(2006) 09 MAD CK 0027

In the Madras High Court

Case No : Writ Petition No. 20470 of 2006

C. Somasundaram APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision : 27-09-2006

Acts Referred:

Citation : (2006) 09 MAD CK 0027

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : L. Chandrakumar, for the Appellant; V. Arun, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

V. Ramasubramanian, J.—The petitioner who was working as a Ward Boy in the Pallipalayam Panchayat, filed O.A. No. 1752 of 1996 on

the file of the Tamil Nadu Administrative Tribunal praying for a direction to the respondents to pay the pension in accordance with G.O.Ms.437

Finance dated 23.6.88 and G.O.Ms.955 Finance dated 23.12.91, by taking into account 50% of the contingency services together with the

regular service rendered by him. After the abolition of the Tribunal, the original application has been transferred to this Court in W.P. No. 20470

of 2006.

2. I have heard Mr. L. Chandrakumar, learned Counsel appearing for the petitioner and Mr. V. Arun, learned Government Advocate appearing

for the respondents.

3. It is not in dispute that the petitioner was originally appointed as a Ward Boy, with effect from 2.10.1961, in the contingency paid establishment.

After completion of about 20 years of service, the petitioner was brought into regular establishment with effect from 1.4.1981. On and from

1.4.1981, the petitioner rendered regular service upto 30.6.1993.

4. The petitioner entered on medical leave with effect from 1.4.1993. Initially the leave was sanctioned as unearned leave on medical certificate

and the same continued upto 31.5.1993. From 1.6.1993 to 6.6.1993, he took earned leave. From 7.6.1993 to 30.6.1993, he was again as

unearned leave on medical certificate.

5. On account of his ill-health and his family circumstances, the petitioner submitted an application dated 26.3.1993, seeking to retire from service

voluntarily, on the expiry of a period of three months. Though no order appears to have been passed on his request, before the expiry of the notice

period of three months, the Panchayat Union Counsel passed a resolution on 16.9.1993, accepting his request for voluntary retirement and

permitting the petitioner to retire with effect from 30.6.1993.

6. The Government had already passed orders, in respect of persons who were originally in contingent establishment, but brought into regular

establishment, for counting 50% of their services rendered in the contingent establishment, together with the regular service rendered by them for

the purpose of pensionary benefits. Therefore, the petitioner was entitled to pensionary benefits on the basis of

(1) 50% of the services rendered in the contingent establishment from 2.10.61 to 31.3.81 and

(2) the entire regular service rendered from 1.4.81 to 30.6.93. There is no dispute with regard to his entitlement for pensionary benefits, on the

above basis, as seen from the categorical admission made by the respondents in para 7 of the reply affidavit filed by them.

7. But unfortunately, even the admitted pension calculated on the above basis, was not paid to the petitioner, forcing him to approach the Tamil

Nadu Administrative Tribunal by way of the above original application. The reason for non payment of the pensionary benefits to the petitioner, is

spelt out by a communication of the Pallipalayam Panchayat Union Commissioner to the Director of Rural Development, in Na.Ka. No.

1314/93/A1, dated 12.12.1994. As per the said communication, the Pension proposals were forwarded to the Examiner of Local Fund Audit in

March 1994, but the same was returned by the Examiner of Local Fund Audits by his proceedings dated 3.5.1994 on the ground that the

permission granted to the petitioner to go on voluntary retirement even while he was on medical leave, was erroneous. According to the Examiner

of Local Fund Audits, the petitioner should have been directed to rejoin the duty before he was permitted to retire voluntarily.

8. In the reply affidavit filed by the respondents to the original application, the respondents have stated that after the Examiner of Local Fund

Audits returned the papers, ratification proposals were sent to the Director of Rural Development on 12.12.1994 and revised proposals were also

sent on 19.4.1996. However, the pensionary benefits have not been sanctioned even thereafter.

9. Under such circumstances, it is clear that the respondents have not granted the pensionary benefits to the petitioner, even after permitting him to

go on voluntary retirement and even after finding that he does not suffer from any deficiency making him ineligible for voluntary retirement. In the

reply, the respondents have relied upon two executive instructions issued by the Government on 8.5.1991 and 25.9.1992, to the effect that the

acceptance of the request for voluntary retirement was irregular, since the applicant did not join the duty after the expiry of medical leave. Thus, the

only ground on which, the pensionary benefits are not sanctioned to the petitioner is that the Commissioner of Panchayat Union should not have

permitted the petitioner to go on voluntary retirement, without directing him to rejoin the duty after the expiry of medical leave.

10. But the said contention is not legally tenable. The right of a Government servant to retire voluntarily, is governed by the provisions of

fundamental Rule 56(3). An exhaustive procedure is laid down under the said Rule for permitting a Government servant to go on voluntary

retirement. The acceptance of the request of the petitioner to go on voluntary retirement is not found fault with, by the Examiner of Local Fund

Audit, on any of the grounds found in fundamental Rule 56(3). In other words, the petitioner has satisfied all the requirements contained in

fundamental Rule 56(3) and hence, the acceptance of his request for voluntary retirement was perfectly in order. However, the Examiner of Local

Fund Audits has taken exception to the acceptance of the request for voluntary retirement, based upon some executive instructions. Those executive instructions have also not been produced before me. Even in the communication dated 3.4.1995 sent by the Examiner of Local Fund

Audits to the Commissioner of Panchayat Union, he has not quoted the executive instructions now relied upon. In any event, these executive

instructions cannot over ride statutory rules. When the petitioner was eligible for voluntary retirement as per the statutory rules and when his

application for voluntary retirement has been accepted in a manner known to law, the respondents cannot deny the benefit of pension to the

petitioner, by relying upon some executive instructions.

11. More over, on the basis of those executive instructions, the order of the Panchayat Union Commissioner permitting the petitioner to retire

voluntarily, was not set aside and the petitioner was not directed to resume duty. In such circumstances, the denial of pension to the petitioner by

the respondents, is totally unjustified and abhorring. The petitioner was not facing any departmental proceedings or criminal case and there were no

recovery proceedings pending against him at the time of submitting the proposal for voluntary retirement and also at the time when the proposal

was accepted. Therefore, the deprivation of the pensionary benefits to the petitioner by the respondents is atrocious.

12. Therefore, the writ petition is allowed and the respondents are directed to settle the pensionary benefits, calculated by taking into account 50%

of the contingency paid services together with the regular services within a period of three months from the date of receipt or production of the

copy of this order, together with the interest at 9% per annum.