

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2018

CORAM:

THE HONOURABLE Dr.JUSTICE S.VIMALA

W.P.No.38085 of 2016
and W.M.P.No.32661 of 2016

T.Kothandapani

... Petitioner

versus

1. Lieutenant Commander Judge Advocate
Naval Pension Office INS Tanaji
Sion Trombay road Mankurd,
Mumbai - 88.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of writ of certiorarified mandamus, to quash the impugned order No.Quoting / LC/Pen/600/court case/49997, dated 29.01.2016 and quash the same order and direct the respondent to pay Pro Rata pension with retrospective effect from 01.01.1973 with due interest.

For Petitioner : M/s.SA.Sarangaban

For Respondent : Mr.P.Ayyasami

O R D E R

In the Writ Petition in W.P.No.9701 of 2012, filed by the petitioner T.Kothandapani, this Court has directed the respondents therein, to consider the claim for pension afresh, in the light of Regulation 69 of the Navy (Pension) Regulations, 1964 / Power to condone the shortfall and the order reads as under:-

" this writ petition is disposed of, with a direction to the respondent to consider the claim for pension afresh, in the light of Regulation 69 of the Navy (Pension) Regulations, 1964/Power to condone the shortfall, and the clarification referred in paragraph 15, cited supra, for the grant of pension, considering the exceptional services rendered and to pass the orders in accordance with law, preferably within three

months from the date of receipt of a copy of this order."

1.1. Contending that despite the order passed by this Court, the respondent has rejected the claim of the petitioner by the order dated 29.01.2016 and that, this order is liable to be quashed, this writ petition has been filed.

2. The learned counsel appearing for the respondent would submit that there is no provision to condone the deficiency of more than one year and that the petitioner has put in qualifying service of only 13 years, 3 months and 18 days, whereas the qualifying service required is 15 years in terms of Regulation 78 of the Navy (Pension) Regulation 1964; therefore, the respondent was not able to consider the request of the petitioner and therefore, the dismissal of the claim is justifiable.

3. The only issue to be considered is, whether the respondent could have considered the order passed by this Court positively and whether there is scope for consideration.

4. The Government of India, Ministry of Defence has issued a clarification on 06.08.1984, under which, a fraction of a year equal to 3 months and above shall be treated as a complete one half year period and it can be reckoned towards calculating the qualifying service for pension.

5. The respondent has stated that the petitioner has completed only 14 ½ years and not 15 years, which is short of six months minimum qualifying service and therefore, the petitioner is not eligible for pension.

5.1. Legally speaking, the reply given by the respondent cannot be said to be incorrect as they are well within their Regulation to say that the petitioner is not eligible for pension.

6. However, the learned counsel appearing for the petitioner pointed out Navy Regulation 95 of 1964, where under, persons retired on or after 03.07.1976, on expiry of 10 years of active service, will be eligible for grant of pension.

7. It is not in dispute that the petitioner retired from service after 03.07.1976 and therefore, Navy Regulation 95 of 1964 would stand attracted to the case of the petitioner. It is not the case of the respondent that Navy Regulation 95 of 1964 has been deleted or modified.

8. In such view of the matter, this Court is of the considered view that the petitioner would be entitled for grant of pension, taking into consideration Navy Regulation 95 of 1964. Accordingly, the respondents are directed to work out the qualifying service based on the retirement of the petitioner and shortfall, if any, which may be meager, may be condoned for the purpose of grant of pension. This Court directs that the case of the petitioner shall be considered as a special case.

9. With the above observation, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed. However, this order shall not be quoted as a precedent.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ogy / srk

To

1. Lieutenant Commander Judge Advocate
Naval Pension Office INS Tanaji
Sion Trombay road Mankurd,
Mumbai - 88.

+1cc to Mr.P.Ayyasami, Advocate, S.R.No.31106

+2cc to M/s.SA.Sarangaban, Advocate, S.R.No.30258

W.P.No.38085 of 2016

AD(CO)
CS/11/02/2019

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