



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON: 03.02.2017

ORDER PRONOUNCED ON : 03.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.A. (MD) No.942 of 2014

and

W.P. (MD) .No.5745 of 2006

Additional Deputy Inspector General
of Police,

Group Centre,
Central Reserve Police Force,
Guwahati-23, Assam.

... Appellant/Respondent

Vs

P.Sundaram

... Respondent/Petitioner

Writ Appeal is filed under Clause 15 of Letters Patent against the order dated 21.01.2013 made in W.P.(MD).No.5745 of 2006.

Prayer in WP(MD). 5745/ 2006 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, call for all records relating to the order of the respondents dated 04/12/2003 issued in his letter No. R. VII-1/03-04-PC.I/49, OFFICE OF THE ADDL.DIGP, GROUP CENTRE, CRPF, GUWAHATI-23 and quash the same and direct the respondent to pay the service gratuity and pension for the qualifying service of twelve years- one month-eighteen days together with 12% interest and the consequential arrears of pension from the date of discharges on 18/05/2003.

For Appellants : Mrs.S.Srimathy
For Respondent : Mr.G.Thalaimutharasu

**JUDGMENT**

[Judgment of the Court was delivered by **J.NISHA BANU, J.**]

This Writ Appeal has been filed against the order dated 21.01.2013 made in W.P.(MD).No.5745 of 2006, whereby, the impugned order passed by the respondent was set aside and the learned Judge directed the respondent therein to arrive at the pension and gratuity payable to the petitioner and disburse the payment to the petitioner.

2.The appellant herein is the respondent in W.P(MD).No.5745 of 2006 and the respondent is the Writ petitioner in the said Writ Petition. However, for the sake of convenience, the parties are referred to as per the rank mentioned in the Writ Petition.

3. The facts projected in the Writ Petition is that the petitioner seeks to quash the impugned order passed by the respondent/Additional Deputy Inspector General of Police, Group Centre, Central Reserve Police Force, Guwahati-23, Assam, in his proceedings dated 04.12.2003, whereby the petitioner request for payment of gratuity was rejected and consequently, to direct the respondent to pay the service gratuity and pension for the qualifying service of twelve years-one month-eighteen days together with 12% interest and the consequential arrears of pension from the date of his discharge on 18.05.2003.

4.The case of the writ petitioner before the learned single Judge is that he joined service in Central Reserve Police as 'Constable' on 01.04.1991. He was discharged from service on 18.05.2003. During his tenure as 'Constable', his character was assessed as exemplary. Thereafter, after his retirement, the petitioner was not paid service gratuity and pension. Therefore, he made a representation to the authorities for payment of the pension and service gratuity. In response to the said representation, the respondent has passed the impugned order informing that service gratuity is not payable to the petitioner as he did not have the qualifying service for the purpose of pension. Hence, the petitioner has filed the writ petition to quash the order, dated 04.12.2003 issued by the respondent.

5.The respondent filed a counter affidavit stating that the petitioner who had put in service of his own is not eligible for getting pension and other service gratuity. The petitioner joined the service on 01.04.1991 and was discharged on 18.05.2003. The length of service of the petitioner was less than 20 years and the petitioner did not complete 20 years of qualifying service, his request was rejected by the respondent.



6. The learned single Judge after considering the submissions made by the petitioner as well as the respondent, remitted back the matter to the respondent to consider the claim of the petitioner by applying Rule 49(2)(b) of the Central Civil Services (Pension) Rules, 1972. Against which, the present writ appeal has been filed.

7. We have heard the submissions made on either side and perused the materials available on record.

8. It is useful to extract Section 17 of the Central Reserve Police Force Rules, 1955, which reads as follows :-

"Discharge :- Subject to the Provisions of the Schedule appended to the Act, any member of the Force shall at any time before he has completed three months' service or after the completion of the full period of service for which he is engaged, be entitled to claim his discharge from the Force by applying to the appointing authority through the proper channel."

It is an accepted fact that the petitioner was discharged from service in terms of the a fore-said provision.

9. It is also useful to extract Rule 49(2)(b) of the Central Civil Services (Pension) Rules, 1972, which reads as under :-

"In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty-three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under Clause (a) and in no case the amount of pension shall be less than (rupees three hundred and seventy five per mensem)."

10. On reading the pension Rules, the Rule is silent on a person, who is discharged from service. But Rule 49(2)(b) of the said Rules, specifically states that a person on completion of qualifying service of 10 years is entitled to, for pension. The petitioner has not been discharged from service on account of any punishment or on the result of any disciplinary proceedings, but on his request. The records show that the petitioner's character was assessed as exemplary and there is no allegation whatsoever during his tenure as Constable. After the petitioner's discharge from service, he was not paid any service gratuity or pension and hence, he made representation to the authorities for payment of pension and service gratuity, but by way of impugned order, the respondent rejected his claim, which cannot be sustained, as the petitioner has put in service of 12 years, one month and eighteen days.



11. Though the length of service of the petitioner was less than 20 years, in terms of Rule 29(2)(b), he is entitled for a minimum pension and as per Article 300 A of the Constitution of India, pension is the property of a person and on completion of 10 years of service, a minimum pension becomes the property of the petitioner, and therefore, as long as the petitioner's discharge was not on account of any disciplinary proceedings, or any moral turpitude, he is entitled for pension, which is well considered by the learned single Judge and the learned Single Judge had directed the authorities to consider his claim in terms of Rule 49(2)(b) of the Central Civil Services (Pension) Rules, 1972 and therefore, the order of the learned single Judge does not warrant any interference in the hands of this Court.

12. In the result, the writ appeal is dismissed. No costs.

Sd/-

Assistant Registrar (C)

/True Copy/

Sub Assistant Registrar

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To

Additional Deputy Inspector General
of Police,

Group Centre,
Central Reserve Police Force,
Guwahati-23, Assam.

+1CC to Mrs.S.Srimathy, Advocate Sr.No.12191

+1CC to Mr.G.Thalaimuttarasu, Advocate Sr.No.12842

GJM/SKN/RSK/17.3.17-4p-4C

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