V. SUKUMARAN

v.

STATE OF KERALA & ANR.

(Civil Appeal No. 3984 of 2010)

AUGUST 26, 2020

[SANJAY KISHAN KAUL, AJAY RASTOGI AND ANIRUDDHA BOSE, JJ.]

Service Law:

Pension – Pensionary benefit granted to Casual labour Roll (CLR) workers after their absorption on Seasonal labour Roll (SLR) posts by different Government Orders – Claim by the appellant for counting the period of his service rendered as CLR worker for pensionary benefits – Denied by State Government on the ground that the benefit could not be granted as he was not absorbed directly from CLR Service but was regularised by appointment through regular employment process – The view of State Government was affirmed in Writ Petition as well as Writ Appeal – Appeal to Supreme Court – Held: Pension is not a bounty payable at will, but a social welfare measure as a post-retirement entitlement – Pensionary provisions must be given liberal construction – The appellant is being deprived of the maximum pensionable service which could be permissible to him if his period of CLR service is recognized as qualifying service – There is no reason to deny the same to the appellant when other CLR workers who have rendered lesser service than the appellant, have got such benefit – Therefore, the benefit of the service rendered as a CLR worker would be liable to be counted for determining the pensionary benefits to the appellant.

Allowing the appeal, the Court

HELD: 1. Pension is succour for post-retirement period. It is not a bounty payable at will, but a social welfare measure as a post-retirement entitlement to maintain the dignity of the employee. The pensionary provisions must be given a liberal construction as a social welfare measure. This does not imply that something can be given contrary to rules, but the very basis for grant of such pension must be kept in mind, i.e., to facilitate a

A **retired Government employee to live with dignity in his winter of life and, thus, such benefit should not be unreasonably denied to an employee, more so on technicalities. [Paras 1 and 19][994-B; 1000-A-B]**

D.S. Nakara and Ors. v. Union of India **(1983) 1 SCC 305 : [1983] 2 SCR 165;** *U.P. Raghavendra Acharya & Ors. v. State of Karnataka & Ors*. **(2006) 9 SCC 630: [2006] 2 Suppl. SCR 582;** *Deokinandan Prasad v. The State of Bihar & Ors.* **(1971) 2 SCC 330 : [1971] Suppl. SCR 634 – relied on.**

C **2. To say that the appellant would be denied the benefit of the period spent as CLR worker for his pensionary benefit would be to treat his case as inferior one to the case of other CLR workers, who never went through a system of recruitment for regularisation but were regularised in the Fisheries Department to provide better working conditions and monetary benefits to the employees. It cannot be said that a regularly recruited person like the appellant should not get the benefit which the other people who were CLR workers would get, having spent more than 7 years in that capacity. [Para 21][1000-D-F]**

E **3. Had the respondents not issued the G.O.s, no doubt the appellant would have no claim. The claim of the appellant arises from the G.O.s, which are beneficial efforts for the CLR workers to improve the conditions of working along with monetary benefits. The appellant did work for the aforesaid long period of time as a CLR worker and should, thus, be entitled to the same on parity vis-à-vis other CLR workers. The appellant was at serial No.2 in the aforementioned list and would have been so absorbed when 29 posts were created. In fact, only 27 posts out of these were filled in. It is thus not even a case where no post existed or that it would affect anybody else, or that the Government would be compelled to create a post for the appellant. In fact, in terms of the G.O. dated 21.8.2006 an equalisation has been given of 200 days of work as a CLR worker to one year's regular service for the purposes of pension. While one would commend such effort by the State Government, it would be very unreasonable to deny this to the appellant in view of the facts of the case. [Para 22][1000-G-H; 1001-A-B]**

4. The appellant is being deprived of the maximum pensionable service which would be permissible to him if his period of CLR service is recognised as qualifying service and there is no reason to deny the same to him when other CLR workers have got this benefit at the time of their absorption and subsequent regularisation as SLR workers and who would have, by virtue of joining at a later point of time, rendered less service. Rule 13 of the Service Rules would possibly come to the aid of the rationale the Court is seeking to adopt as on absorption in the establishment, such persons are given the benefit of counting 50 per cent of their earlier work service prior to absorption for the purposes of pension. [Para 23][1001-C-D]

