

(2011) 01 MAD CK 0230

In the Madras High Court

Case No : Writ Petition (MD) No. 10758 of 2008 and M.P. (MD) No. 1 of 2008

C. Chandra Kumar

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-01-2011

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 10(2)

Citation : (2011) 01 MAD CK 0230

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : K. Vellaiswamy, for the Appellant; P. Krishnasamy, Senior Panel Counsel for R1 to R5, for the Respondent

Judgement

M. Venugopal, J.—The Petitioner has filed the present writ petition seeking for a Writ of Certiorarified Mandamus in calling for the records

relating to the impugned order dated 22.08.2008 issued by the third Respondent in his letter No. 13060/CCK/250/E1 Con and quash the same

and further to direct the Respondents to revise the pay of the Petitioner in the light of the 5th and 6th Pay Commission Reports from 3 01.01.1996

and 01.01.2006 respectively and to pay the consequential arrears arising thereon together with the continuity of service.

2. According to the learned Counsel for the Petitioner, the Petitioner joined the service as Overseer at Pune coming under the control of the

second Respondent on 19.06.1990. His General Service No. is GS 173517H. He has been reappointed as Superintendent, Building and Roads -

Grade II, with effect from 22.07.1994. At the time of joining, the Petitioner has been holding a Diploma in Civil Engineering. He has become the

Associate Member of the Institute of Engineers (AMIE) in 2002 which is

equivalent to B.E in Civil Engineering. He has been the Top-scorer in the Kerala State and he has secured 95.32 percentage mark in the Graduate Aptitude Test in Engineering (GATE"04).

3. The Petitioner because of his high academic qualification has been given the seat in M. Tech. in I.I.T, Madras during the year 2004 and he has

completed the same in the year 2006. He has applied for the study leave for the purpose of higher studies. He has been asked to sign in Form 07

Rule 53(4), bond to be executed by the Government Servant in permanent employment when proceeding 4 on study leave. He has agreed to serve

for a period of three years when he executed the bond. Therefore, he is entitled for full salary, but the salary has not been paid in full to him. He has

made several representations with no response. As such, he filed W.P. No. 23182 of 2005 covering the period from January 1996 including the

study leave period from 02.08.2004 till the completion of study period. The first Respondent has been directed to consider the representation of

the Petitioner dated 11.03.2004 and to pass orders on merits in accordance with law within a period of 12 weeks from the date of receipt of the

order and accordingly, W.P. No. 23182 of 2005 has been disposed of. Again, he filed a writ petition in W.P. No. 32332 of 2007 before this

Court because the first Respondent has not passed any order as directed in the earlier W.P. No. 23182 of 2005. Accordingly, W.P. No. 32332

of 2007 has been disposed of as per the order dated 08.10.2007 in and by which the second Respondent has been directed to consider his

representation dated 27.08.2007 on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of the

order. The third Respondent has sent a reply dated 04.10.2008 in reference No. 13060/CCK/265/E1 rejecting his claim. Therefore, he has filed

the present writ petition.

4. The learned Counsel for the Respondents submits that the Petitioner has been enrolled in GREF on 19.06.1990 in the trade of OVSR with GS

No. 173517H and further has been reappointed to Superintendent BR-II with effect from 20.07.1994. The Petitioner has passed AMIE Section

"A" to "B" Examination in Civil Engineering branch in winter 2000-02 with membership No. ST-251616-6 and Roll No. 460108 from the

Institute of Engineers (Madras).

5. The learned Counsel for the Respondents contends that the Petitioner while serving, during March 2004, has applied for study leave which has been granted to him with effect from 02.08.2004 to 01.08.2006 for higher study at IIT Madras. He has executed a bond for Rs. 2,86,032.00

(Rupees Two Lakhs Eighty Six Thousand and Thirty Two only) at the time of proceeding on study leave that he will report back to the unit after completion of study leave and will serve the Department at least three years failing which he will refund the leave salary paid to him together with interest thereon.

6. It is the contention of the Respondents that the Petitioner submitted his resignation from service as per his application dated 21.04.2006 and the

reason assigned by the Petitioner for his resignation is better offer of jobs in the nongovernment organisation consequent to acquiring enhanced

qualification of M. Tech. in Building Technology and Construction Management from IIT, Madras during the course of two years study leave

sanctioned to him. However, his resignation from service from the Department has not been accepted by the Commander, HQ 25 BRTF vide

letter No. 1314/41/EIE dated 29.04.2006 with directions to deposit the pay and allowance before submitting the requests for resignation. After

completion of study leave, the Petitioner has not reported back to the unit. At last, desertion Roll has been issued as per letter No.

