

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

WP.No.8981 of 2011

Dr.N.Rajan
Petitioner

Vs

1.Government of Tamil Nadu
Rep. by Secretary to Government
Health and Family Welfare Department
Secretariat, Chennai-600 009

2.The Director of Medical Education
Chennai-600 010

3.The Accountant General (A&E)
Tamil Nadu, Chennai-600 018
Respondents

Prayer:- This Writ Petition is filed, under the Article 226 of Constitution of India, to issue a writ of Mandamus directing the third respondent to sanction increments due to the petitioner and authorize drawal of arrears and further directing the first respondent to consider the representation dated 15.07.2009 and 10.09.2010 regarding relaxation of Rules and grant of pensionary benefits.

For Petitioner : Mr.M.Sethu Madhavan for
Mr.M.Ravi

For Respondents : Mr.A.Zakir Hussain,
Government Advocate
for R1 and R2

Mrs.Hema Muralikrishnan for R3.

ORDER

This Writ Petition is filed seeking to direct the third respondent to sanction increments due to the petitioner and authorize drawal of arrears and further direct the first respondent to consider the representation dated 15.07.2009 and 10.09.2010 regarding relaxation of Rules and grant of pensionary benefits.

2. The Petitioner joined service as Assistant Surgeon in the Tamil Nadu Medical service on 02.08.1963 and served at Government Primary Health Centre, Kolanalli upto

24.10.1965. He was placed on probation for three years. By virtue of G.O.Ms.No.2459, Health Department, dated 30.12.1969, the Director of Health Services and Family Planning, dated 10.10.1974, the services of the Petitioner was regularised from 02.08.1963 and by proceedings dated 23.07.1977, the petitioner was declared to have satisfactorily completed the period of probation on 01.08.1965.

3. The Petitioner was deputed to work in the Army Medical Corps on active service at the Military Hospital, Ahmedabad from 28.10.1965 to 22.10.1969. On return from deputation, the Petitioner was posted as Assistant Surgeon (Ortho) at Government General Hospital, Chennai, wherein, he served from 23.10.1969 to 30.06.1970. The Petitioner was promoted as Civil Surgeon (Ortho) at Government Headquarters Hospital, Salem, where the petitioner served from 25.02.1974 to 06.11.1978.

4. According to the Petitioner, the 2nd respondent, by proceedings dated 23.07.1977, declared that the Petitioner satisfactorily completed the period of probation in the post of Assistant Surgeon on 01.08.1965 and the said authority certified that the delay in the declaration of probation was due to administrative reason and therefore, he is eligible to draw arrears of increments with reference to Rule 23(A) of the General Rules. It is further stated that inspite of repeated representations, no increment was granted from 01.08.1965 to 24.02.1974. The Petitioner, due to personal reasons, submitted voluntary resignation from service with effect from 12.05.1978. Thus, according to the Petitioner, he has rendered active Government Service from 02.08.1963 to 12.05.1978 i.e., 14 years, 9 months and 11 days, including Military service of 4 years from 28.10.1965 to 22.10.1969. It is further stated that Rule 23 of the Tamil Nadu Pension Rules, resignation entails forfeiture of past services, however, sought to consider his service for sanction of pensionary benefits.

5. A Detailed counter affidavit has been filed by the 1st and 2nd respondents. It is stated in paragraph 14 of the counter affidavit that the petitioner had resigned during the year 1978 and as per the provision in Rule 23 of the Tamil Nadu Pension Rules, the petitioner is not entitled to claim pension. The Petitioner sought prayer to sanction the pension after completion of more than 30 years of his resignation and more over he had been unauthorisedly absent from duty from 12.05.1978 to 25.08.1982, the date in which he had tendered his resignation.

6. The third respondent has also filed its counter stating that in the absence of details regarding the

qualifying service for the purpose of calculation of pension, the validity of the claim of the Petitioner that has been made after 30 years from the date of relief of his service is incapable of ascertainment.

7. The learned Government Advocate submits that the Petitioner preferred a representation to claim the grant of Pensionary Benefits after the lapse of 30 years. On the facts of the case, the Petitioner resigned with effect from 12.05.1978. The Government orders relied on by the learned counsel for the Petitioner, would not help in any way to claim the pensionary benefits, as the facts of the case herein is totally different. The Petitioner cannot take shelter of the G.O., issued by the respondent Department and further submitted under Rule 42 of the Tamil Nadu Pension Rules, a Government servant shall be eligible to get retirement pension, only if retiring voluntarily after 20 years of service or 50 years of age,

8. The learned counsel for the third respondent relied upon the Judgment of the Supreme Court reported in (2008) 10 SCC 115 [C.Jacob Vs. Director of Geology and Mining], wherein, the Honourable Supreme court held as follows:-

"16. Rule 33 of TNP Rules provides that a retiring pension shall be granted to a government servant who retires, or is retired, in accordance with the provisions of Rule 42 of the said Rules. Rule 42 of TNP Rules provides that a government servant, who under fundamental Rule 56(d), retires voluntarily or is required by the appointing authority to retire in public interest shall be entitled to a retiring pension. (corresponding Rule 36 of CCSP Rules which provides that a retiring pension shall be granted to a Government servant who retires, or is retired, in advance of the age of compulsory retirement in accordance with the provisions of Rules 48 or 48-A of those Rules or Rule 56 of the Fundamental Rules or Article 459 of the Civil Service Regulations and to a Government servant who on being declared surplus, opts for voluntary retirement in accordance with Rule 29 of those Rules). The provision relating to retiring pension makes it clear that a minimum of 20 years qualifying service is required for retiring pension. It does not entitle a government servant to retiring pension on completion of ten years service. Therefore, the petitioner is not entitled to retiring pension

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. "

The learned counsel for the third respondent also brought to the attention of this court to the order passed in W.P.No.25545 of 2010 dated 14.02.2011 [Sr.A.Alphonsa Mary Vs. 1.The Principal Accountant General and others], wherein, this court dismissed the similar plea raised by the Petitioner.

9. A careful perusal of the counter affidavit and submissions made by the learned Government Advocate appearing for respondents 1 and 2 and the learned counsel for the 3rd respondent, would go to show that the Petitioner is not entitled for pensionary benefits under the Government orders relied on by him. The Petitioner has not furnished relevant particulars to the third respondent to substantiate his claim as regards his service.

10. In view of the above discussion, the prayer sought for in this writ petition cannot be granted. There is no merits in the writ petition. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.Government of Tamil Nadu
Rep. by Secretary to Government
Health and Family Welfare Department
Secretariat, Chennai-600 009

2.The Director of Medical Education
Chennai-600 010

3.The Accountant General (A&E)
Tamil Nadu, Chennai-600 018

+1cc to Mr.M.Ravi , Advocate SR.No. 5607

+1cc to Mrs.Hema Muralikrishnan, Advocate SR.No. 4736

+1 cc to Government Pleader Sr.No. 6025

WP.8981 of 2011

A.SK(15/05/2019)