

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :07.02.2019

PRONOUNCED ON : 5.03.2019

CORAM

THE HON'BLE Mr. JUSTICE M.VENUGOPAL

And

THE HON'BLE Mr. JUSTICE P.RAJAMANICKAM

W.P.No.21440 of 2017

1.C.Maraimanimudiarasan .. Petitioner

Vs.

1.State of Tamil Nadu
Represented by the Secretary to Government,
Law Department,
Secretariat, Chennai – 9.

2.High Court of Judicature at Madras,
Represented by Registrar General,
High Court, Chennai – 104.

3.The Principal,
Accountant General (A & E)
New No.361, Anna Salai,
Teynampet, Chennai – 600 018.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the second respondent in connection with the order ROC.No.4925-A/2012/B1 dated 18.11.2016 and quash the same and direct the respondents to add 1/4th of the total service of the petitioner as a civil Judge in Tamil Nadu Judicial Service along with the actual service rendered by him in the Tamil Nadu Judicial Service and consequently pay all the monetary and service benefits.

For Petitioners : Mr.R.Singaravelan
Senior Counsel
For Mrs.M.Srividhya

For 1st Respondent : Mr.S.N.Parthasarathy
Government Advocate

For 2nd Respondent : Mr.E.K.Kumaresan

For 3rd Respondent : Mrs.Hema Muralikrishnan

ORDER

M.VENUGOPAL, J.

Heard both sides.

2.Writ Case:

2.1.According to the Petitioner, on successful completion of Law Course, he enrolled his name on the roll of the Bar Council of Tamil Nadu and Puducherry (vide Enrolment No.641/86) on 12.11.1986. After 13 years of practice as an Advocate, he applied for the post of Civil Judge under the Tamil Nadu State Judicial Service and was selected for an appointment to the said post on merit. He was posted as Judicial Magistrate No.1, Myladuthurai with effect from 10.12.1999 and thereafter, he was promoted to the post of Senior Civil Judge on 05.05.2010. He was posted as Additional Sub Judge, Madurai and he was serving in that post.

2.2.The version of the Petitioner is that while serving as Additional Sub Judge, Madurai, he projected an application seeking 'Voluntary Retirement' on completion of more than 12 years of service in Tamil Nadu State Judicial Service. Based on his application, he was promoted to proceed on 'Voluntary Retirement' from service with effect from 26.05.2012 Afternoon. As a matter of fact, the 3rd Respondent, while calculating his Pension and Death cum Retirement Gratuity including the commutation of pension, had clearly indicated that he had put in Net Qualifying Years of Service of 16 years 2 months and 23 days.

2.3.It comes to be known that the Assistant Registrar of the 2nd Respondent/High Court, Madras represented by Registrar General, High Court, Chennai through its Letter dated 03.10.2012 forwarded the Petitioner's combined application for 'Final Closure of General Provident Fund' (GPF), Pension along with Nominal Service Register to the 3rd Respondent/Principal Accountant General (A&E), Tamil Nadu, Chennai – 18. The 3rd Respondent, on receipt of the same was pleased to pay the Pensionary Benefits to the Petitioner, by means of an order dated 14.11.2012. Subsequently, he forwarded a representation to the 3rd Respondent for consideration

of his claim for weightage under Rule 27 of the Tamil Nadu Pension Rules, 1978.

2.4. The Petitioner, by referring to Rule 27(1) of the Tamil Nadu Pension Rules, 1978 comes out with a plea that 1/4th of the length of his actual service has to be added along with the total years of actual service for the purpose of settlement of pensionary benefits. The said Rule runs as under:

"Rule 27. Addition to Qualifying service in special circumstances-1) Any person appointed to a service or post and who retires from service on or after the 1st July 1960 may add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one-fourth of the length of his service or the actual period by which his age at the time of recruitment exceeds thirty years or a period of five years, whichever is less, if the service or post is one.

(a) for which post-graduate research or specialist qualification or specialist qualification or experience in scientific, technological or professional

fields is prescribed not merely as desirable but as obligatory qualification; and

(b) for which the age of recruitment prescribed in the service rules applicable to the service or post concerned is above thirty years.

(Provided that the age limit prescribed in sub-rule (1) above viz., thirty years shall be lowered to twenty-seven years in so far as Judicial Officers how are directly recruited as Magistrates, District Munsifs and District Judges.

Any person appointed to a post specified in column (2) of the Table below may add to his service qualifying for superannuation pension (but not for any other class of pension) a period not exceeding one-fourth of the length of his service or the actual period by which his age at the time of recruitment exceeds thirty years or the period specified against that post in column(3) of the said Table whichever is less.

Provided that this concession shall not be admissible to any such person, if-

(i) his actual qualifying service at

the time he quits Government service is less than ten years or

(ii) he has not acquired the requisite qualification prescribed for recruitment to the service or post but is appointed to the service or post in relaxation of rules;

Provided further that any such person who is recruited at the age of thirty five years or more may, within a period of three months from the date of his appointment, elects forego his rights to pension, whereupon he shall be eligible to subscribe to the Contributory Provident Fund, Tamil Nadu."

