



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



D.B. Special Appeal Writ No. 543/2020

1. The State Of Rajasthan, Through Principal Secretary, Finance Department, Rajasthan, Jaipur.
2. The Commissioner, Commercial Taxes Department, Rajasthan, Jaipur

-----Appellants

Versus

1. Jagdish Prasad Chodhary Son Of Shri Asha Ram, Aged About 66 Years, Resident Of 11 Alankar Colony, Niwaru Road, Jaipur, Rajasthan
2. The Director, Pension And Pensioners Welfare Department, Rajasthan, Jaipur.

-----Respondents

For Appellant(s) : Mr. Kartikey Sharma on behalf of
Mr. Sandeep Taneja, AAG

For Respondent(s) : Mr. Aslam Khan

**HON'BLE THE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR**

JUDGMENT

11/12/2024

1. A prayer for out of turn hearing of this case was made by learned counsel for the respondents by submitting that the respondent No.1-Jagdish Prasad is a pensioner, aged about 74 years.
2. Prayer was not opposed by learned counsel for the appellants-State, therefore, the matter was heard finally with the consent of the parties.



3. This appeal has been filed by the State aggrieved by the order dated 02.12.2019 passed by the learned Single Judge, whereby respondent-writ petitioner's claim for counting the period of services rendered by him in the territorial army, has been directed to be counted for the purposes of pension.

4. Learned counsel appearing for the State would submit that the learned Single Judge misdirected itself in interpreting Rule 19 of the Pension Rules, 1996 (for short 'the Rules of 1996') in holding that the mandate of giving option would arise only when the employee was asked to give option. He would submit that the Rule is very clear and it obliges an employee to submit an option within a period of three months and if that option is not given, the claim for counting the past services for the purposes of pension could not be raised. According to him, inclusion of the past services rendered in another employment is a part of the statutory scheme of pension and, therefore, the same could be granted only when all the terms and conditions are fulfilled. He would further submit that though the respondent may have been appointed in the year 1983, he retired from the government service on 31.07.2011, when the Rules of 1996 had already come into existence and operation and were in force and, therefore, counting of past services rendered under another employment for the purposes of pension will have to be governed only by the provisions contained in the new Rules.

5. Next submission is that the respondent-writ petitioner was indolent and negligent and even after 1983, he did not raise any claim that services rendered by him in the territorial army should be counted. Even till his retirement, no such issue was raised. It is



only one year after the retirement that he started raising such claim. Such belated claim ought not to be entertained and the claim was liable to be rejected only on this count.

6. The third and last submission of learned counsel for the appellants is that even assuming for the sake of argument that the respondent was entitled to count past services rendered in territorial army, his claim is doubtful because there are discrepancies with regard to the actual period of services rendered by him in the territorial army. While the petitioner claims that he has served for 9 years and 7 months, as per No Objection Certificate (Annexure-1), different period has been prescribed. Further in the certificate of discharge (Annexure-6), the period of services said to have been rendered with the territorial army is stated to be from 08.11.1969 to 13.12.1990. Therefore, on such discrepant dates, the respondent is not entitled to any relief. He further submits that embodied period of service is stated as 12 years, 1 month and 25 days, which is different than the period which has been claimed by the respondent while filing the application before the Tribunal. Therefore, without any clear factual foundation, the claim could not be allowed.

7. Per contra, learned counsel appearing for the respondent would submit that the respondent had joined the civil services in the year 1983, when the Rules of 1996 were not in force. At that time, the Rajasthan Service Rules, 1951 (for short 'the Rules of 1951') providing for counting the period of services in the army, were governed under Rule 175 and the respondent was clearly entitled to count his past services. He would further submit that the Tribunal committed an error of fact in recording the finding



that the respondent-writ petitioner had not deposited the amount of gratuity/bonus after discharge, whereas the writ petitioner had joined the civil services while being in services of territorial army and he had not received anything. Therefore, there was no occasion to deposit the bonus/gratuity amount with the State to claim inclusion of past services rendered by him in territorial army.

