

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on August 26, 2015
Judgment delivered on August 28, 2015

+ **W.P.(C) 7704/2014**

K. LALITHA

..... Petitioner

Through: Mr. A.K. Trivedi, Adv.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondent

Through: Mr. Peeyoosh Kalra, ASC
with Ms. Mahua Kalra, Adv.
for R-1 to R-3
Mr. C. Bheemanna, Adv. for
R-4

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The present petition has been filed by the petitioner seeking the following reliefs:

(a) Quash and set aside the impugned order dated 26/08/2014 declaring as illegal, unjust, unconstitutional, arbitrary and against the rules.

(b) Direct the respondents to release all pensionary benefits to the petitioner, i.e. Pension, Gratuity, Commutation of pension, Leave encashment and all other admissible retirement benefits w.e.f. the date i.e. 04.07.2005 etc alongwith arrears and interest @ 18%

till realisation of dues.

(c) Issue a writ of mandamus or any other writ/directions/orders as may be deemed just and proper in the facts and circumstances of the case

(d) Award cost”.

2. Vide the impugned order dated August 26, 2014, the respondent Nos. 1 to 3 have informed the respondent No. 4 that the request of the respondent No. 4 dated June 6, 2014 and July 30, 2014 with regard to the pension in respect of Ms.K.Lalitha, Assistant Teacher (petitioner herein), the department has already released her terminal benefits as per her entitlement as per Court's direction. The contents of the letter read as under:-

“OFFICE OF THE EDUCATION OFFICER, ZONE XXVII, DISTT. CENTRAL SKV ZEENAT MAHAL SCHOOL BUILDING, KAMLA MARKET

No.Z/XXVII/C/2014/373

Dated:26/8/2014

MOST URGENT/COURT MATTER

To

*The Manager,
Andhra Education Society Sr Sec School,
Rouse Avenue, New Delhi*

Sub: Regarding Pension case in respect of Mrs K.Lalitha, Asstt. Tr

Sir,

With reference to your letter No.AESSSS/2014-15/45 dated 6/6/2014 94 dated 30/7/2014 on the subject cited above, I am directed to inform you that the department has already released her terminal benefits as per entitlement as per court directions and Mrs K.Lalitha, Asstt. Tr has a qualifying service of 14 years 1 month and 7 days i.e. 14 years as on the date of her retirement under the Rule 56(k) (i) of FRSR Part-I. 20 years of qualifying service is mandatory, when the retirement is under Rule 48-A of CCS Pension Rules. In other words, any teacher can put a notice for voluntary retirement only when he/she has completed 20 years of qualifying service. At this stage, Mrs K.Lalitha, Asstt.Tr (retired) is not entitled for any

pension in accordance with the provisions laid down in the CCS (Pension) Rules 1972 on the ground of insufficient total qualifying service i.e. 20 years.

This issues with the prior approval of Deputy Controller of Accounts (Education).

Yours faithfully,

*Education Officer
Zone 27*

Dated:26/8/2014

No.Z/XXVII/C/2014/373

*Copy to: The Accounts Officer, Distt. Central/ND for intimation please
Education Officer”*

3. The brief facts, which are relevant for the case, are that the petitioner joined as an Assistant Teacher, on ad-hoc basis, initially in the year 1984 and continued thereafter with the same status till 1987. The petitioner was subsequently appointed as a permanent teacher vide memorandum dated January 28, 1987 in the Andhra Education Society Senior Secondary School, New Delhi, which is provided aid by the Government of NCT of Delhi. On July 6, 2005 and July 18, 2005, when the age of the petitioner was around 57 years, she submitted representations stating that due to her sickness, she is unable to attend her duties and requested the respondents to allow her to retire prematurely. Certain correspondence was exchanged between the school and the petitioner. As her case for premature retirement was not considered nor any communication was made to her, the petitioner submitted an application dated April 11, 2006 for withdrawal of her

premature retirement. Before any decision could be taken, the petitioner attained the age of superannuation and finally retired from service on July 30, 2008. After the expiry of two years of the retirement of the petitioner, the respondent Nos. 1 to 3 passed an order dated July 14, 2010 conveying the approval of the Deputy Director of Education for premature retirement of the petitioner with effect from July 4, 2005. The petitioner aggrieved by the order dated July 14, 2010, filed a writ petition being W.P.(C) 5372/2012 before this Court, and which stands admitted and ordered to be listed in due course in the category of Regulars as per its seniority.