2.5.The categorical stand of the Petitioner is that by virtue of Rule 27 of the Tamil Nadu Pension Rules, 1978, he is entitled to include ¼th of the actual service and counted. He also made a representation on 29.11.2012 itself which was accepted by the 3rd Respondent/ Principal Accountant General (A&E), Tamil Nadu, Chennai – 18 through his letter dated 18.12.2012, who required the Petitioner to submit a 'Revised Proposal'. As such, he submitted a representation dated 02.04.2013 in respect of the revised proposal

of the 2nd Respondent. Since there was no immediate response, he made a repeated representation and also an application under the Right to Information Act to the Government. In reply to that, the Government had addressed a communication dated 22.01.2015 informing that the 2nd Respondent/High Court, Madras had not sent a proposal for the revised pension by writing a proposal along with a direct letter addressed to the 2nd Respondent dated 12.07.2012. After his repeated representations and reminders, the 2nd Respondent/High Court, Madras represented by Registrar General had passed an order on 18.11.2016 rejecting his claim for weightage under Rule 27 by reproducing the first para of Rule 27(1) of the Tamil Nadu Pension Rules, 1978 without taking note of the entire provision and the Table given in the said provision.

2.6. Apart from that, the reason assigned by the 2nd Respondent for rejection of his claim as regards 'weightage' as per Rule 27 is that Rule 27(1) does not specifically mention about the 'weightage' for 'Voluntary Retirement' also.

2.7. It is represented on behalf of the Petitioner that as per the General Clauses Act and the decision of the Hon'ble Supreme Court

in the case of **General Manager, Southern Railway V. Rangachari** wherein the word 'Appointment' was interpreted by the Court to include even the 'Promotion', 'Seniority' and 'Retirement'. Therefore, the 2nd Respondent/High Court of Madras represented by Registrar General should not have dismissed the Petitioner's claim vide its letter dated 18.11.2016 . The said order of the 2nd Respondent is assailed in the present Writ Petition.

3.Petitioner's Contention:

3.1.The Learned Senior Counsel for the Petitioner submits that the impugned order of the 2nd Respondent dated 18.11.2016 is against the view of the 3rd Respondent through his order dated 18.12.2012 and 02.08.2013 and further that, the 2nd Respondent in Law has no authority in regard to the applicability of Rule 27 of the Tamil Nadu Pension Rules, 1978 as it is for the Government and the 3rd Respondent Office to determine the same.

3.2.The Learned Senior Counsel for the Petitioner contends that when Rule 27 of the Tamil Nadu Pension Rules, 1978 has employed the term 'Retirement' and 'Superannuation', a general term the 2nd Respondent should not have said that the 'Voluntary

'Retirement' is not mentioned under Rule 27. In short, the plea of the Learned Senior Counsel for the Petitioner is that the term 'Retirement' or 'Superannuation' must be deemed to have included all types of retirement including the 'Voluntary Retirement', in view of the monetary provision of the General Clauses Act and the Law laid down by the Hon'ble Apex Court in Rangachari's case.

3.3. Advancing his arguments, the Learned Senior Counsel for the Petitioner proceeds to point out that the order of the 2nd Respondent dated 18.11.2016 is against the Principles of Natural Justice and the Government Orders in force granting the weightage to other similarly placed candidates of other departments.

3.4. Expatiating his contention, the Learned Senior Counsel for the Petitioner comes out with a plea that the benefit of Rule 27 of the Tamil Nadu Pension Rules, 1978 cannot be restricted only to the Retired on normal superannuation at the age of 58 as the word used in F.R.56(1)(a) and 56(1)(c) is 'Retire' and 'Retirement'.

3.5. The Learned Senior Counsel for the Petitioner submits that the 'Retirement' on voluntarily willingness is also to be treated at

par with the 'Retirement' on superannuation, on the attainment of 58 years of age. Also, it is the contention of the Learned Senior Counsel for the Petitioner that there cannot be any unreasonable classification between the two sets of candidates whose claim is for the benefit available under a Rule unless and otherwise such a differential treatment is supported by reasonable object behind the classification.

3.6.The Learned Senior Counsel for the Petitioner contends that the Petitioner is only 16 years two months and 23 days of service and not the full qualifying 20 years of service and as such, the reference made to the G.O.Ms.No.56, Home (Courts-I) Department dated 19.01.2011 is of no assistance of the Respondents.

3.7.The Learned Senior Counsel for the Petitioner strenuously projects an argument that as on date the Petitioner is receiving pension only in respect of the revised qualifying years of service of 16 years 2 months and 23 days and not full pension on the net qualifying service of 20 years and that the revised pension proposal on the basis of revised net qualifying service period is on the basis

of other Government Orders and Rules particularly under Rule 42 and not on the basis of Rule 27 of the Tamil Nadu Pension Rules, 1978.

3.8.The Learned Senior Counsel for the Petitioner contends that as per Rule 27 of the Tamil Nadu Pension Rules, 1978 a candidate is entitled to add 1/4th of the length of his service with the actual period if he is joined the service after the age of 30 years and he should attain the age of superannuation on or after 01.07.1996 and this rule is entirely different from Rule 42 or the G.O.Ms.No.56 dated 19.01.2011.

3.9.The Learned Senior Counsel for the Petitioners submits that the Petitioner's claim under Rule 27 of the Tamil Nadu Pension Rules, 1978 is not at all considered and even according to the letter of the 3rd Respondent dated 18.12.2012, the matter was pending with the State Government for clarification.

