



W.P.No.5795 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.04.2022

Pronounced on : 29.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.5795 of 2011

&

M.P. No.1 of 2011

N.Mani

...Petitioner

Vs.

1.Government Of Tamil Nadu,
Represented by Secretary to Government,
Environment and Forests Department,
Chennai. - 600 009.

2.The Chair-Person,
Tamil Nadu Pollution Control Board,
Chennai – 600 032.

3.The Registrar,
University Of Madras,
Chennai – 600 005.

... Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the orders in (1) No.D1(B)/TE/2010/808, dated 22.06.2010 of the third Respondent and (2) Govt.Lr.No.23412/ECII/2002, Environment and



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Forest Department dated 26.08.2004 of the first Respondent and to quash the same and to issue consequential directions to the Respondents to grant weightage to the Petitioner as provided in FR 56 (3) (d) (i) & (ii) consequent on his voluntary retirement on 09.11.2001 from Tamil Nadu Pollution Control Board and to revise his pensionary benefits on that basis along with revised monthly pension and disburse all consequential arrears of monetary benefits with 18% of interest per annum.

For Petitioner : Mr.S.Balakrishnan
for Mr.M.Ravi

For Respondents: Mr.V.Yamuna Devi
Special Government Pleader for R1
:Mr.Vijaya Kumari Natarajan
Standing Counsel for R2
:Ms.V.Sudha for R3.

ORDER

This writ petition is filed challenging the order of the 1st Respondent dated 26.08.2004 and order of the 3rd Respondent dated 22.06.2010 and to further direct the Respondents to grant weightage to the petitioner in terms of the Fundamental Rules 56 (3)(d) (i) & (ii).

2. The petitioner initially joined the services as Demonstrator in the Chemistry Department of Government Arts College, Cheyyar on 25.06.1975



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in Tamil Nadu Collegiate Educational Service. After a series of promotions, the petitioner was appointed as Selection Grade Lecturer in the Presidency College, Chennai in 1989. Thereafter the petitioner was directly recruited as Deputy Director (Labs) in the 'Tamil Nadu Pollution Control Board' (*in short 'Board' for the sake of brevity*) on 27.09.1991, keeping his lien in the Tamil Nadu Collegiate Educational Service.

3. On 10.11.2001, the petitioner was appointed as Registrar of the University of Madras vide letter dated No:VC/D.1(A)/Regr./2001/280 dated 04.10.2001 of the Vice Chancellor. The petitioner opted for voluntary retirement on 09.10.2001 from the services the Board to enable him to take up the post of Registrar of the University of Madras. The Board, accepted the voluntary retirement vide proceedings No.Per/P1/26313/2001 dated 08.11.2001 which is to take effect from the afternoon of 09.11.2001. The petitioner joined his duty as Registrar of the Madras University on 10.11.2001 and continued to hold the post until 09.11.2004, when the petitioner was informed by the Vice Chancellor of the aforesaid University that the Syndicate of the University had resolved to relieve the petitioner



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from the services of the University on 09.11.2004.

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4. Meanwhile, the aforesaid Board sanctioned petitioner's pensionary benefits consequent upon the petitioner's voluntary retirement, taking the qualifying service as 26 years, 4 months, and 14 days (both in Government and the Board from 25.06.1975 to 26.09.1991 and from 27.09.1991 to 09.11.2001 respectively). By another proceedings dated 24.07.2002, the gratuity due to him was sanctioned.

5. The present writ petition has been filed by the petitioner challenging the order of the 1st Respondent dated 26.08.2004 on the premise that while quantifying the qualifying service the Respondent Board ought to have extended benefit of weightage in terms of FR 56 (3) (d) (i) & (ii), which if extended to the petitioner the qualifying service would be thirty (30) years instead of 26 years 4 months and 14 days. The petitioner had also challenged the order dated 22.06.2010 rejecting the request for payment of additional terminal benefits for the service rendered as Registrar as not feasible of compliance.



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6. To the contrary it is submitted by the Respondent Board that in terms of G.O.Ms.No.1404, Finance, dated 17.10.1979, in the case of employees opting for voluntary retirement and taking up re-employment under Government/Corporation/Statutory Board such employees are not entitled to the benefit of the weightage extended under FR 56 (3) (d) (i) & (ii). It was thus submitted that the petitioner having opted to retire voluntarily to take up his new appointment as Registrar of the University of Madras, his pension and gratuity ought to be calculated in terms of the aforesaid G.O.Ms.No.1404 and the benefit of weightage in terms FR 56 (3) (d) (i) & (ii) cannot be extended. It was further submitted that in terms of Pension Rules an official/employee on retirement if re-employed the pension admissible shall be arrived at by deducting the pay drawn in the new post. Though the above aspect has been set out in the counter of the 3rd Respondent there is no clarity as to whether Madras University has made such deduction.

