

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 25.04.2019

CORAM
THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

W.P.No.11265 of 2017
and
WMP.No.12192 of 2017

Dr.S.Abdul Khuddus Azami (died)

2.Syeada Tashfeen,
3.Md.Ameenuddin
4.S.Md.Moenuddin
5.S.Md.Laiquiddin
6.S.Md.Nihaluddin
7.Syeada Ayisha Tabassum
8.Syead Mohammad Yousuf Asif... Petitioners
(P2 to P8 are substituted as LR's of the
deceased P1 vide Court order dated 06/12/18,
made in WMP.No.31016/18 in WP.No.11265/11
by KRCBJ)

Vs.

1.The Principal Secretary to
Government,
Health and Family Welfare Department,
Fort St. George,
Chennai - 600 009.

2.The Additional Chief Secretary,
Cum Commissioner of Indian
Medicine and Homoeopathy,
Commissionerate of Indian Medicine,
and Homoeopathy,
Aringnar Anna Government Hospital,
For Indian Medicine and Homoeopathy,
Third Avenue, Anna Nagar High Road,
Near Anna Arch, Chennai - 600 106.

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

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the
Constitution of India, praying for the issuance of a Writ of
Certiorarified Mandamus, calling for the records relating to the
proceedings of the Additional Chief Secretary/Commissioner of
Indian Medicine and Homoeopathy, Chennai, the second respondent
herein made in Ref.No.9006/E1/2/2002 dated 26.5.2016 and same
proceedings number dated 26.5.2016 in communicating the decision
of the Government made in G.O.(Ms)No.28, Health and Family
Welfare Department dated 18.1.2012 issued by the Principal
Secretary to the Government Health and Family Welfare

Department, Chennai, the first respondent herein and quash all orders in so far as the same are against the petitioner in getting full benefits and direct the respondents herein to declare that the petitioner is deemed to have completed his probation with effect from the date of completion of 2 years from the date of first appointment instead of 31.5.2010 and consequently direct the respondents herein to disburse all the consequential service and monetary benefits namely (i) Annual increments due to the petitioner from the date of his first appointment, (ii) selection grade, (iii) special grade in the post of Assistant Medical Officer, (iv) notional promotion to the post of Reader on par with his immediate junior, v) Encashment of earned leave benefits for full 240 days; (vi) Encashment of leave on private affairs for 90 days and all other incidental benefits flow from it and disburse all the accrued arrears on the above items after giving credit to the amounts so far disbursed within a short date.

For Petitioners : Mr.K.Rajkumar

For Respondents : Mr.N.Sakthivel,
Additional Government Pleader
(for R1 & R2)

No appearance (for R3)

O R D E R

This writ petition was filed initially by one Dr.S.Abdul Khuddus Azami ('Dr.Azami'), who passed away on 18.04.2018, even during its pendency. His legal heirs, being his widow and seven children, have been impleaded as petitioners 2 to 8 and have been contesting the matter on his behalf. They have challenged order dated 26.05.2016 passed by the Additional Chief Secretary, arrayed as the second respondent and hereafter referred to as R2 in the writ petition.

2.The short controversy for resolution revolves around the fixation of date of retirement of Dr.Azami based upon which his retirement and pensionary benefits will be computed. Dr.Azami was appointed in the year 17.03.1986 in the Government Unani Medical College. His service was regularized with effect from 24.04.1986 vide G.O.Ms.No.118 (IM and H) Department, dated 07.10.1987. This document is not in dispute and consequently neither is the date of regularization of appointment.

3. The petitioner has passed the medical course in Unani medicine namely 'TABAB-e-KAMIL', equivalent to Bachelor of Unani Medicine and Surgery (BUMS) from Islami Arabic Tibbia College, Kurnool in Andhra Pradesh. Pursuant thereto, he registered himself in the Board of Indian Medicine and Homoeopathy, Chennai. The condition imposed upon his regularization was that he had to pass the second class language test in Tamil (full test) within a period of four years, from the date of issue of the order of regularization.

