

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.07.2017

pronounced on : 13.12.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No.10808 of 2003

Dr.M.Sharaf Ali

.. Petitioner

Vs.

1.The Registrar,
University of Madras,
Chennai - 600 005.

2.The State of Tamil Nadu,
rep. by the Secretary to Government,
Education Department,
Fort St. George,
Chennai - 600 009.

3.The Principal Accountant General,
(Accounts and Entitlements)
Tamil Nadu,
Chennai - 600 018.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified mandamus to call for the records of the impugned order No.D1(B)/TE/2002/3395, dated 25.11.2002 passed by the first respondent and quash the same and permit the petitioner to go on voluntary retirement from service under the 1st respondent from 10.04.1995 A.N. and to pay the terminal benefits due to the petitioner.

For Petitioner : Mr.S.J.Jagadev

For Respondents : Mr.R.Gopinathan
for 1st respondent

: Mr.R.Govindasamy
Spl. Government Pleader
for 2nd respondent

: Mr.T.Ravikumar
for 3rd respondent

ORDER

This writ petition has been filed by the petitioner seeking a writ of certiorari calling for the records of the impugned order No.D1(B)/TE/2002/3395, dated 25.11.2002 passed by the first respondent and to quash the same. The petitioner has also sought orders on the respondents to permit him to go on voluntary retirement from service under the 1st respondent from 10.04.1995 A.N. and to pay terminal benefits due to him.

2. The case of the petitioner is that he was originally appointed as a Lecturer in the year 1972 in Tamil Nadu Collegiate Educational Service. While the petitioner was working as Selection Grade Lecturer in Government Arts College, Nandanam, Chennai, he applied for the post of Lecturer in the Department of Management Studies in the University of Madras under direct recruitment

3. By a letter dated 04.07.1989, the first respondent informed the petitioner that the Syndicate is the authority to appoint the petitioner, subject to certain terms and conditions. The second respondent passed G.O.No.1570, dated 02.11.1989 permitting the petitioner to accept the appointment in the Madras University. Consequently, the petitioner was relieved from the Government Arts College, Nandanam on 06.11.1989 and on the same day, he joined as Lecturer in the Department of Management Studies in University of Madras. His post of Lecturer was re-designated as Reader with effect from 21.06.1990 and on 07.11.1991, the petitioner's service in the post of Lecturer was confirmed.

4. The petitioner applied to the first respondent for grant of permission to go to National University, Singapore for doing his Ph.D. On 03.04.1992, permission was granted by the first respondent for three years, which was later ratified by the Syndicate on 22.05.1992.

5. On 09.01.1995, the petitioner sent a notice to the first respondent opting for voluntary retirement. On 07.04.1995, the petitioner joined duty to get relief to go on voluntary retirement. Since no reply was received from the first respondent, on 11.04.1995, the petitioner sent a letter to the first respondent informing that as the notice period had expired on 10.04.1995, he ceased to be a teacher in the University and deemed to have retired and relieved on 10.04.1995 A.N. In the said letter, the petitioner also requested the first respondent to settle the terminal benefits at an early date.

6. According to the petitioner, on 24.04.1995, the first respondent sent a letter to the petitioner informing that his request to go on voluntary retirement was not feasible and the period of his absence from 07.04.1992 to 06.04.1995 to pursue Ph.D. programme was treated as earned leave, study leave without pay and leave on loss of pay respectively.

7. On 24.05.1995, the petitioner was informed that his request to go on voluntary retirement was already negatived and therefore, he is not eligible to go on voluntary retirement which requires 20 years of qualifying service.

8. Challenging the letter of the first respondent dated 24.5.1995, the petitioner filed W.P.No.11155 of 1995 before this Court. By an order dated 20.06.2002, this Court directed the petitioner to submit an application to go on voluntary retirement without insisting for minimum period of 10 years in the University service. Pursuant to the order of this Court, the petitioner submitted an application on 11.11.2002 to the first respondent to permit him to go on voluntary retirement.

9. By the impugned order dated 25.11.2002, the first respondent rejected the request of the petitioner permitting him to go on voluntary retirement and while rejecting the request of the petitioner, the first respondent directed the petitioner to pay a sum of Rs.30,480/- being four months gross salary for the alleged violation of study leave norms and denied all terminal benefits. Challenging the same, the petitioner has filed the writ petition.