3.10.The Learned Senior Counsel for the Petitioner submits that the State Government Order cannot deviate the benefit under the Statutory Rule viz., Rule 27 of the Tamil Nadu Pension Rules, 1978.

3.11.The Learned Senior Counsel for the Petitioner emphatically contends that the stand taken by the Additional Chief Secretary to the Government through his letter dated 04.07.2017 is against Rule 27 of the Tamil Nadu Pension Rules 1978 and in short, the benefit available under Rule 27 cannot be refused to the eligible candidates satisfying the requirement.

3.12.The Learned Senior Counsel for the Petitioner contends that even assuming without admitting that there is a prohibition of the applicability of Rule 27 to the Judicial Officers in G.O.Ms.No.56 dated 19.01.2011, such a prohibition cannot be relied upon to defeat the Petitioner's claim as it is only an executive order and not the Rule. Furthermore, it is the stand of the Petitioner that an Executive or Administrative Order cannot override the Statutory Rule, in this case, Rule 27 of the Tamil Nadu Pension Rules.

3.13.Moreover, the plea of the Petitioner is that Additional Chief Secretary's letter dated 04.07.2017 clarifying the position in respect of the applicability of Rule 27 of the Tamil Nadu Pension Rules and that the Petitioner already retired from service with effect from 26.05.2012 and the Additional Chief Secretary's letter cannot be applied with retrospective effect.

3.14.Lastly, it is the submission of the Learned Senior Counsel for the Petitioner that the second ground on which the Petitioner's claim was rejected is unsustainable on facts as such a ground was cited only for the 'Retirees' who retired from service after rendering 20 years of qualifying years of service as they are eligible to get full pension on completion of 20 years and the addition of any benefit under Rule 27 will not therefore cause any impact and as such, the applicability of Rule 27 of the Tamil Nadu Pension Rules does not arise.

1st Respondent's Submission:

4.The Learned Government Advocate for the 1st Respondent contends that the Petitioner had not challenged any of the Government Orders/Order issued by the Law Department and no cause of action had arisen for impleading the Secretary to Government, Law Department, Chennai – 9 as 1st Respondent.

5.Plea of 2nd Respondent/Registrar General, High Court:

5.1.Per contra, it is the submission of the Learned Counsel for the 2nd Respondent that the Petitioner was appointed as Civil Judge (Junior Division) on 10.12.1999 at the age of 41 years and was

promoted to the post of Civil Judge (Senior Division) on 05.05.2010 and while serving as I Additional Sub Judge, Madurai, he submitted an application on 01.12.2011 to permit him to retire from service voluntarily with effect from 29.02.2012 Afternoon, which was considered and that the Petitioner was permitted to retire from the Tamil Nadu State Judicial Service with effect from 26.05.2012, under Rule 56(3) of the Fundamental Rules as per G.O.(D)No.422, Home (Courts-I) Department dated 25.05.2012.

5.2.The Learned Counsel for the 2nd Respondent brings it to the notice of this Court that the Petitioner had retired voluntarily on 26.05.2012, at the age of 54 years after serving as Judicial Officer for a period of 12 years 5 months and 17 days.

5.3.The Learned Counsel for the 2nd Respondent contends that the Principal District Judge, Madurai through his letter dated 05.07.2012 had forwarded the combined application of the Petitioner seeking final closure of General Provident Fund as well as the Pension proposal to the 3rd Respondent as per High Court's letter dated 03.10.2012. Also that, the Branch Officer, Office of the Principal Accountant General (A&E), Tamil Nadu, Chennai through

proceedings dated 14.11.2012 had certified that the Net Qualifying Service of the Writ Petitioner is 12 years, 5 months and 18 days.

5.4.The Learned Counsel for the 2nd Respondent submits that the Petitioner submitted a representation on 02.04.2013 seeking to weightage for Voluntary Retirement and revision of pensionary benefits, for onward transmission to the 3rd Respondent, which proposal was forwarded by the Registrar (Administration), Madurai Bench of this Court through proceedings dated 03.04.2013 to the 2nd Respondent/Registrar General, High Court, Madras and this Court had forwarded the revised proposal to the 3rd Respondent.

5.5.At this juncture, the Learned Counsel for the 2nd Respondent refers to Rule 42(2)(a) of the Tamil Nadu Pension Rules, 1978 and contends that a Government Servant retiring voluntarily after 20 years of service or 50 years of age under Sub Rule (3) of Rule 56 of the Fundamental Rules, shall be entitled to a retiring pension which shall be calculated after giving weightage upto 5 years in addition to the qualifying service rendered by him.

5.6.The Learned Counsel for the 2nd Respondent points out that due weightage of 5 years was given to the Petitioner by taking into account of his age even though he had not put in 20 years of service at the time of his Voluntary Retirement. In fact, the 3rd Respondent had allowed total net qualifying service of the Writ Petitioner as 16 years 2 months and 23 days. Further, the pension and other pensionary benefits were revised and the D.C.R.G. amount was drawn and paid to him.

