th April, 1976, as amended from time to time. In case of quasi-permanent or temporary employees, the terminal gratuity as may be admissible under the rules would be actually payable to the individual on the date when pro-rata retirement benefits to permanent employees become payable. However, in the case of absorption of a Government employee with CPF benefits, in such an autonomous organisation, the amount of his subscriptions and the Governments' contribution, if any, together with interest thereon shall be transferred to his new Provident Fund account with the consent of that body".

9. A careful perusal of the office memorandum referred above reveals that where pension scheme is in operation in autonomous bodies, the said autonomous body will discharge its pension liability by paying in lumpsum as a onetime payment for the service up to the date of absorption in the autonomous body, as the case may be.

10. After carefully perusing the judgment of the Delhi High Court, it is seen that the issue before the Delhi High Court was a challenge to the order passed by the jurisdictional CAT. The CAT had held on the facts of that case that the

petitioner, who was earlier rendering service in an autonomous body having CPF scheme prior to his joining the service under the government, his services under the same autonomous body cannot be counted for the purpose of pension under the government of NCT of Delhi and therefore, he cannot be allowed to join the Old Pension Scheme under the CCS pension Rules, 1974 but would be covered by the new restructured, defined and contributory pension scheme. This view was affirmed by the Delhi High Court.

11. We find that the issue before the Delhi High Court is different as compared to the issues raised in the present proceeding. The issue before the Delhi High Court was whether services rendered by the petitioner to an autonomous body can be counted for grant of pension after the petitioner subsequently joined the government of NCT, Delhi. However, in the facts of the present case, the issue raised here is whether the petitioner is entitled to draw full and final pension from Tezpur University or is the Tezpur university required to only pay the pro-rata pension to the petitioner as calculated by the Tezpur University.

12. In this context reference to Rule 37 of the CCS Pension Rules is also necessary. Under the Rule 37 of the CCS Pension Rules it is provided that any government servant who has been permitted to be absorbed in a service or a post in or under a corporation or company wholly or substantially owned or controlled by the Central Government or the State Government in or under a body controlled or financed by the Central Government or a State Government shall be deemed to have retired from service from the date of such absorption subject to sub-Section 3 and shall be eligible to receive pensionary benefits, if any, from such date as may be determined in accordance with the orders of the Central Government applicable to him.

13. The Rule 37 is also extracted below for convenience:-

“37. Pension on absorption in or under a corporation, company or body.

(1) A Government servant who has been permitted to be absorbed in a service or post in or under a Corporation or Company wholly or substantially owned or controlled by the Central Government or a State Government or in or under a Body controlled or financed by the Central Government or a State Government, shall be deemed to have retired from service from the date of such absorption and subject to sub-rule (3) he shall be eligible to receive retirement benefits if any, from such date as may be determined, in accordance with the orders of the Central Government applicable to him.

EXPLANATION.— Date of absorption shall be-

- (i) in case a Government employee joins a corporation or company or body on immediate absorption basis, the date on which he actually joins that corporation or company or body;*
- (ii) in case a Government employee initially joins a corporation or company or body on foreign service terms by retaining a lien under the Government, the date from which his unqualified resignation is accepted by the Government.*

(2) The provisions of sub-rule (1) shall also apply to Central Government servants who are permitted to be absorbed in joint sector undertakings, wholly under the joint control of Central Government and State Governments / Union Territory Administrations or under the joint control of two or more State Governments / Union Territory Administrations.

(3) Where there is a pension scheme in a body controlled or financed by the Central Government in which a Government servant is absorbed, he shall be entitled to exercise option either to count the Service rendered under the Central Government in that body for pension or to receive retirement benefits for the

service rendered under the Central Government in accordance with the orders issued by the Central Government.

EXPLANATION.- Body means Autonomous Body or Statutory Body”.

