
(2015) 11 MAD CK 0074

In the Madras High Court

Case No : W.A.(MD) Nos. 1126 to 1131 of 2015

C. Vijayaraj

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 04-11-2015

Acts Referred:

Citation : (2016) LabIC 365

Hon'ble Judges : V. Ramasubramanian and N. Kirubakaran, JJ.

Bench : Division Bench

Advocate : G. Thalaimutharasu, for the Appellant; N. Manoharan, Special Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramasubramanian, J.—The appellants who were Ex-Servicemen and who were appointed as Drivers in the Police Department after retirement from the Military service, filed the writ petitions, seeking a Mandamus to direct the Government to take into account the Military service rendered by them for the purpose of fixation of pay at the time of appointment in the State service. The writ petitions having been dismissed by the learned Judge, they are before us in these writ appeals.

2. Heard Mr. G. Thalaimutharasu, learned Counsel for the appellants.

3. The facts out of which the present appeals arise, are uncomplicated. The appellants herein were appointed in the Military on various dates during the period from 1980 to 1993. After rendering Military service for a period ranging from 7 years to 20 years, all of them have retired.

4. After retirement, all the appellants gained appointment as Grade II Police Constables (Drivers) in the Tamil Nadu Special Police Service. Their appointment was on the basis of a rule of reservation available in Rule 22 of the General Rules for Tamil Nadu State and Subordinate Service.

5. After appointment, the pay of the appellants was fixed at the bottom most stage in the scale of pay. Therefore, the appellants made representations claiming fixation at a higher level on the ground that the service rendered in the Military should also be taken into account while fixing the pay in the State service. The claim was not considered by the respondents forcing the appellants to come up with a batch of writ petitions.

6. The entire claim of the appellants is based upon one Rule and a decision of the High Court of Kerala. The Rule on which the appellants have placed reliance is Rule 29 of the Tamil Nadu Special Police Subordinate Service Rules, 1978. It reads as follows:

"Rule 29. Military service.--Subject to the provisions of Articles 356 and 357-C of the Civil Service Regulations, service rendered in any of the defence forces namely, Indian Army, Navy or Air Force shall count for pension and gratuity in the case of any member of the service-

(i) who is invalidated at any age; or

(ii) who is entitled to a pension for service in the force; or

(iii) who after transfer to the ordinary police, retired therefrom."

7. As seen from the Rule, the Rule confers only one benefit namely that of counting the past service for the purpose of pension and gratuity. The Rule does not entitle these persons to fixation of pay on the basis of the services rendered in the Military.

8. When a Rule grants a benefit, no one can claim any benefit over and above what is conferred by the Rule. A Rule is not elastic that has to be stretched for the other benefits. Hence, the first contention on the basis of which the appellants made a claim was rightly rejected by the learned Judge.

9. The second ground on which the appellants make a claim, is the decision of the High Court of Kerala. But as seen from the facts out of which the decision of the High Court of Kerala arose, there was a policy of the State of Kerala governing the situation. In W.P(C) No. 25304 of 2006 (K), decided by the learned Single Judge of the High Court of Kerala on 30.01.2008, the persons who were Ex-Servicemen and who were appointed as Drivers in the Police Department, filed writ petitions, challenging a decision taken by the Government, to extend the benefit of grant of higher grade only to those who had returned the gratuity received for the Military service. While dealing with the said case, the learned Judge not only relied upon Rule 8(c) of Part III of the Kerala Service Rules, but also relied upon the Government Orders granting the benefit of higher grade.

10. It is true that under Rule 8(c) of Part III of the Kerala Service Rules, the benefit of counting the past Military service was available only for the purpose of pension and not for the purpose of gratuity. But, it is seen from the judgment of the High Court of Kerala that by Government Order, G.O.(P). No. 764/81/Fin.

dated 16.11.1981, the State Government had ordered War service or Military service which counted for civil pension, to be also reckoned for computing 13 years of qualifying service for the grant of the benefit of higher grade. By subsequent orders, the Military service was directed to be reckoned for the grant of first, second and third higher grades also. Therefore, it was not on the basis of Rule 8(c) of Part III of the Kerala Service Rules, the High Court of Kerala granted the benefit. It was actually on the basis of the policy decision taken by the State of Kerala for counting the Military service, for the purpose of grant of first, second and third higher grades that the High Court of Kerala delivered the judgment.

11. Insofar as the State of Tamil Nadu, there is no such policy. There is only one policy namely that of providing reservation in all State and Subordinate Services to the extent of 3% of the posts, under Rule 22 of the General Rules for Tamil Nadu State and Subordinate Service. In such circumstances, the learned Judge was right in rejecting the claim of the appellants as not based upon any Government policy or statutory Rules. Hence, the writ appeals are dismissed. No costs.