8. Learned counsel would next submit that Rule 19 of Rules of 1996 could not be applied retrospectively to take away the vested right of the writ-petitioner to count his services rendered in territorial army upon fulfillment of terms and conditions, as stipulated in Rule 175 of the Rules of 1951. He would further submit that the period of service, which has been shown in various documents if is discrepant, could always be resolved by making an appropriate enquiry. In any case, the writ petitioner has claimed only 9 years and 7 months and not beyond that.

9. We have heard learned counsel for the parties, perused the records and the order passed by the learned Single Judge.

10. The fact, which is not in dispute, is that the respondent-writ petitioner was working in the territorial army at the time when he was selected and joined the civil services as *Jamadar*. The parties admit that he joined services on 22.07.1983. Whether or not, the services rendered by the respondent with the territorial army were liable to be counted for the purposes of pension after joining civil services, are to be governed by the service rules/pension rules, which were in force and operation on the date of joining. It is for the reason that counting of the services rendered under the previous employer is essentially a matter of policy embodied in service rules. Therefore, services rendered under previous



employer cannot be counted *de hors* the rules, but only if the rule permits. Further, if there are certain conditions prescribed under the Rules before past services could be counted, those conditions are also required to be fulfilled. In the year 1983, the then existing Rules of 1951 contained specific provisions under Rule 175, which dealt with the aspect with regard to the counting of the past services rendered in Military. The Rule being relevant is extracted hereinbelow:-

"175. Counting of Military service for Pension under Civil Rules.-

(a) Service rendered after attaining the age of 20 years which is pensionable under military rules but which terminates before a pension has been earned in respect of it, may, at the discretion of Government be allowed to count, when followed by service qualifying for pension under civil rules as part of such service, provided that any bonus or gratuity received in lieu of pension on, or since, discharge from Military service shall be refunded in such number of monthly instalments, not normally exceeding 36 and beginning from such date, as in each case Government may decide.

(b) Service pensionable under military rules which does not terminate before a pension has been earned in respect of it shall not be allowed to count for pension under Civil Rules.

(c) **Counting War Service for Civil Pension.-**
[xxx]

(d) [xxx]"

11. Under the aforesaid Rule, an employee of the army was entitled to count his services rendered after completion of 20 years of age, subject to the conditions that any amount of bonus/gratuity received by him was deposited with the State. The said requirement would come into operation only in the event when such amount is received at the time of discharge. In a case,



where an employee before his discharge or termination, joins the civil services under the State, followed by formal discharge or termination of his services from the erstwhile employer, if no amount has been received by way of gratuity/bonus, there will be no occasion to apply the aforesaid condition. In such a case and per force condition of Rule 175 of the Rules of 1951, the employee would be entitled to count the past services rendered by him in the army.

12. The argument of learned counsel for the appellants that such benefit is at the discretion of the authority, as provided under Rule and, therefore, such inclusion could not be claimed as of right, is liable to be rejected at the threshold. The purpose of conferring discretion is only to verify the conditions prescribed under the Rules before such benefit of counting past services can be granted. It is not the whims and caprice but the discretion based on relevant consideration, which could be made a basis to deny the same.

13. The argument that the writ-petitioner having retired after coming into force of Rules of 1996, was governed by those Rules and, therefore, the pre-condition of submission of option under Rule 19 (1) of the Rules of 1996 was mandatory, is completely misconceived. How can one be expected to submit an option when such provision was not there on the date when he joined the services. If we look into the provisions contained in Rule 175 of the Rules of 1951 (Old Pension Rules), there was no condition of submission of any option. The requirement of submission of option within a period of three months was introduced for the first time while framing of the Rules of 1996. Obviously, such condition will



apply only in those cases where a person joined the civil services after promulgation of the Rules. In such cases, if an employee seeks inclusion of the services rendered in erstwhile employer for the purposes of pension, he has to submit an option within a period of three months. But that Rule has no application in those cases where a person had joined services prior to coming into force of the Rules of 1996. The argument on this count, therefore, fails and is hereby rejected.

