
(2006) 04 MAD CK 0001
In the Madras High Court
Case No : Writ Petition No. 27765 of 2005

A. Abdul Razak	Vs	APPELLANT
Director of Town Panchayat and Others		RESPONDENT

Date of Decision : 21-04-2006

Acts Referred:

Citation : (2006) 2 MLJ 779

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : P. Solomon, for the Appellant; D. Malarvizhi, Government Advocate, for the Respondent

Judgement

N. Paul Vasanthakumar, J.—The prayer in the writ petition is to quash the order of the third respondent in his proceedings Na.Ka. No.

236/A1/98 dated 13.04.1998 and direct the second respondent to give posting to the petitioner as Bill Collector with all the consequential benefits.

2. The facts that are necessary for the disposal of the writ petition are as follows :

The petitioner was appointed as Bill Collector on 07.12.1964 through Employment Exchange. The petitioner became Junior Assistant on

25.07.1967 and continued as such upto 1969. Thereafter, he was posted as Bill Collector in 1969 and continued as such in Town Panchayat,

Lalpet. The services of the petitioner have been regularised from 27.08.1965. While the petitioner was working as Bill Collector, he applied for

un-earned leave on Medical grounds for three months from 01.11.1977 to 31.01.1978 and no order was passed.

3. Again the petitioner went on medical leave for four months, from 01.02.1978

to 01.06.1978, which was further extended till 31.05.1979 and

after the expiry of the leave, the petitioner sought permission to rejoin duty on 01.06.1979, but he was not given permission.

4. The petitioner was kept out of employment from 1979 and no disciplinary action was initiated and no order was passed. The petitioner in fact

served in the Government service for 12 years. According to the petitioner, as per the Pension rules, if a person has served for 10 years, he is

eligible for pension.

5. The third respondent in his proceedings dated 13.04.1998 passed an order stating that the petitioner cannot be given reposting and that the

petitioner having worked for more than 10 years, he is eligible to get pension and he shall be deemed to be voluntarily retired from 31.10.1977.

The said order finds place at page 23 of the typed set of papers.

6. The Pension proposal was also sent to the Accountant General, for which the Accountant General's Office sent a reply on 17.07.1998 and

stated that as on 31.10.1977, the petitioner had completed only 12 years of service and attained only 33 years of age. As per the Tamilnadu

Fundamental Rule 56(3), a Government servant is permitted to retire on voluntary retirement, after giving three months notice before going on

voluntary retirement and he must have 25 years of qualifying service or should have attained 50 years of age. Since, the petitioner has not satisfied

either of the said requirements, he cannot be treated as voluntarily retired and therefore, the proposal was returned.

7. The Accountant General of Tamilnadu, who is the fourth respondent in the writ petition, filed a counter affidavit and reiterated the said decision

that the petitioner is not entitled to be voluntarily retired from 31.10.1977, since he has not satisfied the conditions for voluntary retirement as per

Fundamental Rules 56(3) i.e., not having 25 years of service or attained 50 years of age as on 31.10.1977.

8. The fourth respondent also raised an objection that even if the petitioner is entitled to get Pension, it has to be sanctioned only by the Director of

Local Funds Department. In view of the said stand, the petitioner impleaded the Director of Local Funds Audit, Chennai 600 108 by filing implead

petition in W.P.M.P. No. 12432 of 2006. The implead petition is ordered and the said Officer is impleaded as fifth respondent.

9. The learned Government Advocate has submitted that the petitioner is not eligible to get voluntary retirement as on 31.10.1977 and therefore

the said request of the Executive Officer, namely the third respondent, permitting the petitioner to go on voluntary retirement from 31.10.1977 is

not in order.

10. The learned Counsel for the petitioner taking note of the said submission, submitted that the petitioner is having more than 12 years of service

as on 31.10.1977 and his service is not terminated by the respondents and that the third respondent has wrongly applied the voluntary retirement

scheme and permitted the petitioner to go on voluntary retirement. Ultimately the learned Counsel for the petitioner submitted that the period from

31.10.1977 may be treated as compulsory retirement, so that he will get pension from the fifth respondent with effect from 01.11.1977.

11. It is not in dispute that the petitioner served for 12 years and the respondents have not initiated any disciplinary proceedings and terminated the

petitioner from service. The only objection of the respondents is that the petitioner is not eligible to be voluntarily retired as on 31.10.1977, since

he has not completed 25 years of service or attained 50 years of age as on 31.10.1977.

12. Taking note of the said factual position, I am of the view that the request of the learned Counsel for the petitioner, that the petitioner shall be

treated as compulsorily retired from 31.10.1977 is justified and the respondents are directed to treat the petitioner as compulsorily retired from

31.10.1977.

13. Consequently, the third respondent is directed to send the pension proposal of the petitioner with effect from 01.11.1977 to the fifth

respondent within a period of two weeks from the date of receipt of a copy of this order and the fifth respondent is directed to sanction the

terminal benefits including pension to the petitioner with effect from 01.11.1977. The arrears of pension payable to the petitioner shall be paid

within a period of six weeks from the date of receipt of a copy of this order.

The writ petition is ordered in the above terms. No costs.