10. Resisting the averments in the writ petition, the first respondent filed counter stating that since the petitioner has not satisfied the requisite norms for being relieved under voluntary retirement scheme which was in force with the respondent University, the request of the petitioner was not considered. In so far as the pension benefits are concerned, it is stated that the University had placed on record that the petitioner had unilaterally got himself discontinued from the service of the respondent University with effect from 10.04.1995 rendering himself ineligible for consideration of pensionary benefits. It is stated in the counter that the petitioner was granted two years study leave without pay and with service benefits and one year leave on loss of pay to pursue his Ph.D. programme. As per study leave norms, the petitioner, on return from leave has to serve the University, twice the period of study leave availed by him.

11. According to the first respondent, as per statutes, 20 years of qualifying service is required for availing voluntary retirement. As the petitioner was having only 2 years 5 months and 20 days of service, he was not entitled for voluntary retirement. There is no provision in the statutes to count the past services of the incumbent elsewhere to arrive at twenty years of service required for voluntary retirement. It is also stated that since the petitioner does not stand a chance at all for consideration of his request to go on voluntary retirement based on the laws/pension rules in force in the University, he was asked to pay a sum of Rs.30,480/- being four months gross salary for violating of study leave norms. The writ petition is devoid of merits and prayed for dismissal of the same.

12. The third respondent filed counter stating that University of Madras is an autonomous body funded by various Grants of the Government (both Central and State) and hence the payment of terminal benefits of the employees of the University is not governed by the Tamil Nadu (Pension) Rules. In effect, the third respondent is not the competent authority to authorise the pensionary benefits to the petitioner.

13. I heard Mr.S.J.Jagadev, learned counsel for the petitioner, Mr.R.Gopinathan, learned counsel for the 1st respondent, Mr.R.Govindasamy, learned Special Government Pleader for the 2nd respondent and Mr.T.Ravikumar, learned counsel for the 3rd respondent and also perused the materials available on record.

14. The petitioner had put in 17 years of service in the Tamil Nadu Collegiate Education Services in the year 1972. While he was working, the petitioner applied for the post of Lecturer in the Department of Management Studies in the first respondent University. The petitioner was selected on 04.07.1989 and had joined duty on 06.11.1989 pursuant to G.O.Ms.No.1570, Education Department, dated 02.11.1989. The services of the petitioner in the first respondent University was regularised on 07.11.1991. Later, the petitioner applied for study leave on 03.04.1992 for three years which was granted by the first respondent and the same was also ratified by the Syndicate vide its resolution dated 22.05.1992. On 09.01.1995, the petitioner has submitted an application opting for voluntary retirement.

15. Earlier, the petitioner has filed W.P.No.11155 of 1995 seeking a writ of certiorarified mandamus to quash the proceedings of the first respondent dated 24.05.1995 and to direct the first respondent to permit him to go on voluntary retirement from service under the first respondent from

10.04.1995 A.M. and to pay the terminal benefits of the petitioner.

16. By an order dated 20.06.2002, the learned Single Judge of this Court disposed of W.P.No.11155 of 1995. The operative portion of the order reads thus:

"5. According to the respondents, a minimum of 10 years service is required in the University so as to extend the benefit of G.O.Ms.No.940 dated 06.10.1993. In view of the letter submitted by the petitioner on 05.04.1995 and consequential decision taken by the University on 28.10.1995, the petitioner is not entitled to any claim made in this writ petition. It is also brought to the notice of this Court by the counsel for the respondent to a question posed by the Court that in some cases, off late the respondent is not insisting for the minimum period of 10 years in the University service.

6. Considering the circumstance of the case, I permit the petitioner to submit an application before the respondent/University within a period of four weeks from today and on receipt of the said application, the respondent/University is directed to consider the same sympathetically and pass orders in accordance with law. With the above directions, this writ petition is disposed of. No costs. Connected WMP is also closed."

17. Pursuant to the direction issued in W.P.No.11155 of 1995 dated 20.06.2002, the petitioner submitted an application on 24.07.2002 seeking permission to go on voluntary retirement. Since the first respondent has not acted on the application of the petitioner, he submitted another application seeking to consider his application for voluntary retirement on sympathetic grounds as directed by this Court. On 25.11.2002, the first respondent rejected the request of the petitioner stating as under:

"With reference to your letter cited, I write to inform you that the University has considered the directive of the Hon'ble High Court with due weightage and also considered your request sympathetically. As per the voluntary retirement scheme Rules, an employee should have completed 50 years of age or 20 years of qualifying service in the University, whereas you have not satisfied the said proviso as you have put in only 2 years 2 months and 20 days services in this University and

discontinued the service from this University w.e.f. 10.4.95. With regard to study leave, the period of two years from 28.4.92 to 27.4.94 was granted to you in anticipation that you will serve in the University double the period of study leave subject to maximum of 3 years after resuming duty on completion of the study leave as per the University Rule. Whereas you had continued the leave from 28.4.94 to 6.4.95 on L.L.P. and immediately after joining duty on 7.4.95 and got relieved yourself from the University services on 10.4.95 A/N. In the light of the V.R.S., the University is not in a position to permit you to avail the said scheme and it is reiterated that you are not eligible to avail the same which was already vide this Office letter under reference 3.