5. Thus, the appellant is entitled to succeed in the present appeal and the impugned orders are liable to be set aside. The rejection of the recommendation of the Fisheries Department, respondent No. 2, by respondent No. 1 was consequently improper and unsustainable. The benefit of the service rendered as a CLR worker would, thus, be liable to be counted for determining the pensionary benefits of the appellant at par with other CLR workers and the pension be accordingly calculated. [Para 24][1001-E-F]

Case Law Reference

[1983] 2 SCR 165	**relied on**	**Para 15**
[2006] 2 Suppl. SCR 582	**relied on**	**Para 15**
[1971] Suppl. SCR 634	**relied on**	**Para 15**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3984 of 2010.

From the Judgment and Order dated 03.06.2009 of the High Court of Kerala at Ernakulam in Writ Appeal No. 892 of 2009.

Dr. K.P. Kylasanatha Pillay, Sr. Adv., A. Venayagam Balan, Ms. V.S. Lakshmi, Advs. for the Appellant.

Nishe Rajen Shonker, Adv. for the Respondents.

A The Judgment of the Court was delivered by

SANJAY KISHAN KAUL, J.

1. Pension is succour for post-retirement period. It is not a bounty payable at will, but a social welfare measure as a post-retirement entitlement to maintain the dignity of the employee. The appellant has B been claiming his entitlement for the last almost 13 years but unsuccessfully, despite having worked with Government departments in various capacities for about 32 years.

The Facts:

C 2. The controversy emanates from the appellant having worked in these different capacities with two different departments from time to time, albeit continuously. The appellant joined respondent No. 2, Department of Fisheries of the State Government of Kerala as a Casual Labour Roll (for short 'CLR') worker on 7.7.1976 in a then pilot project on Pearl Culture, at Vizhinjam, Thiruvananthapuram. He worked upto D 29.11.1983 rendering 7 years, 4 months and 23 days of service as a CLR worker whereupon the District Officer, Kerala Public Service Commission (for short 'KPSC') advised him to join the Revenue Department, Kannur District as Lower Division Clerk (for short 'LDC') on his participation in a direct recruitment process. He accordingly E reported for duty on 30.11.1983. On having rendered a few years of service, the appellant sought an inter-departmental transfer from the Revenue Department back to the Fisheries Department and returned to Thiruvananthapuram and joined on 18.9.1987 on probation of two years with the service being subsequently regularised on 18.9.1989. The appellant earned his promotion as Upper Division Clerk (Higher Grade) F (for short 'UDC') from which post he retired on attaining the age of superannuation on 31.12.2008. The total service rendered by the appellant was about 25 years, but excluding the service as CLR.

Developments:

G 3. In order to ameliorate the financial remuneration for CLR and Seasonal Labour Roll (for short 'SLR') posts, the State Government passed a slew of Government Orders (for short 'G.O.') from time to time and that is what gave hope and cause of action to the appellant as he sought the benefits under the same.

H 4. Some CLR workers were aggrieved by their non-regularisation of service, despite a G.O. dated 4.11.1989, which had provided for their

absorption as SLR workers if they had rendered 240 days a year of service in the Fisheries Department prior to 16.9.1985. On these persons approaching the High Court, the State Government was asked to address the issue and on such examination G.O. dated 20.8.1993 was issued creating 29 SLR posts in the Fisheries Department for absorption of the existing CLR workers. A G.O. was also issued on 31.3.2001 subsequently noting that these 29 SLR posts were created for such of the CLR workers who had completed 500 days of work before 1.4.1987, and simultaneously 27 employees in the Fisheries Department, who had worked for the past 20 years and had also completed 8 years as SLR workers were ordered to be permanently absorbed with consequent pensionary and provident fund benefits. Subsequently, the service and wage conditions of the SLR workers of the Fisheries Department were brought at par with those in the Agriculture and Animal Husbandry Department with effect from 31.3.2001 in pursuance of the G.O. dated 13.7.2006. It was, however, also stipulated that no new appointments would be made in the Fisheries Department in the CLR/SLR/HR categories.

