

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 02.08.2018
CORAM:
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
W.A.No.858 of 2016

Dr.K.Kumarasamy

... Appellant/Petitioner

versus

1. Secretary to Government,
Health and Family Welfare Department,
St. George Fort, Chennai 600 009.
2. The Directorate of Medical Education,
Kilpauk, Chennai 600 010.
3. The Principal Accountant General,
261, Annasalai, Chennai 600 018.

.... Respondents/Respondents

Appeal filed against the order passed by this Court dated 07.03.2016 passed in WP No.8439 of 2016.

W.P.No. 8439 of 2016 : Petition praying this Court to call for the record on the impugned Letter No. 4895/B1/2015-2 dated 27/01/2016 on the file of the first respondent and quash the same and consequently direct the respondents to pay pension to the Petitioner with interest by taking into account the qualifying service rendered by the Petitioner.

For Appellant : Mr.N.S.Nandakumar

For Respondents : Mr. K.Karthikeyan
Government Advocate for RR 1 & 2

Mrs.Hema Murali Krishnan for R3

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The challenge in this Intra Court Appeal is to the order of the learned Single Judge dated 07.03.2016 made in WP No.8439 of 2016 in and by which, the learned Single Judge had dismissed the Writ Petition filed by the appellant on the ground of delay and

laches.

2. The appellant joined the Tamil Nadu Medical Services on 04.04.1962, after serving for nearly 13 years, he submitted his resignation on 01.04.1975, however, the resignation came to be accepted by the Director of Medical Education on 17.04.1986. The appellant had made representations seeking payment of pension and the said representations were rejected relying upon the Rule 23 of the Tamil Nadu Pension Rules. Aggrieved the appellant came before this Court by way of above Writ Petition, which came to be dismissed on the short ground of delay and laches.

3. Aggrieved the appellant is before us by way of this intra Court Appeal.

4. We have heard Mr.N.S.Nandakumar, learned counsel appearing for the appellant, Mr.K. Karthikeyan, learned Government Advocate appearing for the respondents 1 and 2 and Mrs.Hema Murali krishnan, learned counsel appearing for the 3rd respondent.

5. Mr.N.S.Nandakumar, learned counsel appearing for the appellant would contend that he has completed 10 years of qualifying service, as per Rule 33(2) of the Tamil Nadu Pension Rules and hence he should not have denied pension under Rule 23. He would also submit that in similar cases this Court has been taken a lenient view and directed the Authority to consider resignation as voluntary retirement and pay pension.

6. Per contra, Mrs.Hema Murali krishnan, learned counsel appearing for the 3rd respondent would submit that the Hon'ble Supreme Court had considered the import of Tamil Nadu Pension Rules in C.Jacob v. Director of Geology and Mining & another in SLP Civil No.25795 of 2008, and had held that the qualifying service for pension is 20 years and not 10 years. She would also point out that the Hon'ble Supreme Court has specifically rejected the contention that the qualifying service is only 10 years based on Rule 43 (2) of the Tamil Nadu Pension Rules. The Hon'ble Supreme court has, after in-depth examination of the Tamil Nadu Pension Rules had made it clear that the minimum service for retiring pension is 20 years and not 10 years as claimed by the petitioner before the Hon,ble Supreme Court. In the said Judgment the Hon'ble Supreme Court had observed as follows:

"17. The petitioner contends that if the minimum service for entitlement to retiring pension was 20 years and not 10 years, Rule 43(2) would not have stated "qualifying service of not less than 10 years". He contended that as Rule 43(2) of the TNP

Rules (Rule 49(2)(b) of CCSP Rules) refers to "not less than 10 years service", any government servant who has put in service of 10 years or more is entitled to retiring pension. The said contention is misconceived. As stated earlier, the said rule does not relate to 'entitlement' of pension nor does it prescribe the conditions for eligibility, but only provides how the amount of pension should be calculated in cases where the retiring Government servant is entitled to pension under the chapter V of the pension rules. The said Rule regulates the 'amount' of pension not only in case of retiring pension, but in case of all classes of pension. Under Chapter V, in certain situations, a Government servant may be eligible for pension even where the service is less than ten years. Rules 32, 36, and 38 of TNP Rules (Rules 35, 38 and 39 of CCSP Rules) do not prescribe any minimum service for being entitled to pension, where the cessation of service is on account of superannuation, or on account of bodily or mental infirmity or on account of abolition of his post. When Rule 43(2) of TNP Rules (Rule 49(2)(2) of CCSP Rules) refers to payment of pension to a person who has a qualifying service of not less than 10 years, it does not mean that the minimum period of service prescribed for retirement pension is reduced to 10 years or that government servants who are dismissed/removed/compulsorily retired by way of punishment, or those who voluntarily retire before reaching the age of superannuation with less than 20 years of qualifying service, become entitled to pension. Rule 43(2) of TNP Rules (Rule 49(2)(b) of CCSP Rules), as noticed earlier, comes into play only when the Government servant is entitled to any of the classes of pension enumerated under Chapter V of the Pension Rules. Therefore, when Rule 43(2) of TNP Rules (or Rule 49(2)(b) of CCSP Rule) dealing with the quantum of pension refers to a government servant retiring in accordance with the said rules after completing qualifying service of not less than 10 years, it does not mean that pension is payable to persons who have not completed the required minimum number of years (20 years) of service or to persons who have forfeited their service on dismissal/removal from service. Therefore, the appellant is not entitled to pension. "

In view of the above law declared by the Hon'ble Supreme Court, the appellant who has not completed 20 years of service and he

cannot claim pension.

7. Mr. N.S.Nandakumar, would however contend that his resignation was accepted only in the year 1986 as on that date he had completed 23 years of service, since an employee who resigns is deemed to be in service till his resignation is accepted. Mr.N.S.Nandakumar would plead that the Government may be directed to take a lenient re-look regarding the entitlement of pension and decide the matter afresh. It is not as if the appellant has no claim at all. After, the appellant's resignation was kept pending in 11 years, it was finally accepted on 17.04.1986. If the date of acceptance of the resignation is taken into account the appellant can be said to have been in service for a period for 23 years.

8. We are therefore of the considered opinion that the Government should revisit the impugned order and consider the claim of the appellant for pension sympathetically and pass orders afresh.

9. The Writ Appeal is therefore partly allowed. The order of the learned Single Judge dismissing the Writ Petition due to delay and laches is set aside. The order impugned in the Writ Petition dated 27.01.2016 is also set aside. The Government is directed to reconsider the claim of the appellant for pension in the light of the fact that the Government had taken nearly 11 years to accept the resignation of the appellant. The said exercise shall be completed within a period of 2 months from the date of receipt of a copy of this order, considering the fact that the appellant is nearly 85 years old as on today. However, in the circumstances there will be no order as to costs.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

jv

To

1. Secretary to Government,
Health and Family Welfare Department,
St. George Fort, Chennai 600 009.
2. The Directorate of Medical Education,
Kilpauk, Chennai 600 010.

3. The Principal Accountant General,
261, Annasalai, Chennai 600 018.

+lcc to Mr.Hema Muralikrishnan, Advocate, S.R.No. 52981
+lcc to the Government Pleader, S.R.No. 54070

W.A.No.858 of 2016

VGI (CO)
GN(17/09/2018)



WEB COPY