

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.11001 of 2005

ORDER:

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By this writ petition, the petitioner seeks directions to the respondents to accord pension to the petitioner, duly taking into account the service rendered by him between 29.10.1977 to 31.01.1996 in the National Remote Sensing Agency, and also to pay the arrears with interest at 9% per annum.

According to the petitioner, he was initially appointed as an Auditor in the office of the Accountant General, Andhra Pradesh at Madras, on 24.07.1959, and while he was serving the Accountant General's office (AG's office), he responded to an advertisement of the 3rd respondent-National Remote Sensing Agency (NRSA), which is an autonomous organization, for recruitment to the post of Assistant Accounts Officer in NRSA. It is the case of the petitioner that as in-service employees of AG's office were allowed and permitted to respond to employment outside subject to fulfilling certain norms and conditions, his application for direct recruitment to the post of Assistant Accounts Officer in the 3rd respondent was forwarded through proper channel by the AG's office. The 3rd respondent has considered his candidature and offered him the appointment to the said post of Assistant Accounts Officer and, accordingly, he joined the services of the 3rd respondent on 29.10.1977. After one year of his services in the 3rd respondent, his probation was declared. The petitioner states that at the time of relieving him for taking up the assignment with the 3rd

respondent, the AG's office has specified an option to him to revert back to the AG's office before the end of two years period reckoned from the date of his relieving from AG's office and, accordingly, he reported back to his parent organization on 29.10.1979 and submitted his application, seeking voluntary retirement from his parent organization, and in that regard, he gave three month notice on 29.10.1979, and with the permission of his parent organization, he went on leave preparatory to retirement (LPR). It is the further case of the petitioner that his parent department has accorded permission to him to take up employment in the 3rd respondent even during his LPR and, as such, he reported back to duty as Assistant Accounts Officer in the 3rd respondent on 05.11.1979 and continued his services with the 3rd respondent till he attained the age of superannuation i.e., 31.01.1996.

The petitioner further asserts that as per the pension scheme announced by the 3rd respondent on 04.09.1986, though he initially opted for the benefit of Contributory Provident Fund (CPF) under Package-II, later on proposed to convert his CPF benefits package into pensionary package, but the 3rd respondent conveyed its decision through its memo dated 18.07.1990, stating that since the petitioner has chosen to get absorbed in the 3rd respondent prior to 31.03.1987, he is eligible only for the benefits contemplated under the CCS (Pension) Rules, 1972, for combined service. Subsequently, through their letter dated 31.01.1992, the 3rd respondent reversed the decision communicated in their memo dated 18.07.1990 stating that since the pension drawn by the officials, who took voluntary retirement from the Central Government and thereafter joined the 3rd respondent, for the

service rendered under the Central Government is retiring pension, they are not eligible for separate pension or gratuity for the period of their re-employment in terms of Rule 7(2) of CCS (Pension) Rules, 1972, and as such, the 3rd respondent did not permit him to opt for the pension scheme in the 3rd respondent.

The petitioner relied on the orders dated 31.03.1995 of the Department of Pension and Pensioners Welfare (DP & PW), whereunder one V.G. Dahale, who was initially employed with the Council for Scientific and Industrial Research (CSIR) and has taken voluntary retirement from CSIR while serving in the 3rd respondent, was allowed pensionary benefits on the basis of combined service rendered by him in CSIR and the 3rd respondent subject to the condition that the pensionary benefits availed of by the said Dahale on his voluntary retirement from CSIR will be refunded by him with interest to CSIR who will in turn discharge the pro-rata pensionary mobility (including commuted value of pension) to the 3rd respondent.

The petitioner also averred that subsequent to consideration of the case of the said V.G.Dahale, he submitted his representation on 07.05.1996 to the 3rd respondent, requesting to consider his case for grant of pension for the service rendered in the 3rd respondent, and the 3rd respondent forwarded its proposal to DOS at Bangalore, seeking approval of its recommendation for payment of pension to the petitioner. The DOS, in turn, sought the opinion of DP & PW, which is treated as the Nodal Agency on matters of this nature, but unfortunately, the DP & PW rejected the proposal of the DOS and declined to consider granting pension to the petitioner for the

combined service rendered by him in the AG's office followed by the 3rd respondent, and the same was communicated to the petitioner on 10.01.2002 and 19.03.2002 by the DOS. Thereafter, the petitioner requested the DOS to grant pension exclusively for the component of the service rendered by him in the 3rd respondent independent of his services rendered between 1959 to 1977 with the AG's office, however since the DP & PW did not accept for this, the DOS through their letter dated 18.11.2004 expressed their inability to accept the request of the petitioner for grant of separate pension for the component of his service rendered with the 3rd respondent in terms of Rule 7(2) of the CCS (Pension) Rules, 1972.

