REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6292 OF 2021
(Arising out of SLP(C) No. 29856/2019)

Valsan P. ....Appellant(s)

Versus

The State of Kerala and Ors. .... Respondent(s)

J U D G M E N T

A.S. Bopanna,J.

1. The appellant is before this Court in this appeal, assailing the order dated 21.05.2019 passed by the learned Division Bench of the High Court of Kerala at Ernakulam in OP (KAT) No.468 of 2017 titled, ***The State of Kerala and Others. Vs. Valsan*** **P**. By the said order the learned Division Bench has allowed the OP and set aside the order dated 14.11.2016 passed by the Kerala Administrative Tribunal, Thiruvananthapuram (for short 'KAT') in O.A. No.975 of 2015.

The KAT had through the said order allowed the application granting the benefit of pension by condoning the period of break in service, as being permissible in the circumstance.

2. The undisputed facts are that the appellant worked as a Technician in the Telecom Department during the period 05.02.1974 to 31.05.1984. The appellant thereafter joined as an Engineer in Steel Industries Limited, Kerala (for short 'SILK') on 04.06.1984. The said SILK is a Public Sector Undertaking (for short 'PSU') owned by Government of Kerala. He worked there till 31.05.1987. Subsequent thereto, through the Public Service Commission, the appellant joined the Technical Education Department on 31.05.1987. He served for about 19 years and on attaining the age of superannuation, retired from service on 30.06.2006.

3. The contested issue arose at this point when the appellant made claim for the pensionary benefits by taking into consideration and reckoning the service of 10 years rendered by the appellant between 05.02.1974 to 31.05.1984 in the Telecom Department which was service under the Central Government. The Accountant General, by the communication dated

26.07.2006 however informed that since the break between the Central Service and State Service is nearly three years, unless the same is condoned by the State Government, the Central Service cannot be reckoned as qualifying service for pension. The appellant therefore made a representation dated 23.09.2006 to the Government requesting to condone the said break in service. Though the said request was rejected by the communication dated 12.02.2007, it was by an unreasoned order. On being assailed, the same was set aside and the matter was sent back for reconsideration. On such reconsideration, the request made by the appellant was declined stating that there are no rules for condoning the break in service. It stated that as per rules the break between the two appointments shall not exceed the joining time admissible under service rules. The rule referred to was Rule 29 (b) Part III of Kerala Service Rules (for short 'KSR').

4. The appellant however filed a review petition dated 17.09.2014 seeking the State Government to review the decision since 'SILK', to which the appellant had joined in the sandwiched period was a fully State-owned PSU. Hence, the appellant requested the exercise of power under Rule 39 of Part

II of Kerala State and Subordinate Service Rules (for short 'KS & SSR'). The review petition filed by the appellant was rejected through the intimation dated 21.05.2015 despite the Government order dated 24.09.2014. The appellant who was aggrieved by the rejection of his request approached the KAT in O.A. No.975 of 2015.

5. The KAT on making a detailed analysis of not just the rules but also the series of Government orders which are relevant, held the appellant entitled to the benefit and accordingly allowed the application. The KAT noted that the requirement was that the period of service in 'SILK' is to be condoned as a disconnect period to provide continuity of service in the two employments. Thus, giving the benefit of the Government order dated 24.09.2014 the entitlement as claimed was upheld. The High Court on the other hand has declined the relief by proceeding on the basis as if the appellant was seeking to reckon the service rendered by him in 'SILK' also as pensionable service. Insofar as service rendered in the Telecom Department it was held that the appellant should approach the Central Government seeking to reckon the same. The High Court, therefore without addressing the real issue has set aside

the order passed by the KAT. The appellant thus claiming to be aggrieved has filed this appeal.

6. We have heard Mr. P.V. Surendranath, learned senior counsel for the appellant, Mr. C.K. Sasi, learned counsel for the respondents and perused the appeal papers.