5. Another significant development was the issuance of G.O. dated 21.8.2006 to the effect that the Pension (Gratuity) Rules of the SLR Workers/Permanent Labourers of Fisheries Department (hereinafter referred to as the 'Pension Rules') were framed to grant pension to these workers and bringing them at par with those working in the Agriculture and Animal Husbandry Department. The Pension Rules were brought with retrospective effect from 31.3.2001. These Pension Rules were to apply to all those SLR workers/Permanent Labourers of Departmental Hatcheries/Farms in the Fisheries Department, who were still in service as well as who had not completed 60 years of age as on that date. Significantly, Rule 4(f)(iii) of the Pension Rules, *inter alia*, defined that 200 days or more work in a calendar year during the period of service spent as casual labourer in the departmental farms prior to permanency would be treated as one year qualifying for pension. The legal significance was that service rendered as a casual labourer of a certain number of days was equated with one year of permanent service for purposes of pension qualification.

The Cause of the Appellant:

6. In view of the aforesaid developments, the appellant made a representation dated 27.11.2006 to the Assistant Director of the Fisheries Department for passing orders to treat his period of CLR service of

more than 7 years as qualifying service for pension. In effect what the appellant claimed was that he should be treated at par with the other CLR service workers having worked in the Department for the requisite period of time. A plea of parity was, thus, raised.

7. The appellant, in this representation also made a request to be provided with service details of other such workers, and obtained requisite information which showed that the appellant's name featured at the 2nd place out of 6 persons in order of starting of the casual service on the aforementioned pilot project. Thus, he was very senior. This representation received favourable consideration by respondent No. 2, Department of Fisheries with a recommendation being made by the Director. In the meantime, another G.O. dated 19.1.2007 was also issued clarifying that the casual service period of farm labourers would be counted for calculating qualifying service for pension and requiring all pension claims to be settled accordingly with prospective effect. However, the State Government/respondent No. 1 finally did not accept the recommendation of the Fisheries Department and rejected the representation of the appellant vide letter dated 16.5.2007 as according to the State Government the benefit could not be extended to the appellant since he was appointed by the KPSC and had not been absorbed in the Fisheries Department from the CLR service. If one may say, the other CLR employees who went through the process of regularisation, thus, gained the benefit which was sought to be denied to the appellant who came through a regular employment process through the KPSC.

8. The aforesaid, thus, gave rise to the cause for the appellant to file writ petition, being WP(C) No. 22931/2007, against the respondents pertaining to the quantum of pensionary benefits he was to receive at the time of retirement with the prayer that his service as a CLR worker from 7.7.1976 to 29.11.1983 be counted as 8 years of[1] qualifying service for pension. The claim was predicated on the following grounds:

a. 29 SLR posts were created to regularise those CLR workers who had completed 500 days of work, and had the appellant continued in service of the Fisheries Department, he would have found a place in one of those 29 posts having worked for 1678 days.

[1] Sir, appellant has calculated qualifying service to be 8 years calculating on the basis of the 200 days a year criteria per Rule 4(f)(iii) of the Pension Rules.

b. The G.O. dated 21.8.2006 provided for 200 or more days of work in a calendar year during the period of service as CLR worker prior to the permanency, calculated as equivalent to one year regular service qualifying for pension and, thus, the appellant was entitled to 8 years of qualifying service of pension on account of his service as CLR worker.

c. The details sought and disclosed vis-a-vis the other casual workers vide letter dated 4.12.2006 showed that the appellant was second senior most person and the first person had got his CLR service regularised as SLR worker with pension being granted to him accordingly.

d. The rejection by the State Government of the recommendation of the Fisheries Department was wrongful.

e. The appellant would be entitled to his maximum pensionable service only if the CLR service was regularised as qualifying service on parity with his co-workers and had he continued to work in the Fisheries Department, he would have undoubtedly been regularised.

