

(2011) 04 MAD CK 0471

In the Madras High Court

Case No : Writ Petition No. 8134 of 2011 and M.P. No's. 1 and 2 of 2011

S. Dhanakotti Gounder

APPELLANT

Vs

The Principal Conservator of Forests, The District Forest
Officer and The Principal Account General

RESPONDENT

Date of Decision : 19-04-2011

Acts Referred:

Constitution of India, 1950 — Article 14
Tamil Nadu Pension Rules, 1978 — Rule 11(2), 25

Citation : (2011) 04 MAD CK 0471

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : R. Singaravelan, for the Appellant; K. Sathish, G.A., (Forest), for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—The prayer in the writ petition is to quash the order of the second Respondent dated 11.03.2011 and consequently direct the first Respondent to pay the monthly pension, commutation of pension and pension arrears of the monthly pension, surrender leave salary and other monetary and service benefits to the Petitioner as available to the cadre of Forest Watcher by taking into account half of the service rendered by him as Plot Watcher from 1976 to 23.03.2003 along with his service as Forest Watcher from 24.03.2003 till the date of his superannuation on 30.04.2010 with effect from 01.05.2010 with 18% interest.

2. When the writ petition was posted for admission on 30.03.2011, the learned Government Advocate (Forest) was directed to find out whether the issue raised in this writ petition is covered by my earlier order made in W.P. No. 25293 of 2010, dated 30.11.2010. Today, the learned Government Advocate submitted that the issue is partly covered by the said order, however the only difference is that there is 13 days break in service of the Petitioner herein. The learned

Counsel appearing for the Petitioner submitted that in so far as the Petitioner is concerned, if the alleged break in service of 13 days is condoned, as the said break has occurred due to his posting at Ooty, the Petitioner will get all the benefits.

3. The case of the Petitioner who is a physically handicapped person is that he was initially appointed as Plot Watcher in the Forest Department even according to the Department from 03.02.1978 and he was serving in the said post on consolidated pay in Thiruvannamalai Division up to 12.03.2003. The Government passed a G.O in G.O. Ms. No. 64, dated 08.03.1999 based on which a State wide seniority list was prepared as per the initial date of joining service as Plot Watcher/Social Forestry Workers for the purpose of appointing them as Forest Watcher as and when vacancies arise in the said post. Based on the said seniority list, the services of the Petitioner was regularized and he was posted as Forest Mali under the control of the second Respondent by an order dated 24.03.2003. The Petitioner served as Forest Mali, Udagai South Bench from 24.03.2003 till he reached the age of superannuation on 30.04.2010. Since the Petitioner has put in less than ten years of regular/time scale service, he was not conferred with pensionary benefits.

4. As the Petitioner was not granted pensionary benefits under the Tamil Nadu Pension Rules, 1978 on the ground that he was not having ten years of pensionable service as the Respondents have treated Petitioner's service of 25 years on consolidated wage basis as non-pensionable service, the Petitioner filed a writ petition before this Court in W.P. No. 29990/2010 seeking for a writ of mandamus directing the Respondents to pay the monthly pension, commutation of pension and pension arrears of the monthly pension as available to the Forest Watcher cadre by taking into account half of the service rendered as Plot Watcher from 03.02.1978 to 23.03.2003 along with the service as Forest Watcher from 24.03.2003 till the date of superannuation of the Petitioner on 30.04.2010 with effect from 01.05.2010 with 18% interest. This Court by order dated 29.12.2010 has observed as follows:

5. Considering the submissions of both sides and also considering the limited prayer sought for in this writ petition and in the light of the representation made by the Petitioner on 01.12.2010, this Court is constrained to direct the first Respondent to give the benefit of G.O.(D) No. 332, E&F (F.2) Department, dated 19.11.2008 in respect of the Petitioner herein as it was given in respect of one V. Murugan, a similarly placed officer, after due approval from the proposal already sent to the Government, within a period of twelve weeks from the date of receipt of a copy of this order. If the first Respondent is not able to pass order within the stipulated period of twelve weeks, it is open to the Petitioner to approach this Court.

5. In pursuant to the orders of this Court, the second Respondent passed an order on 11.03.2011 stating that there was a break in services of the Petitioner for a period of 12 days from 11.03.2003 to 23.03.2003 i.e., before his regular

appointment and hence the benefit of G.O. (Ms) No. 408, Finance (Pension) Department dated 25.08.2009 cannot be extended to the Petitioner. Challenging the said order passed by the second Respondent and for other consequential reliefs, the Petitioner has come up with the present writ petition.

6. According to the learned Counsel for the Petitioner, the break in service of the Petitioner has occurred only due to the official formalities in joining in Udagai South Division after getting relieved from the Thiruvannamalai Division. Further, the Petitioner also claims that he is a physically handicapped person and hence thirteen days intermittent has happened. The learned Counsel appearing for the Petitioner also submitted that the said period cannot be treated as break in service and the said 13 days shall be automatically condoned as per Rule 25 of the Tamil Nadu Pension Rules, 1978.

