IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 03.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR. JUSTICE P.DHANABAL

W.P. No.3856 of 2020
and WMP.No.4570 of 2020

N.Ramadevi .. Petitioner

Versus

1. The Director,
   Department of Pension & Pensioners Welfare,
   Ministry of Personal, Public Grievances & Pension,
   Lok Nayak Bhavan, Khan Market,
   New Delhi 110 003.
2. The President,
   Income Tax Appellate Tribunal,
   4th Floor, Old CGO Building,
   101, Maharishi Karve Marg,
   Mumbi 400 020.

3.The Pay & Accounts Officer,
   Office of the Pay & Accounts Office,
   Ministry of Law and Justice,
   Department of Legal Affairs,
   4th Floor, Janpath Bhavan,
   New Delhi 110 001.

4. The Deputy Registrar,
   Income Tax Appellate Tribunal,
   A3, II Floor, Rajaji Bhavan,
   Chennai 600 090.
5. The Registrar,
   Central Administrative Tribunal,
   City Civil Court Building, Chennai 104. .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus, calling for records relating to the fifth respondent's order in OA.No.310/01754/2016, dated 03.01.2020 to quash the same and to consequently direct the respondents 1 to 4 to forthwith extend the benefits of the pension and pensionary benefits as per Pension Scheme arising thereto and to pay the Old Pension under Central Civil Service (Pension) Rules, 1972, regularly from time to time and when it falls due.

For petitioner : M/s.N.R.Jasmine Padma

For respondents

for RR1 to 4 : Mr.AR.L.Sundaresan, ASG
for Mr.Venkataswamy Babu

for R5 : Tribunal

ORDER

(The Order of the Court was made by D.KRISHNAKUMAR, J)

This petition has been filed to quash the order dated 03.01.2020 in OA.No.310/01754/2016 passed by the Tribunal/fifth respondent and consequently direct the respondents 1 to 4 to forthwith extend the benefits of pension and pensionary benefits as per Pension Scheme arising thereto and pay the Old Pension under Central Civil Service (Pension) Rules, 1972.

2. The petitioner was appointed as a Stenographer in UPTRON India Ltd., which was a public sector undertaking of the Government of Uttar Pradesh. When the said Company became sick, the employees were deputed to analogous posts in various Government Departments. Accordingly, the petitioner was appointed as a Private Secretary in the Income Tax Appellate Tribunal (ITAT) on deputation on 17.04.2002 with all the benefits of pay fixation etc. Subsequently, the petitioner was absorbed in ITAT w.e.f. 11.03.2005, but according to her, she ought to have been absorbed from 05.04.2002 onwards. After completing 3 years of service, she was given the post of Senior Private Secretary. She exercised her option under clause (3)(1)(i) to count the service rendered under UPTRON India Ltd. for

pension as per DP & AR OM No.28/10/84-Pension Unit dated 29.08.1984. Since UPTRON India Ltd. was under BIFR proceedings, it failed to make payment towards her terminal benefits to ITAT. Therefore, the petitioner proposed that she will make good the loss, but ITAT refused to accept the same vide letter dated 16.10.2009.

3. In 2004, the Government dispensed with the CCS (Pension) Rules 1972 for employees, who entered service after 1.1.2004 and therefore, the first respondent denied the benefit of old pension scheme to her. Hence, the petitioner filed OA.No.310/01754/2016.

4. In reply, the respondents stated that as per the order dated 17.04.2002, petitioner was appointed as a Private Secretary at ITAT, Lucknow Bench on deputation basis for a period of 3 years. The petitioner gave willingness to get absorbed in ITAT and second respondent had absorbed her w.e.f 11.03.2005 only after the introduction of new pension scheme i.e. on 01.01.2004. The UPTRON India Ltd. had expressed its inability to pay the dues to ITAT.

5. In the mean time, the Government of India vide OM 28/30/2004-P&PW(B) dated 26.07.2005 made it clear that the employees, who entered service on or before 31.12.2003 and who were governed by CPF Scheme or any pension scheme of Central or State, other than pension scheme under CCS (Pension) Rules 1972, on submission of technical resignation to take up new appointment on or after 01.01.2004 cannot be allowed to join the old pension scheme. Hence, the representation given by the petitioner was rejected stating that the service rendered in a public undertaking cannot be counted as qualifying service for the purpose of pension. So the service rendered in UPTRON India Ltd. cannot be considered as qualifying service.

6. The Tribunal while considering the case of the petitioner had held that the Government vide OM No.28/24/94-P & PW(B), dated 13.09.1996, rejected the demand for considering the service rendered in public sector undertaking for admissibility of pension. So, the petitioner knew this position even when she came on deputation to ITAT in 2002. Further, in the deputation order itself, it is clearly mentioned that in case she opts in favour

of sub clause (i) of clause (1), UPTRON India Ltd. will discharge its pension liability by paying a lump sum as a one-time payment, the pro-rata pension/service, gratuity/terminal gratuity and retirement gratuity for service upto the date of absorption. However, the UPTRON India Ltd. failed to pay the dues to the ITAT on her given option. Since the petitioner was absorbed in the service of ITAT only w.e.f. 11.03.2005, she is not entitled to get the benefit of old pension scheme. Accordingly, the Tribunal dismissed the OA.