4. It is the case of the petitioner that the Court had also directed the Director of Education to process the papers of the petitioner for grant of her terminal benefits taking for the present, without prejudice to the rights and contention of the petitioner. Thereafter, a contempt petition was filed with this petition, wherein, a further observation was made that the respondent shall comply with all the aspects of the order dated October 7, 2013. It is pursuant thereof, the terminal benefits have been given in the manner reflected in the impugned communication dated August 26, 2014.

5. The only submission made by Mr.A.K.Trivedi, learned counsel for the petitioner is that the voluntary retirement sought for by the petitioner,

who was beyond the age of 55 years was under FR-56(k), which stipulates; *'any Government servant may, by giving notice of not less than three months in writing to the appropriate authority, retire from service after he has attained the age of fifty years, if he is in Group 'A' or Group 'B' service or post, (and had entered Government service before attaining the age of thirty-five years), and in all other cases, after he has attained the age of fifty-five years'*. He would submit that the petitioner was beyond the age of 55 years and the requirement to have 20 years as a qualifying service is not relevant. He states, the qualifying service of 20 years would be relevant if the voluntary retirement sought is under Rule 48(A) of the CCS Pension Rules. Learned counsel for the petitioner also draws support from the provision of Rule 49 and Rule 36 of the CCS Pension Rules. He would rely upon the judgment of the High Court of Karnataka in ***Writ Petition No. 11343/2011, decided on November 15, 2012 Prof. S.Sudarajan Vs. Indian Institute of Management*** and this Court in the case reported as ***70 (1997) DLT 435, Jagpal Singh Vs. Delhi Transport Corporation*** in support of his contention.

6. On the other hand, Mr. Peeyoosh Kalra, learned Addl. Standing Counsel appearing for the respondent Nos. 1 to 3 would submit that the petitioner is not entitled to the retiring pension as for that, the petitioner must necessarily have 20 years of qualifying service, which admittedly,

she does not have. He would rely upon the judgment of the Supreme Court in the case reported as **2008 (10) SCC 115 C. Jacob Vs. Director of Geology and Mining and Anr.** to contend that the minimum 20 years of qualifying service is required for retiring pension. He would also rely upon the judgment of this Court in **Writ Petition No. 17388-90 of 2006 Union of India and Ors. Vs. Brahma Devi, decided on December 4, 2009** wherein, this Court has followed the judgment of the Supreme Court in **C.Jacob case (supra)**.

7. Mr. C. Bheemanna, learned counsel appearing for the respondent No. 4 school has taken a stand, which has been canvassed by the learned counsel for the petitioner.

8. Having heard the learned counsel for the parties, and on perusal of the CCS Pension Rules and the Fundamental Rules, premature retirement can be sought, on completion of 30 years of qualifying service (Rule 48) or on completion of 20 years of qualifying service (Rule 48-A) and Rule 56(k) of the Fundamental Rules. Rule 48(A) of the CCS Pension Rules and Rule 56(k) of FRSR, Part I, General Rules are reproduced as under:

“48-A. Retirement on completion of 20 years' qualifying service

(1) At any time after a Government servant has completed twenty years' qualifying service, he may, by giving notice of not

less than three months in writing to the appointing authority, retire from service.

Provided that this sub-rule shall not apply to a Government servant, including scientist or technical expert who is -

(i)	<i>on assignments under the Indian Technical and Economic Cooperation (ITEC) Programme of the Ministry of External Affairs and other aid programmes,</i>
(ii)	<i>posted abroad in foreign based offices of the Ministries/Departments,</i>
(iii)	<i>on a specific contract assignment to a foreign Government,</i>

unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority :

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

¹(3) - Deleted

(3-A)	(a)	<i>Government servant referred to in sub-rule (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefor ;</i>
	(b)	<i>on receipt of a request under clause (a), the appointing authority subject to the provisions of sub-rule (2), may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period</i>

		<i>of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.</i>
--	--	---

(4) Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority :

Provided that the request for withdrawal shall be made before the intended date of his retirement.

(5) Omitted

(6) This rule shall not apply to a Government servant who -

<i>(a)</i>	<i>retires under Rule 29, or</i>
<i>(b)</i>	<i>retires from Government service for being absorbed permanently in an autonomous body of a public sector undertaking to which he is on deputation at the time of seeking voluntary retirement.</i>

EXPLANATION. - For the purpose of this rule the expression "appointing authority" shall mean the authority which is competent to make appointments to the service or post from which the Government servant seeks voluntary retirement.

