



W.P. No.18853 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.18853 of 2021

B.Venugopal

... Petitioner

Vs.

1. Government of India
Rep. by the Home Secretary
Ministry of Home Affairs
North Block
New Delhi-110 001
2. The Director General
Border Security Force
Head Quarter
Block No.10, CGO Complex
Lodhi Road
New Delhi -110 003.
3. The Commandant
78 Battalion BSF
Headquarters,
Baishanavnagar, Malda,
West Bengal.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to an order No.Estt-112/Pen-VG/78-Bn/19/9416-17 dated



W.P. No.18853 of 2021

12.07.2019 issued by the 3rd respondent and quash the same as illegal and consequently to direct the respondents to grant pension for his 12 years 7 months 4 days service rendered in the Border Security Force (78BN,BSF) with 12% interest and all other consequential benefits including arrears of pension and award costs.

For Petitioner : Mr.S.Meenakhsi

For Respondents : Mr.A.Prakash

ORDER

The petitioner herein who was served as LC (Driver) in Border Security Force in 3rd respondent unit during the years 1972 to 1984 resigned from the post on 11.10.1984 and thereafter, from the year 1997 onwards, the petitioner started making a claim for payment of pension and the said claim of the petitioner was considered by the respondents and appropriate proposals were forwarded to the Pension Grievance Cell, New Delhi. The said claim was rejected by the Pension Grievance Cell by an order dated 04.06.2017 with the following observations:

“Case for grant of pension in favour of No. 727880581 Constable B Venugopal of 78 Bn BSF has been examined by this Directorate, but could not be acceded to because as per Hon'ble Supreme Court order dated 04/01/2006, personnel who had resigned prior to FHQ



circular dated 27/12/1995 without any pensionary benefits and not received pension are not entitled to get any pensionary benefits.”

2. However, thereafter the petitioner made representations for grant of pension for the service rendered by him. But the said request was rejected by the respondents by passing impugned order dated 12.07.2019. Aggrieved by the said proceedings, the petitioner approached this Court by filing the present writ petition.

3. There is no dispute on factual aspects that the petitioner served in the Border Security Force for a period of 12 years 7 months and resigned from the post. However taking advantage of the communication issued by the respondents modifying the resignation of the petitioner as resignation eligible for pensionary benefits, the petitioner made a claim for payment of pension for the service rendered by him. However, the same was rejected by the respondents.



4. When the matter is taken up for consideration, it is brought to the notice of this Court by Mr.A.Prakash, the learned counsel appearing for the respondents that the very same issue has fallen for consideration before the Hon'ble Apex Court in the case of *Union of India Vs. Rajesh Kumar* reported in *(2001) 4 Supreme Court Cases 309*.

5. This Court, after having perused the said decision of the Hon'ble Apex Court, is convinced that the issue is squarely covered and the petitioner, who has not completed the requisite qualifying service to claim pensionary benefits, is not entitled for any relief. However, in order to afford an opportunity to the learned counsel for the petitioner this Court, adjourned the matter to today.

6. In the teeth of the decision of the Hon'ble Apex Court referred above, the learned counsel for the petitioner could not bring to the notice of this Court any basis for the claim that is being made by the petitioner in the present writ petition. The Hon'ble Apex Court, having dealt with the matter elaborately in the aforesaid decision, held as under:



WEB COPY



W.P. No.18853 of 2021

“21.Learned counsel for the respondents submitted that on the basis of the GO, a number of persons are granted pensionary benefits even though they have not completed 20 years of service, and, therefore, at this stage, the Court should not interfere and see that the pensionary benefits granted to the respondents are not disturbed and are released as early as possible. In our view, for grant of pension the members of BSF are governed by the CCS (Pension) Rules. The CCS (Pensions) Rules nowhere provide that a person who has resigned before completing 20 years of service as provided in Rule 48-A is entitled to pensionary benefits. Rule 19 of the BSF Rules also does not make any provision for grant of pensionary benefits. It only provides that if a member of the Force who resigns and to whom permission in writing is granted to resign then the authority granting such permission may reduce the pensionary benefits if he is eligible to get the pension. Therefore, by erroneous interpretation of the Rules if pensionary benefits are granted to someone it would not mean that the said mistake should be perpetuated by direction of the Court. It would be unjustifiable to submit that by appropriate writ, the Court should direct something which is contrary to the statutory rules. In such cases, there is no question of application of Article 14 of the Constitution. No person can claim any right on the basis



WEB COPY



W.P. No.18853 of 2021

of decision which is de hors the statutory rules nor can there be any estoppel. Further, in such cases there cannot be any consideration on the ground of hardship. If the Rules are not providing for grant of pensionary benefits it is for the authority to decide and frame appropriate rules but the Court cannot direct payment of pension on the ground of so-called hardship likely to be caused to a person who has resigned without completing qualifying service for getting pensionary benefits. As a normal rule, pensionary benefits are granted to a government servant who is required to retire on his attaining the age of compulsory retirement except in those cases where there are special provisions.

22. In the result, there is no substance in the contention of the learned counsel for the respondents that on the basis of Rule 49 of the CCS (Pension) Rules or on the basis of the GO, the respondents who have retired after completing qualifying service of 10 years but before completing qualifying service of 20 years by voluntary retirement, are entitled to get pensionary benefits. The respondents, who were permitted to resign from service under Rule 19 of the BSF Rules before the attainment of the age of retirement or before putting such number of years of service as may be necessary under the Rules, to be eligible for retirement are not entitled to get any pension



W.P. No.18853 of 2021

under any of the provisions under the CCS (Pension) Rules. Rule 49 only prescribes the procedure for calculation and quantification of the pension amount. The GO dated 27-12-1995 does not confer any additional right of pension on BSF employees.”

7. In the light of the decision of the Hon'ble Apex Court and also admitted fact situation that the petitioner has not completed the qualifying service to claim pension on resignation, this Court does not find any merit in the writ petition and the same is dismissed.

8. Accordingly, the writ petition is dismissed. The connected miscellaneous applications, if any, shall stand closed. No costs.

03.06.2024

Index : Yes/No
Speaking Order : Yes/No
dpa



WEB COPY



W.P. No.18853 of 2021

MUMMINENI SUDHEER KUMAR,J.

dpa

To:

- 1.The Home Secretary,
Government of India
Ministry of Home Affairs
North Block, New Delhi-110 001
- 2.The Director General
Border Security Force Head Quarter
Block No.10, CGO Complex
Lodhi Road, New Delhi -110 003.
- 3.The Commandant
78 Battalion BSF Headquarters,
Baishanavnagar, Malda,
West Bengal.

W.P.No.18853 of 2021

03.06.2024