
(2014) 06 KL CK 0142
In the High Court Of Kerala
Case No : O.P. No. 4611 of 2002

Ramesh, C.V.

APPELLANT

Vs

Director of Agriculture

RESPONDENT

Date of Decision : 26-06-2014

Acts Referred:

Constitution of India, 1950 — Article 19(1), 19(1)(f), 300A, 31(1)
Rubber Act, 1947 — Section 25

Citation : (2014) 3 ILR 721 : (2014) 3 KLT 965

Hon'ble Judges : Alexander Thomas, J

Bench : Single Bench

Advocate : S.P. Aravindakshan Pillay, N. Santha and Peter Jose Christo, Advocate for the Appellant; Joseph Markose, Senior Advocate and Rinny Stephen Chamaparambil, Senior Government Pleader, Advocate for the Respondent

Judgement

Alexander Thomas, J.—The issue raised in this Original Petition is as to whether the petitioner is entitled to get pro rata retirement benefits for the service having a period of 7 years, 6 months and 25 days rendered by him in the 2nd respondent-Rubber Board ("respondent Board" for short), pursuant to his subsequent appointment in the Agriculture Department of the Government of Kerala. The facts necessary for the disposal of this matter are as follows:

2. The petitioner joined the service of the respondent Board on 30-10-1991 as Field Assistant. Later he was selected and appointed in the officer cadre as Junior Field Officer and was posted on 27-10-1993. While so, the Kerala Public Service Commission issued a selection notification in December, 1993 inviting applications from eligible candidates for selection and appointment as Agricultural Officer Grade II in the Department of Agriculture, Government of Kerala. It is the case of the petitioner that he came to know of this selection notification only just prior to the last date for submission of the applications and therefore, he was constrained to submit the application directly to the Public Service Commission, without prior intimate to his employer. The petitioner later submitted Ext. P-1 representation dated 19-11-1994 to the respondent Board to

ratify his submission of the application. He also later applied for casual leave before the Board authorities intimating that the same is required in connection with his appearance in the written examination to be conducted by the Service Commission for the said selection process and the respondent Board had granted such leave from 5-1-1995 to 7-1-1995. The petitioner also submitted application dated 5-12-1995 requesting the respondent Board to issue him conduct and experience certificate so as to submit the same before the Public Service Commission authorities at the time of interview and the 2nd respondent issued Ext. P-2 certificate dated 15-12-1995 wherein it is specifically certified that the same is issued for appearing for the interview for the post of Agricultural Officer Grade II in the Department of Agriculture, Government of Kerala. The petitioner had also applied for casual leave from the respondent Board authorities to enable his appearance in the interview, that was conducted by the Service Commission and such leave was also granted by the respondent Board in order to enable him to attend the interview. The Service Commission issued the advice memo dated 16-3-1999 to the petitioner, whereby the Commission advised him for appointment to the said post under the Government of Kerala. According to the petitioner, immediately on receipt of the advice memo dated 16-3-1999, he had submitted Ext. P-3 dated 31-3-1999 informing the respondent Board that he has been advised for appointment as Agricultural Officer in the Government of Kerala and that he may be relieved from duties as Junior Field Officer on receipt of the posting order from the Agriculture Department and that this may be considered as advance intimation for technical resignation. Later, when the petitioner secured appointment order from the Agriculture Department of the Government of Kerala, he submitted Ext. P-4 representation dated 14-5-1999 informing the Board authorities that he has been appointed as Agricultural Officer in the Department of Agriculture, Government of Kerala, and that he has been instructed to report for duty by them on or before 26-5-1999 and that he may be relieved from the service of the Board on 25-5-1999 so as to enable him to join for duty in the new post on 26-5-1999. The petitioner also submitted Ext. R-2(b) dated 20-5-1999 to the respondent Board authorities for the same purpose. Pursuant to this, the respondent Board issued Ext. R-2(c) dated 24-5-1999 informing him that his resignation as Junior Field Officer has been accepted and that he may be relieved from the service of the respondent Board with effect from A.N. of 25-5-1999. Accordingly, the petitioner joined the post under the Agriculture Department of Government of Kerala on 26-5-1999.

