(2015) 07 MAD CK 0345

In the Madras High Court

Case No : Writ Appeal (MD) No. 599 of 2015 and M.P. (MD) No. 2 of 2015

Cardamom Planters' Association College — APPELLANT

Vs

G. Selva and Others — RESPONDENT

Date of Decision : 06-07-2015

Acts Referred:
Constitution of India, 1950 — Article 14, 19, 21

Citation : (2015) 07 MAD CK 0345

Hon'ble Judges : S. Manikumar, J;G. Chockalingam, J

Bench : Division Bench

Advocate : M. Senthil Kumar, for the Appellant; D. Sivakumaran, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Manikumar, J—Cardamom Planters'' Association College, represented by its Secretary and Correspondent, has challenged the order made in W.P(MD)No. 7428 of 2012, dated 14.11.2014, by which, a learned single Judge, has found that the appellant herein, has delayed, forwarding the proposals and that the educational authorities, viz., respondents 2 and 3 herein, have delayed in sanctioning the retiral benefits to the petitioner. On the above finding, learned single Judge has directed the appellant herein to pay interest at 9% per annum, for the entire amount, due to the petitioner, from the date of her entitlement, till the date on which the proposal was forwarded to the Regional Joint Director, Directorate of Collegiate Education, Regional Office, Madurai, 3rd respondent herein. The 3rd respondent herein, has also been directed to pay interest at the same rate, from the date on which, the proposal was received till 09.07.2012, for the entire amount and till 31.05.2013, for the balance amount, settled on 31.05.2013.

2. Facts leading to the appeal are as follows:

The writ petitioner/1st respondent joined the service of the appellant-College on

23.07.1976. She was promoted as Assistant Professor (Tamil), in the year 1979. As per the date of birth, she had to attain the age of superannuation on 31.12.2010. Two month''s prior to the date of superannuation, she sent a representation to the Management, to take steps for settling her retiral benefits. She also requested the College to forward the proposals for re-deployment, till the end of the academic year, 2010-11, ie., 31.05.2011. On 28.12.1010, the Management has turned down the request, for re- deployment, which compelled the writ petitioner to file W.P. No. 15049 of 2010. Vide order, dated 04.03.2011, a learned single Judge while setting aside the order of rejection for re-deployment, directed the respondents therein, to provide re-employment till 31.05.2011. The same was challenged by the Management in W.A. No. 350 of 2011 and vide judgment, dated 24.03.2011, the Hon''ble Division Bench has confirmed the abovesaid order.

3. It is the further case of the writ petitioner that immediately, after attaining the age of superannuation and during the pendency of W.P. No. 15049 of 2010 and after the disposal of the Writ Appeal on 24.03.2011, she sent due representations on 31.12.2010, 09.02.2011 and 07.04.2011, respectively, to the respondents, to settle her retiral benefits. But the Management failed to forward the proposals, either for payment of salary or for terminal benefits of the petitioner, which compelled her to file another W.P.(MD)No. 5653 of 2011. The latter writ petition was disposed of on 07.12.2011, on the basis of a statement made on behalf of the Management that there was no delay on the part of the Management in forwarding the proposals for terminal benefits. Only on 12.01.2012, proposals were forwarded by the Management to the Regional Joint Director, Directorate of Collegiate Education, Madurai, 3rd respondent herein. Thus, there was a delay of 16 months in forwarding the proposal, by the Management.

4. Though the proposal was forwarded by the Management on 12.01.2012, terminal benefits were not paid to the petitioner for more than six months. The college has failed to enclose the ''''No Due Certificate'''', which caused the delay of more than six months. In the abovesaid circumstances, W.P. No. 7428 of 2012, has been filed for a Mandamus, directing the respondents therein, to pay the terminal benefits, with interest at the rate of 12% per annum.

5. The Secretary and Correspondent of the appellant- College, has filed a counter affidavit, stating that re-employment was not given to the petitioner, as she was not co-operating with the College Management, towards the welfare of the students. However, pursuant to the directions of this Court, steps were taken. As per the directions given in W.A. No. 350 of 2011, the writ petitioner was re-employed. After the orders in W.P. No. 5653 of 2011, the petitioner was paid salary for re-employment period, Death-cum-Retirement Gratuity, Leave Encashment and other benefits.

