

In the High Court of Judicature at Madras

Dated : 05.4.2017

Coram :

The Honourable Mr.Justice NOOTY.RAMAMOHANA RAO

and

The Honourable Mr.Justice S.M.SUBRAMANIAM

Writ Petition No.30277 of 2016

Tmt.M.K.Sivakami

...Petitioner

Vs

1.The Hon'ble Principal District Judge,
City Civil Court, Chennai-104.

2.The Registrar, City Civil Court,
High Court Campus, Chennai-104.

3.The Principal Accountant General
(A&E), No.361, Anna Salai, Chennai-18. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order dated 4.1.2016 of the 3rd respondent in Proceedings No.PO2/3/10218678/ADK returning the petitioner pension proposal, quash the same and consequentially direct the 3rd respondent to sanction and pay her forthwith the pensionary benefits such as DCRG, monthly pension encashment of earned leave and leave on private affairs for the service rendered by the petitioner with arrears and all other consequential benefits together with interest at the rate of 12% after receiving the pension proposal from the 2nd respondent.

For Petitioner : Mr.V.Ajoy Khose
For Respondents 1 & 2 : Mrs.A.Srijayanthi, SGP
For Respondent-3 : Mrs.Hema Muralikrishnan

Order of the Court was made by NOOTY.RAMAMOHANA RAO,J

The writ petitioner has challenged the action of the third respondent - the Principal Accountant General (A & E), Chennai in returning the pension proposal relating to the writ

petitioner. The Principal Accountant General has rested his action on the strength of Rule 23 of the Tamil Nadu Pension Rules, 1978 (henceforth referred to as the Rules) and hence, we called upon to examine the correctness or otherwise of the action of the Principal Accountant General in returning the proposal.

2. The writ petitioner has secured selection through the Tamil Nadu Public Service Commission for recruitment to the post of Typist in Judicial Ministerial Service and thus came to be appointed as such on 10.8.2000 and was posted to work in the Court of Judicial Magistrate-II, Vellore. On her request, she was subsequently transferred to the City Civil Court, Chennai on 1.8.2003. She subsequently earned promotions as Assistant, Bench Clerk Grade-II and Translator. While working as a Translator, due to her deteriorating health condition, which was coming in her way of effectively discharging the duties and functions, she tendered resignation to the service on 01.9.2014 and reiterated the request once again on 09.1.2015.

3. Reluctantly, the Principal Judge, City Civil Court, Chennai accepted the resignation and relieved the writ petitioner of her duties on the afternoon of 30.4.2015. We gather from the record that the writ petitioner has rendered really good quality services in spite of her impeding health condition. She has rendered services very efficiently, kept no file pending with her and updated the entire records and registers till the last date of her performance of duties.

4. So duty conscious was she that in her letter of resignation, she has pointed out that in spite of proceeding on medical leave and also receiving treatment, she has not completely recovered and hence, her conscience has pricked her and hence, she has decided to resign from the job, not for any personal gain nor was it for taking up any lucrative assignment elsewhere. Upon acceptance of her resignation, since she has rendered more than 14 years of service, she sought for payment of pension. It was not disputed before us that 10 years of service is the minimum length of service needed to fetch pension.

5. The proposals have been forwarded to the Principal Accountant General for processing. The Principal Accountant General has returned the same on 04.1.2016 with an endorsement, which reads as under :

"The official has resigned her job due to ill health and her resignation was accepted and she was relieved from service on the afternoon of 30.4.2015 as per proceedings ROC.No.146/2015/ E2 dated 30.4.2015 of Principal District Judge, City Civil Court, Chennai. As per Rule 23 of Tamil Nadu Pension Rules 1978, she is not admissible for pensionary benefits "

6. Before proceeding any further, it is appropriate to notice Rule 23 of Tamil Nadu Pension Rules, 1978 (henceforth called the Rules), which reads as under :

Sub-Rule (1) of Rule 23 of the Rules declares that resignation from service or post entails forfeiture of past service. The Proviso added thereunder would set out that 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 such service qualifies.

7. Since, in the instant case, the resignation has been offered by the writ petitioner not with a view to take up another assignment under the Government service, but is rested upon personal grounds of health, the Principal Accountant General has pointed out that the past service of more than 14 years rendered by the writ petitioner stands forfeited and consequently, she is not entitled to make a claim for pensionary benefits payable under the Rules. The said stance of the Accountant General appears to be in consonance with Rule 23.