3. As the petitioner had seven years, six months and 25 days of service under the respondent Board, he submitted Ext. P-5 dated 6-7-1999 requesting the respondent Board that the service details and service gratuity may be forwarded to the Principal Agricultural Officer, Agriculture Department, Government of Kerala, Kozhikode, for counting his service of seven years six months and 25 days in the service under the State Government Department. This was rejected by Ext. P-6 dated 19-10-2000 issued by the respondent Board authorities on the ground that since his application for the post of Agricultural Officer was not

through proper channel, he is not eligible for any pro-rata retirement benefits from the respondent Board as per the rules. Aggrieved by this, the petitioner submitted Ext. P-7 representation dated 8-11-2000 before the higher authorities of the respondent Board, which was rejected vide Ext. P-8 dated 8-6-2001 issued by the respondent Board reiterating the same reason as in Ext. P-6.

4. It is in the conspectus of these facts and circumstances, that the petitioner has approached this Court by filing this Original Petition with the following prayers:

"(i) to issue a writ of certiorari quashing Exhibit P-6 letter issued by the Board to the Principal Agriculture Officer communicated to the petitioner dated 31-10-2000 and Exhibit P-8 letter of the Board dated 8-6-2001 rejecting the application of the petitioner for granting pro-rata retirement benefits and quash the same;

(ii) to declare that the petitioner is entitled to get pro-rata retirement benefits for the service rendered by him in the 2nd respondent, Rubber Board;

(iii) to issue a writ of mandamus or any other appropriate writ or order directing the Rubber Board to grant pro-rata retirement benefits due to the petitioner and to remit the amounts due to the petitioner towards pro-rata benefits to respondent Nos. 1 and 3."

5. The main contention of the petitioner is that the respondent Board is estopped from contending that he is not eligible for pro-rata retirement benefits after having permitted him to participate in the selection process through their repeated conducts and after relieving him from the service of the Board for joining duty as Agricultural Officer in the Government of Kerala. In this regard, it is urged that the petitioner would not have joined duty in the service under the Government of Kerala, if the respondent Board had informed him that his pro-rata pensionary benefits are liable to forfeited on account of his not having submitted initial application to the Kerala Public Service Commission through the channel of the respondent Board. It is also contended that the respondent Board has not issued any orders or circulars to the effect that the submission of the application to the post notified by the Kerala Public Service Commission or any such outside agency should be made only through proper channel and, therefore, to deny a valuable property right like pro-rata pensionary benefits on the sole ground of non-submission of his application to the Kerala Public Service Commission through the proper channel of the respondent Board, is highly unreasonable and arbitrary. It is further contended that by virtue of the powers vested under Section 25 of the Rubber Act, the respondent Board has framed the Rubber Board Employees' Conduct Rules and Rule 15 of the said Conduct Rules specifically says that no employee shall, except with the previous sanction of the Chairman, undertake any employment. That since the petitioner was relieved from the service of the Board for joining duty as Agricultural Officer in the Government of Kerala, by the permission granted by the Chairman of the Board

as per Ext. R-2(c) dated 24-5-1999, the rigor of this specific prescription, which dominantly governs the field, has been satisfied and therefore, the denial of pro-rata pensionary benefits is based on extraneous and irrelevant considerations. It is also contended that the decision of the Board rejecting the application of the petitioner for pro rata benefits was without hearing the petitioner.

6. The respondent Board has resisted the contentions and prayers of the petitioner by filing a counter-affidavit dated 2-11-2004. The main contentions urged by them to resist the pleas and prayers of the petitioner are based on the applicability of Rule 26(2) of the CCS Pension Rules and the related aspects, as stated in paragraphs 4 and 5 of the counter-affidavit. It is stated in the counter-affidavit, in paragraphs 6 and 8 respectively, that the respondent Board has not received either Ext. P-1 representation dated 19-11-1994 or Ext. P-3 representation dated 31-3-1999. Certain other auxiliary arguments and contentions are also raised by them. The details in this regard will be dealt with in the later part of this judgment.

7. Heard Sri Aranvindakshan Pillai, the learned counsel for the petitioner, the learned Standing Counsel for the 2nd respondent Board and the learned Government Pleader appearing for respondents 1 and 3.

8. It is stated by the 2nd respondent Board that the service conditions of the employees of the Rubber Board are governed by the Rubber Board (Service) Rules, 1961, the Rubber Board Service (Classification, Control and Appeal) Rules, 1961 and the Rubber Board Employees' Conduct Rules. That under Rule 12 of the Rubber Board (Service) Rules, 1961, the conditions of service of the employees of the Rubber Board in respect of matters for which no provision is made in those Rules, shall be same as are for the time being applicable to the officers of the Government of India of the corresponding category and by virtue of the said Rule 12, the matters relating to the pension of the Board's employees are governed by the Central Civil Service (Pension) Rules, 1972 and the orders issued by the Government of India on the subject. Rule 26(2) of the CCS (Pension) Rules, 1972 reads as follows:

"R. 26. Forfeiture of service on resignation.--(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.

