

In the High Court of Judicature at Madras

Dated : 19.4.2017

Coram :

The Honourable Mr.Justice NOOTY.RAMAMOHANA RAO

and

The Honourable Mr.Justice S.M.SUBRAMANIAM

W.P.No.29446 of 2003

K.Veluchamy ...Petitioner

Vs

- 1.State of Tamil Nadu, rep.by its
Secretary to Government,
Finance Department,
Fort.St.George, Chennai-9.
- 2.The Registrar General,
High Court of Madras, Chennai-104.
- 3.The Accountant General, Teynampet,
Chennai-18.Respondents

PETITION under Article 226 of The Constitution of India praying for issuance of Writ of Mandamus directing the third respondent to revise his net qualifying service by giving the benefits of five years of added service to his net qualifying service and other benefits accrued thereon.

For Petitioner : No appearance
For Respondent-1 : Mr.P.Shiva Shanmuga Sundaram, SGP
For Respondent-2 : Mr.A.Jenasenan
For Respondent-3 : Mr.V.Vijaya Shankar

ORDER

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

The petitioner sought for a Writ of Mandamus by directing the third respondent - Accountant General to revise the net qualifying service rendered by the writ petitioner by extending the benefit of five years added service and accordingly, to settle the terminal benefits payable.

2. The writ petitioner was recruited to the Tamil Nadu Judicial Service as a District Munsif on 01.12.1971. He was promoted as Subordinate Judge on 10.11.1980. While he was serving as Subordinate Judge, Erode during the period 1986-89, based on several allegations, disciplinary proceedings were initiated against the petitioner. In the meantime, the case of the writ petitioner came up for consideration for promotion as District Judge and accordingly, he was promoted as a District Judge on 08.11.1991.

3. In those circumstances, a Committee of two Honourable Judges was constituted by this Court to conduct enquiry against the writ petitioner into charges laid against him. The Committee of Honourable Judges held, in their report, that charges 1 and 2 framed against the writ petitioner were not proved, but charge No.3 was proved. In view of charge No.3 having been proved, the petitioner was inflicted with punishment of dismissal from service through G.O.Ms.No.568 Public (Spl.-A) Department dated 30.6.1995.

4. That order of punishment of dismissal from service came to be challenged by the writ petitioner by instituting W.P.No.9680 of 1995. A Division Bench comprising of Justice S.S.Subramani and Justice Abdul Wahab, who heard the said writ petition, have rendered different opinions in the matter on 29.4.1999. In view of the difference of opinion between the two learned Judges, the matter came to be placed before a third Judge namely the Honourable Mr.N.K.Jain, the Acting Chief Justice, for resolving the difference of opinion.

5. It is appropriate at this stage to notice that Justice S.S.Subramani had taken the view that for the proven misconduct, imposition of punishment of compulsory retirement would be a lenient one whereas Justice Abdul Wahab had specifically taken note of delay of three years in concluding the disciplinary proceedings, during which period, the writ petitioner continued to render service and taking an overall view of the matter including the fact that the services of the writ petitioner were not extended beyond the age of 58 years, had taken the view that imposition of punishment of compulsory retirement from service, by which, the writ petitioner would lose certain monetary benefits to some extent, would meet the ends of justice. The Acting Chief Justice had agreed with the view taken by Justice Abdul Wahab and hence, by his order dated 7.9.1999, the Acting Chief Justice concluded the issue in the following words :

"....I am of the view that the punishment imposed is disproportionate to the proved charge and accordingly reduce the

punishment to one of compulsory retirement...."

6. Thus, the majority opinion in W.P.No.9680 of 1995 required substitution of the punishment of dismissal from service imposed through G.O.Ms.No.568 Public (Spl.-A) Department dated 30.6.1995 and accordingly, the State Government passed orders through their G.O.Ms.No.976 Public (Spl.-A) Department dated 20.7.2000, modifying the penalty of dismissal from service imposed on the writ petitioner to that of compulsory retirement. Now, the writ petitioner seeks an addition to his qualifying service and on that basis, to settle his retirement benefits.

7. The Accountant General, in his communication dated 30.5.2003, addressed to the learned counsel, who issued a legal notice on behalf of the writ petitioner, has clearly brought out that the writ petitioner is not eligible for the additional qualifying service contemplated by Rule 27 of the Tamil Nadu Pension Rules, 1978 (henceforth called the Rules), as he has been compulsorily retired from service as a measure of punishment.

8. Therefore, the question that requires to be adjudicated in this writ petition is :

Whether a person, who has been inflicted with the punishment of compulsory retirement from service, is entitled to the benefit of added qualifying service in terms and in accordance with Rule 27 of the Rules ?

9. To find an answer to the above question, one has to necessarily consider in certain detail, the provisions contained in the Rules. Fortunately, there is no dispute that these Rules do apply to the case of the writ petitioner.

