

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No. 23540 OF 2014

ORDER:

This writ petition is filed seeking a writ of *mandamus* declaring letter dated 25-06-2014 issued by respondent No. 3 with reference No. P.III-1/2014-Adm-VI and reference No. P.III-1/2014-Pen-GC RRY dated 02-07-2014 passed by respondent No. 5, by which the petitioner has been denied sanction of pension for the services rendered by him in respondent No. 2-Force from 13-09-1994 to 05-12-2013, as arbitrary and illegal and violative of Articles 14, 16 and 21 of the Constitution of India and sought a consequential direction to direct the respondents to sanction and release terminal benefits including pension together with arrears of pension to which the petitioner would be entitled to and interest @ 9% p.a.

2. Heard Sri Siva, learned counsel for the petitioner, and learned Assistant Solicitor General appearing for the respondents.

3. It has been contended by the petitioner that he has responded to the notification issued by the respondents for appointment to the post of Assistant Sub Inspector during 1994 and after undergoing regular selection process, the petitioner was selected and appointed as Assistant Sub Inspector in the respondents-Force on 13-09-1994. The petitioner further submits that after rendering considerable length of service, the petitioner was promoted as Sub Inspector on 30-04-2010. The petitioner discharged his duties to the best satisfaction of his superiors concerned. The petitioner further submits that while he was working as Sub Inspector with the respondents, Andhra Pradesh Government Model Schools had issued a notification for the post of

Trained Graduate Teacher (for brevity, 'TGT') during 2012 and as the petitioner is fully eligible and qualified to be appointed as TGT, he sought permission from the respondents to appear for selection in pursuance of the notification. The respondents herein were pleased to grant no objection certificate in faovur of the petitioner permitting him to appear for the selection to the said post. The petitioner had appeared in the selection for the post of TGT and he was selected and appointed *vide* proceedings dated 23-11-2013. Thereafter, the petitioner has submitted a technical resignation to the post of Sub Inspector on 26-11-2013 and the competent authority had accepted the technical resignation submitted by the petitioner so as to enable him to get appointed as TGT and the petitioner was relieved *vide* proceedings dated 05-12-2013. While relieving the petitioner, it was stated in the proceedings dated 05-12-2013 that the technical resignation tendered by the petitioner is purely at his own risk and that grant of pro-rata pensionary benefits for the services rendered in CRPF shall be subject to acceptance of the same by Pay and Accounts Officer as he has not completed 20 years of service. The petitioner, after being relieved with the respondents, has joined as TGT in Andhra Pradesh Government Model Schools and thereafter the petitioner has submitted a representation to the respondents on 19-04-2014 requesting the respondents to sanction pension and release the same with all consequential benefits. Thereafter, the respondents have rejected the representation *vide* proceedings dated 25-06-2014 and proceedings dated 02-07-2014. In proceedings dated 25-06-2014, the respondents had contended that the no objection certificate issued in favour of the petitioner was given by the Deputy Inspector General of Police and the same was not in

order and that no objection certificate has to be given after ratification by Sector Office which was not taken by Range Office and the second ground for rejection was stated that as per latest instructions issued *vide* GOI Department of Pension & Pensioners' Welfare, OM No. 28/30/2004-P&PW (B) dated 28-10-2009, *inter* departmental mobility is given between State and Central Government but no pension is allowed on technical resignation and in proceedings dated 02-07-2014, it was stated that the case of the petitioner, after his technical resignation from CRPF with effect from 05-12-2013, for grant of pension was taken up with higher authorities for examination and the Inspector General of Police in turn *vide* letter dated 26-06-2014 has clarified that as per latest instructions issued by Government of India, Department of Pension and Pensioners' Welfare, OM No. 28/30/2004-P&P W (B) dated 28-10-2009, *inter* departmental mobility is given between State and Central Government but no pension is allowed on technical resignation. Challenging the above rejection orders, the present writ petition is filed.

4. Learned counsel for the petitioner submits that the petitioner was governed by Central Civil Services (Pension) Rules, 1972 (for short, '1972 Rules'), while he was working with the respondents and after obtaining necessary permission from the competent authority, the petitioner has participated in the selection process for appointment to the post of TGT and after getting selected as TGT, the petitioner has tendered technical resignation and the competent authority had granted permission in favour of the petitioner and accordingly he was relieved. It is further contended that since the petitioner is entitled for pension for the services rendered with the respondents *i.e.* from

13-09-1994 till 05-12-2013, appropriate orders be passed directing the respondents to sanction pension and release the same in favour of the petitioner.

5. Learned Assistant Solicitor General appearing for the respondents contended that the petitioner is not entitled for pension as he has tendered technical resignation and the competent authority has examined the case of the petitioner and rightly rejected his case *vide* proceedings dated 25-06-2014 and 02-07-2014 and there are no merits in the writ petition and the same is liable to be dismissed.

