

(2014) 12 MAD CK 0036

In the Madras High Court

Case No : W.A.No.1727 of 2012 (WRIT APPEAL is filed under Clause 15 of the Letters Patent against the order dated 20.04.2011 made in W.P.No.27044 of 2010 on the file of this Court)

E. Jebamani

APPELLANT

Vs

Government of Tamilnadu

RESPONDENT

Date of Decision : 17-12-2014

Acts Referred:

Citation : (2015) 1 CWC 268

Hon'ble Judges : Mr. N. Paul Vasanthakumar and Mr. P.R. Shivakumar, JJ.

Bench : Division Bench

Advocate : Mr. V. Parthiban for M/s. Paul and Paul, Advocates, for the Appellant; Mr. S.T.S. Moorthy & A.Sri Jayanthi, Spl.G.P, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. N. Paul Vasanthakumar, J.—This Writ Appeal is filed against the order dated 20.4.2011 made in W.P.No.27044 of 2010, wherein, the appellant has challenged the order issued in G.O.(2D) No.126, Home (Police VI) Department dated 09.03.2009 and for direction to the respondents to sanction pension and other retirement benefits admissible to the petitioner in accordance with the Rules, if necessary, by granting relaxation for the services rendered by the appellant in the State Service from 10.01.1975 to 20.06.1991 with arrears of pension and other benefits.

2. The case of the appellant before the learned single Judge was that the appellant was recruited as Grade-II Police Constable and joined in service on 10.01.1975 in Tirunelveli District. He was promoted as Grade-I Police Constable on 05.01.1983 and while continuing in the said service, in the year 1990, he had applied for the post of Assistant Security Officer in the Directorate of Estate Management, Department of Atomic Energy, Mumbai, through proper channel. The appellant was selected for the said post and for enabling the appellant to join in the said post in Atomic Energy, he sought permission to resign which was

accepted and he was relieved from duty on 20.06.1991. Thereafter, he took up the assignment as Assistant Security Officer in the Department of Atomic Energy on 01.07.1991. When he was working as Assistant Security Officer in the Department of Atomic Energy, he was issued with a show cause notice dated 24.05.1993 asking to show cause as to why his services should not be terminated on the ground that he had suppressed certain information while applying for the post. The appellant gave a reply, however, his services were terminated with effect from 11.11.1993 by invoking Rule 5 of the CCS (Temporary Services) Rules. The said order of termination was challenged by the appellant before the Central Administrative Tribunal, Mumbai, vide O.A.No.919 of 1995. The Central Administrative Tribunal, by order, dated 13.08.1999, dismissed the said application and granted liberty to the appellant to approach the Government of Tamil Nadu restore him in Police department. The appellant accepted the said order and approached the State Government by making a representation and the said representation was kept pending. Hence, the appellant filed writ petition in W.P.No.21236 of 2003 which was dismissed granting liberty to move the authority/respondent for the grant of pension. The appellant reached the actual age of superannuation on 31.07.2008. Since no action was taken, based on the representation seeking pension, again he filed W.P.No.8594 of 2008 and the said writ petition was disposed of by an order dated 09.04.2008 permitting him to send a fresh representation and on receipt of such fresh representation, the same was directed to be considered. Accordingly, the appellant sent a fresh representation on 15.05.2008. The State Government rejected the said request by G.O.(2D) No.126 Home (Pol.VI) Department dated 09.03.2009 by referring Rule 23 of the Tamil Nadu Pension Rules stating that the appellant can get pension from the Central Government by taking his earlier service treating the resignation as a technical resignation. The appellant having resigned his earlier post in the State, his entire services were forfeited by virtue of Rule 23(1) of the Tamil Nadu Pension Rules. Therefore, his request to grant pension by treating it as a retirement on 31.07.2008 under FR 56, does not arise. The said order was challenged and the same was dismissed by the learned single Judge. Hence, this appeal is filed.

