

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

-
WRIT PETITION No.36046 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The relief sought for in this Writ Petition is to declare the action of the respondents, in not releasing pensionary benefits, with effect from 16/17.11.2006 in terms of Rules 5 (a), (c), 8(1) (a), Rule 45 (1) & (2), and retirement Gratuity under Rule 46 (1) (a) of the Andhra Pradesh Revised Pension Rules, 1980 (for brevity, 'the Rules'), as being illegal, arbitrary and in violation of the Rules.

The petitioner was selected by the Andhra Pradesh Public Service Commission and was appointed as a Typist, in the unit of District & Sessions Judge, Medak, by proceedings dated 05.01.1996. It is the petitioner's case that his constant ill-health, on account of piles (hemorrhoids), resulted in his not being able to sit continuously for hours together on the bench; he had applied for leave for treatment, and to take rest, as he was unable to bear the agony of having to sit on a chair though he was suffering from unbearable pain; he applied for voluntary retirement on 16.11.2006 requesting that he be granted retirement benefits, if any; though he had applied for voluntary retirement, the third respondent rejected his application on 17.11.2006; thereafter he was informed, by memo dated 06.12.2006, that he was not eligible for voluntary retirement; he received another memo dated 08.12.2006 asking him to submit his explanation within seven days as to why action should not be taken against him; thereafter, he submitted his resignation on 12.12.2016 on the ground of ill-health; the second respondent, by proceedings dated 19.12.2006, accepted his resignation; and though he made several representations thereafter, for grant of pensionary benefits from the date of his resignation, it was of no avail.

In the counter-affidavit, filed on behalf of the respondents, the Principal District & Sessions Judge, Medak submits that acceptance, of the resignation tendered by the petitioner, was communicated to him vide proceedings dated 19.12.2006; his services came to an end on his resignation being accepted; it is only if he had completed twenty years of qualifying service was he entitled for voluntary retirement; the petitioner had put in only ten years of service by then, including the period of unauthorized absence on several occasions; he had applied for casual leave for one day on 15.11.2006; thereafter, he remained absent from 16.11.2006 onwards without intimation or prior permission; by memo dated 08.12.2006, he was informed that his absence from duties, from 16.11.2006 onwards, amounted to dereliction of duties; he was asked to inform why disciplinary action should not be taken against him; pursuant thereto, the petitioner tendered his resignation, by letter dated 12.12.2006, on grounds of ill-health; the second respondent, by proceedings dated 19.12.2006, had communicated acceptance of the resignation of the petitioner with effect from 16.11.2006; Rule 26 of the Rules entails forfeiture of past service on the resignation of an employee from service; voluntary retirement is permissible, under Rule 43 of the Rules, only if twenty years of qualifying service has been put in by the employee; the petitioner's absence on 05.12.2004 and 16.12.2004 amounted to break in service and, therefore, his service cannot be treated as continuous for a period of ten years and ten months as contended by him; and the Writ Petition is hit by laches as the petitioner has invoked the jurisdiction of this Court nearly nine years after he resigned from service.

Sri Prakash Chakravarthy, learned counsel for the petitioner, would place reliance on Rules 43 and 45 of the Rules, and the judgment of the Madras High Court in **K.Devan v. The District Forest**

Officer (judgment in W.P.No.5170 of 2011 dated 15.12.2011), in support of his submission that resignation from service, on the ground of ill-health, would not result in forfeiture of past service, and would necessitate payment of pension if the employee has put in service of more than ten years by then.

Ms.Uma Devi, learned Standing Counsel for the High Court, would submit that, as the petitioner resigned from service, his past service stood forfeited in terms of Rule 26 (1) of the Rules; even otherwise, in terms of Rule 27, the petitioner's unauthorized absence amounted to a break in service; it is only if an employee has put in continuous service of more than ten years is he entitled for pension; and, as the past service of the petitioner stands forfeited, he is not entitled to claim the benefit of pension under the Rules.

While the petitioner submitted a letter on 16.11.2006, seeking voluntary retirement on the ground of ill-health, he was informed, by memo dated 06.12.2006, that he had not completed twenty years of service for being permitted to take voluntary retirement as he was appointed only on 05.01.1996; and he should explain how he was eligible for voluntary retirement. Thereafter, the petitioner was issued memo dated 08.12.2006 informing him that he had applied for casual leave on 15.11.2006; and, thereafter from 16.11.2006, he was absent which amounted to dereliction of duties. By letter dated 12.12.2006, the petitioner informed the Principal District & Sessions Judge, Medak that he was submitting his resignation on the ground of ill-health; his resignation may be accepted, and he be treated as having resigned from the date of his application for voluntary retirement dated 16.11.2006; and he be granted retirement benefits, if any, to which he is entitled to. Thereafter, by proceedings dated 19.12.2006, the petitioner was informed that his resignation letter was accepted with effect from 16.11.2006. The Junior Civil Judge, Gajwel was directed to relieve the petitioner in the afternoon of 16.11.2006. Consequently, by

proceedings dated 19.12.2006, disciplinary proceedings initiated against the petitioner were dropped as he had resigned from service. It is necessary to note that the petitioner had joined service on 05.01.1996, and had put in more than ten years ten months of service by the time his resignation was accepted with effect from 16.11.2006.