5.7.The Learned Counsel for the 2nd Respondent by referring to Rule 27 of the Tamil Nadu Pension Rules, 1978 submits that the aforesaid Rule is applicable only for those who had retired on 'Superannuation' and not in respect of 'Voluntary Retirement' cases. Moreover, the Government of Tamil Nadu through G.O.Ms.No.56 Home (Courts-I) Department dated 19.01.2011 had reduced the qualifying years of service of the Judicial Officers, to 20 years instead of 33 years as per VI Central Pay Commission for the purpose of earning full pension.

5.8.The Learned Counsel for the 2nd Respondent draws the attention of this Court that the Deputy Secretary to Government,

Home (Courts-I) Department, dated 12.07.2012 had enclosed a copy of the letter of the Principal Accountant General (A&E) dated 31.10.2011 wherein it was stated that the Government of India in the Office Memorandum dated 10.12.2009, had withdrawn the extent of benefit of added years of qualifying service (i.e., weightage) for the purpose of Pension and Gratuity with effect from 01.01.2006, consequent to the revised provisions in regard to qualifying service of 20 years of earn full pension and had requested to clarify as to whether weightage allowed as per Rule 27 of the Tamil Nadu Pension Rules in respect of Judicial Officers stands withdrawn, as modified in para 3 of the Government of India, in Office Memorandum dated 10.12.2009 etc.

5.9.The Learned Counsel for the 2nd Respondent informs this Court that the Petitioner's representation dated 21.04.2015 was pleased before the then Hon'ble Chief Justice of this Court who ordered that the weightage hitherto allowed as per Rule 27 of the Tamil Nadu Pension Rules, 1978 need not be extended to Judicial Officers, since the Government had already reduced qualifying years of service in respect of Judicial Officers to 20 years, instead of 33 years for the purpose of earning full pension with effect from

02.09.2008, in terms of G.O.Ms.No.56, Home (Courts-I) Department, dated 19.01.2011 and as directed, the High Court through letter dated 18.11.2016 had communicated the same to the Principal Secretary to Government, Home Department, Chennai. Further, the High Court, in its Reply, dated 18.11.2016 had stated that in view of the Government of India, in its Office Memorandum dated 10.12.2009 and G.O.Ms.No.56, Home (Courts-I) Department, dated 19.01.2011, the Petitioner's request to allow weightage under Rule 27 of the Tamil Nadu Pension Rules, 1978, cannot be complied with.

3rd Respondent's Contentions:

6.1.The Learned Counsel for the 3rd Respondent, by referring to Rule 27 of the Tamil Nadu Pension Rules, 1978 'Any person appointed to a service (or) post and who retires from service on (or) after 1.7.60 may add to his service qualifying for superannuation pension (but not for any other class of pension)' and contends that the addition to qualifying service as per Rule 27 can be made only in respect of 'Retirement on Superannuation' and not on 'Voluntary Retirement'. Inasmuch as the Petitioner retired voluntarily, the above benefits cannot be extended to him, as

mentioned by the 2nd Respondent through proceedings dated 18.11.2016.

6.2.The Learned Counsel for the 3rd Respondent submits that the Government, through letter dated 04.7.2017 issued by Home (Courts-I) Department, had further clarified that 'the weightage hitherto allowed as per Rule 27 of the Tamil Nadu Pension Rules need not be extended to Judicial Officers, since the Government have already reduced qualifying years of service for earning full pension for Judicial Officers to 20 years instead of 33 years with effect from 2.9.2008, as per the Justice Padmanaban Committee Report vide G.O.Ms.No.56 Home (Courts I) Department, dated 19.01.2011' and as such, the claim of the Petitioner for weightage in terms of the aforesaid Rule 27 of the Tamil Nadu Pension Rules cannot be acceded to. But, the benefit of weightage as per Rule 42 i.e. in respect of Voluntary Retirement was already given to the Petitioner.

6.3.The Learned Counsel for the 3rd Respondent takes a stand that the Office of the 3rd Respondent is vested with the authority of authorising pensionary benefits in respect of the retired Tamil Nadu

Government Employees as per the provisions of the Tamil Nadu Pension Rules and various Government Orders and clarifications issued by the Government of Tamil Nadu for this purpose.

Analysis:

7.It must be borne in mind that the word 'Retire' means to withdraw from office/service, generally on superannuation. In this connection, it is not out of place for this Court to pertinently point out the decision of the Hon'ble Supreme Court in ***R.N.Rajanna (Dr) V. State of Karnataka, (2004) 1 SCC 249 at special page 251 wherein at paragraph 6***, it is, among other things, observed as under:

"..... Though the word "retirement" may take within its fold all or any kind of retirement when the same is used in the context of "superannuation" or retirement by way of superannuation, in service parlance the well-settled meaning it already acquired and even in the normal course to be assigned is that it has relevance and relates to discharge from a post on account of the age fixed for such retirement, uniformly for all or

a particular class or category of service-holders.”

8.Also, this Court aptly points out the decision of the Hon'ble Supreme Court between ***Nagaland Senior Government Employees Welfare Association V. State of Nagaland reported in (2010) 7 SCC at page 643*** wherein it is held that '*In Service Jurisprudence, an 'Employee' can be made to retire from public employment on the basis of age alone*'.

9.That apart, a Government Servant, on attaining the age of superannuation, has no right to continue in Government Service. If one retires on reaching the age of superannuation, in Law, it is neither 'Removal' nor 'Dismissal'.

