HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.29698 of 2016

ORDER :

This writ petition is filed seeking Writ of Mandamus to (i) declare the relieving order dated 20.11.2004 in relieving the petitioner on the afternoon of 28.02.2004, instead of relieving the petitioner on 02.11.2004, as illegal, arbitrary and violative of the principles of natural justice and contrary to Rule 43 of the A.P. Revised Pension Rules, 1980 (for brevity "the Rules"); (ii) declare the action of the respondents in not sanctioning pension of the petitioner as illegal and contrary to Rule 21(1) of the Rules; and consequently sought a direction to the respondents to release the pension of the petitioner by duly taking the period of leave from 01.03.2004 to 01.11.2004 into account for the purpose of calculating the years of qualifying service for the purpose of computing the pension, with all consequential benefits.

The petitioner has joined the State Government service as Assistant Professor of Neurology, Kurnool Medical College, Kurnool, on 02.11.1984. While discharging the duties as Assistant Professor of Neurology, the petitioner was posted as Assistant Professor in Nizam Institute of Orthopaedics and Specialities at Hyderabad in January, 1985. The petitioner submits that consequent upon the option exercised by him, the services of the petitioner were absorbed in the 2nd respondent –

Nizam Institute of Medical Sciences on 16.09.1986 and he was promoted as a Professor on 17.06.1989 and further promoted as Dean in March, 2004. The petitioner further submits that after completing 20 years of service as on 02.11.2004, vide application dated 01.12.2003 the petitioner has applied for voluntary retirement seeking to relieve him with effect from 02.11.2004. Pursuant to the said application, the petitioner was relieved from the service on the afternoon of 28.02.2004. The grievance of the petitioner is that though the petitioner has categorically stated in his application that he should be relieved with effect from 02.11.2004, vide proceedings Rc.No.1/14/86/Acad/A4, dated 20.11.2004, the 2nd respondent has relieved him from service with effect from 28.02.2004. The further grievance of the petitioner is that though he has rendered 20 years of service, the respondents are not extending the pensionary benefits for the service rendered by him in the 2nd respondent – Institute.

The petitioner further submits that the 2nd respondent in its 53rd Executive Board Meeting held on 04.06.2010 has passed a Resolution sanctioning pension to the petitioner keeping in view his long service rendered in the Institution and also on the advice of the Finance Department and the said Resolution was forwarded to the State Government and basing on the same, the State Government was pleased to issue G.O.Ms.No.265, dated 08.10.2012, wherein a decision was

taken to sanction proportionate pension to the petitioner under the Rules. The grievance of the petitioner is that even though the State Government had issued G.O.Ms.No.265, dated 08.10.2012 sanctioning proportionate pension to the petitioner, the respondents are not disbursing the pension to him in terms of the said G.O. Challenging the above said actions of the respondents, the present writ petition is filed.

Heard Sri B. Mahender Reddy, learned counsel for the petitioner; learned Government Pleader for Services-II appearing for respondent No.1; and Sri G. Anandam, learned Standing Counsel for respondent No.2 – Institute.

Learned counsel for the petitioner contends that though the petitioner has completed 20 years of service and the State Government had issued G.O.Ms.No.265, dated 08.10.2012, sanctioning proportionate pension to the petitioner, the respondents are not releasing pension to the petitioner in terms of the said G.O.

The learned Standing Counsel for the 2nd respondent – Institute submits that since the petitioner has not completed 20 years of service, earlier recommendations made by the 53rd Executive Board Meeting were revised in the 63rd Executive Board Meeting held on 31.10.2013 requesting the State Government to review its earlier decision, as the petitioner has not completed 20 years of service in view of his unauthorised absence for certain period.

The learned Government Pleader for Services submits that though the 2nd respondent has passed a resolution to review the decision of the State Government vide G.O.Ms.No.265, dated 08.10.2012 sanctioning proportionate pension to the petitioner, the State Government had declined to review its earlier decision, vide letter dated 07.11.2014 reiterating its earlier decision to sanction proportionate pension to the petitioner under the Rules. The learned Government Pleader, therefore, contends that the pensionary benefits would be disbursed to the petitioner in accordance with G.O.Ms.No.265, dated 08.10.2012 and appropriate orders be passed in the writ petition.

This Court, having considered the rival submissions of the learned counsel for the respective parties, is of the considered view that the grievance of the petitioner is resolved with the issuance of G.O.Ms.No.265, dated 08.10.2012 and the subsequent letter dated 07.11.2014 issued by the State Government reiterating its earlier decision to sanction proportionate pension to the petitioner under the Rules. Accordingly, the petitioner is entitled for sanction of proportionate pension in terms of G.O.Ms.No.265, dated 08.10.2012 with all consequential benefits and the respondents are directed to disburse the pensionary benefits to the petitioner in terms of G.O.Ms.No.265, dated 08.10.2012 with all consequential benefits and pass appropriate orders in

accordance with law within a period of four (4) weeks from the date of receipt of a copy of this order.

With the above observations, the writ petition is allowed. No order as to costs.

As a sequel, miscellaneous petitions pending, if any, in this writ petition shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

18.02.2019.
Msr

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.29698 of 2016

18.02.2019
Msr