(2) 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."

Since there are explicit statutory provisions governing the field, those would predominantly stand on a much higher pedestal than the executive instructions that may be issued by the Government of India. So, in view of the specific statutory provision in Rule 26(2) of the CCS (Pension) Rules, a resignation shall not entitle 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 his service qualifies. It is the sheet anchor of the case put forth by the respondent Board that Rule 26(2) is the statutory rule that governs the field in the facts and circumstances of this particular case. So, if the requirements of the jurisdictional facts stipulated in Rule 26(2) are satisfied, then the petitioner is entitled to succeed in this case. So the primary question to be answered in this case is as to whether the resignation of the petitioner has been submitted to take up, with proper permission, another appointment, as envisaged in Rule 26(2).

9. It is by now well-settled by a long line of decisions of the Supreme Court and various High Courts that as in *D.S. Nakara and Others Vs. Union of India (UOI)*, , *Deokinandan Prasad Vs. The State of Bihar and Others*, and *State of Punjab and Another Vs. Iqbal Singh*, , that right to pension is no longer a bounty or one which is dependent on the gratuitous act of the employer, but is a valuable property right of the employee concerned. In *D.S. Nakara and Others Vs. Union of India (UOI)*, , para 20, the Apex Court held that the earlier approach of treating pensionary benefits as dependent on the sweet will or grace of the employer and not treatable as right and therefore no enforceable right to such benefits etc. has been swept under the carpet by the decision of the Constitution Bench of the Apex Court in *Deokinandan Prasad Vs. The State of Bihar and Others*, and by the subsequent rulings as in *State of Punjab and Another Vs. Iqbal Singh*, . In *Deoki Nandan Prasad's* case (supra) the Constitution Bench held in paragraphs 29 to 35 that right to receive pensionary benefits by a Government servant is right to property so as to attract the then existing provisions of Articles 19(1) and 31(1) of the Constitution of India and that the State has no power to withhold the same merely by an executive order. In the case *State of West Bengal Vs. Haresh C. Banerjee and Others*, , the Apex Court later held that even after the repeal of Articles 19(1)(f) and 31(1) of the Constitution, as per the Forty-Fourth Constitutional Amendment Act, 1978, with effect from 20-6-1979, though the right to property is no longer a fundamental right in Part III of the Constitution, the same is still a constitutional right as provided in Article 300A of the Constitution and that since the right to pensionary benefits is a property right conferred as per Article 300A of the Constitution, the same can be deprived only with authority of law. It is now well-settled that the right to such property can be deprived only by a statutory prescription and not on the basis of executive orders. In *State of Jharkhand and Others Vs. Jitendra Kumar Srivastava and Another*, , the Apex Court held that the right to pensionary benefits cannot be deprived on the basis of executive orders, as the same are not having statutory character and therefore the executive orders cannot be termed as "law" within the meaning of Article 300A. On this basis, the Apex Court held therein that on the basis of the administrative circulars impugned therein, which has no force of law, the State cannot withhold or deprive of pensionary benefits. So it is now well-settled that right to pensionary benefits being a property right can be deprived of lawfully only on the basis of statutory prescription and by the exercise of power under such statutory prescription,

whereunder such exercise of power should also be reasonable, fair and just. Any other process, could amount to permitting deprivation of property right conferred by Art. 300A of the Constitution in a manner, which is not recognised by constitutional jurisprudence. It is in the background of this legal framework that the aforementioned question posed herein should be answered. It is not in dispute that the petitioner had duly informed the respondent Board about his appearance in the written test, interview etc., at which point of time he had duly submitted leave applications informing about the necessity to take leave due to him to participate in the selection process and those leave applications were duly granted by the respondent Board. Even assuming that Exts. P-1 and P-3 were not received by the respondent Board as averred by them, it is indisputable that the factum that the petitioner had applied for the appointment under the Government of Kerala was fully within the knowledge and cognizance of the respondent Board authorities and they have not raised any objections, thereto.