6. Refuting the allegations of delay, on the part of the Management, in sending the proposals, the Secretary of the appellant- College has submitted that it is the

duty of the petitioner to submit all the necessary documents and enclosures, to be forwarded to the Government. On the other hand, the petitioner has simply sent a requisition letter and after verifying the documents, the Secretary has sent a letter, dated 07.12.2011, to the petitioner, to submit necessary documents, for forwarding the proposals and only after the receipt of the said letter, the petitioner has submitted the documents on 09.12.2011. After scrutiny, it was forwarded to the Regional Joint Director, Directorate of Collegiate Education, Madurai, 3rd respondent herein, on 12.01.2012.

7. The appellant-College has further submitted that though each and every person, working in the College, is well aware that documents have to be submitted, along with a requisition letter, the petitioner has failed to do so. But with a mala fide intention, delay is attributed, on the part of the College Management. The Accountant General, Chennai, has passed orders, sanctioning pension and the petitioner received the same on 12.07.2012.

8. Considering the rival submissions, stated supra, vide order, 14.11.2014, the Writ Court held that there was a delay on the part of the Management, in forwarding the proposals and equally, delay on the prt of the Regional Joint Director, Directorate of Collegiate Education, Regional Office, Madurai, 3rd respondent herein, in sanctioning and making payment of terminal benefits and accordingly, passed orders, as stated supra.

9. Assailing the correctness the impugned order, and inviting the attention of this Court to the contents of the representations, dated 11.10.2010, 13.12.2010, 09.02.2011 and 07.04.2011, respectively, of the writ petitioner and Rule 53 of the Tamil Nadu Pension Rules, 1978, Mr.M.Senthil Kumar, learned counsel for the appellant-Management submitted that it is the duty of every employee to submit an application in Form No. 5 to the employer, atleast one year, in advance, from the date of his anticipated retirement. But the writ petitioner simply sent representations, which were not in the prescribed format and that supporting documents were also not enclosed. He also submitted that earlier, when delay was attributed, on the part of the Management, a learned Single Judge of this Court in W.P.(MD)No. 5653 of 2011, dated 07.12.2011, had already taken note of the same and issued directions to the official respondents to process the paper and issue appropriate sanction orders.

10. On the above aspect, learned counsel for the appellant also invited the attention of this Court to the order, made in W.P. (MD)No. 5653 of 2011, dated 07.12.2011 and submitted that the petitioner has only given the basic documents for forwarding her pension papers on 25.05.2011. According to him, when the respondent has failed to submit necessary documents, Management of the appellant-College, cannot be mulcted with interest at the rate of 9% per annum, for the amount payable to the writ petitioner.

11. Per contra, by inviting Rule 61 of the Tamil Nadu Pension Rules, Mr.D.Sivakumaran, learned counsel for the 1st respondent submitted that it is

the duty of the employer to indicate the respondent to submit the pension papers, in Form 5, one year in advance of the date on which, the employee attains the age of superannuation or before the date of his anticipated retirement. It is also his contention that Rule 53 of the abovesaid Rules, has to read in conjunction with Rule 61 and not in isolation.

12. It is also his contention that both the appellant and the official respondents have unnecessarily delayed payment of pension and other retiral benefits from 2010 onwards. He pointed out that the writ petitioner retired from service, on 31.12.2010 on attaining the age of superannuation. Though representations have been made by the writ petitioner, to forward necessary proposals, for payment of her terminal benefits, well before the date of her superannuation, no steps were taken by the Management. Even after retirement, representations were made on 09.02.2011, 07.04.2011 and 06.05.2011, respectively, to the Management, but steps were not taken to forward the proposals. It was only on 07.12.2011, when W.P. No. 5653 of 2011, was taken up for final hearing, the appellant-Management made a representation, through its counsel, that no delay was caused, in forwarding the proposal for terminal benefits. But the fact remains that the Management has forwarded the proposals only on 12.01.2012. For the abovesaid reasons, he prayed for dismissal of the appeal.

