

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No(s). 1330/2010

THE LAW SECRETARY
LAW (B) DEPARTMENT,
GOVT. OF KERALA & ORS.

Appellant(s)

VERSUS

K.P.GEORGE

Respondent(s)

O R D E R

Heard learned counsel for the appellants as well as learned counsel appearing for the respondent.

This appeal has been filed against judgment dated 05.02.2009 passed by the High Court of Kerala in Writ appeal No. 764/2008, whereby the High Court partly allowed the writ appeal filed by the respondent.

Aggrieved by the judgment dated 05.02.2009, the Law Secretary along with others have come up in this appeal.

Brief facts of the case necessary to be noted for deciding this appeal are:-

The respondent was advised by the Public Service Commission to the post of Assistant Grade - II in the Advocate General's office of Kerala High Court w.e.f 01.03.1980. On 29.12.1981, the respondent applied for leave without allowance for taking up employment abroad for a period of five years, which was sanctioned by order dated 29.12.1981. The Government extended the leave for a further period of five years w.e.f. 23.12.1986. The extension of further period of five years was

granted till 23.12.1991. The Government vide order dated 29.01.1993 permitted the respondent to again join the duty w.e.f. 01.02.1993. The respondent further sought leave and the same was granted by order dated 09.12.1993. The respondent again joined w.e.f. 02.05.2000 by order dated 14.03.2000. The Government declared satisfactory completion of probation of the respondent in the cadre of Assistant Grade-II. The petitioner superannuated from service on 30.06.2005. By order dated 20.09.2005, the Government rejected the request of the respondent to reckon the service of the respondent from 01.03.1980 to 22.12.1981 for pension purposes, which was challenged by the respondent in the High Court by filing Writ Petition No. 31271 of 2005. The Single Judge vide judgment dated 15.11.2007 dismissed the writ petition.

Aggrieved by the judgment of the learned Single Judge, the writ appeal was filed before the Division Bench of the High Court.

The Division Bench of the High Court partly allowed the writ appeal. The operative portion of the judgment of the High Court is as follows:

"Therefore, we set aside the judgment of the learned Single Judge and allow the appeal in part. It is declared that the appellant / petitioner shall be entitled to count the period of service rendered by him with effect from 1-3-1980 to 22-12-1981 as qualifying service. He shall not be entitled to count the service between 1-2-1993 to 27-12-1993. The eligible benefits shall be worked out and disbursed to the appellant / petitioner within a period of two months from the date of production of a copy of

this judgment.”

Mr. G. Prakash, learned counsel appearing for the appellants contends that Appendix XIIIA provides for rules to regulate the grant of leave without allowances to officers for taking up employment abroad or within India. By virtue of Rule 5, those who have not completed the probation, leave without allowances will be granted subject to the condition that they will have to start the probation afresh. Learned counsel for the appellants further submits that the respondent had not completed the probation before proceeding on leave, therefore, the earlier period cannot be reckoned for the purposes of pension. He further submits that Appendix XIIIA came into force from 16.12.1983 and therefore the leave which was granted to the respondent prior to the said date could not be added for the purposes of pension.

The submission of learned counsel for the appellants has been refuted by learned counsel for the respondent. Learned counsel for the respondent has referred to Rule 10 and submits that the period prior to aforesaid date i.e. 16.12.1983 has rightly been added for the purposes of pension. It is submitted by learned counsel for the respondent that the Division Bench has rightly directed for inclusion of the said period.

We have considered the submissions of learned counsel for the parties and perused the record.

Rule 5 relied on by learned counsel for the appellants

reads as under:

5. In the case of non-permanent officers in regular service who have not completed probation in the entry grade, leave without allowances may be granted subject to the condition that they will have to start afresh and complete their probation on return from the leave without allowances. In other words, the officers will forfeit the service benefits that had accrued to them prior to their proceeding on leave and they will be deemed as new entrants to Government service on return from leave. What is protected is only their right to rejoin Government service in the same entry grade as if they were new entrants.

Prior to the Appendix XIIA, the grant of leave was regulated in terms of the 1970 Government Order. The Government Order dated 29.04.1970 provides that *the leave period will not be counted for pension*. The relevant part of the Government Order dated 29.04.1970 reads as under:

“(1) The leave period will not be counted for pension;

(2) In the case of eligibility for appointment to selection post, the performance will be assessed afresh on rejoining duty after the leave;

(3) The person already in the select list will be appointed only subject to availability of vacancy on return from leave; and

(4) In the case of non-selection post he will be appointed to such post and allowed to continue on leave.”

In the present case, the respondent had joined on 01.03.1980 and had applied for leave on 29.12.1981. Thus, he had worked from 01.03.1980 to 22.12.1981. Present is not a

case, where the respondent is claiming inclusion of any period from which he was on leave rather he is claiming inclusion of period in which he worked prior to going on leave.

Rule 10 of Appendix XIIIA reads as follows:

"10. These rules shall apply to all cases of grant of leave without allowances on or after the 16th December, 1983 whether in extension of the leave already granted or otherwise and such leave granted before that date shall be reckoned for applying the 20 years limit under Rule 6 above."

Rule 10 expressly states that rules of Appendix XIIIA shall apply to all cases of grant of leave without allowances on or after 16.12.1983. Rules of Appendix XIIIA were not applicable with regard to leave which was granted earlier to that.

It is further made clear that leave granted before that date shall be reckoned only for the purpose of counting the total period of leave without allowances as provided under Rule 6. There is no indication in the statutory rules that the period of working from 01.03.1980 to 22.12.1981 is to be ignored. Admittedly, after returning from leave, the respondent has completed his probation and has also completed the necessary period for sanction of the pension. The Division Bench has referred to and considered all aspects of the matter and noticed the Government order dated 29.04.1970 as well as Rules of Appendix XIIIA.

We are of the view that the Division Bench has rightly declared that the respondent shall be entitled to count the period of service rendered by him w.e.f. 01.03.1980 to

22.12.1981 as qualifying service. We do not find any error in the judgment passed by the High Court.

The appeal is, accordingly, dismissed with no order as to costs. We further direct that in event the benefits as per the judgment of the High Court have not yet been given, the same shall be paid within two months from today.

.....J.
[ASHOK BHUSHAN]

.....J.
[R. SUBHASH REDDY]

NEW DELHI;
FEBRUARY 3, 2021.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 1330/2010

THE LAW SECRETARY

LAW (B) DEPARTMENT, GOVT. OF KERALA & ORS.

Appellant(s)

VERSUS

K.P.GEORGE

Respondent(s)

Date : 03-02-2021 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHUSHAN
HON'BLE MR. JUSTICE R. SUBHASH REDDY

For Appellant(s)

Mr. G. Prakash, AOR
Ms. Priyanka Prakash, Adv.
Ms. Beena Prakash, Adv.

For Respondent(s)

Mr. A. Raghunath, AOR

UPON hearing the counsel the Court made the following

O R D E R

The appeal is dismissed with no order as to costs in terms of the signed order. We further direct that in event the benefits as per the judgment of the High Court have not yet been given, the same shall be paid within two months from today.

(MEENAKSHI KOHLI)
ASTT. REGISTRAR-cum-PS(RENU KAPOOR)
BRANCH OFFICER

[Signed order is placed on the file]