

IN THE HIGH COURT OF KARNATAKA, BENGALURU

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO. 2056 OF 2018 ( S-RES) DATED:18-11-2019

SRI CHANDRA SHEKHAR G, S/ O GOVINDAIAH H, VS. STATE OF KARNATAKA REPRESENTED BY ITS PRINCIPAL SECRETARY, URBAN DEVELOPMENT DEPARTMENT, VIKASASOUDHA, BANGALORE-560001 AND OTHERS

ORDER

Petitioner, a First Division Assistant working in Mysore City Corporation is knocking at the doors of Writ Court seeking a direction to the second respondent-Director of Municipal Administration to count his previous public service rendered by him as Assistant Teacher in a Government School for the purpose of pension. Petitioner is also ventilating his grievance for pay protection.

2. After service of notice, the respondents having entered appearance through the learned AGA and the Panel Advocate resist the writ petition.

3. The learned counsel for the petitioner submits that petitioner had worked as Assistant Teacher during the period between 30.01.2004 and 19.12.2016; he resigned from the said post in order to join the post of First Division Assistant in the Respondent Mysore City Corporation W.E.F. 20.12.2016, having been selected by the KPSC in the open competition.

4. Learned counsel further submits that in view of Rule 235 of Karnataka Civil Service Rules, which the Department of Municipal Administration has adopted, the petitioner is entitled to have his previous public service counted/reckoned for the purpose of pension; his request made to the answering respondents having not been acceded to, a direction needs to be issued in terms of the said Rule and the Note Below the Rule.

5. The learned Additional Government Advocate and also the Panel Counsel for the respondents contend that; ( a) the counting of previous service is possible only when the employee leaves the service in one Department and joins the service in other Department of the same Government, and ( b) where the previous service was not in any specific Department of the Government, but was elsewhere, the same cannot be counted/reckoned for the purpose of pension.

6. Having heard the learned counsel for the parties and having perused the petition papers, this Court is of the considered opinion that the petitioner is entitled to succeed in this legal battle for the following reasons:

( i) the provisions of Rule 235 and allied Rules of KCSR provide for counting of previous public service of an employee subject to certain terms & conditions; the relevant portion of the said Rule reads as under:

"235. Government may by general or special order permit service other than pensionable service, for performing which a Government servant is paid from the consolidated Fund of the State or from a Local Fund, to be treated as duty counting for pension .....

the plain text & context of this Rule gives sufficient indication for the counting of previous service for the purpose of pension;

(ii) the Note Below this Rule amplifies the intent & content of the Rule; the said Note reads as under:

" (Note .- [Wherever pensionable service under Government has been rendered in continuation of service in local authority or autonomous institutions receiving grants form State Government, the services rendered in such local authority or State autonomous institutions shall count as qualifying service for pension subject to the following conditions, namely.-] "

the plain language of this Note further strengthens the claim of the petitioner to have his prior public service counted subject to certain terms & conditions; the contention of the respondents that the previous service becomes countable only when it was rendered in other department of the Government cannot be sustained without bruising the language of this Note; the Apex Court in the case of TARA SINGH Vs. STATE OF RAJASTHAN, AIR 1975 SC 1487 has held that the Note Below the Rule is intended to amplify or restrict its scope and has as much force as the rule itself; the Note in question apparently is amplificatory of the Rule for the benefit of the public servant; and,

(iii) the contention of the respondents that where the employee has put in service successively in two departments of the same Government, he can have his previous service counted and not otherwise is liable to be rejected because of the Explanation added to the said Rule vide Notification dated 10.10.2003 W.E.F. 17.10.2003; the said Explanation reads as under:

" For the purpose of this rule State Autonomous institution means a body which is financed wholly or substantially from State Government grants. Substantially means that more than fifty percent of the expenditure of the autonomous body is met through State Government grants. State Autonomous body includes a State statutory body or a State University but excludes public undertaking or State aided educational institutions.]

" the expression, " State Autonomous body includes State statutory body or a State University " employed in the above Explanation should silence the voice of the respondent that it is only interdepartmental service alone qualifies for counting.

In the above circumstances, this writ petition succeeds; a Writ of Mandamus issues to the second respondent to reckon petitioner's previous service rendered as Assistant Teacher, mentioned above, for the purpose of settlement of pension, subject to other conditions being fulfilled within a period of two months.

It is open to the petitioner to agitate his grievance for pay protection which the answering respondents would consider in accordance with law, before long. All other contentions of the parties kept open.

No costs.