9. Appellant also placed reliance on Rule 13, Part III of the Kerala Service Rules (for short 'Service Rules'), which come to his aid, and read as under:

> "13. Work establishment employees absorbed in regular establishment will be allowed to count 50 per cent of the work establishment service for purposes of pension.
>
> xxxx xxxx xxxx xxxx xxxx"

The Respondent's Stand:

10. The writ petition was sought to be resisted on the ground that the benefit of G.O. dated 21.8.2006 was available only to those CLR workers who were regularised as SLR workers and none of the G.O.s would govern the appellant. The benefit of Rule 4(f)(iii) of the Pension Rules was pleaded to be not extendable to the appellant and all these would have applied had he continued to work as a CLR worker for the Fisheries Department. The appellant was, however, appointed by the KPSC and not absorbed in the department from the CLR service and for this the rules of pension were entirely different as under Part II of the Service Rules.

A 11. We may note the stand of the appellant in respect of the aforesaid was that insofar as 29 SLR posts were concerned, only 27 workers in the Fisheries Department were absorbed and, thus, he would have been easily absorbed against the two remaining posts, more so on account of his seniority.

B ***The View of the High Court***:

12. The learned Single Judge dismissed the writ petition by the order dated 16.1.2009 primarily on the ground that the appointment of the appellant to the Revenue Department was in pursuance of his selection by the KPSC and, thus, he could not compare himself with the CLR C workers, who had obtained regularisation as SLR workers and were governed by various G.O.s. The appellant had not been absorbed in the Fisheries Department from the category of CLR workers. There was no G.O. or provision under the relevant rules for counting the period of service as CLR worker of persons like the appellant who secured appointment through the KPSC as an LDC. No declaration had been D made under Rule 11 of the Service Rules in Part III and in the absence of such declaration the appellant could not take the benefit of the G.O.s. The relevant portion of the Rule reads as under:

> "11. Notwithstanding the provisions of Rule 10, the Government may
>
> E (1) declare that any specified kind of service rendered shall qualify for pension; and
>
> (2) in individual cases, and subject to such conditions as they may think fit to impose in each case, allow service rendered by an employee to count for pension.
>
> F xxxx xxxx xxxx xxxx xxxx"

13. The appellant being naturally aggrieved preferred an appeal, being W.A. No. 892/2009, which endeavour was also unsuccessful as the said appeal was dismissed by the impugned order dated 3.6.2009. G Once again, the basis was the same as the reasoning of the learned Single Judge that CLR service was not provided as qualifying service for the purposes of grant of pension in cases like the appellant, who joined the Revenue Department in pursuance of a recruitment process of the KPSC and was only transferred to the Fisheries Department by an inter-departmental transfer at his own request.

H

Arguments:

14. The arguments before us have been in the same compass as what has been specified aforesaid. The appellant pleads that he must be entitled for service rendered by him of 1678 days as CLR worker of and that the true intention of the G.O. dated 20.8.1993 should be given effect to, being a decision taken in the interest of the workers. The grounds set out hereinabove for the claim of the appellant in para 8 were, once again, repeated before us.

15. Learned counsel for the appellant also sought to emphasise that pension is a right vested in a Government servant and is not a bounty payable at the will and pleasure of the Government as also that pension is a social welfare measure and a post retirement entitlement; something with which we began our order. (***D.S. Nakara and Ors. v. Union of India***[2] ***U.P. Raghavendra Acharya & Ors. v. State of Karnataka & Ors.***[3]; ***Deokinandan Prasad v. The State of Bihar & Ors.***[4]).

16. On the other hand, it was contended on behalf of the respondents, once again, that the appellant could not be treated at par with those CLR workers, who were absorbed as SLR workers vide G.O. dated 20.8.1993 as the concept of regularisation of long and continuous service giving benefit to casual employees could not be equated with a casual employee getting a permanent job through KPSC. The appellant had been enjoying the benefits as a direct recruit to a higher post since 1983, which were not available to his other original co-workers till 2001 when they were regularised by the G.O. dated 31.3.2001. Had the inter-departmental transfer to the Fisheries Department not have taken place, the appellant in any case would not have been in a position to lay a claim.