7. To put the matter in perspective, it is to be noted at the outset that the appellant had worked in the Telecom Department from 05.02.1974 to 31.05.1984 which is pensionable service in usual course if the other requirements were satisfied. The appellant had thereafter worked in the Technical Education Department under the State Government from 31.05.1987, till his retirement on attaining the age of superannuation on 30.06.2006. The said service is also pensionable service. During the interregnum, between 04.06.1984 to 30.05.1987 the appellant worked in 'SILK' which is a State Government Public Sector Undertaking and the service rendered therein is admittedly not pensionable service. The said period of service therefore acts as a disconnect between the two different pensionable service rendered by the

appellant and the same needs to be condoned to provide a single block of pensionable service.

8. In that background, it is also to be kept in perspective that the case of the appellant is not that the non-pensionable service rendered in 'SILK' is also to be reckoned and the entire service from 05.02.1974 to 30.06.2006 is to be admitted for computing the pensionary benefits as assumed by the High Court. On the other hand, what the appellant seeks is to exclude the service rendered in 'SILK' and condone that period between 04.06.1984 to 31.05.1987 from being treated as a disjoint or break between the two pensionable services, though, one is under the Central Government and the other under the State Government. The sum and substance of the claim put forth by the appellant is to reckon the service between 05.02.1974 to 31.05.1984, plus, the service between 31.05.1987 to 30.06.2006 as the total number of years as the pensionable service, clearly excluding the number of years between 04.06.1984 to 30.05.1987.

9. With reference to the consideration made by the State Government in rejecting the claim of the appellant, the learned

counsel for the respondents has referred to Rule 29, Part III KSR to contend that the Rule is categorical that the benefit of past service will stand forfeited if the break between the two appointments exceeds the joining time admissible under the service Rules. The said Rule reads as hereunder:

"<u>Rule 29 Part III KSR</u>

> 29. Resignation and Dismissal. - (a) Resignation of the Public Service or dismissal or removal from it, entails forfeiture of past service.
>
> (b) Resignation of an appointment to take up another appointment the service in which counts is not resignation from public service.
>
> Note: - The break between the two appointments should not exceed the joining time admissible under the service rules plus the public holidays".

10. The above noted Rule if taken into consideration as a standalone provision, it would settle the issue against the appellant since the break between the two appointments is much more than the joining period and the break itself is due to non-pensionable employment. However, what is required to

be examined is the availability of provision to condone such break. The learned counsel for the appellant has therefore referred to Rule 39 of Part II KS and SSR to indicate the power available to the State Government to take just and equitable decisions relating to the service of any person and the Rule should be dealt in the manner in which it is favourable to the person in service. The said Rule reads as hereunder:

"<u>Rule 39 of Part II KS & SSR</u>

> 39. Notwithstanding, anything contained in these rules or in the Special Rules or in any other Rules or Government Orders the Government shall have power to deal with the case of any person or persons serving in a civil capacity under the Government of Kerala or any candidate for appointment to a service in such manner as may appear to the Government to be just and equitable:
>
> Provided that where such rules or orders are applicable to the case of any person or persons, the case shall not be dealt with in any manner less favourable to him or them than that provided by those rules or orders.
>
> This amendment shall be deemed to have come into force with effect from 17th December 1958."

11. In that backdrop, having noted that the appellant's first spell of pensionable service was under the Central Government

and the second spell was under the State Government, it would be apposite to take note of the Government Order dated 12.11.2002 referred by the learned counsel for appellant. The relevant portion of the Government Order dated 12.11.2002 reads as hereunder:

> "Government have examined the matter in detail and are pleased to order that the employees of the State Government Departments who left the former service in Central Government/ Central Public Sector Undertakings on their own volition for taking up appointment is State government Departments will be allowed to reckon their prior service for all pensionary benefits along with the service in the State Government Department if the former employer remits the share of proportionate prorate pensionary liability on a service - share basis.
>
> These Orders will take effect, including monetary effect, only from the date of this order and individual cases otherwise settled will not be re-opened."

