
(2009) 04 MAD CK 0316
In the Madras High Court
Case No : Writ Petition No. 39017 of 2005

C. Abdul Latheef	Vs	APPELLANT
The Government of Tamil Nadu		RESPONDENT

Date of Decision : 21-04-2009

Acts Referred:

Tamil Nadu Pension Rules, 1978 — Rule 18

Citation : (2009) 3 CTC 365 : (2009) 122 FLR 450

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : G. Elanchezhian, for the Appellant; P. Subramanian, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

N. Paul vasanthakumar, J.—The prayer in the writ petition is to call for the records from the file of the 3rd respondent in proceedings Na. Ka. 4771/A1/97 dated 08.03.1999 and set aside the same and further direct the respondents to regularise the services of the petitioner by sanctioning the leave to which he is entitled to and then fix the pension and pay the same with interest at 18% per annum from the date on which the pension is payable to the petitioner.

2. The case of the petitioner is that he joined as a Secondary Grade Teacher on 20.08.1958 in the Elementary Board School, Amakkamampatti, and was promoted on 27.08.1959 and posted to Athikaram Board Elementary School. The petitioner was promoted as Primary School Headmaster on 04.08.1961 and posted at Sathanatham Panchayat Union School. Again the petitioner worked as Secondary Grade Teacher from 04.06.1971 to 09.07.1973. Thereafter, the petitioner was posted as Headmaster on 10.07.1973 at Panchayat Union Middle School at Vadakalur. Thus, the petitioner worked continuously from 20.08.1958 to 11.02.1976.

3. According to the petitioner, he was on leave from 12.02.1976 to 22.01.1981

and the said leave was sanctioned by the Commissioner, Veppur Panchayat Union. The petitioner rejoined duty on 23.01.1981 and worked up to 04.03.1981 as Secondary Grade Teacher in Panchayat Union Middle School, Thirumanthurai and from 05.03.1981 to 10.10.1984 he was on leave. The said leave was also sanctioned by the Assistant Educational Officer, Veppur, in his proceedings dated 31.12.1983. The medical leave applied by the petitioner was also sanctioned and the said period was treated as leave on loss of pay. By proceedings dated 13.06.1989, the petitioner was directed to report for duty within 30 days and get orders of posting from the District Educational Officer, Ariyalur. After receipt of the said proceedings, the petitioner applied for reposting to the District Educational Officer, Ariyalur, on 18.08.1989. However, no reposting order was given to the petitioner and therefore, the petitioner could not rejoin duty. The petitioner completed 58 years of age on 31.10.1995. Neither the petitioner was allowed to rejoin duty nor any order of termination was passed against the petitioner till 31.10.1995. Hence, the petitioner claims that he shall be deemed to be retired from service with entitlement to get pension by counting the period of service from 1958 to 1976 and leave on loss of pay from 14.02.1976 to 23.10.1989 and treat the period from 13.06.1989 to 31.10.1995 as duty period for pension purposes.

4. The period, for which leave was sanctioned on loss of pay to the petitioner, is not entitled to be counted for the purpose of sanctioning of pension in terms of Rule 18 of the Tamil Nadu Pension Rules, 1978, which reads as follows:

18. Counting of periods spent of leave.--

All leave during service for which leave salary is payable and extraordinary leave granted on medical certificate shall count as qualifying service:

Provided that in the case of extraordinary leave other than extraordinary leave granted on medical certificate appointing authority may, at the time of granting such leave, allow the period of that leave to count as qualifying service if such leave is granted to a Government servant.--

- i. due to his inability to join or rejoin duty on account of Civil Commotion; or
- ii. for prosecuting higher scientific and technical studies; [or]
- iii. [for taking up employment abroad, if necessary pension contributions are paid by the Government servant to the Accountant-General, Tamil Nadu from time to time with appropriate interest for belated payments, if any.]

However, from 24.10.1989 to 31.10.1995, in spite of the petitioner stated his willingness to report duty and he having not been permitted to rejoin duty by the District Educational Officer, Ariyalur, the said period is to be treated as the period of compulsory wait as per F.R. 9(6)(3). The petitioner also has not taken any steps to get reposting, except by submitting a representation seeking reposting.

5. The petitioner has now filed an additional affidavit stating that the said period

may be counted for the purpose of pension alone and he is not pressing for salary for the above period. The said statement made by the petitioner in the additional affidavit dated 21.04.2009 is recorded.

6. In the light of the above facts and in view of the admitted fact that the petitioner was not terminated from service till 31.10.1995, that is, the date of superannuation and the petitioner having got more than 20 years of pensionable service, the respondents are bound to sanction pension to the petitioner, immediately after the date of retirement, that is, from 01.11.1995. The respondents are directed to sanction pension and other retirement benefits payable to the petitioner, treating the petitioner as retired from service on 31.10.1995 within a period of eight weeks from the date of receipt of a copy of this order.

7. With the above directions, the writ petition is allowed. No costs.