8. However, the learned counsel for the writ petitioner has raised a contention that a Division Bench of this Court speaking through S.J.Mukhopadhyaya, J (as the learned Judge then was) in the case of D.Vijayarangan Vs. Secretary, STAT, Madurai [reported in 2009 (3) MLJ 1005], held that those, who resign because of illness or ill health and not because of any misconduct or adverse record and are allowed to do so by the State are entitled for the same benefit, which is allowed to those, who resign to join another service under the State, implying that they are entitled to be paid pension for the past service, without forfeiting the same.

9. This judgment of the Division Bench of this Court was rendered on 17.11.2008 in W.P.No.13048 of 2006. The reasoning assigned in paragraph 7 of the said judgment reads as under :

"In such a situation, a question arises whether the service of an employee can be forfeited if person asks for resignation on the ground of ill health, which is allowed by the State.

Under Rule 23, a person is entitled for all benefits if he is allowed to resign for appointment in some other post under the Government. The rule is silent with regard to resignation, if given on the grounds of illness or ill health for which permission is granted by the competent authority. In case, if it is held that the person, who has resigned because of illness or ill health, as at par with the class of employees, who resign for misconduct or any adverse record, and the class of employees, who resign to

join other government organization are kept in a separate class for grant of pensionary benefits, in such case one may doubt Rule 23 violative of Article 14 vis-a-vis those who resign for illness or ill health and is accepted by the competent authority. Therefore, we hold that those who resign because of illness or ill health and not because of any misconduct or adverse record and are allowed to do so by the State are allowed for the same benefit which is allowed to those who resign to join another service under the State. Comparing the employees who are allowed to resign because of illness or ill health at par with those employees who resign because of misconduct or adverse record will be otherwise violative of Article 14 of the Constitution of India."

10. The learned counsel for the writ petitioner has also brought to our notice another judgment of yet another Division Bench comprising of R.Banumathi,J (as the learned Judge then was) and K.Kalyanasundaram,J in the case of District Forest Officer, Nilgiris South Division Vs. Devan [W.A.No.317 of 2012 dated 28.10.2013]. This Division Bench has approved the ratio in the judgment rendered in D.Vijayarangan's case and held that past service prior to resignation qualifies for purposes of payment of pension.

11. Though the above two judgments of the Division Benches of this Court lend great support to the cause and claim of the writ petitioner, however, Mrs.Hema Muralikrishnan, learned counsel appearing for the third respondent - Accountant General has pointedly drawn our attention to a detailed order rendered by the Supreme Court in the case of C.Jacob Vs. Director of Geology & Mining [S.L.P.(C).No.25795 of 2008 dated 03.10.2008, which has since been reported in 2008 (10) SCC 115].

12. Incidentally, the Supreme Court in C.Jacob's case, has considered the scope of Rule 23 of the rules. The Supreme Court, in C.Jacob's case, has clearly held that Rule 43 of the Rules deals with regulation of amount of pension, while the very entitlement to receive pension is governed by Rules falling under Chapter V of the Rules and unless the Government servant is able to make out his entitlement with reference to any particular class of pensions specified in Chapter V of the Rules, the question of taking recourse to the Rules falling in Chapter VI dealing with regulation of amount of pension would not arise.

13. Chapter V of the Rules commences with Rule 32, which dealt with superannuation pension, while Rule 33 dealt with retiring pension. While Rule 34 dealt with pension liable to be granted on absorption of a Government servant in or under a corporation, company or a body, Rule 35 contemplated for an alternative payment of a lumpsum amount in lieu of pension payable under Rule 34. Rule 36 dealt with invalid pension payable to a Government servant, who is decided by the Medical Authority to be permanently incapacitated for further continuance of the service in Government. Rule 38 dealt with compensation pension, which becomes payable when a Government servant is selected for discharge owing to the abolition of the permanent post unless he is appointed to another post. Rule 39 talks of compulsory retirement pension while Rule 40 talks of compassionate allowance payable in the form of pension to a Government servant, who is dismissed or removed from service. Rule 41 talks of granting of pension to a Government servant, belonging to the erstwhile Indian Civil Service (ICS) and Indian Police (IP), who has been proved to be unfit for further advancement in service and hence removed. Thus, Rules 32 to 41 falling under Chapter V of the Rules have not provided for entitlement or for payment of pension to such of those Government servants, who have tendered resignation and whose resignation has been accepted by the Government/Competent Authority. Consequently, in such cases, the main part of Rule 23 will spring up.