10. Rule 3 defined various expressions found mentioned in the Rules. The expression 'pension' was defined in Rule 3(1)(m) as under :

"Pension includes gratuity except when the term pension is used in contradistinction to gratuity but does not include dearness allowance."

Similarly, the expressions "qualifying service" and "retirement benefits" have been defined in Clause (o) and (p) thereof in the following words :

"Qualifying Service means permanent or officiating service (including temporary service under emergency provisions) rendered in a post included in a pensionable establishment."

"Retirement Benefits include pension or service gratuity and death-cum-retirement-gratuity, where admissible."

11. Rule 5 regulates claims to pension or family pension. It spells out that any claim to pension or family pension shall be regulated by the provisions of these Rules in force at the time when a Government servant retires or is retired or is discharged or is allowed to resign from service or dies, as the case may be. Thus, an essential distinction between a Government servant retiring in contrast to a Government servant, who is retired, that is, in other words, made to retire, is brought out in Rule 5(1) of the Rules.

12. Rule 6 (1) has set out that full pension admissible under these Rules shall not be sanctioned to a Government servant unless the service rendered by such Government servant has been approved by the Pension Sanctioning Authority as satisfactory. Sub-Rule (2) thereof further brings out that if such service has not been satisfactory, the Pension Sanctioning Authority may make such reduction in the amount of pension or gratuity or both, as he thinks proper. Thus, for securing sanction of full pension, the service rendered by the Government servant must be such that it shall be satisfactory all through.

13. Rule 21 has spelt out that dismissal or removal of a Government servant from service entails forfeiture of his past service. Similarly, Rule 23 spells out that resignation from service or post entails forfeiture of past service. Whereas Rule 27(1) sets out that any person appointed to a service or post and who retires from service on or after 01.7.1960 may add to his service qualifying for superannuation pension, but not for any other class of pension, the actual period not exceeding $1/4^{\text{th}}$ of the length of his service or the actual period, by which, his age at the time of recruitment exceeds 30 years or a period of five years, whichever is less, if the service or post is one, for which, the age of recruitment prescribed in the Service Rules applicable to the service or post concerned is 30 years. It is clear that Rule 27(1) gets attracted to such cases where the Government servant retires from service, which qualifies for superannuation pension, but not for any other class of pensions, certain additional length of qualifying service as specified therein.

14. Thus, Rule 27(1) requires us to notice the classes of pensions that are admissible and liable to be granted to Government servants, as it talks of 'superannuation pension', but not 'any other class of pension'. Chapter V of the Rules dealt with the classes of pensions and conditions governing their grant. It starts with Rule 32 and speaks of superannuation pension. Rule 32 specifies that superannuation pension is granted to a Government servant entitled or compelled, by rule, to retire at a particular age. The Explanation added thereunder brings out abundantly that the date of compulsory retirement of a Government servant in the superior service is the date, on which, he attains the age of 58 years whereas the date of compulsory retirement of a Government servant in Last Grade Service is the date, on which, he attains the age of 60 years. Thus, if a Government servant is compelled to retire upon attaining the age of 58/60 years, as is applicable to the class or post held by him, such Government servant becomes entitled to be paid superannuation pension.

15. Rule 33 talks of next class of pension known as retiring pension. Rule 33 specifies 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 Rule 42. Rule 42 figures in Chapter VI and the said Rule regulates the amount of pension. Thus, for the grant of retiring pension admissible under Rule 33, a person shall be retired or retires in advance of the compulsory age of retirement of 58/60 years, as spelt out in Explanation (1) to Rule 32.

16. Rule 34 talks of different class of pension known as pension on absorption in or under a corporation, company or body while Rule 35 talks of payment of lumpsum amount to persons on absorption in or under a corporation or company or body, if he elects the alternative of receiving death-cum-retirement gratuity and lumpsum amount in lieu of pension. Rule 36 talks of invalid pension liable to be sanctioned to a Government servant, if he is decided by Medical Authority to be permanently incapacitated for further continuance in service. Rule 38 talks of compensation pension, which is liable to be granted to Government servant, who is selected for discharge owing to the abolition of his permanent post.

17. Rule 39 talks of compulsory retirement pension. Since it will have some bearing upon the controversy at issue, we prefer to extract the same herein below :

"39. Compulsory retirement pension :

(1) A Government servant compulsorily retired from service as a penalty may be granted by the authority competent to impose such

penalty, pension or gratuity, or both at a rate not less than two thirds and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement.

(2) Whenever in the case of a Government servant the Government passes an order (whether original, appellate or in exercise of power of review) awarding a pension less than the full compensation pension admissible under these rules, the Tamil Nadu Public Service Commission shall be consulted before such order is passed.

Explanation - In this Sub-Rule, the expression 'pension' includes gratuity.

(3) A pension granted or awarded under sub-Rule (1) or as the case may be under Sub-Rule (2) shall not be less than the limit specified in Sub-Rule (5) of Rule 43."