10.In the present Writ Petition, the Petitioner has sought for quashing of the 2nd Respondent's order in R.O.C.No.4925-A/2012/B1 dated 18.11.2016 and seeks for passing of an order in directing the Respondents to add 1/4th of his service as Civil Judge in Tamil Nadu Judicial Service along with actual service rendered by him and resultantly, to pay all monetary and service benefits.

11.It is to be noted that the 2nd Respondent in R.O.C.No.4925-A/2012/B1 dated 18.11.2016 addressed to the Petitioner [with reference to his Letter dated 21.04.2015] had stated that the Rule 27 of the Tamil Nadu Pension Rules is applicable only for those who retired on superannuation and not for 'Voluntary Retirement' case. Further, it was mentioned that the Government of India in its O.M.F.No.38/37/08-P&PW(A) dated 10.12.2009 had withdrawn the extent benefit of adding years of qualifying service (weightage) for the purpose of computation of pension and gratuity with effect from 01.01.2006, consequent to the revised pension with regard to qualifying of 20 years to earn full pension. Added further, the said letter of the 2nd Respondent dated 18.11.2016 speaks of the reduction of qualifying years of service for earning full pension for Judicial Officers, to 20 years instead of 33 years as per VI Central Pay Commission, with effect from 01.01.2006.

12.Indeed, it is to be relevantly pointed out that in paragraphs 4 and 5 of the G.O.Ms.No.56, Home (Courts-I) Department, dated 19.01.2011 reads as under:

"4.In the reference eighth read above,

the Supreme Court of India, in their order dated 26.7.2010 and 2.8.2010 have accepted the Report of the Justice, Thiru E.Padmanabhan Committee with regard to Domestic Help Allowance, Medical Allowance and retirement benefits such as Additional Quantum of Pension, Commutation of Pension, Gratuity/Death cum Retirement Gratuity, Encashment of Leave, Family Pension, with effect from 01.01.2006 with two changes. The Supreme Court of India, New Delhi has approved the recommendation of Justice Thiru.E.Padmanabhan Committee to continue with Justice Shetty Commission recommendations with regard to paragraphs 31(a),(d) and 36 of the report.

5.The Government, in pursuance of the orders of Hon'ble Supreme Court of India, New Delhi referred to above, hereby accord sanction to implement the recommendations of Justice Thiru.E.Padmanabhan Committee and accordingly order the following allowances and Pensionary benefits

with effect from 01.01.2006 to Judicial Officers/Retired Judicial Officers.”

13. Apart from that, in the aforesaid G.O. at paragraph 5(iv) to (vi) runs as under:

“iv) QUALIFYING SERVICE

The qualifying years of service for earning full pension for Judicial Officers shall be 20 years instead of 33 (Thirty three) years with effect from 01.09.2008 as per VIth Central Pay Commission.

v) QUANTUM OF PENSION:

The recommendation of Justice Shetty Commission shall continue subject to a modification with respect to qualifying years of service for earning full pension which shall be 20 years instead of 30 years.”

vi) ADDITIONAL QUANTUM OF PENSION:

The additional quantum of pension paid to Judicial Officers who have retired including family pensioners in terms of VIth Central Pay Commission

Report shall be paid according to the following table:-

Age of Pensioner/Family Pension	Additional Quantum of Pension
From 80 years to less than 85 years	20% of revised basic pension/family pension
From 85 years to less than 90 years	30% of revised basic pension/family pension
From 90 years to less than 95 years	40% of revised basic pension/family pension
From 95 years to less than 100 years	50% of revised basic pension/family pension
100 years or more	100% of revised basic pension/family pension

14. Furthermore, in the Report of the Hon'ble Justice E. Padmanabhan Committee [One Man Commission] dated 17.07.2009, Part-V, Section-1 under the head 'Pension', wherein at paragraph 33, it is observed as under:

"The First National Pay Commission has approved the existing requirement of 10 years of qualifying service for judicial officers to be eligible for minimum pension. The said Pay Commission recommended that the qualifying years of service should be 33 years for earning full pension, except in the States of Tamil Nadu and Kerala. This was based on the prevailing formula, mainly

qualifying years of service for earning full pension, while considering the qualifying years of service in various States as well Central service.

33(a) Recently, the VIth Central Pay Commission slashed the qualifying years of service for earning full pension from 33 years to 20 years and this has been notified and given effect by Central Government. This recommendation has been adopted by various State Governments with respect to their employees but benefits to be paid prospectively from 2-9-2008, the date on which the Central Govt. issued the Notification.

33(b) Hence, this Hon'ble Court may consider to slash the qualifying years of service from 33 to 20 years for entitlement to full pension to all the Judicial Officers."

15. Apart from the above, the paragraph 34 of the said Report under the caption 'Quantum of Pension' reads as under:

"34. The First National Judicial Pay Commission fixed 50% of the average emoluments drawn during 10 months

preceding the date of superannuation as pension. The Judicial Officers have been persistently representing that the weightage should be given to their legal education and practice at bar. Once the qualifying years of service for full pension is reduced from 33 years to 20 years as is done in the case of Central Govt. employees, the Judicial Officers may not have a justification to agitate this plea.

