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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 24.11.2021
CORAM
THE HONOURABLE MRS.JUSTICE S.SRIMATHY
W.P.(MD)No.20191 of 2013
and
M.P.(MD)No.1 of 2013

G.Chandrakanthan ... Petitioner

vs.

1.The Assistant General Manager,
United India Insurance Co.Ltd.,
Regional Office,
1st Floor, 7A, West Veli Street,
Madurai.

2.The Manager,
United India Insurance Co.Ltd.,
Rural Branch,
Trichy.

3.The Manager,
United India Insurance Co.Ltd.,
Marketing Department (Pension Department),
Head Office,
Chennai. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the Respondents 1 and 3 in connection with the orders passed by them in MDURO: MKTG: 193:99-2000, dated 31.08.1999 and Pension Dept. HO:PEN: 512:2008, dated 04.12.2008 respectively and quash the same and direct the respondents to pay the backwages and to sanction Family Pension by issuing a Writ of Certiorarified Mandamus or any other appropriate Writ, Order or direction as this Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.D.Selvanayagam
For Respondents : Mr.G.Prabhu Rajadurai

O R D E R

This writ petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order stated in the prayer and direct the respondents to pay the backwages and sanction Family Pension.

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2.The petitioner was appointed as Development Officer on 01.02.1984. The petitioner was discharged from service (Termination), vide notice, dated 31.08.1999. The termination order was passed under Rule 11 of the Scheme of General Insurance (Rationalization of Pay Scales and other conditions of service of Development Staff) Scheme, 1987.

3.Since the petitioner's performance was not as prescribed under the Scheme and has not achieved the target fixed in the Scheme, the petitioner was terminated from service. The petitioner filed a writ petition to quash the impugned order, MDURO:MKTG:193:99-2000, dated 31.08.1999 and Pension Dept. HO:PEN:512:2008, dated 04.12.2008 and direct the respondents to pay the backwages and sanction Family Pension.

4.The second respondent has filed a counter affidavit stating that since the petitioner was terminated from service, the petitioner is not entitled to backwages and Family Pension, since termination would amount to forfeiture of service.

5.Heard Mr.D.Selvanayagam, learned Counsel appearing for the petitioner and Mr.G.Prabhu Rajadurai , learned Counsel appearing for the respondents.

6.The learned Counsel for the petitioner submitted that Rule 11 of the Scheme states that termination shall not be considered as penalty. If it is so, the impugned order ought to be set aside and the claim of the petitioner ought to be considered. When the Rule specifically states that termination under Rule 11 is not considered as penalty, the respondent is incorrect in submitting to invoke General Pension Rules and deny the benefits to the petitioner. When there is a specific Rule covering the issue, the general rule cannot be applicable, under the principles of Specific Rule prevails the General Rule. Therefore, the petitioner prays to set aside the impugned order and direct the authorities to grant Pension/Family Pension to the petitioner. The learned Counsel appearing for the petitioner also submitted that the representation of the petitioner, dated 03.06.2008, for Family Pension / Pension may be considered.

7.The learned Counsel appearing for the petitioner has referred General Insurance (Rationalization of pay scales and other conditions of service of Development staff) Scheme, 1976 and General Insurance (Rationalization of pay scales and other conditions of service of Development staff) Scheme, 1987. In the Scheme 1987, it has been stated that if any termination is under Cost Control-Rule 11, then the termination cannot be considered as penalty. The relevant portion of the sub clause 9 is extracted below:

"*Where the non-core allowance of a Development*

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Officer are reduced under sub-paragraph (2) of sub-paragraph (3) or decrements are effected under sub-paragraph (4) or his services are terminated under sub-paragraph (6), such reduction of non-core allowance or decrements or termination of services shall not be deemed to be a penalty."

8.The learned Counsel appearing for the respondents had submitted that the resignation, termination of service would amount to forfeiture of service. The Tamil Nadu Pension Rules is applicable to the respondent company and as per the rules termination amounts to forfeiture of service and hence the petitioner is not entitled to.

9.After considering the arguments of either parties and after perusing the records it is seen that under Rule 11 of the General Insurance (Rationalization of pay scales and other conditions of service of Development staff) Scheme, 1987 termination of services shall not be deemed to be a penalty. It is their own rules which says that termination under Rule 11 is not penalty and then the respondent cannot deny to grant pension. Since this termination is not considered as penalty as per the aforesaid clause, the denial of Family Pension/Pension is illegal.

10.Therefore, this Court set aside the impugned order and direct the respondents to consider the petitioner's claim and sanction the Family Pension / Pension as per the Scheme of Pension applicable to the respondent company and disburse the same within two months from the date of receipt of a copy of this order.

11.Accordingly, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

jbr/trp

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

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Head Office,
Chennai.

+1 CC to M/s.D.SELVANAYAGAM, Advocate (SR-35769[F] dated 24/11/2021)

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-35915[F] dated 25/11/2021)

W.P.(MD)No.20191 of 2013
and
M.P.(MD)No.1 of 2013
24.11.2021

RS (03.12.2021) 4P 6C

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