Heard the learned counsel for the parties and perused the materials available on record.

13. Admittedly, the petitioner was due to retire on 31.12.2010. Two representations, dated 11.10.2010 and 31.12.2010 respectively, have been submitted to the appellant-Management, for pension. On 28.12.2010, the College Committee has passed a resolution, rejecting the request of the petitioner, for re- employment. Therefore, W.P.(MD)No. 15049 of 2010, has been filed, to quash the order, passed by the appellant, dated 28.12.2010 and for a direction to both the appellant and other educational authorities, viz., the Director of Collegiate Education, Chennai and Joint Director of Collegiate Education, Madurai, to grant re-employment, till 31.05.2011.

14. Material on record discloses that though the Management has opposed the relief sought for, while setting aside the order of the College Committee, dated 28.12.2010, a learned single Judge, vide order, dated 04.03.2011, directed the appellant-Management to re- employ the petitioner in service, till 31.05.2011, by paying salary and all other attendant benefits, to which, she is entitled for, from the date of her superannuation, till 31.05.2011. Being aggrieved by the same, the appellant-Management has filed W.A.(MD) No. 350 of 2011 and by judgment, dated 24.03.2011, the appeal filed by the Management has been dismissed. Thereafter, vide order, dated 31.05.2011, the writ petitioner has been relieved from her duties.

15. Writ Petitioner''s second battle has started, by filing W.P. (MD)No. 5653 of 2011, for a Mandamus, to direct the appellant- Management to send the

proposals for re-employment and terminal benefits, expeditiously. When the matter came up on 01.12.2011, the learned counsel for the appellant-Management has been directed, to find out, as to the delay in forwarding the applications papers of the petitioner, regarding her pension. While recording the submission of the learned counsel for the appellant-Management, the Writ Court passed the following order:

"....Today, when the matter came up, the learned counsel fairly stated that the petitioner has only given the basic documents for forwarding his pension papers on 25.05.2011 and he has also produced the internal extract of Tapal Delivery book. He also undertook that there was no delay on the part of the College in forwarding such application. With reference to the payment of the salary for the re-employment period, he has stated that the amount has been claimed and also been paid during July 2007. This fact is not denied by Mr.M.Saravanan, the learned counsel appearing for the petitioner.

4. Under said circumstances, it is unnecessary to issue any direction to the College, since the College is already on the job of forwarding the petitioner''s application. One only expect that there will not be any delay on the part of the official respondents in processing the papers and issuing appropriate pension orders in favour of the petitioner. The Writ Petition is disposed of accordingly."

16. With due respect, from the above said order, it cannot be concluded that there was a finding recorded by the writ Court to the effect that there was no delay on the part of the Management. From the above extract, it could only be deduced that the appellant- Management has undertaken that there would not be any delay and that the basic documents for forwarding pension papers were submitted on 25.05.2011.

17. Representation of the writ petitioner, dated 06.05.2011, enclosed in the typed set of papers, filed along with this writ appeal, shows that she had joined duty on re-employment on 06.04.2011. In the said representation, the writ petitioner has also pointed out that there was a delay in preparation of re-employment proposals also. Representation further reads that vide letter, in GS/2011-12, dated 03.05.2011, the appellant-Management has directed the writ petitioner to submit documents, pertaining to re-employment proposals to the college at 08.00 P.M., on 04.05.2011. Thereafter, vide letter, dated 31.05.2011, the writ petitioner has been relieved, on completion of re-employment period. Vide letter in GS/2011-2012, dated 07.12.2011, the writ petitioner has been directed to furnish certain documents, as as to enable the Management to forward the proposals, as follows:

(1) Passport size photo - 3;

(2) Details of the members of the family with their Date of Birth and marital status;

(3) Home address

(4) Identification Marks and Height

(5) Death Certificate of husband.