18. Rule 39 clearly brings out that a Government servant, who is compulsorily retired from service as a penalty may be granted pension or gratuity or both at a rate not less than $\frac{2}{3}$ rd and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement. Thus, Rule 39 is a special provision, which deals with cases of such Government servants, upon whom the punishment of compulsory retirement from service has been imposed for purpose of granting them gratuity or pension or both.

19. In our opinion, it is under this Rule 39 regime, the case of the petitioner falls. We will detail our reasons a little later.

20. Continuing to study Chapter V of the Rules, we notice that under Rule 40, a Government servant, who is dismissed or removed from service, if his case is deserving of special consideration, can be sanctioned a compassionate allowance not exceeding $\frac{2}{3}$ rd of pension or gratuity or both, which would have been admissible to him, if he had retired on medical certificate. Thus, compassionate allowance is another form of sanction of pension in cases of Government servants, on whom, the punishment of dismissal or removal from service has been inflicted, if such cases deserve special consideration. Rule 41 is a special kind of pension granted to persons, who have been declared as unfit for further advancement and hence are removed from service by the Government of India on the recommendation of the State Government.

21. Thus, various classes of pensions, which are admissible to be granted in various types/classes of cases, in which, the

Government servants fall, have been completely detailed in Chapter V of the Rules. Therefore, unless the Government servant's case falls in one class of admissible pension or the other, sanction of pension otherwise becomes inadmissible. If we now go back to Rule 27, we have noticed already that, the said Rule enabled addition of certain qualifying length of service for those classes of Government servants, who otherwise qualify for sanction of superannuation pension.

22. In the instant case, it is not in dispute that the writ petitioner is not retired on attaining the age of superannuation of 58 years, but is retired from service as a measure of punishment as per the orders passed by the State Government contained in their G.O.Ms.No.976 Public (Spl.-A) Department dated 20.7.2000, which, in turn, is passed pursuant to the judgment rendered by this Court in W.P.No.9680 of 1995 instituted by this very writ petitioner challenging the correctness of the earlier orders of the State Government contained G.O. Ms.No.568 Public (Spl.-A) Department dated 30.6.1995, dismissing him from service.

23. Therefore, in our opinion, the class of pension, to which, the writ petitioner is entitled squarely falls under Rule 39 and hence, he is not entitled for payment of superannuation pension, as spelt out in Rule 32. There is a well-marked distinction between superannuation pension governed by Rule 32 and compulsory retirement pension specified under Rule 39.

24. This is the precise reason why Clause (1) of Rule 27 has used the expression 'addition to qualifying service for superannuation pension', but not for any other class of pension'. In our opinion, Rule 27 gets attracted only to such cases where the superannuation pension under Rule 32 becomes admissible and it does not get attracted to cases where pension under Rule 39 or under the other Rules noticed supra. becomes admissible. Otherwise, there is no necessity for the Rule Making Authority to specifically use the expression 'but not for any other class of pension' in Rule 27(1) of the Rules.

25. It is a settled principle of law that when a Rule is clear and unambiguous, the full flow thereof should be given effect to normally and by an interpretative process, the Court shall not add or delete anything therefrom. We are, therefore, not justified in subscribing to the idea put forth by the writ petitioner that in his case, he shall be extended the benefit of added qualifying service as per Rule 27, ignoring the mandate that no such addition is admissible to pensions liable to be sanctioned under other Rules contained in Chapter V of the Rules, than under Rule 32.

26. May be it is a coincidence that the punishment of compulsory retirement has been inflicted on the writ petitioner on 30.6.1995, which is incidentally the date, on which, he would have retired in normal course on attaining the age of superannuation of 58 years. The reason being that the disciplinary proceedings were initiated much prior to 30.6.1995. But, for variety of good reasons, they could not be completed in real quick time before 30.6.1995. Therefore, the writ petitioner cannot take advantage of the coincidence of inflicting of punishment of compulsory retirement on him on 30.6.1995, which is also the date, on which, he would have otherwise retired from service on attaining the age of superannuation of 58 years. In the instant case, he was punished for proven misconduct and that element cannot be ignored.

27. In our opinion, the Rules have been clearly bringing out a distinction between a Government servant, who is retiring on attaining compulsory age of superannuation and a Government servant, who is retired, i.e. made to retire. In the latter cases, the Government servant is made to retire while in the former cases, he automatically retires from service upon reaching the age of compulsory superannuation. Therefore, the Rules maintain a clear distinction between those cases where the Government servants attain the age of superannuation and thus retire from service and those Government servants, who are made to retire.

28. For all the aforesaid reasons, we see no merit in this writ petition. Accordingly, the writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

RS

To

1.The Secretary to Government of Tamil Nadu,
Finance Department,
Fort.St.George, Chennai-9.

2.The Registrar General,
High Court of Madras,
Chennai-104.

3.The Accountant General,
Teynampet,
Chennai-18.

+1cc to the Government Pleader Sr.23844

+1cc to Mr.V.Vijayshankar, Advocate Sr.23942

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