The grievance of the petitioner is that though the employers whom he served in two different spells are entirely distinct and different and also that he is not a re-employed person with the 3rd respondent, who recruited him directly while he was in employment with AG's office, the decision of the 3rd respondent communicated to him on 03.01.1992 that he cannot be permitted to opt for Pension Scheme in the 3rd respondent as he is a voluntarily retired servant from the Central Government and the Pension which he was drawing was a retired pension, is erroneous, and also the letter dated 18.11.2004, whereby his request for grant of pension exclusively for the component of the service rendered by him with the 3rd respondent is declined, is also arbitrary and illegal.

Respondents 1 to 3 have filed counter affidavit, wherein it is stated that the petitioner initially worked in AG's office and was deputed to the 3rd respondent, which is a Central Government Autonomous Body fully funded by Government of India, on lien and

later on taken as a re-employed person in respondent No.3, therefore, Rule 7 (2) of CCS (Pension) Rules, 1972, is very much relevant to the case of the petitioner. It is also stated that since the petitioner is already in receipt of separate retiring pension from AG's office, he cannot have second pension for the service rendered by him in respondent No.3. It is further stated that as per the clarifications of the DP & PW, the Department of Space has replied to the petitioner vide letter No.8/2(7)/91-11 (Vol.II) dated 13.11.2001 that as per the Government orders in existence at the time of the petitioners' mobility to Respondent No.3 there was a provision for payment of pro-rata pension to the employees resigning from the parent department and with proper consent of parent department, to take up appointment in autonomous bodies and the petitioner had not availed benefit of such provision and instead opted to take voluntary retirement from Government service. The mobility orders issued by the Government of India vide DP & AR's OM No.28/10/84 – Pension Unit dated 09.08.1984 are applicable to the cases of absorption in autonomous bodies with proper consent and the same are not applicable to the cases where employees have taken voluntary retirement from Government service.

Learned counsel for the petitioner strenuously contended that the appointment of the petitioner into the services of Respondent No.3, after obtaining voluntary retirement from AG's office, is neither absorption nor deputation nor transfer on request etc., but it is fresh appointment. He further submitted that only for the purpose of continuity of service, he joined into the service of respondent No.3 in the afternoon of 29.10.1979. Simply because there is a continuity of service, the petitioner could not have been treated as on deputation or

the employee absorbed from the service of AG's office into the service of respondent No.3. Further, the petitioner is not a re-employed person for the purpose of invoking Rule 7(2) of CCS (Pension) Rules, 1972 and thereby denying pension to him. Learned counsel for the petitioner relied on a judgment of a Division Bench of Madras High Court in **P.Arumugam vs. Registrar, Tamil University**^[1].

Learned counsel for the respondents reiterated the stand taken by them in the counter affidavit filed by them and supported the impugned action of the respondents in denying second pension to the petitioner for the service rendered by him in Respondent No.3 and also not allowing the petitioner the option for switching over from CPF to GPF with pension scheme.

I have given my earnest consideration to the submissions made by the learned counsel on either side and perused the material made available on record.

Rule 7 (2) of CCS (Pension) Rules, 1972 reads as under:

“Except as provided in Rule 19, a Government servant who, having retired on superannuation pension or retiring pension, is subsequently re-employed shall not be entitled to a separate pension or gratuity for the period of his re-employment.”

The aforesaid Rule has been invoked for the purpose of denying pension to the petitioner for the service rendered by him in Respondent No.3.

In **P.Arumugam's** case referred supra, which is relied on by the learned counsel for the petitioner, it was held as under:

“ 10.1. In the case on hand, the appellant did not apply to the respondent for any such option. In the above said

background, when we consider the question relating to applicability of Rule 7(2) of the Tamil Nadu Pension Rules to the case of the appellant, on a reading of Rules 7(1) and (2) of the Tamil Nadu Pension Rules, we are of the considered opinion that the disqualification for earning two pensions as stipulated in the said rule will have no application to the case of the appellant. The contention of the respondent is that Rule 7(2) will have to be imported into the Service Statute of the respondent University inasmuch as the availability of such a rule is not there in the said Service Statute. In effect, it is a fictional application of Rule 7(2) to the employees of the respondent University in the absence of such a specific rule in the Service Statute of the respondent University.