34(a) Hence it is for this Hon'ble Court to consider and issue directions either to continue the 33 years of qualifying service for earning full pension or to reduce the same to 20 years, as has been done by the Central Government and various State Governments. If there is a slashing of qualifying years of service for full pension, the pensioners will get the benefit of such slashing.

34(b) With respect to quantum of pension and calculation, the recommendations of Hon'ble Justice

Shetty Commission will continue subject to a modification with respect to qualifying years of service for earning full pension, in terms of order that may be passed by this Hon'ble Court."

16. One cannot brush aside a primordial fact that the Retirement benefits are implemented resting upon the recommendations of the Hon'ble Justice E. Padmanabhan Committee [One Man Commission] to the Judicial Officers/Retired Judicial Officers and the same was informed by the Government in its letter dated 19.12.2013 addressed to the 2nd Respondent/Registrar General, High Court, Madras.

17. Furthermore, this Court cites the decision of the Hon'ble Supreme Court in ***Reserve Bank of India and another V. Cecil Dennis Solomon and another, (2004) 9 SCC 461 at page 463,*** wherein it is observed as under:

"The expressions "superannuation", "voluntary retirement", "compulsory retirement" and "resignation" convey different connotations. Voluntary retirement and resignation involve

voluntary acts on the part of the employee to leave service. Though both involve voluntary acts, they operate differently. Resignation can be tendered at any time but voluntary retirement can be sought for only after rendering the requisite period of qualifying service. In case of the former, normally retiral benefits are denied but in case of the latter, the same is not denied. In case of the former, permission or notice is not mandated, while in case of the latter, permission of the employer concerned is a requisite condition. Though resignation is a bilateral concept, and becomes effective on acceptance by the competent authority, yet the general rule can be displaced by express provisions to the contrary."

सत्यमेव जयते

Voluntary Retirement:

18. It is to be remembered that in respect of 'Voluntary Retirement' and 'Resignation' both relate to the 'voluntary acts' of an 'Employee' to leave service. In case of 'Resignation', an 'Employee' can tender the same, at any given point of time.

However, in respect of 'Voluntary Retirement', it can be prayed for after putting the specified qualifying service period.

19.No wonder, 'Voluntary Retirement' is a condition of service. As regards 'Resignation', the same is not effective until it is accepted by the Employer. Whereas 'Voluntary Retirement' does not require acceptance once the conditions for making the request are satisfied, in the considered opinion of this Court. In regard to 'Voluntary Retirement', notice is to be given and where 'Voluntary Retirement' becomes effective only on acceptance by an Employer, no enforceable right accrue to an Employee, as per decision of the Hon'ble Supreme Court in ***New India Assurance Company Limited V. Raghuvir Singh Narang*** reported in ***Judgment Today (2010) 3 SC 645***.

20.At this juncture, it is useful to refer to the definition of Section 2(a)(1) of the Tamil Nadu Judicial Ministerial Service Rules, 1955, under the caption 'Appointed to the Service' means as under:

"(1) A person is said to be "appointed to the Service" when in accordance with these rules or in accordance with the

rules applicable at the time, as the case may be, he discharges for the first time the duties of a post borne on the cadre of the service or commences the probation, instruction or training prescribed for the members thereof.

Explanation.- The appointment of a person holding a post borne on the cadre of another service to hold additional charge of a higher post in the same service or a post borne on the cadre of this service or to discharge the current duties thereof does not amount to appointment to this service."

21. Section 2(a)(2) of the Tamil Nadu Judicial Ministerial Service Rules, 1955 speaks of 'Approved Candidate' means a candidate whose name appears in an authoritative list of candidates approved for appointment to this service or any class or category thereof. Also, Section 2(a)(8) speaks of 'Member of the Service' meaning a person who has been appointed to the service and who has not retired or resigned, been removed or dismissed, been substantively transferred or reduced to another service or been discharged otherwise than for want of a vacancy. He may be a

probationer, an approved probationer or a Full Member of the Service.

22. In so far as the Petitioner is concerned, he was appointed as Civil Judge (Junior Division) on 10.12.1999 at the age of 41 years and subsequently promoted to the post of Civil Judge (Senior Division) on 05.05.2010 and he submitted his application on 01.12.2011 (while serving as 1st Additional Sub Judge, Madurai) seeking permission to retire from service voluntarily with effect from 29.02.2012 Afternoon and he was permitted to retire from the Tamil Nadu State Judicial Service with effect from 26.05.2012 as per Rule 56(3) of the Fundamental Rules (vide G.O.(D).No.422 Home (Courts-I) Department, dated 25.05.2012. In short, the Petitioner retired voluntarily on 26.05.2012 at 54 years of age after serving for a period of 12 years 5 months and 17 days as Judicial Officer. In fact, the 3rd Respondent Office had certified on 14.11.2012 that the Petitioner's Net Qualifying Service was 12 years 5 months and 17 days. Moreover, the Petitioner was given five years of weightage [Rule 42(2)(a) of the Tamil Nadu Pension Rules, 1978] by taking into account of his age even though he had not put in 20 years of service at the time of his Voluntary Retirement. The 3rd Respondent

had allowed the Net Qualifying Service of the Writ Petitioner is 16 years 2 months and 23 days through admissibility Report dated 06.06.2013 and since the Petitioner's Net Qualifying Service increased as 16 years 2 months and 23 days, his pension and other benefits were revised and D.C.R.G. amount was paid to him.