You are therefore again requested to send a sum of Rs.30,480/- being four months Gross salary for violation of the provision of Study Leave Norms."

18. In G.O.Ms.No.940, Education (F.I) Department, dated 06.10.1993, it has been stated as under:

" The following clarifications are issued towards settlement of terminal benefits to teachers who have taken appointment under Universities.

i)

ii) In other cases of direct recruitment (i.e.) the teachers who were appointed in Universities under rule 9(b) of the Tamilnadu State and Subordinate Service Rules and then taken by the University, orders issued in G.O.Ms.No.33 Education dated 10.1.89 can be made applicable and in these cases the respective Universities should take over the pensionary liability for the entire service, including the service under Government which will be counted for pension by the University with reference to para 3 of G.O.Ms.No.33 Education dated 10.1.89. Governemtn shall not pay any pension or gratuity either to the individual or to the University.

2. In respect of teachers who are absorbed as per Government Order first read above the services rendered by them in the Government may be counted for purpose of arriving at the qualifying service in the foreign body for the purpose of sanction of pension and Death-cum-retirement Gratuity.

3. In respect of cases covered by Government Order second read above the Universities shall bear the pensionary liabilities for the entire qualifying service (including the service rendered in Government) as the Government will not pay any pro-rata pensionary liability to the Universities. This arrangement is based on counting of past service of teachers (both Government and Aided Colleges) who take up appointment in Universities and vice-versa and hence on similar appointment from Universities to Government Colleges, the pension liability for the past services in University be taken over by the Government.

4. The Commissioner of Collegiate Education and Registrar of Universities are requested to settle the terminal benefits in all cases on the above line immediately."

19. As stated supra, the petitioner had put in 17 years of service in the Tamil Nadu Collegiate Education Services. G.O.Ms.No.33, dated 10.01.1989 provides that the service rendered by College teachers both in Government and Aided colleges who take up appointment under University and vice-versa be counted for the purpose of pension subject to the specific concurrence of Vice-Chancellors of respective Universities to take over the pensionary liabilities.

20. As per G.O.Ms.No.940, dated 06.10.1993, the entire qualifying service under the Government i.e., 17 years have to be added with the services of the first respondent University.

21. As stated supra, the study leave applied by the petitioner has been ratified by the first respondent. Therefore, if the qualifying service under the Government is added with the services in the first respondent University, the petitioner had put in more than 20 years of qualifying service and therefore, he is eligible to invoke the voluntary retirement benefit scheme available with the first respondent University.

22. It is also not the case of the first respondent that the total service both under the Government and the first respondent University was less than 20 years of qualifying service. While passing the impugned order, the first respondent has not taken into account the Government Orders, supra, which are clear on the point. The first respondent University cannot over rule or over look and/or by-pass the Government Orders as long as the said Government Orders are in force.

23. The first respondent was not justified in law in requiring the petitioner to pay a sum of Rs.30,480/- when the said authority has not chosen to settle the terminal benefits due to him. Therefore, I am of the view that the order impugned in this writ petition is liable to be set aside and it is appropriate to direct the first respondent to consider the case of the petitioner in the light of the G.O.Ms.No.33, dated 10.01.1989 and pass orders.

24. In the result:

(a) This writ petition is allowed by setting aside the impugned order in No.D1(B)/TE/2002/3395, dated 25.11.2002 passed by the first respondent.

(b) The first respondent is directed to consider the claim/request of the petitioner in the light of G.O.Ms.No.33, Education (H2) Department, dated 10.01.1989 and pass orders qua pension benefits.

(c) The said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order.

(d) No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vs
To

1.The Registrar,
University of Madras,
Chennai - 600 005.

2.The Secretary to Government,
State of Tamil Nadu, सत्यमेव जयते
Education Department,
Fort St. George, Chennai - 600 009.

+1cc to Mr.S.J.JAGADEV Advocate, S.R.No.89731
+1cc to Mr.T.RAVI KUMAR, Advocate, S.R.No.89459
+1cc to Mr.R.GOPINATH, Advocate, S.R.No. 88758

order made in
W.P.No.10808 of 2003

RSY (CO)
TR(22/06/2018)