18. In response to the abovesaid letter, details have been furnished by the petitioner. Thereafter, the writ petitioner seemed to have sent a letter, dated 15.12.2011 to the Regional Joint Director, Directorate of Collegiate Education, Regional Office, Madurai, 3 rd respondent herein. Referring to the same, vide letter, dated 03.01.2012, the Regional Joint Director, Directorate of Collegiate Education, Regional Office, Madurai, 3rd respondent herein, has called for remarks, from the Secretary and Correspondents of the appellant- College, with regard to terminal benefits payable to the writ petitioner. Thereafter, the appellant-College has sent a letter in GS/2011-2012, dated 06.01.2012, to the Regional Joint Director, Directorate of Collegiate Education, Regional Office, Madurai, 3 rd respondent herein, and the said letter is extracted hereunder:

19. After considering the proposals sent by the appellant- College, the Joint Director of Collegiate Education, Madurai Region, Madurai, vide proceedings in Rc.No. 608/B3/2012, dated 12.03.2012, has forwarded the application to the Accountant General (A & E), Tamil Nadu, Chennai, as follows:

"I forward herewith the application for pension on behalf of Tmt.G.Selva, Associate Professor in Tamil, C.P.A. College, Bodinayakanur, who retired on 31.12.2010, along with the connected records as detailed below:

1. Application for pension

2. Memorandum of service and leave

3. Last Pay Certificate

4. Statement of Average emoluments

5. Specimen Signature and passport size photographs duly attested (in duplicate)

6. Guarantee Certificate

7. Joint Director''s Order sanctioning the pension

8. Non-employment Certificate duly attested

9. Service Register

(2) The applicant was employed as a Associate Professor in Tamil in College from 23.07.1976 to 31.12.2010. She has completed 58 years of age on 31.12.1952, as her date of birth being 14.12.1952. Her total service counting for pension upto the date of completion of 58 years of age is 34 completed years, 5 months and one days.

(3) The leave availed by the applicant during her service is shown in the memorandum of leave.

(4) The pension of the applicant is calculated on the basis of the undernoted rates of pay during the last 10 months of her service ended with the date of completion of years.

The average monthly emoluments works out to Rs. 59280/- above and the pension admissible to the applicant is Rs. 29640/- (Rupees twenty nine thousand six hundred forty only).

(5) Thiru.Gurusamy (Expired) Wife/Husband of Tmt.G.Selva, as the two sons of the pensioner have the age of 25 they are not eligible to get the family pension. She also eligible to get the Death-cum-Retirement Gratuity of Rs. 10,00,000/- (Rupees Ten Lakhs only). In this connection, I wish to state that the Management contribution with Account in Chalan No. 1019, dated 18.02.1982. I am also to state that no provisional pension was sanctioned to her.

(6) During the period of last 10 months at her service the grant scale of pay has been taken into account for purpose of reckoning the average emoluments.

(7) Necessary authorization for the drawal of pension at Sub Treasury, Bodinayakanur for Rs. 29640/- (Rupees Twenty Nine Thousand Six Hundred Forty Only) and a family pension of Rs. ... and DCRG for Rs. 10,00,000/- (Rupees Ten Lakhs Only) may be issued at an early date."

20. Vide letter, dated 15.03.2012, the appellant-College, has sent a reply, to the petitioner stating that proposals have already been forwarded. As ''No Due Certificate'' was not issued by the Management, the writ petitioner has made a representation, dated 21.05.2012, to the appellant-College. Thereafter, she has filed W.P. (MD)No. 7428 of 2012, for the relief, as stated supra.

21. Though placing reliance on Rule 53 of the Tamil Nadu Pension Rules, 1978, Mr.M.Senthil Kumar, learned counsel for the appellant-Management submitted that the petitioner has to submit in writing, an application in Form No. 5 to the appellant-Management, atleast one year, in advance, from the date of her anticipated retirement and that for the failure of the writ petitioner to submit the said application, in advance, delay cannot be attributed against the Management, reading of Rule 61(2a) of the abovesaid Rules, indicates that it is the duty of the Management to send the application for pension, to the writ petitioner, in Form-5, one year in advance, of the date on which the writ petitioner, attains the age of superannuation or before the date of her anticipated retirement, if earlier, with the request that it should be returned to the Management, duly completed, within a period of three months, from the date of issue of intimation, to the employee, by the Management, but in no case, later than the actual date of retirement.

