

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

**TUESDAY THIS THE 7TH DAY OF APRIL
TWO THOUSAND AND FIFTEEN**

PRESENT

THE HON'BLE SRI JUSTICE R.KANTHA RAO

WRIT PETITION No.22397 of 2002

Between:

Smt.T.Devaraj

..... PETITIONER

And

The Chairman, Visakhapatnam Port Trust, Visakhapatnam

.....RESPONDENT

The Court made the following:

THE HON'BLE SRI JUSTICE R.KANTHA RAO

WRIT PETITION No.22397 of 2002

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ORDER:

This writ petition is filed under Article 226 of the Constitution of India by the petitioner assailing the action of the respondent in not counting the petitioner's past central government service in Naval Base at Visakhapatnam from 05.06.1968 to 20.01.1976 i.e. for a period of 7 years 7 months and 16 days and in not condoning the interruptions for a period of 250 days in total in Visakhapatnam Port Trust by granting leave for the purpose of continuity of qualifying service for fixation of retirement benefits including pension, by declaring the impugned order passed by the respondent in A/Misc/2002, dated 28.09.2002 as illegal, arbitrary, capricious and contrary to the Rules 26, 27(2), 28(1) and 29 of the Central Civil Service (Pension) Rules of 1972 and also contrary to the Articles 480 and 422 of the Civil Service Regulations and also violative of Articles 16 and 21 of the Constitution of India to set aside the said order and consequently to direct the respondent to count the past service of the petitioner as qualifying service for the purpose of retiral benefits and pension along with his service in Visakhapatnam Port Trust and to condone the interruption of 250 days in his service in Visakhapatnam Port Trust by granting any leave stood to his credit and to pay retiral benefits accordingly.

2. The short facts necessary for considering the issue involved in the present writ petition may be stated as follows:

The petitioner joined as civilian lower division Clerk in I.N.S. Circars Naval Base Visakhapatnam on 05.06.1968 and worked up to 20.01.1976 for a period of 7 years 7 months and 16 days in regular vacancy. While working as such, he applied for the post of clerk in Visakhapatnam Port Trust through proper channel with the permission of Naval Base Headquarters, New Delhi.

Thereafter, considering his application he was appointed as clerk in Visakhapatnam Port Trust on 21.01.1976 with continuation of his previous service with a lein on his previous post for a period of two years from 21.01.1976 to 20.01.1978. It is submitted by the petitioner that as on the date of his joining the respondent's organization, he was having 12 days casual leave, 128 days of earned leave and 110 of half pay leave. It is further submitted by the petitioner that after the petitioner joining as clerk in Visakhapatnam Port Trust 250 days of interruptions occurred for want of vacancy which is beyond his control. Thereafter, he worked continuously without any break and his services were regularized with effect from 24.01.1977 as clerk in Visakhapatnam Port Trust before expiry of his period of leave and he retained the service in Visakhapatnam Port Trust and technically resigned to the post of clerk in Naval Base with effect from 21.01.1978 i.e. from the next day of expiry of lein.

3. It is further submitted that the petitioner has been making requests to the respondent to condone the interruptions and regulate his past service to get the qualifying service for terminal benefits and full pension. According to him, the service rendered by him in both the departments i.e. at Naval Base and Visakhapatnam Port Trust is pensionable service. When there is pension eligibility in both the departments, the past service in the previous department shall be counted in the subsequent service for the purpose of pension etc., if the subsequent service is accepted with the permission of previous department. The petitioner made a representation dated 04.08.1999 to the respondent in writing to consider his case as per rules. But, the respondent did not consider his representation either positively or negatively. Thereafter, he filed W.P.No.11689 of 2002 on 28.06.2002 questioning the inaction on the part of the respondent in not disposing of his representation. The said writ petition was disposed of on 01.07.2002 directing the respondent to dispose of the representation dated 04.08.1999 followed by reminder dated 24.08.2000 within eight weeks, if not already disposed of.

4. Thereafter, the respondent disposed of the representation of the petitioner by passing the impugned order dated 28.09.2002 rejecting the claims of he petitioner. By the impugned order, the past services of the petitioner as civil

lower division clerk in the Naval Establishment, Visakhapatnam is forfeited and the breaks in his service occurred due to non-availability of post is also not condoned. Challenging the action of the respondent, the petitioner filed the present writ petition seeking the aforesaid reliefs.