CF/173517H/CCK/490/18/E1 dated 17.05.2007 addressed to the Petitioner, the District Magistrate, Superintendent of Police, OIC Police

Station, Dist. Kottur Chennai to apprehend him etc.

7. The learned Counsel for the Respondents submits that HQ CE (P) Sewak vide their letter No. 11003/ Dis/25TF/96/EIB dated 28.02.2007

informed to M/s. Jones Long Lassale, 70/2 Millers Road, Vasantha Nagar, Bangalore - 560 052, to discharge the Petitioner from their

organisation and advise him to report to his parent Unit and further that, the money suit for recovery of dues from the Petitioner has been filed

before the Court of Civil Judge (Senior Division), Manipur (West), on 17.03.2008.

8. The stand of the Respondents is that the Petitioner is not entitled for full salary and W.P. No. 23182 of 2005 and 32332 of 2007 have been

disposed of with a detailed replies to the Petitioner under letter No. CF/173517H/CCK/C/490/85/E1 dated 17.03.2005 and HQ CE (P) Sewak

letter No. 13060/251/E1 Con dated 23.08.2008, etc. As per v. Central Pay Commission, the scale of pay of Rs. 4,500-125-7,000 has been

approved by the Central Government and accordingly, the pay scale has been granted to the Petitioner. Further, the pay scale of Rs. 5,000-150-

8,000 has not been approved by the Government in v. Central Pay Commission and therefore, the said scale of pay is not applicable to the

Petitioner. As per fixation of pay in the scale of pay of Rs. 4,500-125-7,000 with effect from 01.01.1996, a sum of Rs. 4,000/- (Rupees

Fourteen Thousand only) has already been paid as arrears to the Petitioner [viz., Rs. 10,000/- (Rupees Ten Thousand only) paid on 01.06.1998

and Rs. 4,000/- (Rupees Four Thousand only) paid on 01.07.1998.] But, in the VI Central Pay Commission, the scale of pay of Rs. 5,000-150-

8,000 has been approved for Overseers having Diploma qualification and the said scale of pay would be granted to the Petitioner only on receipt

of clarification from higher authorities and after reporting back for duty as well as after taking Option/Undertaking certificates. The Option

Certificate/Undertaking Certificate has been sent to the Petitioner as per letter No. CF/173517-H/CCK/158/490/E1 dated 29.01.2009. As far as

ACP is concerned, the ACP will be granted to the Petitioner inasmuch as at present he is an deserter.

9. The contention of the Respondent is that the Petitioner has been overstaying/ absent from duty after completion of study leave with effect from

03.08.2006 and further that no arrears of pay and allowance are admissible to him unless and until he rejoined. Furthermore, the Petitioner, with

effect from 20.06.2003, has proceeded on 118 days leave and during the period of leave, he has been arrested by the Annanagar Police on

07.11.2003 as intimated telegraphically on 11.11.2003 in regard to the criminal charge under Dowry Prohibition Act wherein the complaint has

been lodged by his wife. He has been released on conditional bail on 10.11.2003 by executing a bond of Rs. 5,000/- (Rupees Five Thousand only)

with further instruction to report before the police for a period of one month. Under Rule 10(2) of CCS(CCA) Rules, 1965, a Government servant

detained in the police custody on a criminal charge for a period exceeding forty eight hours will be deemed to have been placed under suspension.

The order of suspension has been revoked with effect from 10.11.2003 when he has been released on bail. The period of three days" suspension

in respect of the Petitioner has been regularised by granting leave at credit. Further, he is not entitled for any subsistence allowance because of his

absence from duty for a long period. The letter dated 29.04.2006 has been addressed to the Petitioner wherein it has been mentioned by the

Administration Officer for Commander, Head Quarters, that he has been regularly receiving the leave salary as per entitlement, he has to deposit

the said amount in treasury while submitting the application for resignation and moreover, the arrears of payment have not paid to him, but final

clearance of pay and allowance by PAO (GREF) after resignation and apart from the above, he has to deposit the pay and allowance drawn by

him during the study leave before submitting the application for resignation.

