

THE HON'BLE SRI JUSTICE M.S.K. JAI SWAL

WRIT PETITION No.3918 of 2006

ORDER:

This writ petition is filed questioning the action of the respondents in not fixing and releasing his pensionary benefits in view of his voluntary retirement from service.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents. Perused the material available on record.

3. Before going into the merits of the case, it is necessary to look into the facts of the case in brief:

4. The petitioner entered into service as Assistant Engineer in the erstwhile A.P.State Electricity Board in the year 1976, his services were regularized and probation period was declared, vide proceedings, dated 21.08.1980 with effect from 02.03.1977. While he was working at Operation Circle, Visakhapatnam, vide memo, dated 19.08.1989, the petitioner was deputed to work with Kenya Power and Lighting Company Limited, Nairobi, Kenya for a period of 2 years on some terms. But the petitioner worked there from 14.02.1990 to 04.09.1991. In the meanwhile, the petitioner was given paper promotion as Assistant Divisional Engineer, vide proceedings dated 28.09.1990. The petitioner informed the respondents Board that due to ill-health of his wife, he relieved from the deputation duties at Kenya on 04.09.1991 and coming to India on 14.10.1991 and requested to post at Visakhapatnam. The Member Secretary, vide proceedings, dated 29.11.1991, posted the petitioner at Visakhapatnam.

5. According to the respondents, as the petitioner have no generation experience in the cadre of Assistant Engineer, and as per Board Regulations, such officers should be posted to generating stations initially to acquire generation experience of 2 years in the cadre of Assistant Divisional Engineer, the posting orders issued to Visakhapatnam Zone, were cancelled and he was re-allotted to Lower Sileru Hydraulic Electrical Scheme (LSHES), vide proceedings, dated 13.12.1991. On the representation of the petitioner, dated 04.02.1992, he was posted as ADE/Mechl/Upper Silreru Second Stage-I, vide proceedings, dated 11.02.1992, but the petitioner did not report to join there.

6. According to the petitioner, vide letter, dated 23.06.1992, M/s.Atlantic Power Savers, Nairobi, Kenya, requested the Board to depute some of its officers to work at their new project. The petitioner expressed his willingness to work at Kenya, vide his letter, dated 29.06.1992, duly enclosing his leave application for two years. Vide letter, dated 25.08.1992, the Board, in principle, accepted to depute him to Kenya.

7. According to the respondents, vide Memos, dated 22.07.1992 and 01.10.1992, the petitioner was directed to report duty at LSHES and if he fails to join duty within 15 days from the date of receipt of the memo, his promotion will be cancelled. In the meanwhile, a D.O.letter, dated 24.08.1992 was received from President of APSEB Employees Cooperative House Building Society Limited, Visakhapatnam, stating that the petitioner worked as Treasurer of the Society and he collected an amount of Rs.2,55,000/- from certain members and the said amount was not entered into cash book and he has not rendered the account in spite of several reminders. Vide memo, dated 19.09.1992, enclosing the copy of D.O letter, dated 24.08.1992, the petitioner was directed to settle the issue of

the Society. As the petitioner has not joined at LSHES, vide proceedings, dated 24.02.1993, the paper promotion given to the petitioner as Assistant Divisional Engineer, Electrical was cancelled. The respondent Board initiated enquiry proceedings and appointed an Enquiry Officer to enquire into the unauthorised absence of the petitioner, vide proceedings, dated 21.04.1993.

8. According to the petitioner, as his request for posting at Visakhapatnam was not considered and in view of his wife's health condition, he addressed a letter, dated 10.06.1993, requesting the Member Secretary to retire him from service voluntarily with immediate effect, and the same was acknowledged by the Board on 15.06.1993. As he has no interest to continue in service, the petitioner did not question his promotion cancellation proceedings, dated 24.02.1993. However, the Superintending Engineer, Enquiry Cell, vide memo, dated 17.09.1993, served him a charge memo, for which, the petitioner submitted his explanation on 08.10.1993.

9. According to the respondents, the request of the petitioner for voluntary retirement is not acceptable as per Regulation-43 of the A.P.Revised Pension Rules, 1980, according to which, a Government servant shall have the option to retire from service voluntarily after he has put in not less than 20 years of qualifying service.