23.It may be relevantly pointed out that the Government of Tamil Nadu through Letter No.37655/Cts-I/2011-17 dated 19.12.2013 had informed that it had not accepted the proposal of the Registrar General, High Court, Chennai to issue amendment to para 5(iv) of the G.O.(Ms)No.56 dated 19.01.2011 to the effect that the date of effect for 20 years of qualifying service for earning full pension shall be determined from 01.01.2006 instead of 02.09.2008 in regard to the Judicial Officers of the Tamil Nadu State Judicial Service.

24.Although an argument was advanced on behalf of the Petitioner that the Retirement on 'Voluntary willingness' has to be treated at par with the Retirement of superannuation on the attainment of the age of 58 and further that, the benefit under Rule 27 is not to be restricted only to the 'Rretirees' on normal

superannuation at the age of 58 since the word used in F.R.56(1) and 56(1)(3) is 'Retire', this Court is unable to accept the same for the simple reason that the term 'Retirement' with reference to 'Superannuation' only means to discharge from a post based on the age determined for such 'Retirement'. As such, the contra plea taken on behalf of the Petitioner in this regard is not acceded to by this Court.

25. Furthermore, even though the term 'Voluntary Retirement' is voluntary act like that of 'Resignation', yet, this Court fervently opines that they do operate on different fields. In respect of an 'Employee' seeking permission to provide 'Voluntary Retirement', the sanction of the 'Employer' in this regard is a requisite factor. It is not an invariable rule in Service Jurisprudence that an 'Employee' can be made to retire from public employment on account of age alone, as per decision of the Hon'ble Supreme Court in ***Nagaland Senior Government Employees Welfare Association V. State of Nagaland, (2010) 7 SCC 643.***

26. Dealing with the contention of the Petitioner that the Additional Chief Secretary of the Government's Letter dated

04.07.2017 in clarifying the position as regards the applicability of Rule 27 of the Tamil Nadu Pension Rules, 1978 and that the Petitioner had already retired from service with effect from 26.05.2012, the same cannot be applied with retrospective effect. At this stage, this Court points out that in G.O.(Ms).No.56, Home (Courts-I) Department, dated 19.01.2011, it is observed as under:

"In the reference first read above {1.Orders of the Supreme Court of India, New Delhi, dated 28.04.2009 in W.P.No.1022/1989}, the Honourable Supreme Court of India, New Delhi has appointed One Man Commission headed by Justice Thiru.E.Padmanabhan (Retired) to determine the Pay Scale of all the Judicial Officers of the Subordinate Courts working and retired throughout the Country. On the basis of First National Judicial Pay Commission, the Commission submitted its report on 17.07.2009, before the Hon'ble Supreme Court of India. In the reference third read above, it has been ordered as "All the States are hereby directed to implement Justice E.Padmanabhan Committee recommendations with effect

from 01.01.2006. There should be uniformity and all the States should implement recommendations and shall raise the pay scale and allowances from 01.01.2006 and shall pay arrears of salary, if any."

27. From the contents of the aforesaid G.O.(Ms.)No.56, dated 19.01.2011, it is crystalline clear that all the States were directed to implement the Hon'ble Justice E.Padmanabhan Committee recommendations with effect from 01.01.2006 and when the G.O.(Ms).No.56, dated 19.01.2011 was issued by the Government of Tamil Nadu in regard to the implementation of various allowances and retirement benefits to Judicial Officers/Retired Judicial Officers with effect from 01.01.2006, it cannot be countenanced that the Letter of the Additional Chief Secretary dated 04.07.2017 (vide Ref. Letter No.85893/Cts.I/2016-1) has no 'Retroactive application. In short, the Government of Tamil Nadu had only implemented the orders of the Hon'ble Supreme Court and issued the Government Order in question. Further, the Writ Petitioner has not assailed any of the Government Orders/Order of the Law Department.

28. At the risk of repetition, this Court points out that when the Petitioner 'Retired Voluntarily' on 26.05.2012 Afternoon, at 54 years of age, after serving for a period of 12 years 5 months and 18 days as Judicial Officer, was given due weightage of 5 years as per Rule 42(2)(a) of the Tamil Nadu Pension Rules, 1978 and hence, his qualifying service was increased to 16 years 2 months and 23 days, he had received the 'Pension and other Benefits' and also the Revised Pensionary Benefits, apart from receiving the 'D.C.R.G. sum'.