7. The counsel for the University of Madras placed reliance on Rule 7(1) under the 'Tamil Nadu Pension Rules, 1978' (*in short 'TNPR, 1978' for*



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the sake of brevity) which reads as follows:

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“A Government Servant shall not earn two pension on the same service or post at the same time or by the same continuous service and Rule 17 (2) clearly states that (p.no.5) except as provided in rule 16, a Government Servant who having retired on a superannuation pension or retiring pension is subsequently reemployed shall not be entitled to a separate pension or gratuity for the period of re-employment.”

8. It was submitted by the petitioner in response to the above contentions of the Respondent Board and the University that the post of Registrar of Madras University would not qualify as “re-employment”, as it is a tenure post and therefore, the petitioner ought to have been extended the benefit in terms of FR 56 (3) (d) (i) & (ii). Further, it was submitted by the petitioner that the impugned orders also suffered from the vice of being non-speaking and therefore liable to be set aside.

9. To appreciate the contention of the petitioner and the Respondent Board and University, it may be relevant to refer to the relevant provisions/rules G.O's in particular Fundamental Rules 56 (3) (d) (i) & (ii),



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Rule 7 & 44 of the Tamil Nadu Pension Rules, 1978.

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“Fundamental Rule 56:

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(d) (i) A Government servant including a Government servant in the Tamil Nadu Basic Service retiring voluntarily shall be given a weightage not exceeding five years, subject to the condition that the total qualifying service rendered by such Government servant, including weightage, does not in any case exceed Thirty three years of qualifying service and it does not take him beyond the date of superannuation, as the case may be.

(ii) The weightage given shall be in addition to the actual qualifying service for purposes of pension and gratuity only, and it shall not entitle a Government servant retiring voluntarily to any notional fixation of pay for purposes of calculating the pension and gratuity. The pension shall be determined based on the 50% of average emoluments drawn during the last ten months of service rendered, reckoned from the date of voluntary retirement”.

Tamil Nadu Pension Rules, 1978:

44. Regulation of pay in case of re-employed Government pensioner. - *(1) The authority Competent to fix the pay and allowances of the Post in which a pensioner is re-employed shall determine whether the pension shall be held wholly or partly in abeyance. If pension is drawn wholly or in part, such authority shall take the amount of such pension into account in fixing the pay to be allowed to him.*



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Explanation. - Where the employment is in a service paid from local fund, the authority determining whether the pension shall be wholly or partly held in abeyance shall be either:-

(i) the authority administering the local fund, if so empowered by the Government by special or general orders in this behalf; or

(ii) in any other case, the Government or such other authority as the Government may prescribe.

Note. - *Rules relating to the re-employment of superannuation of retiring pensioners do not apply to post in hereditary village officers.*

(2) No retired personnel should be re-employed without specific orders of Government.

(3) Sub-rule (2) shall not apply to the re-employment in posts borne on the contingent establishment but it will apply to re-employment in posts borne on the work charged establishment. The principles governing the fixation of pay laid down in sub-rule (4) will, however, apply to re-employment in posts borne on contingent establishment as well as work charged establishment. In cases where the post of reemployment carries a fixed pay, that fixed pay will be taken as "the maximum of the post" referred to in sub-rule (4). In the cases of re-employment in posts paid from contingencies and of unskilled labourers where the pension exceeds the pay (proper) of the post, the re-employed person may, at the discretion of the appointing authority, be permitted to receive in addition to the pay of the post, a portion of their pension not exceeding half. They may also be allowed dearness allowance calculated on the total of the pension drawn and the pay on re-employment and



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other allowances attached to the post but not the temporary, increase in pension, which will be held in abeyance during the period of the re-employment.

(4) (i) The general principle governing the fixation of pay of a re-employed pensioner in the same or similar post is to allow him to draw his pension in full and in addition such pay as will bring his total emoluments up to the rate of pay drawn by him on the date of his retirement.

(ii) In the cases of re-employment in a higher post where the minimum pay of the post is more than the pay last drawn the pensioner may be allowed to minimum pay of the post, less pension and pension equivalent of other retirement benefits.

(iii) In the case, however, of a pensioner re-employed in a lower post, his pay plus pension during re-employment should be limited to the pay drawn by him at the time of retirement or to the maximum of the post in which he is re-employed whichever is less.

(iv) A re-employed pensioner may in addition, be allowed to draw the special pay attached to the post in which he is re-employed.

(v) Technical personnel who are re-employed in the Survey Department may be allowed the basic initial pay of the posts to which they are appointed in addition to their pension.

[(vi) Normal increments shall be sanctioned to the Government pensioners who are re-employed in the time scale of pay of the post to which he is appointed as if the pay had been fixed at the minimum or the higher stage, as the case may be (i.e. before an adjustment on account of pension and pension equivalent of other retirement benefits is made)



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subject to the condition that the pay and gross pension or pension equivalent of other retirement benefits taken together do not at any time exceed Rs.26,000/- per month.]