Conclusion:

17. We have given our thoughtful consideration to the controversy before us, albeit in a limited contour. Leave was granted in this matter on 23.4.2010 but the matter has seen its fate of hearing only after a decade despite hearing being expedited when leave was granted!

18. We are unable to accept the rationale and reasoning of the learned Single Judge and the Division Bench of the High Court in the given facts and circumstances of the case.

[2] (1983) 1 SCC 305
[3] (2006) 9 SCC 630
[4] 1971(2) SCC 330

A 19. We begin by, once again, emphasising that the pensionary provisions must be given a liberal construction as a social welfare measure. This does not imply that something can be given contrary to rules, but the very basis for grant of such pension must be kept in mind, i.e., to facilitate a retired Government employee to live with dignity in his winter of life and, thus, such benefit should not be unreasonably denied B to an employee, more so on technicalities.

20. While looking into the facts and circumstances of the case, there is no dispute about the time period spent by the appellant as a CLR worker and his being at serial No. 2 for grant of pensionary benefits in the list of details of CLR workers had he continued as one. The appellant C was able to advance his career by going through a process of direct recruitment by the KPSC successfully. It is not a case of some unreasonable or improper benefit being extended to the appellant but that he competed against others and was successfully recruited.

21. It is also not in dispute that he was transferred to the Fisheries D Department albeit at his own request and demitted office from there after earning promotion. To say that the appellant would be denied the benefit of the period spent as CLR worker for his pensionary benefit would be to treat his case as inferior one to the case of other CLR workers, who never went through a system of recruitment for E regularisation but were regularised in the Fisheries Department to provide better working conditions and monetary benefits to the employees. Can it really be said that a regularly recruited person like the appellant should not get the benefit which the other people who were CLR workers would get, having spent more than 7 years in that capacity? The answer, in our view, is in the negative, as it would amount to whittling away long F years of service as a CLR worker of 1678 days (7 years 4 months and 23 days).

22. Had the respondents not issued the G.O.s, no doubt the appellant would have no claim. The claim of the appellant arises from the G.O.s, which are beneficial efforts for the CLR workers to improve the conditions G of working along with monetary benefits. The appellant did work for the aforesaid long period of time as a CLR worker and should, thus, be entitled to the same on parity vis-à-vis other CLR workers. The appellant was at serial No.2 in the aforementioned list and would have been so absorbed when 29 posts were created. In fact, only 27 posts out of these were filled in. It is thus not even a case where no post existed or H

that it would affect anybody else, or that the Government would be compelled to create a post for the appellant. In fact, in terms of the G.O. dated 21.8.2006 an equalisation has been given of 200 days of work as a CLR worker to one year's regular service for the purposes of pension. While one would commend such effort by the State Government, it would be very unreasonable to deny this to the appellant in view of the aforesaid facts.

23. What also weighs with us is that the appellant is being deprived of the maximum pensionable service which would be permissible to him if his period of CLR service is recognised as qualifying service and there is no reason to deny the same to him when other CLR workers have got this benefit at the time of their absorption and subsequent regularisation as SLR workers and who would have, by virtue of joining at a later point of time, rendered less service. We also feel that Rule 13 of the Service Rules would possibly come to the aid of the rationale we seek to adopt as on absorption in the establishment, such persons are given the benefit of counting 50 per cent of their earlier work service prior to absorption for the purposes of pension.

24. We are, thus, of the view that for all the aforesaid reasons, the appellant is entitled to succeed in the present appeal and the impugned orders are liable to be set aside. We also find that the rejection of the recommendation of the Fisheries Department, respondent No. 2, by respondent No. 1 was consequently improper and unsustainable. The benefit of the service rendered as a CLR worker would, thus, be liable to be counted for determining the pensionary benefits of the appellant at par with other CLR workers and the pension be accordingly calculated. The arrears of pension be remitted to the appellant within a maximum period of eight (8) weeks from today with admissible interest as applicable to outstanding pension amounts.

25. The appeal is accordingly allowed with costs throughout.

Kalpana K. Tripathy Appeal allowed.