10. A sum of Rs. 26,814/- (Rupees Twenty Six Thousand Eight Hundred and Fourteen only) is due to be paid to the Petitioner and therefore, the

acquittance roll of Rs. 30,000/- (Rupees Thirty Thousand only) has been sent to him for obtaining the signature of the Petitioner, but the same has

been returned as "undelivered".

11. In regard to the payment of ration money, a claim for Rs. 9,386/- (Rupees Nine Thousand Three Hundred and Eighty Six only) as ration

money has been returned by the letter dated 17.12.2005 to the effect that there is no provision in Border Roads Regularization for payment of

ration money during study leave except EL/HPL/CL, etc. A sum of Rs. 26,814/- (Rupees Twenty Six Thousand Eight Hundred and Fourteen

only) will be paid to the Petitioner on rejoining the duty at unit. For pay fixation under RPR 2006, Option/Undertaking Certificate has been sent to

the Petitioner to his home address for signature and early return and on receiving the same and the Petitioner reporting back for duty to pay fixation

under RPR 2008 will be done. The arrears will be paid on reporting back to the duty by the Petitioner.

12. The Petitioner has addressed a letter dated 27.08.2007, to the second Respondent wherein he has among other things mentioned that "he has

informed the appropriate authorities of his Department that without clearing his arrears money and without informing the status of submitted

complaints, he will not be in a position to rejoin the duty" and further that he is yet to receive the arrears payment/replies regarding the submitted

complaints and consequently, requested that necessary action may be taken to

pay all his arrears, etc.

13. The third Respondent by his reply dated 22.08.2008 to the representation of the Petitioner dated 27.08.2007 has inter alia mentioned that "the

Petitioner is still absenting himself from duty without any leave sanctioned to him and has not rejoined duty after completion of study leave" and

further that, "the outstanding dues claimed by the Petitioner is not admissible and that the Department is not under any obligation to pay the

individual the amounts claimed by him since the same are not admissible under the Rules."

14. The learned Counsel for the Petitioner relies on the communication of the DTE General Border Roads (T&C), in reference No. 18368/6TH

CPC/DR/DGBR/68/T&C dated 26.04.2010, wherein the Joint Director (Administration) and (T&C), has mentioned in paragraphs 2 to 5, as

follows:

2. It is again submitted that 5th CPC had approved pay scale of Rs. 5,000-8000 to all diploma engineers and accordingly implemented in all

central Govt departments like MES, CPWD and Railways except in GREF. The benefit of pay scale of Rs. 5000-8000 was not granted by the

department due to the reason that this cadre is a combination of Diploma/Non Diploma holders. This commented adversely by 6th CPC for not

granting the scale of Rs. 5000-8000 to BR-I Is/Overseers as suggested by 5th CPC. However, pay scale of Rs. 5000-8000 was finally granted to

diploma engineers of BRO after obtaining approval vide Sectt BRDB letter No. DRD-B/02/191/2007/GE-1 dated 25 Feb 2009.

3. As per 6th CPC Para 7.39.22, "'Govt to implement pay scale Rs. 5000-8000 retrospectively from 01 Jan 1996 at least for fixation of pay'"(Para

of 6th CPC highlighted) which is also accepted by Government in toto. Further at Para 7.39.23 of 6th CPC report, it is also clearly brought out

that as per correct interpretation of 5th CPC recommendations, post carrying pay scale of Rs. 5000-8000. The commission accordingly

recommended to place diploma holder OVSR/Supdt Grade II recruited as D Rs in the pay scale of Rs. 5000-8000 retrospectively wef 01 Jan

1996. V Ith CPC report has protected the pay of all diploma engineers wef 01 Jan 1996 and therefore payment accrued on account of arrears

arising consequent to fixation of pay from the date of implementation of

recommendation of Vth CPC not denied for the payment of arrears.

4. It is submitted that most of the B&R cadre in GREF are bound to perform their duties in extreme border areas and inhospitable condition with

great risk of life ignoring family life as compared to their counterparts in other civil departments who are enjoying higher pay scale of Rs. 5000-

8000 like CPWD, MES and in Railways etc since 01 Jan 1996.

5. In view of the foregoing, it is once again requested to re-consider the case sympathetically for granting arrears to diploma holders placed in the

pay scale of Rs. 5000-8000 wef 01 Jan 1996 which is long demand of diploma engineers to boost the morale up.