14. Therefore, the learned counsel appearing for the third respondent - Accountant General would urge before us that as per the judgment of the Supreme Court in C.Jacob's case, which was decided on 03.10.2008, the claim for payment of pension by the writ petitioner is not sustainable. The learned counsel would also point out that the judgment rendered by the Division Bench of this Court in D.Vijayarangan's case, though rendered on 17.11.2008, did not have the benefit of noticing the judgment of the Supreme Court rendered in C.Jacob's case on 03.10.2008 before it. Similarly, nor did the Division Bench, which dealt with Devan's case, consider the ratio laid down by the Supreme Court in C.Jacob's case.

15. It is true that D.Vijayarangan's case was decided by a Division Bench of this Court late in point of time to C.Jacob's case. But, however, the judgment of the Supreme Court in C.Jacob's case has not been drawn to its attention and consequently, it has not noticed the ratio behind that judgment. It is equally unfortunate that the attention of the Division Bench, which decided Devan's case, had not been drawn to the ratio in C.Jacob's case either. It was also pointed out that since the Accountant General was not a party to Vijayarangan's

case or Devan's case, the Accountant General did not have an opportunity to point out the judgment of the Supreme Court in Jacob's case.

16. In view of the above situation, we would think it more appropriate to independently consider as to whether the Government servants, who have rendered the minimum qualifying service, but tendered resignation to service on grounds other than touching upon their integrity or lack of devotion to duty or for rendering insipid or ineffective services or for grounds attributable to major misconduct to them and to save the consequential punishments, tendered resignation, such servants are entitled for grant of pension.

17. It is no longer in doubt that grant of pension to a Government servant is not an act of bounty or conferment of a favour by a Government upon any such servants. Nor was it an act of grace of the Government. It is a right earned by the Government servant in recognition of quality of services rendered by him thus far and hence, it has come to be recognized as a case of deferred payment. When a Government servant renders quality services without any blemish or misconduct attributable to him and he discharges or at any rate helps in discharge of most important functions, which the State Government has undertaken towards its citizens, which Governments undertake to perform various duties and services towards its citizens as a part of good governance of the State itself. Not all services rendered forming part of the State Governance fetch them a fee in the sense of 'quid pro quo'. Only for securing few services, fees or charges are collected, but not for all services rendered by the State.

18. Most services rendered by the State are in recognition of promotion of welfare and well being of the citizens. If the Government servants do render services to the State to enable it achieve Constitutional goals, the Government servants, as a class, deserve to be recognized for such quality of service rendered and hence, as a social welfare measure, payment of pension has been undertaken. Payment of pension would render the Government servant to live in the years beyond his prime with honour helping him hold his head high. He is not required to feel obliged for having not become dependent upon someone or the other for his sustenance.

19. By securing monthly pension, he can carry on his activities in the manner considered appropriate by him. Thus, the State is virtually relieving of such Government servants, who have attained a particular old age from stressful factors of securing monthly sustenance thereafter. In fact, the State is obliged under Article 39 by Clause (a) to secure a right to an

adequate means of livelihood and by Clause (e) that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Thus, the Constitutional goal of making old aged citizens of this country 'live in honour' as a facet of guarantee of life is carried forward and implemented. Quality of life certainly matters.

20. As the survey of various provisions contained in Chapter V of the Rules revealed to us that even in cases where Government servants, for proven misconduct, are inflicted with grave punishments of dismissal and removal from service, there is provision for payment of compassionate allowance in the form of monthly pension as per Rule 40. Even in cases where a Government servant is discharged due to abolition of post/service, compensation pension becomes payable as per Rule 38. We, hence, fail to see as to how there can be a legitimate denial to make payment of pension in the form of compassionate allowance to persons, who have rendered more than 10 years of service, but were forced to resign from the Government service, not for any personal gain or for avoiding the evil consequences of being penalised severely for the misconduct exhibited by them, but resign from the Government service all due to factors of ill health or continued ill health. And if we may add, those, who have tendered resignations to the Government service all due to their health conditions, deserve certainly more compassion than those, who have been inflicted with severe punishment of dismissal or removal from service for a proven misconduct on their part.

