

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.28216 of 2005

ORDER:

This writ petition is filed seeking the following relief:

“to issue an order, direction or writ more particularly one in the nature of Writ of Mandamus declaring the act of the 1st respondent not transferring the pro-rata pension of Rs.4,410/- for the services rendered between 8.9.1972 to 24.8.1977 by the petitioner is contrary to Supreme Court judgment, O.M.No.28/10/1984-Pension Unit dt.29.8.1984 of Ministry of Home Affairs, Government of India and OM.No.28/2/85-PW dt.28.2.1988 is illegal and arbitrary violates Article 14 and 19(1) (g) of the constitution of India and consequently direct the first respondent to transfer the pro-rata pension fund benefit amount of Rs.4,410/- to the second respondent for the service rendered between 8.9.1972 to 24.8.1977 with the first respondent and direct the second respondent to re-fix the pension having regard to the earlier service rendered by the petitioner with the first respondent and pass such further or other orders as this Honourable Court deems fit and proper in the circumstances of this case.”

Heard Si G.Sudha, learned counsel for the petitioner and Sri K.Lakshman, learned Assistant Solicitor General.

It has been contended by the petitioner that he was appointed as Superintendent E/M Grade in the Military Engineering Service in the office of the 1st respondent-Director General, Naval Project, Visakhapatnam, on 8.9.1972 and he worked in the said office up to 24.8.1977. While he was working in the office of the 1st

respondent, the 2nd respondent-Chairman had issued a notification and the petitioner had responded to the said notification and applied for the post of Assistant Executive Engineer, after obtaining 'no objection certificate' from the 1st respondent-Director General. The petitioner was selected to the post of Assistant Executive Engineer and joined in the 2nd respondent organization on 24.8.1997. The grievance of the petitioner is that the service rendered by him in the office of the 1st respondent is not being counted for the purpose of pensionary benefits. In those set of circumstances, the petitioner filed the present writ petition.

Learned counsel appearing for the petitioner had contended that the issue raised by the petitioner in this writ petition is squarely covered by the judgment rendered in *R.L. Marwaha v. Union of India*¹ wherein the Hon'ble Supreme Court held as follows:

"We, therefore, direct the respondents to revise the pension payable to the petitioner in accordance with the government order by giving him the benefit of the service rendered by him in the Central Government while computing his qualifying service for pension. We, however, make it clear that the petitioner is entitled to recover the difference between the pension which he is entitled to get in accordance with the government order and the pension which is already disbursed to him with effect from August 29, 1984, i.e. the date of the government order only and he is not entitled to get any relief in respect of the period prior to August 29, 1984."

Learned Assistant Solicitor General had contended that the service rendered by the petitioner is less than five years and the same cannot be counted for the purpose of pensionary benefits. Learned Assistant Solicitor General had further contended that the

¹ (1987) 4 Supreme Court Cases 31

office memorandum relied upon by the petitioner has no retrospective application as the petitioner had rendered service with the 1st respondent during 1972 to 1977. Learned Assistant Solicitor General further contended that the office Memorandums were issued on 29.8.1984 and 28.2.1988 and hence, these office memorandums have no application in the case of the petitioner and therefore, the writ petition is liable to be dismissed.

Considering the submissions made by both the parties, this Court is of the opinion that the principle had been adjudicated by the Hon'ble Supreme Court in the decision cited supra and, therefore, the same analogy has to be applied in the case of the petitioner and the petitioner is entitled for the service benefits rendered by him in the office of the 1st respondent.

Accordingly, the Writ Petition is disposed of directing the respondents to count the service rendered by the petitioner from 8.9.1972 to 24.8.1977 and revise the pensionary benefits and pay the difference, in accordance with rules, within a period of four weeks from the date of receipt of a copy of this order. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

Date: 05/ 10/ 20188

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