22. Rules 53 and 61 of the Tamil Nadu Pension Rules are extracted hereunder:

"53. Submission of application for pension:- (1) Every Government servant shall submit in writing an application for pension in Form-5;

Provided that a gazetted Government servant shall send his application direct to the Audit Officer and non- gazetted Government servant to the Head of Office.

(2) Every Government servant shall submit his application for pension at least one year in advance of the date of his anticipated retirement:

Provided that -

(i) in a case in which the date of retirement cannot be foreseen one year in advance, the application shall be submitted immediately after the date of retirement is settled; and

(ii) a Government servant, proceeding on leave preparatory to retirement in excess of one year, shall submit the application at the time of proceeding on such leave.

61. Preparation of Pension Papers:- (1) Every Head of Office shall undertake the work of preparing pension papers in Form 7 one year before the date on which a Government servant is due to retire on superannuation, or on the date on which he proceeds on leave preparatory to retirement whichever is earlier. The work shall not be delayed till the Government servant servant has actually submitted his application in writing for pension in Form 5.

(2) (a) The Head of Office shall send to every Government servant the application for pension in Form 5 one year in advance of the date on which, the Government servant attains the age of superannuation, or before the date of his anticipated retirement, if earlier, with the request that it should be returned to him duly completed within a period of six months from the date of issue of intimation to the Government servant by him but in no case later than the actual date of retirement.

(b) The Head of Office shall also draw attention of the retiring Government servant to the provisions of Rule 78."

23. Form 5 of the Tamil Nadu Pension Rules, 1978, is extracted hereunder:

Form 5 [See Rules 53(1), 58(1) and 61]

APPLICATION FOR PENSION

From

....

....

....

....

To

Sub: Application for sanction of pension.

Sir,

I beg to say that I am due to retire from service with effect from the......... my date of birth being........ I therefore request that steps may kindly be taken with a view to the pension and gratuity admissible to me being sanctioned by the date of my retirement. I desire to draw my pension from...............Treasury.

2. I hereby declare that I have neither applied for nor received any pension or gratuity in respect of any portion of the service qualifying for this pension and in respect of which pension and gratuity are claimed herein nor shall I submit an application hereafter without quoting a reference to this application and the orders which may be passed thereon.

2A. I am governed by rule 49 of the Tamil Nadu Pension Rules, 1978 and that the details of my family already furnished by me in Form 3 are complete and up- to-date.

3. I enclose herewith-

(i) two Specimen Signatures of mine duly attested:

(ii) three Copies of the passport size joint photograph with my wife/husband;

(iii) two slips each bearing my left hand thumb and finger impressions duly attested; and

(iv) two slips showing the particulars of my height and identification marks duly attested.

**My present address is................... and my address after retirement will be...................

(Signature)

Designation.

Place:........................

Dated the.................

* Only two copies of passport size photograph of self need be furnished:- (i) If the Government servant is governed by rule 49 of the Tamil Nadu Pension Rules, 1978 and is unmarried or a widower or a widow.

(ii) If the Government servant is governed by Rule 50 of the Tamil Nadu Pension Rules, 1978.

** This is required only in the case of a pension who is not literate enough to sign his name. If such a Government servant on account of physical disability is unable to give left hand thumb finger impressions, he may give the thumb and finger impressions of the right hand. Where a Government servant has lost both the hands he may give his the impressions. Impressions should be duly attested.

Any subsequent change of address should be notified to the Audit Officer/Head of Office."

24. From the material on record, it could be seen that though the petitioner has submitted representations, even before attaining the age of superannuation, the Management has not sent the application for pension in Form-5 to the writ petitioner, with a request that it should be returned to the Management, duly completed, within a period of three months, from the date of issue of intimation, to the employee, by the Management, but in no case later than the actual date of retirement.