15. Further, the learned Counsel for the Petitioner brings it to the notice of this Court that the Petitioner has already joined the duty with the

Respondents.

16. This Court has heard the learned Counsel for the Petitioner and the learned Counsel for the Respondents and noticed their contentions.

17. The specific case of the Petitioner is that his pay ought to be revised in the light of the v. and VI Central Pay Commission Reports and that

consequently, the arrears should be paid to him. He has made a claim as per letter dated 27.08.2007 to an extent of Rs. 10,89,263/- (Rupees Ten

Lakhs Eighty Nine Thousand Two Hundred and Sixty Three only) besides the pay and allowance payable to the period subsequent to 27.08.2007

till 14.11.2008 which works out to Rs. 14,06,827/-(Rupees Fourteen Lakhs Six Thousand Eight Hundred and Twenty Seven only). However, the

Respondents dispute the claim of the Petitioner.

18. Admittedly, the Petitioner during April 2006 before three months of study course on 02.08.2006, has submitted his resignation from service,

vide his application dated 21.04.2006 mentioning the reason that he had better offers from various State Government and Non-Government

Organisations in view of his enhanced qualification of M. Tech in Building Technology and Construction Management from IIT, Madras. However,

his resignation letter has not been accepted by the Commander, Headquarters, 25, Border Roads Task Force, as intimated in the letter dated

29.04.2006.

19. The fifth Respondent in his letter dated 29.01.2009, in reference No. CF/173517-H/CCK/158/490/E1 addressed to the Petitioner has stated

that the pay and allowance during the study leave, the amount of Rs. 26,814/- (Rupees Twenty Six Thousand Eight Hundred and Fourteen only)

are held for payment after deducting the HPL/EOL of Rs. 98,673/- (Rupees Ninety Eight Thousand Six Hundred and Seventy Three only) for the

period from 01.07.2001 to 31.07.2006 and that the same will be paid to him after joining from study leave and that acquaintance rolls for the same

amount already sent to his address, has been returned as "undelivered" by the postal authorities. Further, in the said letter, it is also categorically

specified that the Petitioner is absent from duty about two years till date without any leave being sanctioned by the competent leave sanctioning

authority and that all dues can be paid to him after rejoining from study leave and regularising the period of long absence/overstay of leave.

20. Precisely, in the letter of the fifth Respondent dated 29.01.2009, it is mentioned that "VI Pay Commission will be held up for want of his

signature/Respondent rejoining and moreover, the form of option and undertaking certificate is enclosed herewith for his signature and early return

for their future action, etc."

21. In the typed set of papers filed on behalf of the Respondents pertaining to the summary of Pay and Allowances signed by the fifth Respondent,

it is mentioned as hereunder:

SUMMARY OF PAY AND ALLOWANCES

GS-173517H SUPDT BR-II C.CHANDRAKUMAR OF 490 RMPL/83 RCC

PERIOD FROM 01.07.2001 TO 31.07.2004 (before study leave/on posted strength)

GROSS GBF TOTAL AMOUNT

GPF REC CGEGISFROM MISC NAP BALANCE

SALARY SUBS DEC PAID

134079.0015015.0015000.00 450.00 61500.00 7394.00 99359.00 34720.00
15300.00 19,420.00

162608.0023017.0015500.00 510.00 53500.00 0.00 92527.00 70081.00
13850.00 56,231.00

53161.00 7505.00 0.00 150.00 15000.00 0.00 22855.00 30506.00 13900.00
16,606.00

349848.0045537.0030500.00 1110.00 130000.007394.00

214541.00135307.0043050.00 92,257.00

PERIOD FROM 01.08.2004 TO 31.07.2006 (during study leave)

127407.0019513.000.00 390.00 7500.00 100.00 27503.00 99904.00 95000.00
4,904.00

114009.0016511.000.00 330.00 0.00 0.00 16841.00 97168.00 83400.00
33,768.00

241416.0036024.000.00 720.00 7500.00 10.00 44344.00
197072.00158400.0038,672.00

Pay and Allowance (a) Summary of Recovery/deduction

DO 1 to Rs. 92,257.00 (i) Income Tax Rs. 629.00

DO 4 Rs. 38,672.00 (ii)HPL/EOL Rs. 98,673.00

(Detail attd as per Appx O)

(iii) TA/DA - Penalty Rs. 4,813.00

Rs.1,39,929.00

Total Amount = Rs.1,04,115.00

Net amount payable Rs.1,39,929.00 (-) Rs.1,04,115.00 = Rs.26,814.00

Balance amount for Rs. 26,814/- was due to paid to index for same amount sent to his home for signature but the same was return back due to

undelivered. This point was also noted in statement of case.

