

Vikrant Malhan [Ex. Lt. Cdr.] vs Union Of India & Ors on 2 December, 2020

Author: Rajiv Sahai Endlaw

Bench: Rajiv Sahai Endlaw, Asha Menon

\$~VC-12

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 9666/2020

VIKRANT MALHAN [EX. LT. CDR.] Petitioner
Through: Ms. Pallavi Awasthi, Advocate

Versus

UNION OF INDIA & ORS.
Through:

..... Respondents
Mr.Bhagvan Swarup Shukla, CGSC
with Ms. Shreya Sinha, GP and
Mr.Sarvan Kumar Shukla, Adv. for
UOI

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MS. JUSTICE ASHA MENON
ORDER

% 02.12.2020

[VIA VIDEO CONFERENCING]

C.M.Appln.31003/2020 (Exemption from filing original certified copy of order/documents)

1. Allowed, subject to just exceptions and as per extant rules.

2. The application is disposed of.

W.P.(C) 9666/2020

3. The petitioner, enrolled as a Short Service Commission Officer (SSCO) under 7 + 3 Scheme, for a period of ten years, with the respondents Indian Navy, on 12th August, 2002 and having been released after ten years of service on 12th August, 2012, has filed this writ petition seeking the following reliefs: -

"(i) By issuing a writ in the nature of mandamus by directing the respondent to grant pro rata pension in favour of the petitioner from the date of his discharge with all consequential benefits alongwith an interest @14%.

(ii) To direct the respondents to apply the clause No.1 as embodied in the Notification No. 8(3)86/A/D (Pension/Services) by Government of India, Ministry of Defence dated 19.02.1987 in respect of Short Service Commissioned Officers for the purpose of grant of Pro-rata pension under the term of 'Commissioned Officer'.

(iii) To direct the respondents to frame an appropriate policy to grant pro-rata pensionary to Short Service Commissioned Officers absorbed in PSU/CAB/CPE.

(iv) Pass any other and further order (s) and direction (s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice."

4. The counsel for the respondents Indian Navy appears on advance notice.

5. In view of the aforesaid claims, we have enquired from the counsel of the petitioner, whether the petitioner is seeking the mandamus for grant of pro-rata pension, as claimed in prayer paragraphs No.(i) and (ii), on the basis of any scheme or policy or rule of the respondents Indian Navy, or is seeking a mandamus, as sought in prayer paragraph No.(iii), to the respondents Indian Navy to frame an appropriate policy to grant pro-rata pensionary benefit to SSCOs.

6. The counsel for the petitioner states that she is not claiming the relief of pro-rata pension on the basis of any existing scheme or policy but is seeking a direction for framing an appropriate policy.

7. However when we asked the counsel for the petitioner, under what law is the Court entitled under Article 226 of the Constitution of India to issue mandamus for framing a law or a policy or a scheme, the counsel for the petitioner sought adjournment to study the law.

8. We also informed the counsel for the petitioner, that as far as the claim of the petitioner for pro-rata pension, as in prayer paragraphs No.(i) and (ii), on the basis on any existing law or rule or scheme or policy, is concerned, the same, in accordance with the dicta of a Co-ordinate Bench of this court in Ashit Kumar Mishra Vs. Union of India MANU/DE/3584/2017, will have to be made before the Armed Forces Tribunal (AFT) and not by the way of a petition under Article 226, notwithstanding our recent judgment in Brijlal Kumar Vs. Union of India 2020 SCC OnLine Del 1477.

9. However while this order is being dictated, the counsel for the petitioner changes her stand and states that she is claiming the relief of pro rata pension on the basis of existing policies only. Reliance is placed on order dated 25th February, 2020 in W.P. (C) 2139/2020 titled Lt. Cdr. Mithun Nair (Retd.) v. Union of India & Ors., Annexure P-11 to the petition and on Govind Kumar Shrivastava Vs. Union of India MANU/DE/0048/2019 (DB) [Special Leave Petition (SLP) (Civil) No. 8813/2019 whereagainst was dismissed on 26th April, 2019] and Rakesh Kumar Vs. Union of India MANU/DE/0121/2020.

10. The counsel for respondents states that the application for review of the order dated 25th February, 2020 in Lt. Cdr. Mithun Nair (Retd.) supra has been filed, since the same was passed in the absence of the counsel for the respondents.

11. We may even otherwise mention that the order in Lt. Cdr. Mithun Nair (Retd) supra is without any discussion and reasoning and does not constitute a precedent.

12. We have allowed the counsel for the petitioner to argue, to show that the petitioner, on the basis of any existing rule is entitled to pro-rata pension.