10. The petitioner had duly submitted Ext. P-4 dated 14-5-1999 and Ext. R-2(b) dated 20-5-1999 before the Board authorities immediately after he has acquired the appointment order pursuant to the advise granted by the Kerala Public Service Commission, informing and requesting the Board authorities that he has been offered the aforesaid appointment and that he may be relieved from the service of the Board so as to enable him to join duty in the post under the Government of Kerala. This has been acceded to by the Board as per Ext. R-2(c) dated 24-5-1999 whereunder it is informed that the resignation of the petitioner has been accepted by the Chairman of the respondent Board who is the competent authority and that accordingly he could be relieved from the service of the Board with effect from 25-5-1999. Viewing the right to receive pensionary benefits as the property right conferred under Article 300A of the Constitution, this court has no hesitation to hold that the above said admitted and uncontroverted facts and circumstances clearly show that the petitioner had submitted his resignation to take up, with proper permission, another appointment, as envisaged in Rule 26(2). Viewing the aspects from the angle of the valuable property right conferred by the Constitution, the action of the employer in attempting to deprive such property rights, should be subject to strict scrutiny and there can be no doubt that what is required under Rule 26(2) is that only the incumbent should have submitted the resignation, to take up, with proper permission from the competent authority, another appointment as stipulated in the Rule. The Rule cannot be understood from its plain language as to require that even the application for the appointment in question should have been submitted with only after securing prior permission from the employer. Even if such requirements are stipulated by way of administrative instruction, the deviance from the prescription in such administrative instructions, cannot be given such weighty consideration as to effectuate the deprivation of the valuable right to property conferred by the Constitution, on hyper technical grounds. Such deviances of administrative instructions, no doubt, may have relevance on the relationship between the employer and employee at the initial stage after the

submission of the application and could even be the basis for appropriate disciplinary action that may be warranted in the facts and circumstances of such cases. But admittedly, no such action or objection has ever been raised by the Board against the petitioner for not having submitted the application through the Board. But such administrative instructions cannot be raised to the pedestal of the situation amounting to violation of a statutory prescription so as to justify the forfeiture of a constitutionally conferred right of property. The interpretative process that should be adhered to by a Constitutional Court must be from a perspective which recognizes that the deprivation of a constitutionally conferred right of property can only be on the basis of a statutory prescription and also on the basis of a reasonable and fair exercise of power conferred under such statutory prescription. Viewed from this perspective, this court has no doubt to hold that the requirements of Rule 26(2) have been fulfilled in this case, as far as the petitioner's case is concerned. So the contention of the respondent Board that the requirement stated to be stipulated by administrative instructions to have prior permission even before submitting the application for the selection process in question should be equated with the same weight as the prescription in the statutory provision in Rule 26(2) which insists only about the submission of resignation with proper permission to take up another appointment, cannot be countenanced.

11. It is also contended by the learned Standing Counsel for the respondent Board that in view of the Government of India Executive Instructions given as decision No. 1 under Rule 26 of the Central Civil Services Pension Rules which is appended on pages 6 and 7 of the counter-affidavit would apply in this case. The executive instructions of the Government of India, appended under Rule 26 of the CCS (Pension) Rules, read as follows:

"GOVERNMENT OF INDIA'S DECISIONS

(1) When resignation a technical formality and when it subsists.--A Government servant intending to apply for a post or posts outside his parent office/department under the Government of India should have his application forwarded through the competent authority under whom he was serving at the time of applying for the post. Such an authority should either forward the application or withhold it according as the exigencies of public service may indicate but it should not forward the application conditionally, for example, that in the event of the applicant coming out successful, he will be required to resign his post before taking up the new one. Once the application has been forwarded unconditionally and the person concerned is offered the post applied for, he should be relieved of his duties to join the new post as a matter of course and the question of his resigning the post held by him in such circumstances should not arise. Accordingly, the amended article is intended to cover the cases where even though the applications were forwarded by the competent authority, the applicant had been asked for one reason or the other to resign his post before taking up the new one. The above position holds good whether the Government

servant held the post in permanent or temporary capacity, before resigning the post.

Situations may arise where the application of a Government servant was not forwarded and the Government servant resigned his appointment of his own volition with a view to his taking up the new post or where it was not possible to forward his application in the public interest but the Government servant had volunteered to resign his post or where the conditions of service in an office demand as a matter of policy that the Government servant should resign his post in the event of his taking up another post outside. In all such cases, it has been held that resignation of public service will subsist and entail forfeiture of past service.