21. In our opinion, therefore, Rule 40 requires a modification by providing thereunder for payment of compassionate allowance even in cases where the Government servants tender resignation all due to grounds of ill health like, in the instant case. It is also appropriate at this juncture for us to draw the attention of the Government while dealing with a similar provision namely Rule 41 of the Central Civil Services (Pension) Rules, 1972, which also contemplated and provided for payment of compassionate allowance to those servants, who have been dismissed or removed from service, the Supreme Court in the case of Mahinder Dutt Sharma Vs. Union of India [reported in 2014 (11) SCC 684], has brought out the relevant factors to be borne in mind while exercising any such power, in paragraph 14 in the following words :

"14. In our considered view, the determination of a claim based under Rule 41 of the Pension Rules, 1972 will necessarily have to be sieved through an evaluation based on a series of distinct considerations, some of which are illustratively being expressed hereunder:

14.1. (i) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of moral turpitude? An act of moral turpitude is an act which has an inherent quality of baseness, vileness or depravity with respect to a concerned person's duty towards another, or to the society in general. In criminal law, the phrase is used generally to describe a conduct which is contrary to community standards of justice, honesty and good morals. Any debauched, degenerate or evil behaviour would fall in this classification.

14.2. (ii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of dishonesty towards his employer? Such an action of dishonesty would emerge from a behaviour which is untrustworthy, deceitful and insincere, resulting in prejudice to the interest of the employer. This could emerge from an unscrupulous, untrustworthy and crooked behaviour, which aims at cheating the employer. Such an act may or may not be aimed at personal gains. It may be aimed at benefiting a third party to the prejudice of the employer.

14.3. (iii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act designed for personal gains from the employer? This would involve acts of corruption, fraud or personal profiteering, through impermissible means by misusing the responsibility bestowed in an employee by an employer. And would include acts of double-dealing or racketeering, or the like. Such an act may or may not be aimed at causing loss to the employer. The benefit of the delinquent could be at the peril and prejudice of a third party.

14.4. (iv) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, aimed at deliberately harming a third-party interest? Situations hereunder would emerge out of acts of disservice causing damage, loss, prejudice or even

anguish to third parties, on account of misuse of the employee's authority to control, regulate or administer activities of third parties. Actions of dealing with similar issues differently, or in an iniquitous manner, by adopting double standards or by foul play, would fall in this category.

14.5. (v) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, otherwise unacceptable, for the conferment of the benefits flowing out of Rule 41 of the Pension Rules, 1972? Illustratively, any action which is considered as depraved, perverted, wicked, treacherous or the like, as would disentitle an employee for such compassionate consideration."

22. From the above, it becomes imminently clear that where the factors, which compel a Government servant to tender resignation to his services are similar to the ones, which have been pointed out supra by the Supreme Court, for the very same reasons, no compassionate allowance may become payable in cases of resignation from service, but otherwise if the factors are identical or similar, in such a case, denying to make payment of pension in the form of compassionate allowance is neither just nor fair. A welfare State can ill afford to ignore the claims of such persons, who have tendered resignation wholly due to medical grounds or personal reasons, but not for taking up an alternative assignment.

23. We, therefore, hope and trust that the Government would spare appropriate attention immediately to this area because it has a general and universal application across the spectrum of all Government services. Even if a Proviso is added to Rule 23 for making payment of compassionate allowance to such cases of resignation, it would meet the ends of justice. We hope and trust that the State Government would take appropriate decision within the next three months and then communicate their decision to the Principal Accountant General for grant of pension in the form of compassionate allowance to the writ petitioner as well. The State Government will make sure that payment of such pension in the form of compassionate allowance becomes available to all the Government servants, who have tendered resignation purely for personal reasons, but not attributable to either their conduct or other factors as enumerated in the judgment of the Supreme Court.

24. With this, the writ petition stands disposed of. No costs. Registry is directed to mark a copy of this judgment to the Chief Secretary to Government, for taking necessary follow up action.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

RS

To

- 1.The Principal District Judge, City Civil Court, Chennai-104.
- 2.The Registrar, City Civil Court, High Court Campus, Chennai-104.
- 3.The Principal Accountant General (A&E), No.361, Anna Salai, Chennai-18.
- 4 The Chief Secretary to Govt.,
Government of Tamil Nadu
Fort St. George, Chennai 9

+1cc to Mr.V. Ajoy Ghose, Advocate, S.R.No.20676
+1cc to Mr.Hema Muralikrishnan, Advocate, S.R.No.20869

lrs (CO)
md(19/04/2017)

W.P.No.30277 of 2016

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