

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 07.02.2017	Date of pronouncing Judgment 24.02.2017
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CORAM

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR. JUSTICE V. PARTHIBAN

Writ Petition No.10767 of 2015

T.S.Krishnan

.. Petitioner

Versus

1. The Union of India
Rep. by the Secretary
Government of India
Department of Pensions
Ministry of Personnel & Public
Grievances & Pensions
Log Nayak Bhavan
New Delhi.
2. M/s. Garrison Engineer
MES (GE JAIPUR)
Jaipur, Rajasthan-302 006.
3. The Registrar
The Central Administrative Tribunal
Madras Bench,
Chennai - 600 104.

.. Respondents

Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the proceedings in O.A.No.1034/2013 on the file of Central Administrative Tribunal, Chennai, dated 18.11.2014 and quash the same and direct the respondents 1 & 2 to calculate and disburse pension to the petitioner herein, at the earliest date that may be fixed by this Honourable Court.

For Petitioner : Mr.P.V.Selvarajan
for
Mr.R.Aranganathan

For Respondents 1 & 2 : Mr.M.Arvind Kumar
SCGPC

ORDER

The Writ Petition is filed against the order passed by the Central Administrative Tribunal, Madras Bench in O.A.No.1034 of 2013 dated 18.11.2014 dismissing the Original Application filed by the petitioner herein.

2. The petitioner herein has approached the learned Tribunal seeking the following reliefs:-

"(i) To call for the records pertaining to the order 190110/LC/PEN/EIR (PG-IV) passed by the respondents on 19.03.2013 quash the same and to direct the respondents to calculate and disburse pension to the petitioner herein from 01.04.1997 at the earliest date that may be fixed by this Court.

(ii) award costs."

3. The petitioner served in Military Engineering Services (MES) with effect from 20.04.1966 till 30.03.1977. Due to personal reasons, he resigned from service with effect from 01.04.1977. On acceptance of his resignation from service, the petitioner seems to have made representations on 12.02.1988 and 01.12.2003 claiming for grant of pensionary benefits on the basis of the Newspaper Report appeared in 1988 that the persons, who had not less than ten years of service prior to 01.01.1986 would also be considered for grant of pension. The said claim was rejected by an order dated 29.01.2004 on the ground that the service rendered by him in the Department was forfeited as per Rule 26 of CCS (Pension) Rules, 1972 and no pension benefit was payable to him. Not being satisfied with the rejection letter, the petitioner appeared to have pursued his claim with the Department by giving representation after representation and in 2010, he approached the Tribunal in O.A.No.1069 of 2010 for the relief. The learned Tribunal by its order dated 21.11.2012 directed the Department to consider the representation of the petitioner and in pursuance of the direction, an order was passed on 19.03.2013 rejecting the claim once again on the ground that his case was not that of a Government employee, who retired or was declared permanently incapacitated, after rendering temporary or quasi-permanent service of 10 years or more prior to 01.01.1986. It was also mentioned in the rejection order that Rule 26(1) and (2) of CCS (Pension) Rules, 1972, was very clear that on resignation, an employee was not entitled to any pension, gratuity or terminal benefits. Against which, the petitioner approached the Tribunal once again in the present Original Application, with the prayer as stated supra.

4. The official respondents contested the claim of the petitioner on the ground that as per Rule 26 of CCS (Pension) Rules, 1972 a person, who tenders resignation forfeits, his past service and not entitled to pension and therefore, in view of the statutory bar, the claim of the petitioner cannot be granted.

5. Both the counsel for the petitioner and the respondents have cited several decisions on either side and by a detailed order, the Tribunal dismissed the application, in view of the legal position, case laws cited against the applicant therein / the present Writ Petitioner. The learned Tribunal while concluding against the applicant was aware of the consequences

of resignation and retirement, meaning that the resignation means about the complete cessation of Master and Servant relationship, whereas voluntary retirement maintains the relationship for the purpose of grant of retirement service, in view of the past service. Resignation can be tendered irrespective of length of service, whereas in the case of voluntary retirement, an employee has to complete the qualified service for retirement. The learned Tribunal after taking note of all the submissions, both on the basis of facts and laws, has dismissed the application, as devoid of merits. As against the said dismissal of Original Application, the present Writ Petition has been filed.

