

IN THE HIGH COURT OF SIKKIM

Contempt Petition No.1 of 2000

U. N. Dubey
Post Graduate Teacher (Maths),
Govt. Senior Secondary School, Mangan,
North Sikkim. Petitioner.

Versus

T. T. Dorjee,
Commissioner-cum-Secretary,
Department of Education,
Government of Sikkim, Gangtok. Contemnor.

Date of Decision : 5th September, 2000

Coram:
The Hon'ble Mr. Justice Ripusudan Dayal, Chief Justice.
The Hon'ble Mr. Justice Anup Deb, Judge.

Present : Petitioner in person.

Mr. S. P. Wangdi, Advocate General with
Mr. Karma Thinlay, Assistant Government
Advocate for the respondent.

JUDGMENT

Dayal CJ.

This application has been filed by the petitioner to proceed against Shri T. T. Dorjee, Commissioner-cum-Secretary, Department of Education, Sikkim, Gangtok for the alleged non-compliance of the orders passed by this Court on 13.12.1995, 10.2.1996

Mangan

and 23.5.1996 passed in Writ Petition No.30 of 1994 and Civil Review Petition No.5 of 1995.

2. The contempt petition relates to the direction issued by this Court in sub-para 4 of paragraph 28 in the judgment dated 13.12.1995 in writ petition No.27 of 1994 and three other connected writ petitions which states as under:-

"28. Keeping everything in view and all the matters considered in the preceding paragraphs we think that justice would be met if steps in the following manner are taken by the Government :

.....
4. Total period of service on adhoc or contractual basis, ignoring the period of break if any, is to be reckoned as qualifying service towards notional fixation of initial pay in the grade and also for the purpose of pension."

3. Pursuant to that direction,, admittedly the petitioner was given regular service with effect from 10th June, 1996. His pay was fixed vide Office Order No.739/Est-1/Edn. dated 18th December, 1996 (Annexure P5) issued by the Secretary, Education in the following terms :-

"In continuation to office order No.547/Est-I/Edn dated : 07.06.96, the basic pay of Shri U. N. Dubey, PGT (Maths) Hee-Yangthang Sr.Sec.School (West) is hereby fixed at Rs.1940/- per month in the scale of Rs.1820-60-2600EB-75-3200 w.e.f. 10.06.96. In addition, he will be entitled to draw such allowances as are admissible under the rules.

The date of next annual increment shall be 01.03.97 unless otherwise postponed by extra ordinary leave exceeding one month.

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His past services on contract w.e.f. 16.07.87 to 15.12.87 and w.e.f. 16.02.88 to 21.03.91, duly ignoring the break in service w.e.f. 16.12.87 to 15.02.88 and w.e.f. 22.03.91 to 09.06.96 shall be counted for the purpose to retirement benefits only.”

It is not disputed before us that for the purpose of fixation of pay, the service rendered on contract by the petitioner with effect from 16.7.1987 till 21.3.1991 was counted for refixation of pay ignoring the break from 16.12.1987 till 15.2.1988. The period from 22.3.1991 till 9.6.1996 was not taken into consideration for fixation of pay. The petitioner submits that this period should also have been counted for fixation of pay because according to him the word ‘break’ occurring in sub-para 4 of paragraph 28 of the judgment extracted above conveys that sense. After hearing the petitioner and the learned Advocate General we find ourselves unable to agree with the submission made by the petitioner. Sub-para 4 of paragraph 28 makes it manifest that for the purpose of fixation of initial pay, the total period of service on adhoc or contractual service was to be taken into consideration and if there was break between the date on which the contract service commenced and the date on which contract service ended, the period of break should have been ignored. This is exactly what has been done while fixing the pay. The period from 22.3.1996 till 9.6.1996 cannot be treated as the period of service on

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contract service.

4. Petitioner seeks support for his submission from the order dated 10.2.1996 passed in Civil Review Petition No.5 of 1995 where while dealing with similar submission, the Court observed that 'regarding fixation of initial pay, if and when his service is regularised, his case would be covered under Clause 4 of paragraph 28 of our judgment.' The petitioner submits that the judgment meant that the petitioner was entitled to count the period from 22.3.1991 to 9.6.1996. We are unable to agree with the submission as we are of the view that the words referred by the petitioner mean only this that the matter was to be governed under Clause 4 of paragraph 28 and not that he was entitled to treat the period as on contract service for the purpose of fixation of pay. The petitioner also seeks support for his submission from paragraph 17 of the judgment dated 23.5.1996 passed in Civil Review Petition 5 of 1995. The words from which the petitioner seeks sustenance read as under :-

"17. It has been argued on behalf of the respondents in this review petition that past service, of the adhoc Teachers whose services are going to be regularised, should be taken into account for fixation of their seniority and also they should be treated as on duties for the years in between the dates of their retrenchment and of their regularisation in service. In this regard, we must refer to Dharwad P.W.D. Employees' Association case where it has been clearly noted that by awarding such a benefit, the Exchequer should not be encumbered unnecessarily and unreasonably. Moreover, in Para 28(4) of the original judgment the effect of regularisation of service of such adhoc Teachers were

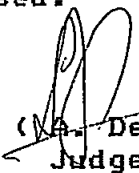
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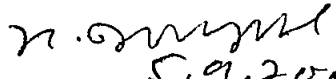
taken care of and it was noted that total period of service on adhoc or contractual basis, ignoring the period of brake if any, is to be reckoned as qualifying service towards notional fixation of initial pay in the grade and also for the purpose of pension. Therefore, the candidates whose services are going to be regularised cannot expect anything further to the benefit ensured in Para 28(4) of the judgment. Since we have directed to place the adhoc Teachers who are to be regularised ahead of the Teachers to be recruited directly, some amount of benefit in terms of seniority becomes available to them."

5. The petitioner submits that the words "Since we have directed to place adhoc teachers who are to be regularised ahead of the teachers to be recruited directly, some amount of benefit in terms of seniority becomes available to them" support his case. We do not see any merit in this submission.

6. There has not been any disobedience or violation of any order of the Court and, as such, there is no merit in the contempt petition.

7. In the result, the contempt petition is dismissed.


(A. Deb)
Judge
5.9.2000


(R. Dayal)
Chief Justice
5.9.2000

at/