14. There is no material placed on record to show that after formal discharge/termination from the services of territorial army, the respondent-writ petitioner received any amount towards bonus/gratuity. Therefore, it is abundantly clear that the respondent-writ petitioner, per force rules and conditions of Rule 175 of the Rules of 1951, was entitled to count his past services rendered in the territorial army.

15. Even though the Tribunal as well as learned Single Judge have based their entire consideration by application of provisions contained in the Rules of 1996, instead of sending the matter back to the Tribunal at this stage, we ourselves examined the statutory scheme based on foundational facts stated by the learned counsel for parties in their pleadings, taking into consideration that the respondent-writ petitioner is aged 74 years.

16. However, there is a considerable force in the submission of learned counsel for the appellants that there are discrepancies insofar as the period of services rendered by the respondent-writ petitioner with the territorial army is concerned. We find that as against the claim made by the writ petitioner that he is entitled to count 9 years and 7 months period for the purposes of pension,



being the period of services rendered by him in the territorial army, as claimed by him, the contents of communication (Annexure-1) and certificate (Annexure-6), contained different period, therefore, there is some discrepancy with regard to the period, to which the respondent-writ-petitioner would be entitled to count his services rendered in territorial army.

17. In view of the discussions which we have made hereinabove, Rule 175 of the Rules of 1951, clearly entitles the respondent to count his services rendered in territorial army. He has claimed 9 years and 7 months. The certificate which has been issued by the authorities is for a period longer than 9 years and 7 months because the period of services rendered begins from 08.11.1969 and ends up on 13.12.1990. Assuming that he had actually joined the territorial army and started working therein, Rule 175 of Rules of 1951, clearly provides that only that services will be counted for the purposes of pension which are rendered after attaining the age of 20 years, therefore, the services rendered by the respondent-writ petitioner after attaining the age of 20 years on 25.07.1971, shall be counted for the purposes of pension. As far as the upper limit is concerned, the parties are not in dispute and, in fact, the respondent also is not in a position to dispute that he actually joined the services on 22.07.1983. It appears that the formal discharge/termination from territorial army was made after some time and probably for that reason, the period of service has been shown up to 13.12.1990.

18. In any case, the period of services claimed by the respondent is only 9 years and 7 months, which is lesser than that. Therefore, we are of the view that the writ-petitioner is



entitled to count only 9 years and 7 months as period of services rendered by him in the territorial army, which should be counted for the purposes of pension.

19 Learned counsel for the appellants has raised an issue with regard to delay in approaching the Tribunal. This does not impress us. There is nothing on record that while the writ-petitioner was in service, any communication was made to him, either at the time of joining of service or any time thereafter or even till his retirement, that according to the records of the respondent, the pensionable service is only that, which is actually rendered from 22.07.1983. Obviously, when the respondent retired from service and found that the appellants while reckoning the period of pensionable services have not included the period of services rendered by him in the territorial army, the dispute arose and then the application was filed before the Tribunal. Therefore, the issue of delay cannot come in the way of the respondent writ-petitioner in claiming the relief from the Court.

20. In the result, though we do not affirm the reasoning provided by learned Single Judge to grant relief, we concur with the ultimate conclusion for the reasons, additionally stated by us in this order, that the respondent is entitled to count 9 years and 7 months services rendered in the territorial army for the purposes of pension.

21. The appellants are directed to forthwith amend/modify the pension case and Pension Payment Order. On that basis, whatever amount of arrears of pension is found payable, would be provided to the respondent-writ-petitioner and appropriate pension, as revised in compliance of the order of this Court, shall be payable



to the respondent. We make it clear that the interest, as is payable on delayed pension, shall also be payable to the respondent-writ petitioner.

22. The appeal is, accordingly, dismissed.

(ASHUTOSH KUMAR),J

(MANINDRA MOHAN SHRIVASTAVA),CJ

KAMLESH KUMAR/RAJAT/84