29. Insofar as the plea of the Petitioner that even assuming without admitting that the prohibition of the applicability of Rule 27 of the Tamil Nadu Pension Rules, 1978 to the Judicial Officers in G.O.(Ms.).No.56 dated 19.01.2011 and that such a prohibition cannot be relied upon to defeat the Petitioner's claim because of the reason that it is only an Executive Order and not the Rule etc., this Court is of the considered view that the G.O.(Ms.)No.56 dated 19.01.2011 was issued in the teeth of the Hon'ble Supreme Court's Order dated 26.07.2010 and 02.08.2010 wherein the Report of the Hon'ble Justice E.Padmanabhan Committee with regard to the Domestic Help Allowance, Medical Allowance and Retirement

Benefits such as Additional Quantum of Pension, Commutation of Pension, Gratuity / Death-cum-Retirement Gratuity, Encashment of Leave, Family Pension, with effect from 01.01.2006 with two changes. In short, the Hon'ble Supreme Court had approved the recommendation of the Hon'ble Justice E.Padmanabhan Committee to continue with Hon'ble Justice Shetty Commission recommendations with regard to paragraphs 31(a), (d) and 36 of the Report. The contention of the Petitioner is that the Executive or Administrative Order cannot override the Statutory Rule viz., Rule 27, is not accepted by this Court.

30. It is seen from the representation of the Petitioner dated 29.11.2012 addressed to the 3rd Respondent/Principal Accountant General (A&E), Tamil Nadu, Chennai – 18 that he had practised as an Advocate for a period of 13 years till he is appointed as Judicial Officer and underwent training for the post of the Judicial Officer and as such, 5 years period was to be added for practising as an Advocate (he got himself enrolled as an Advocate on 12.11.1986 vide Enrollment No.641/86), this Court is of the considered view that the Petitioner's service as an Advocate for five years (out of 13 years) is not to be taken into account for calculating his Pensionary benefits, since Rule 27 speaks only about any person appointed to a

Service or a Post. Further, the Petitioner was appointed as Civil Judge on 10.12.1999 and retired from service voluntarily on 26.05.2012 Afternoon. As such, his request dated 29.11.2012 seeking five years period to be added for practicing as an Advocate, is not accepted by this Court.

Disposition:

31. In view of the detailed upshot and also this Court, taking note of the entire conspectus of the attendant facts and circumstances of the present case in an encircling manner, comes to a consequent conclusion that the impugned order of the 2nd Respondent in R.O.C.No.4925-A/2012/B1 dated 18.11.2016 does not suffer from material irregularities or patent illegalities in the eye of Law. Resultantly, the Writ Petition fails.

32. In fine, the Writ Petition is dismissed. No costs.

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[M.V., J.] [P.R.M., J.]

05.03.2019

Speaking Order : Yes
Index : Yes
Internet : Yes
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To

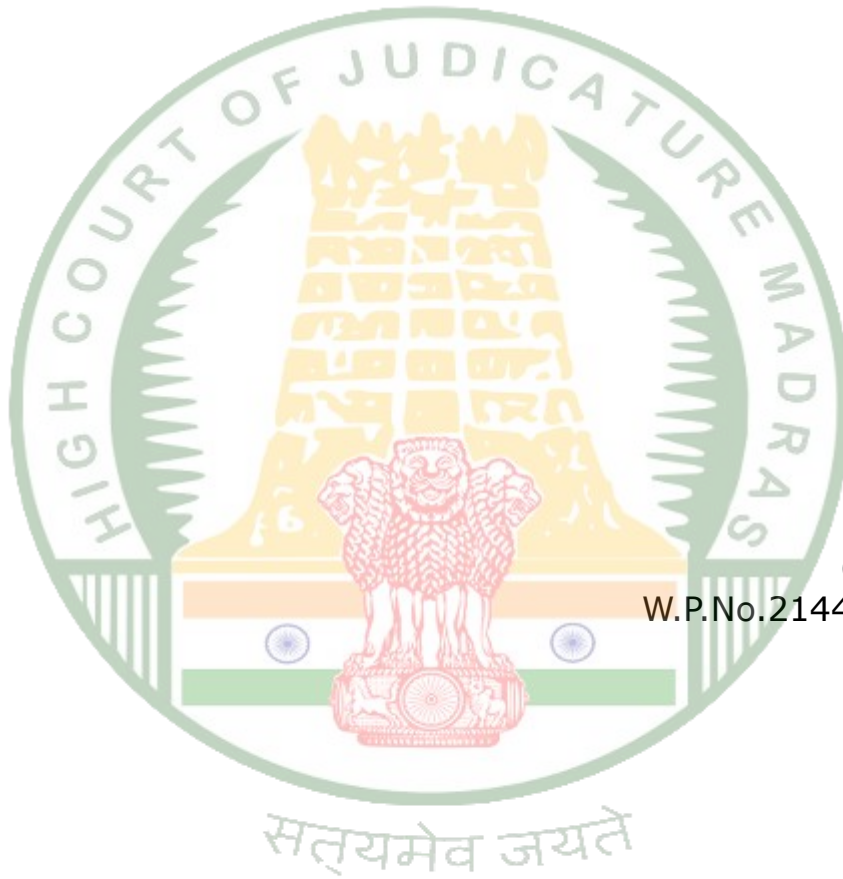
- 1.The Secretary to Government,
State of Tamil Nadu,
Law Department,
Secretariat, Chennai – 9.
2. The Registrar General,
High Court of Judicature at Madras,
High Court, Chennai – 104.
- 3.The Principal,
Accountant General (A & E)
New No.361, Anna Salai,
Teynampet, Chennai – 600 018.
- 4.The Government Advocate,
High Court, Chennai.



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M.VENUGOPAL, J.
AND
P.RAJAMANICKAM, J.

Sgl



ORDER in
W.P.No.21440 of 2017

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05.03.2019