

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.143 of 2012

ORDER :

Heard the counsel for petitioner; the learned Government Pleader for Education for respondents nos.1 to 3; and Sri G. Rama Rao, counsel for respondent nos.4 and 5.

2. This Writ Petition has been filed by the petitioner assailing the action of the 2nd respondent (Accountant General, Andhra Pradesh, Hyderabad), rejecting pension proposals of the petitioner vide proceedings No.P5/I/R1842/SP938/2011-01 ADK, dt.02.02.2011.

3. The 4th respondent herein was admitted into grant-in-aid with effect from 01.06.1981.

4. The petitioner herein joined the 4th respondent-College as Lab Attender on 05.08.1978. On 16.12.1982, he was promoted as Junior Assistant by the 4th respondent. On 03.07.1989, he was further promoted as Senior Assistant.

5. In 1992, he was suspended from service for certain misconduct and a punishment of reduction of two increments with cumulative effect was imposed, and thereafter on 29.06.1993, his promotion as Senior Assistant was cancelled, and he was reverted to the post of Junior Assistant.

6. Alleging that the 4th respondent-College Management was harassing him, and that he was abused by the Management officials in

front of his colleagues, the petitioner gave a letter on 07.08.2000 to the 4th respondent to relieve him on medical grounds. He then stopped attending the 4th respondent-College to render any service therein.

7. Thereafter, on 19.10.2000, he gave a letter to the 4th respondent to treat the letter dt.07.08.2000 as his request for voluntary retirement from service. He also submitted pension proposals in five sets to be forwarded to the competent authority, apart from regularizing his service between 01.09.1991 and 13.02.1992, when he was suspended.

8. No action was taken on the said request though much correspondence ensued between the 4th respondent and the other official respondents. When the 3rd respondent (i.e., the Regional Joint Director, Collegiate Education, Rajahmundry) requested vide proceedings dt.11.11.2002 to the 4th respondent, to respond to the petitioner's representation, the 4th respondent informed him that the petitioner resigned on 07.08.2000 though, in fact, the petitioner did not use the word '*resign*' in his letter dt.07.08.2000, addressed to the 4th respondent.

9. After taking note of this conduct of the 4th respondent, the 3rd respondent informed the 4th respondent that the petitioner did not apply for resignation and there was no acceptance of resignation by the correspondent of the 4th respondent; that as per Rules, if an employee applies for resignation, he should give it in writing about

the resignation and the employer should obtain an undertaking from the employee that he is physically and mentally fit and aware of the consequences of resignation; that this procedure was not followed and the proceedings of the 4th respondent, issued on 07.08.2000 accepting the resignation of the petitioner, is contrary to the request of the petitioner to relieve him on health grounds. He categorically stated that petitioner had not resigned from the post of Junior Assistant, and recommended consideration of his case for voluntary retirement, if he is eligible for the same. Subsequently also, the 4th respondent was directed on 16.06.2003 by the 3rd respondent to furnish information regarding dues of the petitioner and also to forward the service book in original of the petitioner. But notwithstanding the said direction of the 3rd respondent, the 4th respondent continued to treat the petitioner as having resigned and informed the 2nd respondent – Accountant General that the petitioner has resigned, and on that basis, the 2nd respondent wrongly denied him pension.

10. Though the counsel for petitioner also sought to contend that the petitioner is entitled to benefit of the voluntary retirement scheme of the State Government, it is not in dispute that the college was admitted to grant-in-aid only in 1981, and by 07.08.2000 his services was less than 20 years. So petitioner cannot seek benefit of the said scheme.

11. The learned Government Pleader, appearing for respondent nos.1 to 3, stated that only because of the misleading information

given by the 4th respondent that the petitioner resigned from service, the petitioner was denied the pension, and that the 3rd respondent rightly stated that the petitioner never resigned.

12. Though the counsel for 4th respondent, sought to contend that the petitioner's letter dt.07.08.2000 is to be treated as resignation letter, I am unable to agree with the said submission since the petitioner did not use the word '*resign*' in the said letter, and had in fact, sought for it to be treated as voluntary retirement in his subsequent letter given in September, 2000.

13. It is not in dispute that service less than 20 years does not make the petitioner eligible for voluntary retirement.

14. Therefore, the claim of the petitioner that he should have been treated as having voluntarily retired on 07.08.2000 cannot be accepted.

15. However, the petitioner should attain the age of superannuation on completion of 58 years on 04.05.2009, and would be eligible to draw pension from that date.

16. The question is *whether he is to be disentitled to draw pension on attaining the age of superannuation also.*

17. It is not in dispute that though the petitioner has been not attending duties after 07.08.2000, no disciplinary action for

unauthorized absence or any other reason was initiated against the petitioner by the 4th respondent before 04.05.2009 or even till date.

18. However, admittedly, the petitioner did not seek to resign in his letter dt.07.08.2000, addressed to the 4th respondent, and the fact that the petitioner never gave a resignation letter is also accepted by the 3rd respondent in his letter dt.13.03.2003, and reiterated in the proceedings Rc.No.1215/A2/2008 dt.15.09.2012 that the petitioner cannot be said to be disentitled to pension after attaining the age of superannuation on 04.05.2009.

19. Unless the petitioner specifically resigns and states that he is physically and mentally sound and understood the consequences of resignation and gives the same in writing to the 4th respondent, the 4th respondent cannot say that the petitioner has resigned and give such false information to the 3rd respondent and to the 2nd respondent.

20. It is clear that because of the misleading information furnished by the 4th respondent to the other respondents that petitioner resigned from service on 07.08.2000, the impugned order has been passed by the 2nd respondent on 02.02.2011 denying pension to the petitioner on the ground that under Rule 26(1) of the Revised Pension Rules, 1980 he forfeited his past service on acceptance of resignation, but as a fact the petitioner never resigned from service which is also accepted by the 3rd respondent.

21. Therefore, the impugned order dt.02.02.2011 passed by the 2nd respondent is set aside. The 4th respondent shall forward the service record of the petitioner through the 3rd respondent to the 2nd respondent within a period of four (04) weeks from the date of receipt of copy of the order; the 2nd respondent is directed to treat the petitioner as having retired on 04.05.2009 on attaining the age of superannuation; and the 2nd respondent shall release pension as per the eligibility of the petitioner within a period of four (04) weeks from the date of receipt of the Service Record of the petitioner from the 4th respondent through the 3rd respondent.

22. The 4th respondent shall also pay costs of Rs.20,000/- to the petitioner within a period of six (06) weeks.

23. Accordingly, the Writ Petition is allowed as above.

24. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 22-06-2017

Ndr/*