XXX

XXX

XXX

FR 56.....

(k) Any Government servant may, by giving notice of not less than three months in writing to the appropriate authority, retire from service after he has attained the

age of fifty years, if he is in Group 'A' or Group 'B' service or post, (and had entered Government service before attaining the age of thirty-five years), and in all other cases, after he has attained the age of fifty-five years”;

9. A perusal of the Rule 48(A) of CCS Pension Rules, it is clear that the Government servant can seek retirement only on completion of 20 years of qualifying service, which is not the case here.

10. It is a conceded position that the petitioner was appointed on January 28, 1987 in the respondent No. 4 school. Her notice for premature retirement dated July 6, 2005 reads as under:

“To

*The Manager
AES, DDM School
1, DDU Marg,
New Delhi*

*Sub: **Premature retirement from service.**
(Through proper channel)*

Dear Sir,

With reference to my telegram for leave dated 04/07/2005 and the medical certificate forwarded to you, I would like to submit that I was advised complete rest and avoid strenuous duties by the Doctor. Keeping in view the medical advice and my present state of health, I am unable to continue in service.

Since my health condition does not permit to attend duties, I also request you to kindly relax the condition of 3 months notice and allow me to proceed on premature retirement with immediate effect.

Thanking you,

Yours faithfully,

*K.Lalitha
Asst. Teacher*

*Copy to: Principal
AES, DDM School,
1, DDU Marg,
New Delhi”*

11. There is no dispute that the petitioner could have sought retirement. In fact, the order accepting her request for premature retirement dated July 14, 2010 reads as under:

*“OFFICE OF THE EDUCATION OFFICER, ZONE
XXVII: DISTT. CENTRAL SKV SEENAT MAHAL SCHOOL
BUILDING: KAMLA MARKET*

NO.Z/XXVII/C/10/442

Dated: 14/7/10

To

*The Manager
Andhra Education Society SSS,
Rouse Avenue
New Delhi*

*Sub: Pre-mature retirement in respect of Mr. K. Lalitha, Asstt.
Tr. w.e.f. 4/7/2005.*

Sir,

With reference to your letter No. 671 dated 15/5/2010 on the subject cited above, I am directed to convey the approval of Deputy Director of Education, Distt. Central /ND for the pre-mature retirement in respect of Mrs. K. Lalitha, Asstt. Tr. w.e.f. 4/7/2005.

I am further directed to convey you that all the benefits to Mrs. K. Lalitha be processed as per rules for pre-mature retirement.

Yours faithfully,

*Education Officer
Zone 27”*

12. The submission of Mr.Trivedi that since there is no requirement under FR-56(k) of FRSR Part-I General Rules, of a Government servant, putting 20 years of service, the petitioner is entitled to the benefits of pension, is liable to be rejected in view of the judgment of the Supreme Court in *C. Jacob's case (supra)*, wherein the Supreme Court was considering the case wherein facts were, the petitioner joined service as a Drill Helper in June, 1967, in the Regional Mining Cell, Trichy, in the erstwhile State Geology branch of Department of Industries and Commerce, State of Tamil Nadu. His services were terminated in the year 1982. Nearly eighteen years later, the petitioner gave representations dated May 5, 2000 and July 21, 2000 to the first respondent requesting that he may be taken back into service. As the enclosure to the said representation was incomplete, the first respondent called upon him to send the complete document. Instead of complying with the said request, the petitioner approached the Tamil Nadu Administrative Tribunal seeking a direction the first respondent to dispose of his representation. The Administrative Tribunal disposed of the said application, without notice to the respondents, with a direction to the Director of Geology and Mining (first respondent), to consider petitioner's representation and pass an order thereon within four months. The representation was disposed of vide order dated April 9, 2002. The

matter did not rest there. Further, litigation was filed by the petitioner, in which the termination of the petitioner was held to be illegal, by declaring that the petitioner was deemed to have retired from service on July 18, 1982 and directed that the pension be sanctioned from that date and that the entire arrears should be calculated and paid in eight weeks. In the Intra-Court appeal, the Division Bench held that the petitioner has not completed 20 years of qualifying service on July 18, 1982 and therefore, he was not entitled to pension. The said order was challenged before the Supreme Court. Two issues were framed by the Supreme Court, which included the issue with regard to the common error in assuming that 10 years service entitles a Government Servant of pension under the Pension Rules. The Supreme Court in para 16 has held as under:

“16. Rule 33 of TNP Rules provides that a retiring pension shall be granted to a government servant who retires, or is retired, in accordance with the provisions of Rule 42 of the said Rules. Rule 42 of TNP Rules provides that a government servant, who under fundamental Rule 56(d), retires voluntarily or is required by the appointing authority to retire in public interest shall be entitled to a retiring pension. (corresponding Rule 36 of CCSP Rules which provides that a retiring pension shall be granted to a Government servant who retires, or is retired, in

advance of the age of compulsory retirement in accordance with the provisions of Rules 48 or 48-A of those Rules or Rule 56 of the Fundamental Rules or Article 459 of the Civil Service Regulations and to a Government servant who on being declared surplus, opts for voluntary retirement in accordance with Rule 29 of those Rules). The provision relating to retiring pension makes it clear that a minimum of 20 years qualifying service is required for retiring pension. It does not entitle a government servant to retiring pension on completion of ten years service. Therefore, the petitioner is not entitled to retiring pension”.

13. From the perusal of the aforesaid conclusion of the Supreme Court wherein, the Supreme Court had also referred to Rule 56 of the Fundamental Rules as applicable to the Central Government employees, which also includes Rule 56(k) of FRSR, Part I, on which reliance was placed by Mr. Trivedi, and held that the provision relating to retiring pension makes it clear that a minimum of 20 years of qualifying service is required for retiring pension. The said conclusion of the Supreme Court is also based on the reading of the Rule 56 of the Fundamental Rules, the submission of Mr. Trivedi needs to be rejected.

14. The submission of Mr. Trivedi, who relied upon Rule 49 of the CCS Pension Rules to contend that in terms of this Rule, a Government servant retiring in accordance with the said Rules, after completing

service not less than 10 years, would also be entitled to the pension, needs to be rejected as the said issue has also been dealt with by the Supreme Court in para No.17, which I reproduce as under:-

“17. The petitioner contends that if the minimum service for entitlement to retiring pension was 20 years and not 10 years, Rule 43(2) would not have stated "qualifying service of not less than 10 years". He contended that as Rule 43(2) of the TNP Rules (Rule 49(2)(b) of CCSP Rules) refers to "not less than 10 years service", any government servant who has put in service of 10 years or more is entitled to retiring pension. The said contention is misconceived. As stated earlier, the said rule does not relate to 'entitlement' of pension nor does it prescribe the conditions for eligibility, but only provides how the amount of pension should be calculated in cases where the retiring Government servant is entitled to pension under the chapter V of the pension rules. The said Rule regulates the 'amount' of pension not only in case of retiring pension, but in case of all classes of pension. Under Chapter V, in certain situations, a Government servant may be eligible for pension even where the service is less than ten years. Rules 32, 36, and 38 of TNP Rules (Rules 35, 38 and 39 of CCSP Rules) do not prescribe any minimum service for being entitled to pension, where the cessation of service is on account of superannuation, or on account of bodily or mental infirmity or on account of abolition of his post.

When Rule 43(2) of TNP Rules (Rule 49(2)(2) of CCSP Rules) refers to payment of pension to a person who has a qualifying service of not less than 10 years, it does not mean that the minimum period of service prescribed for retirement pension is reduced to 10 years or that government servants who are dismissed/removed/compulsorily retired by way of punishment, or those who voluntarily retire before reaching the age of superannuation with less than 20 years of qualifying service, become entitled to pension. Rule 43(2) of TNP Rules (Rule 49(2)(b) of CCSP Rules), as noticed earlier, comes into play only when the Government servant is entitled to any of the classes of pension enumerated under Chapter V of the Pension Rules. Therefore, when Rule 43(2) of TNP Rules (or Rule 49(2)(b) of CCSP Rule) dealing with the quantum of pension refers to a government servant re- tiring in accordance with the said rules after completing qualifying service of not less than 10 years, it does not mean that pension is payable to persons who have not completed the required minimum number of years (20 years) of service or to persons who have forfeited their service on dismissal/removal from service. Therefore, the appellant is not entitled to pension”.

15. In view of the aforesaid position of law, the petitioner is not entitled to any relief as she had only put in qualifying service of 14

years, 1 month and 7 days.

16. The petition is dismissed.

17. No costs.

(V.KAMESWAR RAO)
JUDGE

AUGUST 28, 2015
akb