Sd/- XXXXX (Suneel Verma) EE (Civ)

SG Officer Commanding.

22. The recovery of HPL/EOL in respect of the Petitioner is mentioned as Rs. 98,673/- (Rupees Ninety Eight Thousand Six Hundred and Seventy

Three only).

23. According to the Respondents, the Petitioner has deserted from duty and further that, he has joined in a private organisation viz., M/s.JLL,

Bangalore, as per the letter dated 23.01.2007 of the Indian Institute of Technology, Madras, addressed to the third Respondent. The third

Respondent in his letter dated 28.02.2007 addressed to M/s. Jones Long Lassale, Bangalore, has stated that the Petitioner has not reported to his

Unit/Department despite several letters to him and that he has forwarded his resignation letter etc. and that he is presently serving in their Company

after completing M. Tech., from IIT, Madras.

24. As against the Petitioner, the Respondents have filed a case before the Civil Judge (Senior Division), Manipur, for recovery of amount due in

regard to the expenses incurred by the Government during the study leave of the Petitioner.

25. Earlier, the Petitioner has filed W.P. No. 23182 of 2005 and W.P. No. 32332 of 2007 before this Court. Now, he has filed the present writ

petition in W.P(MD) No. 10758 of 2008.

26. On a careful consideration of the respective contentions, it is evident that the fifth Respondent by his letter dated 29.01.2009, in reference No.

CF/173517-H/CCK/158/490/E1, addressed to the Petitioner, has stated that he is most welcome to join duty and all his claims will be processed

to concerned authorities for necessary action and there has been no delay to process his legitimate claim, etc.

27. It is to be noted that the fifth Respondent in his letter dated 29.01.2009 has categorically stated that all dues on account of Pay and Allowance

arrears can be paid to the Petitioner after rejoining from study leave and thereafter, regularising the period of long absence/overstay of leave and

further, the VI Pay Commission will be held up for want of his signature/ Respondent rejoining and moreover, the form of option and undertaking

certificate is enclosed herewith for his signature and early return for their future action, etc.

28. As far as the present case is concerned, the Petitioner places reliance on the communication of the DTE General Border Roads (T&C), in

reference No. 18368/6TH CPC/DR/DGBR/68/T&C dated 26.04.2010, in and by which he is entitled to get the payment of arrears from the

Respondents.

29. The Petitioner takes a plea that the Commission has recommended the pay scale of Rs. 5000-8000 and he ought to be paid from 01.01.1996

in the said scale of pay and also the consequent arrears. Moreover, the letter of the fifth Respondent dated 29.01.2009 also goes to the extent of

saying that the all dues on account of Pay and Allowance arrears can be paid to the Petitioner after rejoining from study leave and thereafter,

regularising the period of long absence/overstay of leave and further, the VI Pay Commission will be held up for want of his signature/Respondent

rejoining and he has been directed to put his signature in the form of option and

undertaking certificate.

30. Therefore, the Petitioner is directed to exercise his option and furnish the undertaking certificate by affixing his signature within a period of two

weeks from the date of receipt of a copy of this order to the Respondents if not already done by him. The Respondents soon after obtaining the

option from the Petitioner and also getting the undertaking certificate from him, are directed to revise the pay of the Petitioner in the light of the v.

and VI Pay Commission Reports from 01.01.1996 and 01.01.2006 respectively and to pay him the consequential arrears, of course, after

deducting all legitimate dues to be paid by the Petitioner, after regularising the period of long absence/overstay of leave/desertion period [including

the sum claimed towards the study leave period before the Court of Civil Judge (Senior Division), Manipur (West)] as the case may be, to the

Respondents, within a period of three months. The Petitioner is directed to lend the helping hand to the Respondents and co-operate with them in

all earnestness so as to give a quietus to the disputes/controversies between the parties in once and for all to prevent an aberration of justice.

31. With these directions, this writ petition is disposed of, leaving the parties to bear their own costs. Consequently, the connected Miscellaneous

Petition is closed.