G.O.Ms.No.1404:

“2. There may be cases where some of the employees who have voluntarily retired in terms of the Government Order cited may seek employment or reemployment in Government Companies, departments or other organisations funded by or receiving aid from the Government. The objective of the scheme of voluntary retirement being to facilitate employees desirous of leaving Government Service creating avenues of employment to new recruits, it is hereby ordered that an employee retiring voluntarily under the Government Order cited shall not continue to be employed or re-employed in Government Service, Government Companies, Services of local bodies or educational or other institutions or organisations which are funded by or in receipt of aid from the Government except on public grounds. Sanction for such re-employment or continuation of employment should be only under specific approval of the Government. Pay of such employees who have voluntarily retired under the Government Order cited and who continue to be employed or are re-employed in Government Departments, Government Companies local bodies or any organisation or institution which is funded by or receives aid from the Government shall be regulated as follows:

(a) If the minimum pay of the post in which the person is employed or re-employed is the same as or higher than the pay drawn by him at the time of Voluntary retirement, he may be



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allowed the minimum pay of the post less pension and pension equivalent of other retirement benefits:

(b) If the minimum pay of the post in which the person is employed or re-employed is less than the pay drawn by him at the time of voluntary retirement, his pay plus pension should be limited to the pay drawn by him at the time of voluntary retirement or to the maximum of the post in which he is re-employed, whichever is less.

3. The Government further direct that, for purpose of retirement benefits in the post in which a person is employed or re-employed after retiring voluntarily from the Government Service in terms of the Government Order cited, the weightage of added years of service provided to the employee in terms of clause (iii) of the Appendix to the Government Order cited shall be reduced from the qualifying service put in by him in the post in which he continues to be employed or re-employed after voluntary retirement.

The Government observe that the object of the scheme of giving the weightage of added years of service sanctioned in the Government Order cited is to enable people to leave Government Service, early if they so desire. At the same time it is not the intention to allow them to go from Government Service to Service under local bodies or any organisation or institution which is funded by or receives and from the Government, after getting this benefit. The Government therefore, direct that in case persons opting for voluntary retirement and taking up employment under Government corporations/Government Statutory Boards they will not get the benefit of added years and they will be allowed only such benefits that are available to persons who first serve in Government Corporation as deputationists and then get permanently absorbed.”



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10. On a cumulative reading of the provisions viz., 56(3)(d)(ii) of Fundamental Rules, Rule 7 and 14 of Tamil Nadu Pension Rules, 1978 and G.O.Ms.No.1404, the following position emerges:

a) Once a Government Servant opts for voluntary retirement there are other limitations/restrictions which gets triggered in terms of Rules 9, 17 & 44 of the TNPR, 1978.

b) It appears that the Government intended/anxious to ensure that a Government Servant did not enjoy two pensions except in the circumstance carved out as an exception under Rule 16 of the TNPR, 1978 which is admittedly not the case here.

c) The general principle governing the fixation of pay of a re-employed pensioner in the same or similar post is to allow him to draw his pension in full and in addition such pay as will bring his total emoluments up to the rate of pay drawn by him on the date of his retirement. In the cases of re-employment in a higher post where the minimum pay of the post is more than the pay last drawn the pensioner may be allowed to minimum pay of the post, less pension and pension equivalent of other retirement benefits.



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d) It may also be relevant that the aforesaid G.O.Ms.No.1404 which has been relied upon by the Respondent Board and University to deny the petitioner the benefit of Fundamental Rule 56 (3) (d) (i) & (ii) provides that the weightage of added arrears of service provided to the employee shall be reduced from the qualifying service put in by him in the post in which he continues to be employed or re-employed after voluntary retirement.

e) The above limitation is being imposed inasmuch as the object of the scheme of giving weightage of additional arrears of service is to enable people to leave the Government Service early if they are so desirous. This is to further the objective of the scheme of voluntary retirement which is to facilitate employees desirous of leaving Government Service thereby create avenue of employment to new recruits. The above object would be defeated if a Government Servant after opting for voluntary retirement takes up employment in other Government Corporation or Board. It is with a view to discourage such practice that the benefit of weightage of added years was not being extended to Government Servant who after opting for voluntary retirement is re-employed in other Government Board/Corporations.



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11. Now taking into count the above aspects it appears to me that the plea of the petitioner that employment to the post of Registrar of University of Madras would not constitute re-employment is specious and may well defeat the very object of promoting voluntary retirement schemes which is to create avenue of employment to new recruits and not to enable the existing government servants to look for new avenues for employment in government service after opting for Voluntary Retirement Scheme.

12. The petitioner is thus not entitled to the benefit of weightage in terms of the Fundamental Rule 56 (3) (d) (i) & (ii). The petitioner's service in the University being only after opting for Voluntary Retirement Scheme and for a tenure of 3 years, the 3rd Respondent has rightly rejected the request of the petitioner for payment of additional terminal benefits for the service rendered as Registrar as not feasible of compliance.

13. Accordingly, this writ petition stands dismissed. Consequently, connected miscellaneous petition is closed. No Costs.



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To:

- 1.The Secretary to Government,
Government of Tamil Nadu,
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- 2.The Chair-Person,
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MOHAMMED SHAFFIQ, J.

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