Rule 5 (a) of the Andhra Pradesh Revised Pension Rules stipulates that any claim to pension or family pension shall be regulated by the provisions of these rules which were in force at the time when the Government servant was allowed to resign from service. Rule 5 (c) stipulates that any type of pension sanctioned under these rules, except family pension, shall be subject to Rule 45 of the Rules.

In terms of Rule 45 (2) of the Rules a government servant, who retires from service after having completed qualifying service of not less than ten years, is entitled to be paid proportionate pension. Rule 42 of the Rules relates to retirement on attaining the age of superannuation, Rule 43 relates to retirement on completion of 20 years of qualifying service, and Rule 44 relates to retirement on completion of 33 years of qualifying service. As the petitioner did not complete either 20 years of qualifying service, or 33 years of qualifying service, Rules 43 and 44 of the Rules are not applicable. Rule 42 of the Rules, which is attracted only when a Government servant attains the age of superannuation, is also inapplicable as the petitioner did not retire, but had resigned from service.

Rule 26 of the Rules relates to forfeiture of services and, under sub-Rule (1) thereof, resignation from a post entails forfeiture of past service. Under the proviso thereto, resignation does not entail forfeiture of past service if it has been submitted to take up, with prior permission, another appointment, whether temporary or permanent, under the Government. The proviso to Rule 26 (1) of the Rules is not

applicable, as the petitioner did not take up another appointment nor did he seek permission to do so. Consequently, in terms of Rule 26 (1) of the Rules, the petitioner's past service entailed forfeiture on his resignation from service with effect from 16.11.2006.

Rule 27 of the Rules relates to the effect of interruption in service and, under sub-Rule (1) thereof, an interruption in the service of a Government servant entails forfeiture of his past service, except in cases mentioned thereunder. It is not even the petitioner's case that the interruption in his service, on account of unauthorized absence, attracts any of the factors mentioned in clauses (a) to (f) of Rule 27 (1).

In terms of Rule 45 the pension, which the petitioner is entitled to, is only in accordance with the provisions of the Revised Pension Rules. As it is not in dispute that the petitioner resigned from service, Rule 26 (1) of the Rules entails forfeiture of his past service and, consequently, he cannot be held to have put in more than ten years of service to be eligible for pension in terms of Rule 45 (2) of the Rules.

Reliance placed on the judgment of the Madras High Court in **K.Devan v. The District Forest Officer** (judgment in W.P.No.5170 of 2011 dated 15.12.2011) is misplaced. In **K.Devan**, a learned single Judge of the Madras High Court, following an earlier Division Bench judgment of the same Court in **D.Vijayarangan v. Secretary, Sales Tax Appellate Tribunal (Addl.Bench), Madurai**^[1], held that Rule 23 (similar to Rule 26 of the Rules) must be presumed to exclude resignation on the ground of ill-health as, otherwise, it would violate Article 14 of the Constitution of India; and result in discrimination between those who resigned from service on the ground of illness, and those who resigned for misconduct or any other adverse record.

We must express our inability to agree with the opinion expressed in aforesaid judgments of the Madras High Court. These rules were made in exercise of the powers conferred under the proviso to Article 309 of the Constitution of India. There is a presumption regarding constitutionality of statutory provisions- be it plenary or subordinate. In the absence of any challenge to the constitutional validity of provisions having the force of law, Courts must necessarily presume that the Rules are constitutionally valid. Rule 26 (1) of the Rules does not make any distinction between resignation on the ground of ill-health and resignation on any other ground. It would be impermissible for this Court, while exercising jurisdiction under Article 226 of the Constitution of India, to read any such limitation in Rule 26 (1) of the Rules, or to exclude resignation on the ground of ill-health from its ambit. Rule 26 (1) of the Rules must be literally construed and, as the petitioner has resigned from service (*albeit* on the ground of ill-health), his past service would entail forfeiture and, consequently, he must be held not to have put in the minimum required service of ten years to be eligible for pension under the Rules.

The Writ Petition is also hit by laches as the petitioner has chosen to question the action of the respondents, in not granting him pension, nearly nine years after his resignation was accepted by proceedings dated 19.12.2006. While the petitioner claims to have submitted several representations, mere filing of representations does not justify condoning the inordinate delay of nearly nine years in invoking the jurisdiction of this Court after his resignation was accepted.

Viewed from any angle, the petitioner is not entitled to the relief sought for. The Writ Petition fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

27th January, 2016.
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