It has been decided that in cases where Government servants apply for posts in the same or other departments through proper channel and on selection, they are asked to resign the previous posts for administrative reasons, the benefit of past service may, if otherwise admissible under rules, be given for purposes of fixation of pay in the new post treating the resignation as a "technical formality". The pay in such cases may be fixed under F.R. 27.

[G.I. M.F. Letter No. 35 (15)-E. V/60, dated the 21st September, 1960, to the Secretary to the Government of Orissa, Finance Department, Bhubaneshwar and G.I., M.F., O.M. No. 3379-E, III (b)/65 dated the 17th June, 1965.]"

(emphasis supplied)

A mere reading of para 1 of the above said administrative instructions clearly indicate that those instructions are stipulating that the authority, on receipt of the application of the candidate, should either forward the application or withhold it, but should not forward the same conditionally and more importantly it stipulates that once the application has been forwarded unconditionally and the person concerned is offered the post applied for, he should be relieved of his duties to join the new post, as a matter of course, and the question of his resigning the post held by him should not then arise. So, the above administrative instructions mainly stipulate as to the circumstances under which the applicant need not even resign for taking up the new assignment. So, the said administrative instructions cannot be said to be dealing with the subject-matter of Rule 26(2) of the CCS (Pension) Rules, which on the contrary, deals with the aspects wherein there is resignation of the incumbent and where such resignation need not result in forfeiture of past service for pensionary purposes. So the requirements laid down in the above said administrative instructions are not relevant for deciding whether the requirements of the statutory provisions in Rule 26(2) of the CCS (Pension) Rules are satisfied in a particular case for claiming non-forfeiture of past service on resignation.

12. Even otherwise, the contentions of the respondent Board that the failure of the incumbent to fulfil the requirements in the above said administrative instructions, will lead to deprivation of the right under Rule 26(2) is devoid of any

merit, for reasons more than one.

13. Firstly, it is admittedly an Executive Instructions of the Government of India and it has to stand on a much lower pedestal compared to statutory prescription in Rule 26(2) as early held herein above. Secondly it is really doubtful whether the same would apply to in the case of employees like Rubber Board. As a plain reading of the same shows that it governs the situation of inter departmental appointment process. Even assuming it be so, the specific contention of the petitioner is that for situation of this nature, there is explicit and special provision in the statutory rules application for the Rubber Board employees. It is urged by the petitioner in ground (g) that the Rubber Board in exercise of the powers vested under Sec. 25 of the Rubber Act has framed the Rubber Board Employees' Conduct Rules and Rule 15 thereof specifically mandates that no employees shall except with the previous sanction of the Chairman undertake any employment. The prescription of this nature is not denied by the second respondent in their counter-affidavit but what stated is that the provision in Rule 26 of the CCS Pension Rules would weigh over this prescription in Rule 15. This court is of the considered opinion that there is absolutely no conflict between the statutory prescription in Rule 26(2) of the CCS Pension Rules and Rule 15 of the Rubber Board Employees' Conduct Rules. The above said Rule 15 applies in the special field of other employment that may be undertaken by an existing employee of the Rubber Board. Therefore, the prescription in Rule 15 should have predominance over the stipulation in the above said Government of India administrative instructions even if it is assumed that such executive instructions applied to the Rubber Board. So what is mandated in Rule 15 of the Rubber Board Employees Conduct Rules is that no employee shall, except with the previous sanction of the Chairman, undertake any employment. This means that for taking up any employment other than employment in the Rubber Board, the existing employee of the Rubber Board should necessarily secure the previous permission of the Chairman. The requirement in Rule 15 has been fully satisfied with the petitioner by his submission of the request as per Exts. P-4 and R-2(b) which has been granted as per Ext. R-2(c). Therefore, even if it is assumed that the aforementioned Government of India Executive Instructions relied upon by the respondent Board applies, the same will be subservient to the statutory prescription in Rule 15 as far as the specific aspect of the question of taking up other employment by an existing employee of the Rubber Board is concerned. The deviance from the requirement in the executive instructions insisting for prior permission before submitting application could at best be the basis for appropriate disciplinary action.

14. It is also the specific case of the petitioner as urged in ground (D) that the respondent Board has not issued any orders or circulars to the effect that the submission of application for appointment elsewhere should be made only through proper channel of the respondent Board.