4. Admittedly, though the petitioner has attempted the examination 27 times, he has failed in all attempts. For this reason, he was discharged from service on a few occasions and re-instated into service pursuant to orders of the Tamil Nadu Administrative Tribunal extending the time for passing the aforesaid examination. Finally, after several dismissals and re-instatements, the petitioner prayed for an exemption from passing the above examination citing several similar cases, in which, persons who had crossed 50 years of age had been exempted from writing and passing the test.

5. He approached this Court vide writ petition No.16309 of 2010, that was allowed on 29.03.2011. This Court at paragraph 34 and 35 states as follows:

'34. In the absence of any serious complaints, from any of the quarters, stated supra, rejection of the request of the petitioner for relaxation of Rule 12-A of the General Rules is not only against the orders of the interim stay granted by the Tribunal and that the order of removal, a major penalty, cannot be inflicted, to achieve object of discharging him from service. As the petitioner has rendered 27 years of unblemished services, which is not controverted by the respondents, this Court is of the considered view that the Government ought to have shown some leniency in allowing the petitioner to retire peacefully from service, as done in the case of Mr.G.S.N.Khadri. Pension and other retiral benefits are the only source of income to a Government Servant, after rendering a long number of years of service. Except passing the second language test in Tamil, the petitioner had maintained a clean record of service, which observes due consideration, and if pension and other retiral benefits are denied, it would cause serious hardship and agony. The petitioner has served his master satisfactorily for 27 years and he should not have been sent out by an order of removal, thus, depriving him of the retiral benefits, for the only mistake, in not passing the language test. Needless to say, even persons, who have committed misconduct are allowed to work, after awarding appropriate penalty, depending upon the gravity of the charge.

35. In such view of the above, this Court is inclined to interfere with the impugned order. Accordingly, the impugned order is set aside and consequently, a direction is issued to the respondents to

allow the petitioner to retire from service, by granting relaxation of the rules, with consequential service and monetary benefits, including retiral benefits and pension, with effect from the date of attaining the age of superannuation and disburse the arrears.'

6.Thus this Court has noticed his long and blemish-free services of 27 years and has permitted him to retire from service granting relaxation with consequential service and monetary benefits including retirement benefits and pensionary benefits from the date of attending age of superannuation.

7.The interpretation of the aforesaid order by the respondent, is challenged in this writ petition. The second respondent, vide the impugned order, has computed the retirement benefits only from the date of probation, which is in 2010, whereas, according to the petitioner, he is entitled to the benefits from the date of appointment, which is 17.03.1986.

8.In the light of the earlier order passed in the writ petition as extracted above, wherein in paragraph 34 and 35, this Court has taken note of the unblemished service of the petitioner for more than 27 years and has granted exemption from passing the Tamil language exam, I see no reason for the respondent to restrict the retirement benefits only from the date of probation. The very fact that he has been confirmed after the period of probation establishes that his service even prior thereto has been found acceptable. The order of the Division Bench aforesaid has attained finality and with it, the findings that the petitioner's service was satisfactory for the entire duration. The only factor that stood in the way of his obtaining retirement benefits was his failure to pass the Tamil Language exam from which also, he has been exempted. The Division Bench has categorically opined that the computation of retirement benefits has to be 'in consequence of' the exemption granted and such exemption, therefore, covers the entire period of service, from the date of regularisation of service itself.

9.In these circumstances, this writ petition is allowed and the second respondent is directed to pass necessary orders computing the pensionary and retirement benefits from the date of regularisation of service being 24.03.1986 and to pay the benefits within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary to
Government,
Health and Family Welfare,
Department,
Fort St.Geroge,
Chennai - 600 009.

2.The Additional Chief Secretary,
Cum Commissioner of Indian
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3.The Principal Accountant General (A&E),
Tamil Nadu, Anna Salai,
Teynampet, Chennai - 600 018.

+1cc to Mr.K.Rajkumar, Advocate, S.R.No.39824

+1cc to the Government Pleader, S.R.No.40621

W.P.No.11265 of 2017
and
WMP.No.12192 of 2017

SKV (CO)

RRS (29/04/2019)

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