14. In this context it is relevant to refer to the Judgment of the Apex Court rendered in *T.S. Thiruvengadam Vs Secretary to Government of India, Ministry of Finance, Department of Expenditure, New Delhi and Others* reported in (1993) 2 SCC 174. In this matter, the Apex Court was confronted with the issue of date of applicability of an Office Memorandum issued by the Government of India, which provided for revised terms and conditions of the absorption in Central Public Sector undertakings but restricted this revised benefits only to those, who were absorbed on or after June, 16, 1967. The Appellant before the Apex Court was absorbed in a Central Public Sector undertaking prior to the cut of date and his claims for pension was rejected by the Government.

15. The Apex Court upon examination of the entire matter held that the revised memorandum is an incentive to attract Central Government employees to Public Sector undertakings but the persons who are so attracted do not become a different class and it was held that all Central Government employees, who were absorbed in public sector undertaking either before the cut of date of June, 16, 1967 of thereafter are entitled to the benefits under the memorandum of June, 16, 1967. While examining the issues involved, the Apex court interpreted the mandate of Rule 37 of CCS, Pension Rules.

16. The Apex Court held that under Rule 37, a Government servant who has been permitted to be absorbed in service in a Central government Public undertaking in public interest, be deemed to have retired from service from the date of such absorption and he shall be eligible to receive retirement benefits in accordance with the orders of the Government applicable to him.

17. A careful perusal of the Judgment read with the CCS Pension Rules discussed above clearly demonstrate that Government servants who are absorbed in government undertakings or autonomous bodies are deemed to have retired from service on the date of their absorption in those bodies or undertakings.

18. In the facts of the present case, the petitioner, who was a Government servant who had joined Tezpur University as a Deputy Registrar was given a lien for 1 year and extra ordinary leave pursuant to his selection and appointment to the post of Registrar, North East Regional Institute of Science and Technology, Nirjuli, Itanagar, Arunachal Pradesh. The petitioner's lien was not extended and thereafter he submitted 'technical resignation' and was absorbed in North East Regional Institute of Science and Technology, Nirjuli, Itanagar, Arunachal Pradesh upon being released by Tezpur University on 14.05.2007.

19. Prior to his tenure in the Tezpur University, he had worked for the Dhanbad School of Mines (now Indian Institute of Technology, Dhanbad as well as under the Accountant General, Uttar Pradesh. There is no quarrel that the petitioner was already a Government servant well prior to joining his services as Deputy Registrar in Tezpur University.

20. Under such circumstances, in terms of the provisions of Rule 37 since he satisfies the qualifying service, he would ordinarily have been entitled to all pensionary and retrial benefits had he superannuated from service of any Government Department. It is clearly prescribed under the Rule 37 that in the event any Government servant subsequently gets absorbed in any Government of India undertaking or autonomous body, the Government servant cannot be deprive of his pensionary benefits if he satisfies the qualifying service. Such pensionary benefits are therefore required to be released to the petitioner upon

his superannuation.

21. Under Rule 37 of the CCS Pension Rules upon subsequent absorption in the autonomous body, the government servant will be deemed to have retired on such date of his absorption. As such, the petitioner in terms of Rule 37 of the CCS Pension Rules was deemed to have retired on 15.02.2006.

22. His prior service rendered under the Central Government and the department of Accountant General, Dhanbad School of Mines (now Indian Institute of Technology, Dhanbad could not have been ignored and was rightly taken into account by the Tezpur University while calculating the pro-rata pension. As the North East Regional Institute of Science and Technology, Nirjuli, Itanagar, Arunachal Pradesh does not have any pension scheme, the pensionary benefits required to be paid to the petitioner will have to be paid by the Tezpur University.

23. Accordingly, this writ petition is disposed of directing the respondent, Tezpur University to release the pro-rate pension payable to the petitioner. In view of the findings of the Court as discussed above, the impugned order dated 15.03.2021 is set aside.

24. The Tezpur University will calculate the pensionary benefits payable to the petitioner and release him the said amount as expeditiously as possible within a outer limit of 60(sixty)days from the date of receipt of certified copy of this order.

25. Writ petition is disposed of in terms of the above. No order as to cost.

JUDGE

Comparing Assistant