



WEB COPY

W.P.No.23653 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.23653 of 2012

K.Sundaramurthy

... Petitioner

Vs.

1. Under Secretary to Government,
Department of Personnel & Administrative Reforms,
Chief Secretariat, Puducherry.

2. Pondicherry Engineering College,
represented by the Principal,
Puducherry.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent with No.A48011/10/2009/DPAR/CCD(2) dated 21.3.2012 and to quash the same and consequently to direct the second respondents to grant pension to the petitioner with effect from 30.04.2009 the date on which the petitioner retired from service by superannuation with arrears with 12% interest from 30.4.2009 to till the date of payment.

For Petitioner : M/s.P.Thiyarajan

For Respondents : Mr.Syed Mustafa,
Government Advocate



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(Pondicherry)

ORDER

Heard Mr.P.Thiyarajan, learned counsel for the petitioner and Mr.Syed Mustafa, learned Government Advocate (Pondicherry) and perused the entire material on record.

2. After hearing the matter at length, it is agreed that there cannot be any exception for the impugned order passed by the respondents.

3. However, taking into consideration the fact that the petitioner is an Ex-Servicemen and was initially employed by the respondents on 11.08.1994 and continued to serve in the Respondent No.2 over a period of five years and ultimately his services were regularized on 01.11.1999 as 'Assistant Security Officer' and retired from service on attaining the age of superannuation on 30.04.2009, but unfortunately could not complete the qualifying service of 10 years and had put in only 9 years and 6 months after his services were regularized in the Respondent No.2 as 'Assistant Security Officer'. In case, if the petitioner had exercised the option under Rule 17 of CCS Pension Rules, 1972 (hereinafter referred to as 'the Rules, 1972' for short), half of the



services rendered by the petitioner prior to regularization of his services, i.e., over a period of five years would have been counted by duly taking into consideration half of the said service and by adding same to the regular service, the petitioner would have become eligible for payment of pension under the Rules, 1972. But unfortunately, the petitioner could not exercise the said option in terms of Rule 17 of the Rules, 1972 and therefore, the impugned order came to be issued.

4. This Court having taken note of the order passed by the Hon'ble Apex Court under almost identical circumstances in the case of ***“Union of India and others -vs- Gandiba Behera”*** reported in **(2021) 14 SCC 786**, is of the considered view that it is a fit case, where the respondents should exercise their discretion of relaxing the Rules in terms of Rule 88 of the Rules, 1972. The Hon'ble Apex Court in Paragraph No.28 of the above said decision held as under:-

“ 28. We are also of the opinion that the authorities ought to consider their cases for exercising the power to relax the mandatory requirement of qualifying service under the 1972 Rules if they find the conditions



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contained in Rule 88 stand fulfilled in any of these cases.

*We do not accept the stand of the appellants that just because that exercise would be prolonged, recourse to Rule 88 ought not to be taken. The said Rules is not number specific, and if undue hardship is caused to a large number of employees, all of their cases ought to be considered. If in the cases of any of the respondents' pension order has already been issued, the same shall not be disturbed, as has been directed in **Union of India v. Registrar [Union of India v. Registrar, (2021) 14 SCC 803]** ”.*

5. In the light of the above, the petitioner is granted liberty to make a representation before the Respondent No.2 within a period of six weeks from the date of receipt of a copy of this order invoking the power under Rule 88 of the of CCS Pension Rules, 1972 and duly undertaking to refund the amounts that were received by the petitioner under Rule 17 and in case, if any such representation is submitted by the petitioner within the time stipulated above, the respondents shall consider the same for exercising powers under Rule 88 for relaxing the time limit prescribed under Rule 17 of the Rules, 1972 and



pass appropriate order therein within a period of eight weeks from the date of submission of such representation by the petitioner. This Court hope and trust that the Respondent No.2 would consider the representation of the petitioner in a proper perspective and with positive attitude, especially taking into consideration the fact that the petitioner is an Ex-Servicemen.

6. Accordingly, the Writ Petition is disposed of. No costs. Connected Miscellaneous Petitions, if any shall stand closed.

16.08.2024

skr

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

1. Under Secretary to Government,
Department of Personnel & Administrative Reforms,
Chief Secretariat, Puducherry.
2. The Principal,
Pondicherry Engineering College,
Puducherry.



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MUMMINENI SUDHEER KUMAR, J.

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