10. According to the respondents, the enquiry was completed and the unauthorized absence of the petitioner from 13.12.1991 was proved. Basing on the enquiry report, the Member Secretary/APSEB issued a show cause notice memo, dated 13.02.1995, proposing punishment of "deemed to have resigned from service" under Regulation-28(3) of Service Regulations with effect from 13.12.1991, but the same was not served on

the petitioner on the ground that "addressee not in India". Hence, the show cause notice was published in two daily newspapers i.e., Deccan Chronicle and Andhra Jyothi on 31.05.1995, but the petitioner has not submitted his explanation. Therefore, final order, dated 13.03.1997 was issued confirming the proposed punishment. As the final order was also not served on the petitioner, the same was also published in two daily newspapers.

11. According to the petitioner, he was under the *bona fide* impression that his request for voluntary retirement was accepted and further proceedings were dropped. He enquired about his terminal benefits and then he came to know the impugned order, dated 13.03.1997. The petitioner admitted that an amount of Rs.74,024/- was released to him towards GPF. The other terminal benefits, viz., pension, retirement gratuity and commutation value on the pension were not paid to him. The petitioner preferred appeal to the 3rd respondent against the orders, dated 13.03.1997, but the same was rejected, vide memo, dated 10.06.2004. Hence, the present writ petition.

12. As noticed from the preceding narration of facts, it is manifest that the petitioner has been treating his employment with the board as a stop gap arrangement and had been grossly negligent in protecting his own service and pursuing the remedies that are available to him. The prayer in the writ petition is to declare the impugned memo, dated 10.06.2004 of the 3rd respondent as illegal and also the proceedings of the Member Secretary, dated 13.03.1997 as illegal, unjust and arbitrary and to treat him as having taken voluntary retirement with effect from 10.06.1993. At the outset, it can be said that the petitioner made a

request to grant him terminal benefits, treating him as voluntarily retired from service after more than 10 years.

13. The petitioner made an application seeking voluntary retirement on 10.06.1993 and the same was rejected by the authorities on the ground that as per Regulation-43 of A.P.Revised Pension Rules, 1980, only such of the employees who have completed 20 years of qualifying service have the option to retire from service voluntarily. Admittedly, the petitioner having joined the employment in 1979 has submitted an application seeking voluntary retirement on 10.06.1993. He did not even complete 14 years of service by then. Therefore, there is no question of accepting the request of the petitioner to treat him as if he retired voluntarily with effect from June, 1993 which was rightly negatived, since it is contrary to the provisions of the regulation, referred to above.

14. Once the request of the petitioner to retire voluntarily was negatived on the ground that he was ineligible to exercise such an option, the only course open to the petitioner is to tender resignation which he did not do.

15. The service conditions of the petitioner are governed by the Andhra Pradesh State Electricity Board Service Regulations, and Regulation No.28(3) is relevant for purpose which reads as under:

“Regulation No.28(3): An employee of the Board who remained unauthorisedly absent from duty for a continuous period of one year shall be deemed to have resigned from service from the date of absence and shall automatically cease to be in Board Employment.”

16. In view of the above regulation, if an employee is absent unauthorizedly continuously for a period of one year, he shall be deemed

to have resigned from service from the date of absence and he shall automatically be ceased to be an employee of the Board.

17. In the instant case, from the narration of facts, it is manifest that the petitioner had been absent unauthorizedly right from 13.12.1991. He went to Kenya on 19.08.1989 and in September, 1991 he opted to return back on the ground of illness of his wife. When he was on deputation to Kenya, the petitioner was given paper promotion as Assistant Divisional Engineer. When he expressed his intention to return from foreign service, even though originally he was proposed to be posted to Visakhapatnam as per his request, but subsequently, due to contingency of employment, he was directed to report duty at Lower Sileru Hydraulic Electrical Scheme, where he did not join in spite of repeated demands, calling upon the petitioner to join positively in the post where he was posted. In view of his non-joining in the allotted post, even his promotion was cancelled, which, however, is not under challenge.

18. The petitioner wanted to go back to foreign employment, for which, he applied for two years leave, but however, that was not materialized, in view of pendency of certain departmental action against him. The fact remains that the petitioner has been abstaining from duty continuously from 13.12.1991.

19. Not only the unauthorized absence, the petitioner is also guilty of laches. For his unauthorized absence, enquiry was initiated on 21.04.1993 and the charge memo was issued on 17.09.1993. The petitioner offered his explanation on 08.10.1993. Thereafter, he did not participate in the enquiry. Several communications sent to his known address were returned with an endorsement "he was not available" and at times with a specific endorsement "he is not in the country". The enquiry

officer submitted his report and proceedings were issued proposing the punishment on 13.02.1995. When these proceedings could not be served on the petitioner, those were published in two local daily newspapers, viz., Deccan Chronicle and Andhra Jyothi on 31.05.1995. There was no response from the petitioner and ultimately, the final orders were passed on 13.03.1997, which were also published in the above two daily newspapers.