5. The respondent filed counter-affidavit contending *inter alia* as follows:

The services of the petitioner were regularized with effect from 24.01.1977 and therefore, his breaks in service cannot be condoned. The Visakhapatnam Port Trust is governed by CCS/Pension Rules, 1972 and in terms of Rule 27 of the said Rules he is not entitled for condonation of service as his breaks of service in the Port Trust are due to non-availability of vacancy for the break periods but not due to authorized leave of absence/unauthorized absence/suspension/transfer of non-qualifying service or joining time. Contending as above, the respondent sought to dismiss the writ petition.

6. I have heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondent.

7. There is no dispute about the fact that the petitioner was granted lein for two years in the previous post so as to enable him to join as clerk in the respondent organization. Therefore, he joined the respondent organization with the permission of his parent department as well as with the consent of the respondent organization. The contention of the respondent is that the case of the petitioner is governed by Rule 27 of CCS/Pension Rules, 1972 which provide continuation of breaks in service only in the event of unauthorized absence, suspension or transfer of non-qualifying service, but the said rule does not provide for condonation of breaks in service in case the breaks occurred on account of non-availability of the vacancies in the respondent organization.

8. On the other hand, the version of the petitioner is that Rule 27 of CCS/Pension Rules, 1972 cannot be read in isolation and it has to be read

along with Articles 418 and 422 of Civil Service Regulations. It is contended on behalf of the respondent that since his joining the new post is with the concurrence of both the departments and a lein over his previous post was granted to him, he cannot be denied the reliefs sought for by him for the purpose of fixation of his pensionary benefits. Article 418 of Civil Service Regulations lays down that if the resignation of an appointment is taken up with proper permission of another department, whether permanent or temporary service in which counts in full or in part, is not a resignation of public service. Thus, according to Article 418 of Civil Service Regulations, in case where an interruption in service is inevitable due to two appointments being at different stations, such interruptions not exceeding the joining time permissible under the rules on transfer, shall be covered by grant of leave of any kind due to the government servant on the date of relief or by formal condonation under Article 422 to the extent to which the period is not covered by leave due to the government servant.

9. Thus, the version of the petitioner is that the benefit of past services as well as the condonation of break in service has to be accorded to him since the resignation of the previous post is only a technical formality and the breaks in service were not on account of the fault of the petitioner. The learned counsel appearing for the petitioner argued that since the petitioner resigned his earlier post to join another appointment with proper permission, the benefit under Article 418(b) of Civil Service Regulations shall be admissible to him. Article 422 of Civil Service Regulations provides that interruptions in service can be condoned if the total period of service is less than five years duration and in the total service where there are two or more interruptions, if they do not exceed one year can be condoned.

10. In the instant case, as already pointed out, the lein over the earlier post was permitted to the petitioner and he joined the post of clerk in the respondent organization only with the permission of both the organizations. The petitioner's case is governed by Articles 418 and 422 of Civil Service Regulations but not by Rule 27 of CCS/Pension Rules, 1972 alone. The breaks in service of the

petitioner which occurred in the respondent organization are admittedly not on account of his fault but on account of non-availability of the vacancy. The respondent organization permitted the petitioner to join as a clerk in the respondent organization and if the breaks in service occur on account of non-availability at certain intervals, the said breaks cannot be attributable to the petitioner. Therefore, in the considered view of this Court as per Articles 418 and 422 of Civil Service Regulations, the respondent ought to have considered the representation made by the petitioner and granted the relief sought for by him in his representation for the purpose of fixation of his retiral benefits. The rejection of the request made by the petitioner is contrary to Articles 418 and 422 of Civil Service Regulations. This Court is, therefore of the view that the petitioner is entitled for the past service in the parent department as well as he is entitled for condonation of breaks in service as prayed for by him in the present writ petition. The writ petition therefore succeeds.

11. Accordingly, the writ petition is allowed. The impugned order passed by the respondent in A/Misc/2002, dated 28.09.2002 is hereby set aside and consequently the respondent is directed to count the past service of the petitioner as qualifying service for the purpose of retiral benefits and pension along with his service in Visakhapatnam Port Trust by condoning the interruption period of 250 days in his service in Visakhapatnam Port Trust by granting any leave stood to his credit and to pay retiral benefits including pension accordingly. There shall be no order as to costs. Pending miscellaneous petitions, if any, shall stand closed in consequence.

R.KANTHA RAO,J

Date:07.04.2015

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THE HON'BLE MR JUSTICE R. KANTHA RAO

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