6. The learned counsel appearing for the petitioner strenuously contended that in the present case, the resignation must be construed to mean retirement and therefore, the petitioner should be granted the pensionary benefits as admissible. According to him, the Hon'ble Supreme Court of India has laid down decision, ruling that the resignation should be construed as retirement in certain set of circumstances and the employee cannot be denied rightful pension, as a consequence of such resignation. The following decisions are cited by the learned counsel appearing for the petitioner:-

(i) AIR 1990 SC 1808 (M/s.J.K.Cotton Spg. and Wvg. Mills Company Ltd., Kanpur ...vs.. State of U.P. and others)

(ii) 2011 (12) SCC 197 (Sheelkumar Jain ..vs.. New India Assurance Company Limited)

(iii) 2014 (16) SCC 260 (Shashikala devi ..vs.. Central Bank of India and others)

(iv) 2005 (8) SCC 325 (Union of India and others ..vs.. Braj Nandan Singh)

(v) Judgment of the Hon'ble Supreme Court of India, dated 12.10.2015, in Civil Appeal No.10251 of 2014.

7. In order to legally appreciate the case of the petitioner, there are two issues arise for consideration before this Court. One is, whether the petitioner has rendered requisite years of service for getting pensionary benefits on resignation / retirement (assuming resignation is to be considered as retirement). Secondly, whether in the face of clear expression as contained in Rule 26 of CCS (Pension) Rules 1972, such construction is possible in favour of the employee.

8. All the decisions cited by the learned counsel appearing for the petitioner are rendered on the facts therein that the employees concerned had put in number of years of service, which in fact entail them to get pensionary benefits, otherwise. Therefore, in such factual matrix, the Hon'ble Supreme Court of India has held that the resignation in those cases, should be construed to mean retirement. Moreover, none of those cases cited was with reference to Rule 26 of the CCS (Pension) Rules 1972, which is applicable to the present case.

9. In the instant case, admittedly, the petitioner had worked only for 11 years from 1966 to 1977 and he did not, admittedly, put in requisite number of years of service for claiming pensionary benefits. Therefore, the citations relied on by the petitioner cannot come to his help, as the petitioner was even otherwise not entitled to pension whether it is called resignation or it should be construed as retirement.

10. Moreover, Rule 26 of the CCS (Pension) Rules, 1972 reads as follows:

"26. Forfeiture of service on resignation

(1) Resignation from a service or post, unless it is allowed to be withdrawn in the public interest by the Appointing Authority, entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service, if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies."

The Rule is very clear and unambiguous and it is not open for any other interpretation, except holding that the resignation means forfeiture of past service, as found in sub-para (1) above. In fact, the learned Tribunal relied on the decisions of the Hon'ble Supreme Court of India reported in 2005 (8) SCC 325 in the matter of "Union of India and others ..vs.. Braj Nandan Singh" with reference to the very same Rule itself. The ratio laid down in the said decision was with reference to Rule 26 of the CCS (Pension) Rules, 1972 and the Tribunal in extenso extracted the decision of the Hon'ble Supreme Court of India. The ratio laid down in the said decision clearly applicable to the facts and circumstances of the present case and therefore, the learned Tribunal has rightly dismissed the Original Application filed by the petitioner herein.

11. Be that as it may, it is also to be noted and seen that the claim of the petitioner was made on the mistaken notion that ten years was the qualifying service for getting pensionary benefits. Such a notion is misconceived, in view of the fact that ten years qualifying service is only on certain contingencies, like forced or involuntary retirement and not to voluntary retirement/ resignation. The benefit of voluntary retirement being not available to the petitioner, as he had not served requisite qualifying years of service, his resignation, therefore, cannot be construed to be a retirement. Even otherwise, it is also to be seen that the petitioner, after more than 15 years of his retirement, has submitted representation and he belatedly approached the Tribunal thereafter in 2010 and obtained some directions which resurrected the issue, which was not adjudicated for more than 20 years. Therefore, in all fours, the claim of the petitioner cannot be countenanced both

on law and facts and therefore, the learned Tribunal rightly dismissed the application.

12. We do not find any infirmity in the order passed by the learned Tribunal and therefore, the Writ Petition is devoid of merits and dismissed. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Secretary
Government of India
Department of Pensions
Ministry of Personnel & Public Grievances & Pensions
Log Nayak Bhavan, New Delhi.

2. The Registrar
The Central Administrative Tribunal
Madras Bench,
Chennai - 600 104.

+1cc to Mr.R. Aranganathan, Advocate SR.11931

+2ccs to Mr. M. Arvind Kumar, Advocate SR. 11837

Pre-delivery order
in
Writ Petition No.10767 of 2015

RSY(CO)
VR(08/03/2017)

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