20. In the final orders that were passed, it was specifically mentioned that the petitioner is entitled to prefer an appeal to the Chairman, Andhra Pradesh State Electricity Board, within three months. The final orders were communicated to the petitioner on his two known addresses. No appeal is filed within a period of three months or for that matter even till date no appeal has been preferred. Only after about 6 years i.e., on 18.12.2003 the petitioner addressed a representation to the Director (Personnel), requesting to treat him as having voluntarily retired from service on 10.06.1993 and to grant him *pro rata* pension and terminal benefits. Once again, on 04.03.2004 and 28.04.2004 similar representations were made to the Director (Personnel). On 10.06.2004, vide the impugned proceedings, the representations of the petitioner were rejected, informing him that as per Regulation-37(b) of Service Regulations, Part-II, an employee who resigned or deemed to have resigned deemed to have forfeited the benefits arising from his past service and also lose all his rights in future after resignation. The petitioner was further informed that he is not entitled to the benefits as claimed except his GPF contributions, and it is on record that a sum of Rs.74,024/- has already been paid to the petitioner towards his GPF eligibility. These proceedings were passed on 10.06.2004, and even

thereafter, the petitioner was not diligent and only after two years, i.e., on 28.02.2006 the petitioner filed the writ petition in hand.

21. It is manifest from the above that the final orders treating the petitioner as having deemed to have resigned his post as long back as on 13.03.1997, no appeal is preferred and only after more than 6 years, certain representations were made by the petitioner claiming terminal benefits, which were also rejected in June, 2004, and in 2006 this writ petition is filed.

22. No employee, whose main source of sustenance is employment, will conduct in the manner in which the petitioner conducted himself, even though he was not being paid any remuneration or benefits right from 1991 till 2004.

23. Even though several memos and notices sent to the petitioner to both the addresses furnished by him were not being served, the authorities have taken adequate precautions of publishing such notices and memos in two daily newspapers, viz., Deccan Chronicle and Andhra Jyothi, in spite of that, there was no response whatsoever from the petitioner, which only goes to show that the petitioner was least bothered about his service in Board ostensibly for the reasons that he was gainfully employed somewhere else contrary to the rules and regulations.

24. It may be recalled that the petitioner was sent on Foreign Service for a period of two years to Kenya, but he worked there only for one year seven months and opted to return on the ground of sickness of his wife. He expressed his intention to report to duty at Visakhapatnam on 14.10.1991, however, within 8 months thereafter, a proposal came from M/s.Atlantic Power Savers, Nairobi, Kenya to depute the petitioner

and the petitioner has voluntarily accepted to go on deputation to that company even by applying leave for two years.

25. From the above discussion, what is apparent is that the petitioner had been grossly negligent in performing duties and irresistible inference that can be drawn is that from or about 1993 till about 2003 the petitioner was gainfully employed abroad and hence he did not pursue his remedies. The fact that several notices sent to the two known addresses of the petitioner were returned on the ground that he was out of country gives credence to this inference. Otherwise, there is no reason for the petitioner to have kept quiet without any salary or terminal benefits right from 1991 to 2004, i.e., well over a period of more than 13 years.

26. The main stay of the claim of the petitioner for grant of terminal benefits is that he was to be treated as having voluntarily retired from service from 1993. There is no gain saying fact that if the regulations in force for voluntary retirement are perused, he is eligible for certain terminal benefit. Even that he cannot claim as of right and the discretion is vested with the authorities in the matter of accepting the request of the petitioner. Be that as it may, in the instant case, the fact is that the petitioner was not even eligible to exercise the option of having voluntarily retired from service with effect from June, 1993, since by then, the petitioner has not even completed 14 years of service, whereas it is mandated that he should have put in not less than 20 years of service. The petitioner being a senior employee, holding the post of an Engineer, he is supposed to know the rules and regulations and its consequences, and the consequences which follow its non-adherence.

27. For the foregoing discussion, absolutely I find no merit in the writ petition and the same is accordingly dismissed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

M.S.K.JAI SWAL, J

Date: 20th October, 2017
Dsr