3. The contention of the learned counsel for the appellant is that under Rule 23 of the Tamil Nadu Pension Rules, though the resignation from the post entails forfeiture of past service, the proviso contained in the said rule clearly states that the resignation shall not entail forfeiture of the past service if it has been submitted to take up with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies. Relying upon the said proviso, learned counsel for the appellant submitted that the appellant having applied in the Department of Atomic Energy by getting No Objection Certificate from the respondent Department on 26.08.1987 and having selected and sought for permission to resign so as to enable him to join in the new post on 6.5.1991 which was accepted by the Superintendent of Police on 18.6.1991 and relieved on 20.06.1991, the said proviso is applicable to the

appellant and he cannot be denied of pension for the past service rendered in the State Government.

4. Learned counsel for the appellant also relied on the judgment of the Division Bench rendered in (2009) 3 MLJ 1005 (D. Vijayarangan v. Secretary Sales Tax Appellate Tribunal (Addl.Bench) & Others) wherein similar circumstances, the Division Bench considered the scope of the proviso to Rule 23(1) and gave a direction to the petitioner therein to pay pension and gratuity and other benefits within three months, taking into consideration of 16 years and 5 months and 10 days of service rendered by him, i.e., from 10.01.1975 to 20.06.1991.

5. Learned counsel for the respondent, on the other hand argued that the appellant having resigned his post is bound to forfeit his earlier service as per Rule 23(1) and the appellant having not completed 20 years of service or 50 years of age, the said resignation cannot be treated as a voluntary retirement.

6. In answer to the said submission, learned counsel for the appellant submitted that as per Rule 43 of the Tamil Nadu Pension Rules, a person completing qualifying service of ten years is entitled to terminal benefits including pension.

7. We have considered the rival submissions and perused the no objection certificate issued from the department dated 26.8.1987, letter of the appellant seeking permission to accept his resignation dated 6.5.91, the proceedings dated 18.6.1991 issued by the Superintendent of Police, Nilgiris, accepting the permission sought for to resign, and the relieving order issued on 20.06.1991.

8. It is not in dispute that the appellant applied for the post in the Atomic Energy only after getting no objection certificate and he was selected and appointed. However, during the probation period he was terminated and the said order was upheld by the Central Administrative Tribunal in O.A.No.919 of 1991 the order dated 13.08.1999, granting liberty to the appellant to approach the respondents for restoration and the restoration sought for having been rejected, the petitioner has rightly claimed sanction of pension and retirement benefits for the past service rendered.

9. Rule 23 of The Tamil Nadu Pension Rules, 1978 reads as follows:

"23. Forfeiture of service on resignation - (1) Resignation from a service or post entails forfeiture of past service:

Provided that a resignation shall not entail forfeiture of past service if it has been submitted to take up with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

10. Admittedly, the appellant has rendered 16 years and 5 months of service. During the said service, the appellant was departmentally proceeded for participating in the Union activities and was terminated. However by G.O.Ms.No.1631 Home Department dated 11.06.1990, the Government took a policy decision to cancel the punishment of dismissal order passed against the

police personnel who participated in the union activities and allowed to rejoin duty. Thereafter, the punishment of withholding of two years increment with cumulative effect was ordered in G.O.Ms.No.1158, Home Department, dated 14.5.1987. But for the said punishment, no other punishment was imposed against the appellant and in fact, the Superintendent of Police, Tirunelveli District, addressed a letter to the Assistant Personal Officer, D.A.E and D.E.M, Vikram Sarabhai Bhavan Bombay, on 27.7.1992 wherein it is certified that the Department has no objection to appoint the appellant as Assistant Security Officer in the Department of Atomic Energy and Directorate of Estate Management. Thus, it is evident that there was no adverse order except the said order of punishment which was also over in the year 1989.

11. The appellant has admittedly rendered more than 10 years of service which is a minimum qualifying service for the sanction of pension under Rule 43 of the Tamil Nadu Pension Rules, 1978 and as per proviso to Rule 23(1), the appellants earlier service will not be forfeited.

12. In the light of the Tamil Nadu Pension Rules, 1978, referred above and having regard to the judgment of this Court cited *supra*, we are of the view that the appellant having claimed for pension after his actual date of superannuation, that was on 31.07.2008, the appellant is entitled to get pension and other benefits only from 01.08.2008. Considering his qualifying service i.e., 16 years 5 months and 10 days, the first respondent is directed to pass orders to that effect and give arrears from 01.08.2008 and other retirement benefits within a period of three months from the date of receipt of a copy of this order.

13. The Writ Appeal is disposed of accordingly. No costs.