

(1998) 04 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 74/1995

Abdul Aziz Shah

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 28-04-1998

Acts Referred:

Civil Services Regulations, 1956 — Article 226(1)

Citation : (1998) SriLJ 189

Hon'ble Judges : Nisar Ahmad Kakru, J

Bench : Single Bench

Advocate : M.Amin, A.M.Magray , Advocates appearing for the Parties

Judgement

1. The petitioner was appointed in the Forest Department as a Forest Guard. The respondent No.2 issued an order bearing No.47 of 1993 dated

29/03/1993, notifying the date of retirement of the petitioner as 31/12/1994, accordingly the petitioner was superannuated on the said date. The

petitioner's case for pensionary benefits came to be recommended to the respondent no.1 and a communication came to be issued by respondent

No. 2 to the address of respondent No.1 vide his NO. 1320/G Ltd. 30/ 09/1994 wherein it was conveyed to the concerned office that nothing

remained outstanding against the petitioner. In response to the said communication respondent No. 1. wrote to the respondent No.2 that the date

of birth of the petitioner being 27/12/1935, therefore he was due for his retirement on 31/12/1993 and through the said communication respondent

No.1 asked respondent No.2 to work out the pay and allowances whatever paid to the petitioner from 1st January, 1994 to 31st December 1994

and to intimate the same to respondent No. 1 so that recovery of the said amount is effected from the deathcumretirement gratuity. This

communication has been impugned through this writ petition and the petitioner prays for a writ of mandamus to command the respondents to pay

pensionary benefits to the petitioner. Respondents were put on notice to meet the claims set by the petitioner. No counter was filed and claim of

the petitioner remained unrebutted.

2. Petition has come up for final hearing today. Mr. A.Bhan counsel for the respondents has not chosen to appear inspite of

the fact that his name stands reflected in the cause list Mr. M. Amin learned GA appeared for the respondents, submits that the petitioner has

over stayed in service for one year therefore, recovery has been ordered genuinely by respondent No.2 and deeds the communication impugned

on the strength of such argument.

3. Whether the petitioner has over stayed in service on his own a question to be appreciated in the light of the factual position and the facts which

emerge from the documents forming part of the petition are as under:

a) The documents appended with the writ petition make it amply clear that the date of retirement of the petitioner was notified by respondent NO.

2 vide order No: 47 of 1993 and a copy of the said order was forwarded to the respondent No.1 as also to other authorities concerned which fact

is evident from the order itself. The notification is dated 29/ 03/1993 and petitioner had to retire on 31/ 12/1993 according to the impugned

communication, thus there was enough time available to respondent No.1 to ask the respondent No.2 to reflect the correct date in the notice of

retirement issued to the petitioner and had the respondent No. 1 acted right in time the petitioner would not have been retained after the due date,

but fact of the matter remains that the respondent No. 1 did not raise a finger on this issue.

b) The notification referred herein above coupled with the communication impugned make it clear that the petitioner has not functioned on the

establishment of respondents on his own but was asked by the respondents to function till 31/12/1994 which is evident from the notice of

retirement.

47 of 1993 dated 29/03/1993, which notified the petitioner about his date of superannuation. It is also an admitted fact that the said notice was

issued much before 31/12/ 1993, which is the date, the respondents claim to be

the actual date of retirement of the petitioner. It is also an un rebutted fact that the petitioner's continuation after 31/ 12/1993 was questioned by respondent No.1 vide impugned communication for the first time when settlement of his pension was under consideration and no dispute was raised when copy of notice of retirement bearing No.47 of 1993 dated 29/03/1993 was sent to the petitioner. Moreso, no malafide intention is attributable to the petitioner and crux of the matter is that the petitioner was allowed to function after the date of retirement, be it due to negligence or inadvertence, the result is that the work was extracted from the petitioner.

5. In view of these factual aspects there is absolutely no justification for the respondents to recover the salary from the petitioner paid for the period from 11/1994 to 31/ 12/1994.

6. Here arises a question which calls for an answer as to whether stay of one year in the service beyond 58 years prescribed under rules can contribute to the pensionary benefits of the petitioners.

7. To address myself to the question in its right perspective it is relevant to mention here that the constitution envisages an egalitarian social order and to ensure implementation of such order, it is necessary to provide equal opportunity in respect of employment and allowing some one to continue for a longer period, is likely to create a disorder and such omission and commission of an authority may cause frustration to the members of the service. That apart, the service rules are to be adhered to by the authority strictly, so that no one is allowed to continue in the active service beyond the period prescribed under statute and if he is allowed to continue as is true of the petitioner he is entitled to salary but to no other benefit pensionary or otherwise, because his continuation is in derogation to the rules and if such service is reckoned for pensionary benefits it will defeat the rules, thus the service rendered by the petitioner beyond 58 years cannot confer any benefit on him other than the salary and the question is answered accordingly.

8. Needless to mention that deviation from rules is not permissible and had I come to a conclusion that the petitioner has been allowed to continue deliberately in violation of rules, I would have called upon the respondents to explain the reasons therefore, but on the facts and circumstances of

the case I believe that the continuation of the petitioner has not been allowed by the respondent No.2 deliberately, thus intentional violation cannot

be attributed. It is also relevant to mention that in a case where the court finds that the deviation from the rules is want on or deliberate on the part

of the functionary of the state the court shall be within its powers to proceed against such officers, called explanation and in case the reply is not

satisfactory strictures can be passed.

9. Thus on the facts and circumstances of the case the writ petition is allowed, communication impugned bearing No. PNRI/9495/567879 dated

6.1.1995 is quashed and the respondents have no right to recover the salary paid to the petitioner for the period he was allowed to over stay and

has worked commencing from 1.1.1993 to 31.12.1994.

10. Now dilating upon the grievance of the petitioner in respect of nonsettlement of pensionary benefits, the learned counsel for the petitioner has

canvassed that the petitioner has been demanding settlement of his pension for last more than three years, moreso, the petitioner is a poor man and

is the only source of livelihood for his dependents. It is submitted that with holding of pensionary benefits has worked too harsh to him, therefore,

claims interest on the withheld pensionary benefits but in view of the peculiar circumstances of the case, I am not inclined to grant his prayer and in

my opinion his grievance can be taken care of by providing that the petitioner's pensionary benefits shall be settled: by the respondents within a

period of four months followed by disbursement, which period shall be reckoned from the date this order is served on the respondents but if the

respondents fail to adhere to the terms of this order, in such eventuality, petitioner shall be at liberty to invoke the legal remedy which ever available

to him for implementation of the judgment, that apart, the amount withheld shall bear interest at the rate of 12% per annum from the date the writ

petition was filed viz 6.2.1995 till disbursement is made in full.

11. No order as to costs.