13. The counsel for petitioner has drawn our attention to Annexure P-1 to the petition, being the letter/policy dated 19th February, 1987 subject matter of Govind Kumar Shrivastava supra and has contended that the same is not confined to Indian Air Force, as was the case in Govind Kumar Shrivastava supra, but pertains to Indian Navy as well as Indian Army. It is further contended that the reference therein to 'Commissioned Officer' would include a Short Commissioned Officer as well as a Permanent Commissioned Officer. On further enquiry, it is stated that the Navy Act, 1957, in Section 3(5), while defining 'Commissioned Officer' does not discriminate between 'Permanent Commission Officer' and 'Short Commission Officer'.

14. As per the letter/circular dated 19th February, 1987 also, only those Commissioned Officers were entitled to pro-rata pension, who had completed a minimum ten years of service. We have enquired from the counsel for the petitioner that when the commission of the petitioner was for ten years only, how can the petitioner claim to have been discharged after ten years, to be entitled to pro rata pension on the basis of letter/circular dated 19th February 1987. In Govind Kumar Srivastav supra, the benefit of pro rata pension was merely extended to Airmen also, but only to those who had been discharged after ten years of service but not the qualifying 15 years of service to be eligible for pension.

15. The counsel for the petitioner states that as per the pleadings, the petitioner was enrolled on 12th August, 2002 and discharged on 12th August, 2012 i.e. after ten years.

16. We have enquired from the counsel for the petitioner, the date of commissioning of the petitioner. Once the petitioner admits to have been enrolled under 7 + 3 Scheme, it is unlikely that the commission of the petitioner lasted for more than ten years. It is well-nigh possible that the petitioner was under training and was commissioned subsequently.

17. We have further enquired from the counsel for the petitioner, the terms and conditions on which the petitioner was enrolled. We are of the prima facie opinion that if there was an express mention in the recruitment advertisement or the appointment letter that there would be no pension, the principles of estoppel would apply.

18. Moreover Govind Kumar Shrivastava supra was entertained by this Court and not referred to AFT, because entailed a claim of discrimination and which is not so in this case. In fact, in Brijlal Kumar supra, the senior counsel engaged by the counsel for the petitioner herein had herself argued

that Ashit Kumar Mishra supra as well as Govind Kumar Shrivastava supra were listed before the same Bench on the same date and while Ashit Kumar Mishra supra was transferred to AFT, Govind Kumar Shrivastava supra was not, because entailed a claim of discrimination. It is not so here.

19. The counsel for the petitioner has also contended that W.P.(C) 2098/2019 and W.P.(C) 8006/2019 filed by Indian Short Service Commissioned Officers Association and All India Short Service Commissioned Officers Welfare Association respectively, also claiming the relief of pro-rata pension for Short Service Commissioned Officers, are also pending consideration and are listed next on 11th January, 2021. It is stated that this petition be also tagged to the said petitions

20. However, when we offered to have the other two petitions also listed tomorrow, the counsel for the petitioner stated that it need not be done since the other two petitions claim other reliefs also.

21. The counsel for the petitioner then seeks time, to place before us the recruitment advertisement pursuant to which the petitioner had applied and terms and conditions on which the petitioner was appointed/commissioned, to show whether the petitioner accepted that the petitioner will not be entitled to any pension and in which case, as aforesaid, the principles of estoppel would apply.

22. List on 17th December, 2020.

23. Though Mr. B.S.Shukla, Central Government Standing Counsel appears for the respondents Union of India (UOI) and the Indian Navy, but since during the hearing of Brijlal Kumar supra, it was the contention of the counsels for the respondents that the counsel appearing for the respondents in Govind Kumar Shrivastava supra had not properly represented the case of the respondents, we deem it our duty to caution UOI, of the consequences of permitting Ms. Pallavi Awasthi, Advocate for the petitioner to drop anchor in the matter of pro-rata pension for Short Service Commissioned Naval Officers. We remind UOI that last time Ms. Pallavi Awasthi, Advocate for the petitioner herein and who was also the advocate for Govind Kumar Shrivastava supra, was allowed to take flight in the matter of pro-rata pension for Airmen, the Union of India, as was also argued in Brijlal Kumar supra, came under liability of hundreds of crores of rupees. Having so cautioned Union of India, they will not in future be heard to complain that they were ill represented in this case. A copy of this order be forwarded to Mr. Chetan Sharma, Additional Solicitor General attached to this court.

24. List as aforesaid, on 17th December 2020.

RAJIV SAHAI ENDLAW, J ASHA MENON, J DECEMBER 02, 2020 hd