

14.07.2023
Item No. 200
Ct. No. 238
AKG

WPA 17932 of 2022
Gajendra Narayan Paria
Vs.
The Indian Institute of Technology (IIT), Kharagpur & Ors.

Mr. Goutam Kr. Das,
Mr. Dipanjan Datta,
Mr. Atanu Basu,
Mr. Indranuj Dutta

...for the Petitioner

Mr. R. N. Majumdar,
Mr. S. M. Obaidullah

...for I.I.T.

The petitioner was appointed by the Indian Institute of Technology, Kharagpur on February 9, 1982 as a Mechanic (Group “C”) for a project. Subsequently, he was appointed to the post of Senior Mechanic at the Indian Institute of Technology, Kharagpur as a regular employee with effect from April 19, 1991. The petitioner was granted financial upgradation as Senior Technician on completion of 12 years of service with effect from April 19, 2003 in the Pay Scale of Rs. 5500/- - 9000/-. Ultimately, the petitioner retired from the post of Junior Technical Superintendent on April 30, 2014.

After his retirement, the petitioner filed a writ petition before this Court alleging, inter alia, that while similarly circumstanced other employees had been given the benefit of their scheme/project service

in counting the total period of service under the Indian Institute of Technology, the petitioner had not been given the same benefit. The said writ petition was disposed of by an order dated September 28, 2021 by a Co-ordinate Bench of this Court with a direction upon the institute to consider the case of the petitioner in accordance with law, following which the institute passed a reasoned order on November 29, 2021, thereby rejecting the claim of the petitioner. In this writ petition, the said order dated November 29, 2021 has been challenged.

In course of the submission, as the best example, the petitioner sought to compare his case with one Somnath Banerjee, who had been given the benefit of his scheme/project service.

In view of the submission advanced by the learned advocate appearing for the petitioner, this Court on February 20, 2023 directed the institute to file an affidavit explaining the following :-

1. **“On what basis of 85 employees, as referred to in the order impugned dated November 29, 2021 were given the promotional benefits taking into account their scheme service.**
2. **The institute will also explain as to how Shri Somnath Banerjee was given the promotional benefits as well as the retiral benefits from February 12, 1982 i.e. the date of his appointment in scheme service and why in case of the petitioner, such benefits have been calculated from the date of his regular appointment in the Institute.”**

In response to such direction, the institute affirmed an affidavit on March 16, 2023, the relevant part of the said affidavit is quoted below :

- i) **“With regard to query No. 1 of the order of this Hon’ble Court it submitted that consequent upon approval of the Competent Authority of the Respondent Institute, the promotion of 85 employees were antedated after combination of the last spell of past Scheme/Project service with their initial period of service in the Respondent Institute.**
- ii) **With regard to query No. 2 of the order of this Hon’ble Court it is submitted that Shri Somnath Banerjee served the Project/Scheme during the period from 12th February, 1982 to 7th August, 1984 as Mechanic and subsequently been appointed in the Institute in the same post as Mechanic and subsequently been appointed in the Respondent Institute in the same post as Mechanic with effect from 8th August, 1984. Consequent upon his joining the Respondent Institute service, Shri Banerjee was initially granted Promotion/Upgradation as Senior Mechanic notionally with effect from 1st April, 1993 with actual financial benefit with effect from 1st April, 1994 on completion of eight years service under Recruitment & Career Development Scheme (R & CDS) and the same was subsequently antedated with effect from 1st March, 1990 in combination of the past service in the Project/Scheme from 12th February, 1982 vide Office order No. Estt./356/2005 since he was holding the same post of Mechanic in the Project/Scheme and initial joining in the Respondent Institute, as approved by the Competent Authority. The petitioner was appointed in the Scheme/Project service Gr-C with effect from 9th February, 1982 vide Office Order No. R/47/82 dated 6th March, 1982 on contract basis in the**

pay scale of Rs. 260-6-326-EB-8-350/- (IIICPC)/Rs. 975-1540/- (IV CPC).

Subsequently, he was appointed to the post of Senior Mechanic in the Respondent Institute with effect from 19th April, 1991 vide Office Order No. R/54/91 dated 25th April, 1991 in the pay scale of Rs.1320-30-1560-EB-40-2040 (IVCPC/Rs.4500-7000/- (VCPC). Shri Paria was granted promotion/financial upgradation as Senior Technician on completion of 12 years of service with effect from 19th April, 2003 vide Office Order No. ESTT/245/2007 dated 31st May, 2007 in the pay scale of Rs.5500-9000/- and pay was fixed accordingly vide Office Order No. ESTT/277/2007 dated 28th June, 2007.

Since the petitioner was appointed to the post of Senior Mechanic in the Respondent Institute his promotional seniority to the next higher post was considered from 19th April, 1991 and his past service rendered in Project/Scheme in a lower post Mechanic could not be considered for the purpose of seniority for antedating his promotion. However he was granted the retirement benefits considering his previous service rendered in the Scheme/Project with effect from 9th February, 1982.”

The affidavit of the institute makes it very clear that the petitioner was never treated in a similar manner with Somnath or other project employees. Two distinguishable facts should be mentioned. Somnath and the petitioner, both were appointed in the project/scheme service on February 9, 1982 and February 12, 1982 respectively. While Somnath was appointed as a regular employee under the institute on August 8, 1984 as a Mechanic, the petitioner,

however, was appointed as a Senior Mechanic at the institute as a regular employee on April 16, 1991. The aforesaid facts make it absolutely clear that the institute, from the inception, treated the petitioner differently from other project employees.

It has been suggested by the institute by referring to the letter of appointment of the petitioner at page 67 of the writ petition that the petitioner's appointment in the institute was a fresh appointment to the post of Senior Mechanic while Somnath was allowed to continue at the institute in the same post of Mechanic in the year 1982. This factual aspect has not been denied by the petitioner.

Therefore, I am of the view that the petitioner cannot claim the same benefit as has been given to Somnath. The fact remains that Somnath was given promotion to the post of Senior Mechanic with effect from April 1, 1993 with actual benefit from 1st April, 1994. Thereafter on completion of eight years of service as a mechanic, the benefit under Recruitment and Career Development Scheme (R &CDS) was accorded to him. The petitioner was appointed at the institute as Senior Mechanic on April 16, 1991.

The petitioner, therefore, could not claim the benefit of R &CDS as had been given to Somnath. From the inception of their regular appointment in the institute, they were treated differently. After accepting

the difference throughout his service career, the petitioner cannot challenge the same after his retirement.

Accordingly, **WPA 17932 of 2022** is dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Kausik Chanda, J.)