12. Though the benefit of reckoning the earlier pensionable service between Central Government and State Government was provided, it was subject to remitting the proportionate pro rata pensionary liability on service share basis between the two employers. However, by a subsequent Government Order dated 06.12.2003, which has reference to the earlier Government

Order dated 12.11.2002, the State Government has done away with the proportionate pro rata sharing between the two employers for payment of pensionary benefits. The State Government has notified to bear the pensionary benefits. The relevant portion of the said Government Order dated 06.12.2003 reads as hereunder:

> "Government have examined the matter in detail and in modification of the orders issued in the G.O. 3rd cited are pleased to order that in the case of prior service rendered by Central Government employees in State Government and vice versa, the liability of Pension including gratuity, will be become in full by the central Government/State Government to which the Government servant permanently belongs at the time of retirement and no recovery of proportionate pension will be mode from Central Government/State Government under whom he had served. But in the case of employees who left the former service in the Central Public Sector Undertakings the orders issued in G.O. dt 12.11.02 will stand."

13. In view of the said position, the observation of the High Court that the appellant is free to move the Central Government if he has a case that his service in the Telecom Department is liable to be reckoned is not justified. If the break in service is condoned as sought by the appellant, then the entire relief would be available at the hands of the State

Government. Therefore, the solitary moot question for consideration in the instant case is, as to whether the break in service interrupting the service rendered in Telecom Department and the Technical Education Department is condonable.

14. On this aspect, the learned counsel for the appellant has relied on the Government Order dated 24.09.2014 whereunder the condonation of the non-qualifying sandwiched period was provided for, to reckon the qualifying service. The Government Order was made with reference to Rule 29 (a) Part III KSR. The Government Order dated 24.09.2014 reads as hereunder:

> "As per Rule 29(a) Part III Kerala Service Rules, resignation of the Public Service or dismissal or removal from it, entails forfeiture of past service. As per Rule 29(b) of ibid, resignation of an appointment to take up another appointment the service in which counts is not resignation from public service and the break between two appointments should not exceed the joining time admissible under the service rules plus public holidays.
>
> ***2) Several requests have been received in Government to reckon the prior qualifying service for pension after condoning the***

non-qualifying sandwiched service as break without forfeiture of past service.

3) Government have examined the matter in detail and are pleased to order that the prior public service shall be reckoned as qualifying service for pension after condoning the sandwiched non qualifying service as break between the two services."

A perusal of the Government Order noted above indicates that the benefit sought for by the appellant is provided and the sandwiched non qualifying service as break in the two services is condonable and the prior public service shall be reckoned as qualifying service for pension. The learned counsel for the respondents contended that the High Court was justified in holding that the appellant had retired on 30.06.2006, while the Government Order is dated 24.09.2014 and as such cannot be made applicable retrospectively. We are unable to accede to such contention. In fact, the KAT had taken note of the entire sequence and had rightly noted that the issue had not been settled and not reached finality in the case of the appellant since his review petition dated 17.09.2014 against the order dated 25.07.2014 was still pending when the Government Order dated 24.09.2014 was issued. The said

Government Order in para 2 has taken note of the several requests received to reckon the prior qualifying service. Further, the main aspect of reckoning the service rendered in Central Government for pensionary benefit after joining State Government service was given effect through the Government Order dated 12.11.2002 and 06.12.2003 i.e., when the appellant was still in State Government service and had not retired. The issue of condoning the break i.e., the sandwich period was claimed immediately on retirement and it was still being agitated. The review was rejected on 21.05.2015 only after the Government Order dated 24.09.2014 was issued granting the benefit of condoning the break.

15. In that view, we are of the considered opinion that the KAT was justified in its conclusion and High Court has erred in setting aside the same. The order dated 21.05.2019 passed by the High Court of Kerala in O.P. (KAT) No.468 of 2017 is therefore set aside. The order dated 14.11.2016 passed by the KAT in O.A. No. 975 of 2015 is restored for its implementation. The time line depicted in the said order for implementation shall apply from this day.

16. The appeal is accordingly allowed with no order as to costs.

17. The pending applications, if any, shall also stand disposed of.

.....J.
(M.R. SHAH)

.....J.
(A.S. BOPANNA)

New Delhi,
October 21, 2021