7. The learned counsel for the petitioner submitted that when the UPTRON India Ltd. become sick, the petitioner was appointed as Private Secretary in ITAT on deputation on 17.04.2002 and she was absorbed on 11.03.2005. Subsequently, she gave an option under clause (3)(1)(i) to count the service rendered under UPTRON India Ltd. Since the UPTRON India Ltd. was under BIFR proceedings, it failed to make payment towards her terminal benefits to ITAT. Though the petitioner submitted that she will made good the loss, the ITAT refused to accept the same, which is perverse. In support of his contention, the learned counsel for the petitioner relied upon the judgment of Rajasthan in ***the Union of India vs. R.N.Mishra*** in

D.B.Civil Writ Petition No.18908/2022, dated 06.04.2023.

8. According to the learned Additional Solicitor General appearing for the respondents 1 to 4, the petitioner was working in a Public Sector Undertaking before her deputation in ITAT. As per the OM, dated 13.09.1996, the service rendered by an employee in a Public Sector Undertaking does not count as qualifying service for the purpose of pension. The old pension Scheme was in force till 31.12.2003, but the petitioner was absorbed permanently in ITAT as Private Secretary only on 05.04.2005 and retired at the age of superannuation on 30.11.2016. Therefore, the service rendered by the petitioner in UPTRON India Ltd. as well as the deputation period in ITAT may not be counted as qualifying service for the purpose of pension.

9. The learned Additional Solicitor General further submitted that in the deputation order itself, it is clearly mentioned that if the petitioner opts in favour of sub clause (i) of clause (1), UPTRON India Ltd. will discharge its pension liability by paying a lump sum as one-time payment. However,

UPTRON India Ltd. failed to pay the dues to ITAT on her given option.

10. In reply, the learned counsel for the petitioner submitted that the petitioner is ready to pay the share of UPTRON India Ltd. as one time payment and therefore, requested the respondent Department to pay the pension and other pensionary benefits as per the Old Pension under Central Civil Service (Pension) Rules, 1972.

11. Heard the learned counsels appearing for both sides and perused the materials available on record.

12. The petitioner on deputation joined as Private Secretary in ITAT on 17.04.2022. The ITAT vide proceedings dated 11.03.2005 permanently absorbed the petitioner from 05.04.2005 as Assistant Private Secretary with certain conditions. The relevant portion of the said order reads as follows:

> *"Smt.N.Remadevi will exercise option within six months of the issue of this order:-*
> *(i) Either to count the service rendered under the UPTRON India Ltd. for Pension in the Central Government under the*

DP. & AR's O.M.No.28/10/84-PU dated 29.08.1984.

(ii) Or to receive pro rata retirement benefits for the service rendered under UPTRON India Ltd."

The option shall be exercised in writing. the option once exercised shall be final. In case no option is exercised within the stipulated period, he/she will be deemed to have opted in favor of sub-clause (i) above,

In case he/she opts in favor of sub-clause (i) of Clause (1) above, UPTRON India will discharge its pension liability by paying in lump sum as a one-time payment, the pro rata pension/service gratuity/terminal gratuity and retirement gratuity for the service up to the date of absorption of Smt. N.Ramadevi/Shri John Joseph in the I.T.A.T. the lump sum amount of pension will be determined with reference to commutation table laid down in CCS (Commutation of Pension) Rules. Smt. N. Ramadevi/Shri John Joseph will have to forgo the employer's share of C.P.F. contributions with interest thereon, which will be paid to the Govt., then he/she will be eligible to draw pension in accordance with the rules of the Central Govt. for the combined service under the UPTRON India Ltd. and that under the Income-tax Appellate Tribunal on his/her retirement."

13. The petitioner in reply to the said proceedings vide letter dated 30.11.2005 exercised her option under clause 3 (1)(i) for permanent absorption so as to count the services rendered by her under the UPTRON India Ltd. She was also willing to forgo the Employer's share of CPF contributions with interest. However, stating that the UPTRON India Ltd. did not discharge its liability of leave salary contribution and pension contribution with interest, the ITAT rejected her request of granting pension.

14. Now, the petitioner is ready to pay the lump sum amount to the respondent Department and he has also given an undertaking to that effect. In such circumstances, we do not find any reason for denying the said request of the petitioner for taking the service rendered by her in UPTRON India Ltd. In similar circumstances, the High Court of Rajasthan in the case of ***the Union of India vs. R.N.Mishra*** (referred to supra), dismissed the appeal filed by the Department as against the order granted in favour of the employee.

15. In view of the above, the rejection order passed by the Tribunal is liable to be set aside. Accordingly, the impugned order is set aside. The Tribunal is directed to grant the benefit of old pension scheme considering the earlier service rendered by the petitioner in the UPTRON India Ltd. as qualifying service for the purpose of pensionary benefits. It is made clear that as per the undertaking, the petitioner has to pay the lump sum amount to the respondent Department within a period of four weeks from the date of receipt of a copy of this order. Once the said amount is paid by the petitioner, the respondents are directed to consider the petitioner's request for granting of pensionary benefits under the old pension scheme for the qualifying service rendered by the petitioner for the UPTRON India Ltd. as well as the respondent Department as early as possible within a period of eight weeks there from.

16. Accordingly, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

[D.K.K., J] [P.D.B., J]
03.11.2023

Speaking order: Yes/No
Index : Yes/No
pvs

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