
(2015) 02 MAD CK 0296

In the Madras High Court

Case No : Writ Petition(MD) No. 14026 of 2012 and M.P.(MD) Nos. 1 of 2012 and 2 of 2015

I. Rani

APPELLANT

Vs

The Secretary to the Govt. and Others

RESPONDENT

Date of Decision : 23-02-2015

Acts Referred:

Citation : (2015) 02 MAD CK 0296

Hon'ble Judges : V.M. Velumani, J.

Bench : Single Bench

Advocate : Veerakathiravan, for the Appellant; T.S. Mohamed Mohideen, Additional Govt. Pleader, Advocates for the Respondent

Judgement

V.M. Velumani, J.—This writ petition has been filed to call for the records relating to the impugned order passed by the first respondent in his proceedings No. 31731/S2/2012, dated 27.11.2012, quash the same and consequently, direct the respondents herein to pay the retirement benefits viz., Gratuity, Pension, Provident Fund, Salary arrears and all other amounts payable by the respondents to the petitioner forthwith for the services rendered by the petitioner from 20.07.1988 to 02.03.2012 together with 18% interest per annum.

2. Originally, the writ petition was filed to direct the respondents herein to pay the retirement benefits viz., Gratuity, Pension, Provident Fund, Salary Arrears and all other amounts payable by the respondents to the petitioner forthwith for the services rendered by the petitioner from 20.07.1988 to 02.03.2012 together with 18% interest per annum. By order, dated 23.02.2015, made in M.P.(MD) No. 1 of 2015, the amendment was ordered by incorporating the present relief.

3. The petitioner was appointed as Secondary Grade Teacher on 25.02.1987 and posted at Municipal Middle School, Rajampalayam, Mannargudi and subsequently, she was transferred to Thanjavur.

4. The petitioner fell ill frequently. Because of the serious displacement in the

spinal cord, she was forced to go on leave, when she was working as a Teacher. During the year 2004-2007, the petitioner could not attend the duty due to her family situation and also ill-health. Therefore, she was subjected to departmental proceedings by the respondents and a charge memo was issued. After following necessary procedures, the period of her absence from 24.06.2004 to 08.01.2007 was regularised by the respondents and treated as Loss of Pay.

5. Subsequently, the petitioner could not continue her service and absented for the period from 01.12.2007 to 11.10.2011 and was subjected to departmental proceedings and a punishment of stoppage of annual increment with cumulative effect for one year was imposed by the third respondent, in his proceedings in Na.Ka.No. 5595/B3/2009, dated 05.12.2011.

6. The petitioner has filed an appeal before the second respondent challenging the said order of punishment. Due to her family circumstances and ill-health, she submitted a representation for voluntary retirement from services on 14.10.2011 to the third respondent through proper channel. By the said representation, she has given 90 days notice. The third respondent after considering all the facts and Rules, by proceedings No. 5595/B1, dated 29.02.2012, accepted her request for voluntary retirement subject to audit objection if any and if any amounts payable to any of the Societies of the Department and getting No Objection Certificate from the authorities.

7. In pursuant to the order of the third respondent, the fourth respondent relieved the petitioner from duty on 02.03.2012 in the Municipal Middle School, Sowashtra Street, Thanjavur. The petitioner sent a representation to the respondents for settlement of all her retirement benefits, viz., provident fund, gratuity, pension, salary dues and other amounts due and payable by the respondents to her. The fifth respondent sent a communication stating that the petitioner has not put in required qualifying service either by age or by any method of service to offer voluntary retirement. The fifth respondent returned the proposals informing the respondents 2 to 4, to approach the first respondent for relaxation of the Rules pertaining to voluntary retirement in the petitioner's case as per Rule 56(3) of the Tamil Nadu Government Fundamental Rules [hereinafter called as "the Rules"]. The respondents have not taken any steps. According to the petitioner, as she has completed 23 years of uninterrupted service, she is entitled to five years of grace period. Therefore, she has completed 28 years of service. Under the circumstances, the petitioner has filed the present writ petition for the relief sought for.