25. Rule 61(2)(a) also makes it clear that the intimation should be returned to the Head of the Office, duly completed within a period of six months from the date of issue of intimation to the employee by the Management, but in no case later than the actual date of retirement. First of all, from the material on record, it could be deduced that there was no intimation by the appellant-College to the writ petitioner, along with application, in Form-5, in terms of Rule 61(2)(a) and therefore, the writ petitioner cannot be found fault with. The contention of the learned counsel for the appellant-Management that the writ petitioner has failed to discharge her obligations, by submitting an application in Form-5, along with necessary documents and that therefore, there is not only a failure, and delay on her part, cannot be accepted. Going through the aforesaid rules, we are in agreement with the contention of the learned counsel for the respondents that the rules have to be read in conjunction and not in isolation. It is not open to the Management to blame the respondent, when it has failed to discharge its duties under the Pension rules.

26. As per Note to Section 51, pension application should not be treated as papers, which may be dealt with in ordinary course; but their disposal as well as subsequent references, if any, from the Accountant General or any other Officer should be regarded as urgent. Prior to the retirement, the appellant-Management has not sent any proposals, though it was aware that the writ petitioner was due to retire on 31.12.2010. Only after the dismissal of the Writ Appeal No. 350 of 2011 dated 24.03.2011, the appellant-Management has sent a letter, dated 07.12.2011 to the writ petitioner to submit necessary documents. As stated supra, the writ petitioner attained superannuation on 31.12.2010. As per the Pension Rules, proposals ought to have been sent well in advance before the date of superannuation. It is evident that the Management was not willing to re-employ the writ petitioner for which she had to litigate.

27. Pension proposals have been forwarded by the Management only on 12.01.2012. Even thereafter, in the matter of sending "No Due Certificate"?, one of the documents, required to be sent by the Management, there was a delay and only when the petitioner pointed out the same by her letter dated 21.05.2012, it has been sent by the Management. Thus, from the materials on record, there is certainly a delay, on the part of the appellant-Management, in forwarding the proposals. Thereafter, pension and other retiral benefits, have

been sanctioned belatedly. Reading of the impugned order shows that the Government have not filed any counter affidavit to the averments made against them, in the writ petition.

28. In Dr. Uma Agrawal Vs. State of U.P. and Another, AIR 1999 SC 1212 : (1999) 2 JT 359 : (1999) 2 SCALE 153 : (1999) 3 SCC 438 : (1999) 2 SCR 42 : (1999) AIRSCW 876 : (1999) 3 Supreme 138 , the Supreme Court held that,

"....grant of pension is not a bounty but a right of the government servant. The Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit. Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases where a retired government servant claims interest for delayed payment, the Court can certainly keep in mind the time-schedule prescribed in the Rules/Instructions apart from other relevant factors applicable to each case."

29. In S.K. Dua Vs. State of Haryana and Another, AIR 2008 SC 1077 : (2008) 1 CLT 701 : (2008) 116 FLR 636 : (2008) 1 JT 331 : (2008) 1 SCALE 284 : (2008) 3 SCC 44 : (2008) 1 SCC(L&S) 563 : (2008) 3 SLJ 104 : (2008) AIRSCW 689 : (2008) 1 Supreme 95 , the appellant therein was served with three charge sheets/show cause notices in June 1998, few days before his retirement. However, he retired on 30.06.1998 on reaching the age of superannuation. He was paid provisional pension, but other retiral benefits were not given to him, which included commuted value of pension, leave encashment, gratuity, etc. They were withheld till the finalisation of disciplinary proceedings. While answering the issue as to whether the appellant therein was entitled to interest on delayed payment of retiral benefits, in the absence of any statutory rules/ administrative instructions or guidelines, the Supreme Court, at Paragraph 14 of the judgment, held as follows:

"14. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in the absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of "bounty" is, in our opinion, well founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents."

30. Thus it is now well settled that an employee/Government servant is entitled

to interest on belated payment of pension and other retiral benefits, even in the absence of statutory rules/administrative instructions or guidelines and that he/ she can claim for interest, under Part III of the Constitution, relying on Articles 14, 19 and 21.

31. In view of the above, we do not find that there is any infirmity in the impugned order. Hence, the Writ Appeal is dismissed. No costs. Consequently, M.P(MD)No. 2 of 2015 is closed.