6. This Court having considered the rival submissions of both learned counsel is of the considered view that a perusal of the relieving orders dated 05-12-2013 would make it clear that the technical resignation tendered by the petitioner was accepted by the competent authority with proper permission and the technical resignation was accepted by the respondents so as to enable the petitioner to take up employment with Andhra Pradesh Government Model Schools and it was also stated in the said proceedings that pro-rata pensionary benefits will be extended to the petitioner but very strangely the respondents rejected the case of the petitioner contending that the no objection certificate issued to the petitioner at the time of participating in selection for the post of TGT was not in order. In the relieving order dated 05-12-2013 when the respondents stated that the technical resignation submitted by the petitioner has been accepted by the competent authority with proper permission, in the subsequent rejection orders dated 25-06-2014 the respondents cannot contend that the no objection certificate issued in favour of the petitioner was not in order.

7. The second ground raised by the respondents is that as per the OMs dated 26-07-2005 and 28-10-2009, the petitioner is not entitled for pensionary benefits. The petitioner has filed the OM dated 26-07-2005 at page No. 68 and the OM dated 28-10-2009 at page No. 70 of the material papers annexed to the writ petition. Para No. 2 (iii) of the OM dated 26-07-2005 reads as under:

"All the Central Government employees who entered Central Government service or the service of an Autonomous Body set up by Central Government, on or before 31-12-2003 and who were governed by old pension scheme under the Central Civil Services (Pension) Rules, 1972 and who submit technical resignation on or after 01-01-2004, to take up new appointment under State Government, will be eligible for grant of pro-rata pensionary benefits for the period of Central Government or Central Autonomous Body service, on the lines as provided in the Rule 37 of Central Civil Services (Pension) Rules, 1972 and related orders."

A perusal of the above extracted para of the OM dated 26-07-2005 makes it abundantly clear that the petitioner is in fact entitled for grant of pension. Para No. 2 of the OM dated 28-10-2009 reads as follows:

"The position has been further reviewed by the Government of India and it has been decided to continue mobility of Government servants/Autonomous body employees appointed on or before 31-12-2003 and who were governed under the old non-contributory pension scheme of their respective Governments/Organizations in order to provide for the continuance of (Pension) Rules, 1972 as under:-

a. between the Central Government departments covered under CCS (Pension) Rules, 1972; and Railway Pension Rules, 1993 or other similar non-contributory pensionable establishments of Central Government covered by old pension Rules other than CCS (Pension) Rules, 1972;

- b. between State and Central Government provided the employees were appointed in the State Government (s) on or before 31-12-2003 and covered under old pension scheme similar to CCS (Pension) Rules, 1972;*
- c. the pre-existing arrangement of mobility between State/Central Autonomous Body to Central/State Government and between autonomous bodies that were governed by old pension schemes in force up to 31-12-2003 vide No. 28/10/84-P&PW dated 07-02-1986 and OM No. 28-10-84-Pension unit dated 29-08-1984 stand restored although those under CPF etc. will not be allowed entry into the old pension scheme on appointments from 01-01-2004."*

Para No. 3 of the above said OM states that these instructions modify/supersede provisions in the OM of even number dated 26-07-2005 to the extent as indicated above and take effect from 01-01-2004. It would mean that the earlier OM dated 26-07-2005 has not totally been superseded and as per para No. 2 (iii) of the OM dated 26-07-2005, the petitioner is entitled for pensionary benefits. Learned Assistant Solicitor General appearing for the respondents further contended that since the petitioner has not completed 20 years of service with the respondents, he is not entitled for pensionary benefits as the qualifying service for grant of pension is 20 years. Learned counsel for the petitioner has submitted that the said qualifying service has been reduced to 10 years by way of an amendment carried out to Rule 49 (2) of 1972 Rules *vide* amendment dated 08-06-2011 and since the petitioner has rendered more than 10 years of service with the respondents, he is entitled for sanction of pension and its release. The OMs dated 26-07-2005 and 28-10-2009, which were cited by the respondents in their impugned orders to reject the case of the

petitioner for grant of pensionary benefits, have no application for rejection of the case of the petitioner. In fact, the above said OMs, more importantly the OM dated 26-07-2005 entitles the petitioner for seeking pension and pensionary benefits and apart from that, Rule 49 (2) of 1972 Rules also make it abundantly clear that the petitioner is entitled for pension as he has rendered more than 10 years of qualifying service.

8. This Court having considered the rival submissions made by both parties is of the considered view that the petitioner is entitled for grant of pension and pensionary benefits for the services rendered by him from 13-09-1994 till 05-12-2013 with all consequential benefits and the impugned rejection orders dated 25-06-2014 and 02-07-2014 are liable to be set aside and are accordingly set aside.

9. The writ petition is allowed. Pending miscellaneous petitions, if any, shall stand closed in consequence. No costs.

Date: 28-12-2018.
JSK

ABHINAND KUMAR SHAVILI, J.

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI



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DATE: 28TH DECEMBER, 2018

JSK