10.2. Even by holding that Rule 7 can be bodily lifted and imported into the Service Statute of the respondent University, then the question would be whether after applying the said rule it will have to be seen whether the disqualification of earning two pensions in the same service or post could be said to be there in the case of the appellant. For the sake of convenience, Rule 7(1) can be extracted here for better appreciation which reads as under:

“7(1) A Government servant shall not earn two pensions

in the same service or post at the same time or by the same continuous service.”

While applying the above said rule, it will have to be remembered that instead of reading the said rule applicable to a Government servant, it will have to be read in such a manner that it is applicable to an employee of the respondent University. In other words, the rule will have to be otherwise read as under:

“An employee of the respondent University shall not earn two pensions in the same service or post at the same time or by the same continuous service.”

When the said rule is read in that manner, it will have to be found out whether by sanctioning pension for the service rendered in the respondent University, the appellant could be said to suffer the disqualification of earning two pensions in the same service or post at the same time or in the same continuous service.

10.3 As far as the respondent University was concerned, the appellant was not earning any pension for any service rendered in the respondent University in any post contemporaneously or by virtue of any continuous service. The service rendered by the appellant in the respondent University was only between 1.2.1984 and 31.12.2001. There was no other service rendered by the appellant in the respondent University other than the above said period. If the said fact relating to the rendering of service by the appellant in the respondent University was not in dispute, then there is no question of the appellant earning two pensions in the service of the respondent University. The pension earned by the appellant for the service rendered by him for the State Government was quite distinct and different from the service rendered by him for the respondent University. If the said distinction in the rendering of service by the appellant in the respondent University and in the State Government can be distinguished, there is no reason why the applicability of Rule 7 can be ignored in order to hold that the appellant does not suffer the disqualification of earning two pensions simultaneously for the same service. In our considered opinion, sub-rule (2) will have no application inasmuch as the said situation would arise only if the retirement of the appellant, after earning the retiring pension had taken place in the service of the respondent University at an earlier occasion and after such retirement on superannuation, earning pension or retiring pension there was any re-employment in the service of the respondent University once over again, providing scope for earning another pension for such employment or continuous

service.

10.4. That is not the case here. In the case on hand, the retirement of the appellant and the earning of retiring pension by virtue of his voluntary retirement was entirely in a different service altogether which was clearly distinguishable from the service rendered in the respondent University. If the said distinction could be clearly identified, the non application of Rule 7(2) could be safely arrived at inasmuch as Rule 7(2) is only the continuation of Rule 7(1) and the only other aspect referred therein is the exception provided under Rule 16. Once we are clear of the said position, we can safely hold that Rule 7(2) will also have no application. Once non-application of Rule 7 on the whole could be stated without any scope for contradiction, we can safely hold that irrespective of paragraph 20, deemed application of Rule 7 will not have any impact on application of paragraph 16 of Service Statute of the respondent University in the case of the appellant. We are of the clear opinion that the earning of pension by virtue of the voluntary retirement of the appellant in the erstwhile service put in by him in the State Government is clearly distinguishable from the service put in by him in the respondent University on and after 1.1.1984.”

As can be seen from the record, the petitioner had taken voluntary retirement from the service of AG's office and thereafter continued in the service of NRSA, which is altogether a different department. Admittedly, the employment of the petitioner in NRSA is neither absorption nor transfer, but it is a case of fresh employment in pursuance of the notification issued by Respondent No.3. Thus, the retirement of the petitioner from the service of AG's office and earning of retiring pension by virtue of his voluntary retirement can be said to be entirely in a different service altogether, which is clearly

distinguishable from the service rendered in the 3rd respondent. In that view of the matter, the principles enunciated by the Madras High Court in the judgment referred supra are very much applicable to the case of the petitioner, and the stand of the respondents that Rule 7 (2) of CCS (Pension) Rules is applicable to the case of the petitioner, cannot be accepted. Therefore, there is no embargo for granting pro-rata pension to the petitioner for the service rendered by him in Respondent No.3, as per his entitlement, and the petitioner, in my considered opinion, is entitled for claiming pro-rata pension for the period from 29.10.1977 to 31.01.1996.

The writ petition is, accordingly, disposed of directing the respondents to consider fixing pension of the petitioner, duly taking into consideration the period of service rendered by him from 29.10.1977 to 31.01.1996, and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order. No order as to costs.

C.V.RAMULU,J

01.02.2011

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[\[1\]](#) (2006) 3 M.L.J. 1025.