8. The third respondent filed counter affidavit denying the various averments made by the petitioner. The third respondent in his counter affidavit has stated that after deducting the period on which, the petitioner was absent, the total qualifying service is only 17 years 2 months and 25 days. By mistake, she was permitted to go on voluntary retirement. Now, the issue is referred to the second respondent for appropriate further orders. Further, the petitioner's appeal against order of punishment imposed by the third respondent, is pending before

the second respondent. At the time of arguments, the learned Additional Government Pleader appearing for the respondents 1 to 4 contended that the proposal for relaxation of Rule 56(3) of the Rules was rejected by the first respondent on 27.11.2012. The petitioner did not challenge the said order immediately. Only, now in the year 2015, by way of amendment, the petitioner is challenging the said order. The petitioner is not entitled to the present relief due to delay and laches. Therefore, he prayed for dismissal of the writ petition.

9. The fifth respondent filed counter affidavit stating that the petitioner has not put in required period of qualifying service or completed 50 years of age. Therefore, the proposals for payment of terminal benefits and pension returned for getting relaxation from the first respondent and relaxing Rule 56(3) of the Rules condoning the shortfall of the petitioner's qualifying service of 2 years 6 months and 21 days. The proposals were sent to the third respondent for relaxation of Rule 56(3) of the Rules with regard to voluntary retirement or permit her to join duty, if her order of voluntary retirement is not ratified.

10. Originally, the petitioner has filed the writ petition seeking a direction to the respondents herein to pay the retirement benefits viz., Gratuity, Pension Provident Fund, Salary Arrears and all other amounts payable by the respondents to the petitioner forthwith for the services rendered by the petitioner from 20.07.1988 till 02.03.2012 together with 18 per cent interest per annum. The first respondent, by the impugned order, dated 27.11.2012, bearing Letter No. 31731/S2/12, rejected the request for relaxation of Rule 56(3) of the Rules. The petitioner filed M.P. (MD) No. 1 of 2015 to amend the prayer to quash the order of the first respondent, dated 27.11.2012. By order dated 23.02.2015, the said petition was ordered.

11. As per the Rules, a person is entitled to go on voluntary retirement, if he/she had completed 50 years or put in 20 years of service. The petitioner has not satisfied this condition. By mistake, the third respondent has passed an order allowing the petitioner to go on voluntary retirement. The petitioner herself has made a representation, dated 29.08.2012 and 03.09.2012 to the second respondent and the first respondent respectively to permit her to work, if the order permitting her to go on voluntary retirement, is rejected.

12. The first respondent has rejected the request for relaxation of the Rule 56(3) of the Rules and did not ratify the order permitting the petitioner to go on voluntary retirement. But, no order has been passed permitting her to join duty and work. The first respondent has rejected the proposal for relaxation of the Rule 56(3) of the Rules. In that case, the first respondent ought to have passed an order permitting the petitioner to join duty and direct the respondents 2 to 4 to give her posting. No order has been passed giving posting and permitting her to join duty.

13. The first respondent passed impugned order, dated 27.11.2012. The petitioner has filed the petition for amendment only in the year 2015, challenging

the order of the first respondent rejecting the proposal for relaxation of Rule 56(3) of the Rules. The petitioner has not given any reason for the delay.

14. In the circumstances, the petitioner is not entitled to the order as prayed for in the writ petition. The respondents are directed to give posting and permit the petitioner to join duty within four weeks from the date of receipt of a copy of this order. The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

15. The learned counsel for the petitioner submitted that the petitioner may be granted continuity of service from the date of reliving the petitioner on voluntary retirement till posting order and permitting the petitioner to join duty. The learned counsel for the petitioner also submitted that the petitioner is willing to give up all the monetary benefits for this period.

16. In view of this submission, the petitioner is directed to give a representation to the respondents to this effect. The respondents are directed to consider the same sympathetically.