

(1989) 10 KL CK 0027
In the High Court Of Kerala
Case No : O.P. No. 2341 of 1985

P. Damodaran Pillai

APPELLANT

Vs

The Kerala Water and Waste Water Authority and Others

RESPONDENT

Date of Decision : 12-10-1989

Acts Referred:

Constitution of India, 1950 — Article 148, 309
Kerala Service Pension Rules — Rule 13, 57

Citation : (1989) 10 KL CK 0027

Hon'ble Judges : K.A. Nayar, J

Bench : Single Bench

Advocate : B. Gopakumar and Chincy Gopakumar, for the Appellant;
Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.A. Nayar, J.—This Original Petition is for the issue of a writ of mandamus or other direction or order compelling the Respondents to see that all the service benefits including minimum pension and gratuity are disbursed to the Petitioner without any further delay.

2. The Petitioner joined the service of the erstwhile Public Health Engineering Department as C.L.R. worker on 20th February 1967. He was appointed as N.M.R. worker on 20th . March 1973. By a registered letter dated 16th July 1982 of the second Respondent the Petitioner was directed to retire from service with effect from 15th July 1982. The Petitioner was originally in the service of the 4th Respondent. With effect from 1st April 1984 the assets and liabilities of the erstwhile Public Health Engineering Department were vested in the first Respondent, the Kerala Water and Waste Water Authority by virtue of the provisions contained in the Kerala Water Supply and Sewerage Act 14 of 1986 and the service of the employees under the erstwhile Public Health Engineering Department were also taken over by the first Respondent. It is the admitted case in the Original Petition that with effect from 1st July 1969 Part III Pension Rules

of Kerala Service Rules are made applicable to the Petitioner and other employees of the first Respondent. Therefore the Petitioner requested the first Respondent to disburse the amount of pension, gratuity etc. by Exts. P-1 and P-2 representations. But there was no reply to the same. Hence the Petitioner filed this Original Petition.

3. A counter-affidavit has been filed on behalf of Respondents 1 to 3. It is stated in the counter-affidavit that the Petitioner was appointed as C.L.R. worker on 20th February 1967 and was absorbed into N.M R. category with effect from 20th March 1973. Even though the Petitioner was due to retire on 28th February 1982 he was allowed to continue in service till 15th July 1982 by an oversight. The admitted case is that the Petitioner has been appointed as N.M.R. on 20th March 1973 and retired on 15th July 1982. If that be so he has 9 years 3 months and 25 days of service to his credit. In Rule 57, Part III, K.S. Rs. it is provided that for the purposes of minimum service for pension, fraction of less than a half year, if any, in the qualifying service also will be rounded to the next completed year, namely, 10 years. Therefore, under the said proviso 9 years 3 months and 25 days will have to be rounded of to 10 years and on that short ground the Petitioner is entitled to pension.

4. In the counter-affidavit, it is stated that the Petitioner was due to retire on 28th February 1982 but by an oversight he was allowed to continue till 15th July 1982 and therefore the period of service from 1st March 1982 to 15th July 1982 cannot be counted for pension. I do not agree.

5. The notion that pension is a bounty or gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right has been given a sound burial by the Supreme Court. In D.S. Nakara and Others Vs. Union of India (UOI), , the Supreme Court held:

From the discussion three things emerge: (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 rules which are statutory in character because they are exacted in exercise of powers conferred by the proviso to Article 309 and Clause (5) of Article 148 of the Constitution, (ii) that the pension is not an ex-gratia payment but it is a payment for the past service rendered; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the heyday of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the average emoluments drawn during last three years of service reduced to ten months under liberalised pension scheme. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to retirement, that is, since the cessation of the contract of service and that, it can be reduced or withdrawn as a disciplinary measure.

6. The provision for pension is a social security measure and in interpreting such

provision ""logomachy semantic luxuries" have no part to play. We have been told by the Supreme Court that law relating to social and economic justice must be interpreted and applied in the perspective of Part IV of the Constitution and the benefit of reasonable doubt on law and facts, must go to the weaker section of the society. In The K.C.P. Employees" Association, Madras Vs. The Management of K.C.P. Ltd., Madras and Others, the Supreme Court held:

In industrial law, interpreted and applied in the perspective of Part IV of the Constitution, the benefit of reasonable doubt on law and facts, if there be such doubt, must go to the weaker section, labour.

This principle of social justice is not confined to industrial adjudication alone. The principle of social justice is a living concept giving sustenance to rule of law and is not confined to industrial adjudication alone.

7. Admittedly the Petitioner worked as N.M.R. worker from 20th March 1973 to 15th July 1982 without break and a person like that is entitled to get pension calculated according to law taking into account the entire period he worked as N.M.R. worker. There is no justification for splitting the service into two and taking the service after 28th February 1982 as service not eligible for pension.

8. The Petitioner has a case that he had worked as C.L.R. worker with effect from 20th February 1967 and by virtue of Rule 15, Part III, K.S.Rs. a work establishment employee absorbed in regular establishment will be allowed to count 50 per cent of the work establishment service for purposes of pension. Whether a C.L.R. worker will be considered as work establishment employee is a question which has not been raised in this case. So it is not necessary for me to pronounce upon that as I am convinced that the service put in as N.M.R. worker from 20th March 1973 to 15th July 1982 will have to be counted as a whole and if so counted the Petitioner is entitled to minimum pension considering that he is deemed to have put in 10 years of service. It may be the Petitioner would have been given service gratuity and D.C.R.G. on the basis that he is not eligible for pension and if any amount has been paid on that account the same will be adjusted against the gratuity and pension payable to the Petitioner.

9. The Respondents are, therefore, directed to see that all service benefits including minimum pension and gratuity are disbursed to the Petitioner according to law on the basis that he has completed 10 years of qualifying service in the post of N.M.R. worker.

The Original Petition is allowed as above. There will be no order as to costs.

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