15. It is also to be noted that this Court in the case of Varghese Vs. State of

Kerala, , has dealt with a case considering the validity of Rule 29(a) of Kerala Service Rules Part III, which is almost *pari materia* to Rule 26(1) of the CCS (Pension) Rules dealing with forfeiture of past service benefits on account of resignation. This court held that such prescription in Rule 29(a) of Part III KSR to the extent it denies pension merely on account of resignation to persons other than those who resign on account of pending or intended disciplinary proceedings would be unconstitutional and illegal. Apart from that, the right to property conferred by Art. 300A of the Constitution can be deprived only on the basis of a reasonable and fair exercise of power conferred through a statutory prescription.

16. Viewed from all these angles, the irresistible conclusion is that the necessary jurisdictional facts laid in Rule 26(2) of the CCS (Pension) Rules has been fully satisfied in the facts and circumstances of this case. The question as to whether the exercise of power by the respondent Board in the instant case for deprivation of the property right of the petitioner has been reasonable and fair also assumes great importance. The respondent Board has been informed by the petitioner about his participation in the selection process at least from the stage of written examination and interview and at all stages till the culmination of the selection process. That this was fully within their knowledge and cognizance, is a matter beyond the shadow of doubt. If the respondent Board had so sincerely felt that the petitioner was liable to face forfeiture of pro rata pensionary benefits on account of his conduct in not having submitted his application through proper channel, then the rudimentary and elementary aspects of fairness and reasonableness expected from any employer leave alone a model employer like a public sector undertaking, is that the employee should have been told in all clear terms at least when he submitted Exts. P-4 and R-2(b) that it would have resulted in a situation of forfeiture of pro rata pensionary benefits as per the considered view of the employer. In such a situation the employee would have pondered about the consequence of his proposed resignation. What was offered by him in Exts. P-4 and R-2(b) was only to facilitate his relief from the present employer to take up employment under the Government of Kerala. In this case, he should have weighed the pros and cons of the case and he should have been given the reasonable opportunity to decide whether or not to pursue with this intention to join new service or to stick on of the continuity with the present employer. This is a matter of great importance as far as the fate of employees are concerned. The petitioner had about more than 7 1/2 years service under the Board in May 1999 when he was offered the appointment by the Government of Kerala. He was then aged about 32 years. If the considered views of the employer or of the respondent Board regarding the forfeiture of pro rata pensionary benefits were informed to the petitioner at least then, he would have a chance to weigh with the option of either continuing with the respondent Board in which case he could have sought a further service up to the age of 60 with a long qualifying pensionable service to the tune of about 35 years of service and better prospects like non-transferability, higher pay revisions, higher retirement benefits etc. He could weigh this with the alternate option of losing 7 1/2 years

of service and having only about 23 years of qualifying years in service under the Government of Kerala where the retirement age is upto 55/56 years. If this basic fairness is not shown by the employer to the employee, the impugned action would certainly be vitiated by unfairness and unreasonableness. Going by the conduct of the 2nd respondent this Court has no hesitation to hold that the petitioner was made to believe that his request in Exts. P-4 and R-2(b) have been substantially acceded in Ext. R-2(c). There is no indication in Ext. R-2(c) to the contra. In the facts and circumstances of this case, this Court has no hesitation to hold that the respondent Board, by its conduct, is estopped from taking the stand as in the impugned order. Therefore, viewed from the aforesaid constitutional interpretative process regarding the deprivation of a constitutionally conferred right of property, it can only be held that since there were no other conditions attached to Ext. R-2(c), the order in Ext. R-2(c) acceding to his resignation by the competent authority and ordering his relief from service with effect from requested date is an action acceding to his request in Exts. P-4 and R-2 (b) to relieve him from the service so as to enable him to join for duty with the new post. This implies that the petitioner has been given permission by the competent authority to take up employment with another employer as envisaged in the statutory prescription in Rule 26(2) and therefore, the requirement stipulated in Rule 26(2) is fully satisfied.

17. In the light of the above said situation, this court is of the considered opinion that the rejection of the request of the petitioner for grant of pro rata pension contribution, as conveyed through the impugned communications as per Exts. P-6 and P-8 are ultra vires and unenforceable. Accordingly, the impugned decisions in Exts. P-6 and P-8 are set aside. It is declared that the petitioner is entitled to get pro rata retirement benefits for the service rendered by him in the second respondent Board. Accordingly, it is directed that the second respondent Board shall grant pro rata retirement benefits due to the petitioner and remit the amount due in this regard due to the petitioner in respect of the above said benefits to respondents 1 and 3. This shall be done without much delay and at any rate within a period of two months from the date of production of a certified copy of this judgment.

O.P. is allowed as stated above. However, there will be no orders as to pass.