7. The learned Counsel for the Petitioner further submitted that Rule 11(2) of the Tamil Nadu Pension Rules, 1978 clearly states that for calculating qualifying service, half of the service paid from contingencies shall be allowed to be counted and that the Petitioner is satisfying the conditions contained in Rule 11(2) as he was appointed on daily wage basis from 03.02.1978 till he was regularized on 24.03.2003. The learned Counsel further submits that the impugned order totally wiped out Petitioner's earlier full time service of 25 years, merely on the ground that there is break in service of 13 days.

8. I have heard the learned Counsel appearing for the Petitioners and the learned Government Advocate appearing for the forest department. The facts in this case are not in dispute.

9. Rule 11(2) of the Tamil Nadu Pension Rules, 1978 reads as follows:

11(2) Half of the service paid from contingencies shall be allowed to count towards qualifying service for pension along with regular service subject to the following conditions:

(i) Service paid from contingencies shall be in a job involving whole time employment and not part time for a portion of the day.

(ii) Service paid from contingencies shall be in a type of work or job for which regular posts could have been sanctioned, for example Chowkidar.

(iii) Service shall be for which the payment is made out on monthly or daily rates computed and paid on a monthly basis and which, though not analogous to the regular scale of pay, shall bear some relation in the matter of pay to those being paid for similar jobs being performed by staff in regular establishments.

(iv) Service paid from contingencies shall be continuous and followed by absorption in regular employment without a break.

(v) Subject to the above conditions being fulfilled, the weight age for past service paid from contingencies shall be limited to the period after the 1st January, 1961 for which authenticated records of service may be available.

(vi) Pension or revised pension admissible as the case shall be paid from the 23rd June 1988.

Half of the service rendered by State Government employee under non-pensionable establishment shall be allowed to be counted for pensionary benefits along with regular service under pensionable establishment subject to the following conditions.

(a) Service under non-pensionable establishment should have been in a job involving whole time employment.

(b) The service under non-pensionable establishment should have been on time scale of pay.

(c) The service under non-pensionable establishment should have been continuous and followed by absorption in pensionable establishment without a break.

10. Rule 25 of the Tamil Nadu Pension Rules reads as follows:

25. Condonation of interruption in service.-(1) In the absence of a specific indication of the contrary in the Service Book, an interruption between two spells of Civil Service rendered by a Government servant shall be treated as automatically condoned and the pre-interruption service treated as qualifying service.

(2) Nothing in Sub-rule (1) shall apply to interruption caused by resignation, (or) removal from service or for participation in strike.

(3) The period of interruption referred to Sub-rule (1) shall not count as qualifying service.

11. The Petitioner's interruption of 13 days was not due to resignation or removal from service or for participation in strike. Hence, the said interruption is automatically condoned and half of 13 days service need not be counted as pensionable service. The learned Counsel further submitted that even otherwise the Department can condone the break in service from 11.03.2003 to 23.03.2003 considering the fact that he is a physically handicapped person who lost his one leg and able to move with artificial leg.

12. In the judgment rendered in W.P. No. 29990 of 2010 dated 29.12.2010, it has been observed that the Government issued G.O(D) No. 332 Environment and Forest Department dated 19.11.2008 in favour of one V. Murugan, Forest Guard, who retired on 30.9.2005, ordering to count 50% of his service from 1.9.1980 to 23.3.2003 for the purpose of sanction of pension to the said Murugan. The learned Counsel for the Petitioner also submits that the Petitioner has not been paid any benefit under the new pension scheme and hence there will be no impediment to extend the benefits of pension rules to the Petitioner as it was given to the said V. Murugan. Further, the new pension rule will not apply to the Petitioner. The benefit given to an identically placed person shall be extended to

all similarly placed persons is no longer res integra. I had an occasion to consider similar issue in the decision reported in (2006) 2 MLJ 574 (N.S. Balasubramanian v. Food Corporation of India). In the said order, the judgment of the Hon''ble Supreme Court reported in K.C. Sharma and others Vs. Union of India and others, , State of Karnataka and Others Vs. N. Parameshwarappa and Others, , 1999 SCC 788 (Govind Ram Purohit v. Jagjiwan Chandra) were followed. The said decision was confirmed by the Division Bench of this Court in W.A. No. 956 of 2006 dated 30.10.2006 and the Hon''ble Supreme Court dismissed the S.L.P.(C) No. 6771 of 2007 on 23.4.2007. In the decision reported in Maharaj Krishan Bhatt and Another Vs. State of Jammu & Kashmir and Others, , the Hon''ble Supreme Court has held as follows:

19. ...once a similar case of Abdul Rashid Rather came up for consideration before a Single Judge and his writ petition was allowed, a direction was issued to the authorities to appoint him as PSI by granting consequential benefits, the learned Single Judge could not be said to have committed any error of law in following the said decision, in allowing the writ petition filed by the present Appellant-writ Petitioners and in issuing similar directions to the State authorities. This was particularly true because the judgment and order of the learned Single Judge was confirmed by the Division Bench and even by this Court inasmuch as SLP was also dismissed.

20. In our considered opinion, in the light of the facts and circumstances, the Government ought to have accepted and respected the decision of the learned Single Judge without filing intra-court appeal. No distinguishing feature had been brought to the notice of the Division Bench, nor the Division Bench set aside the judgment and order passed by the learned Single Judge holding or observing that though Abdul Rashid Rather was granted the benefit and the learned Single Judge ordered extension of those benefits to the writ Petitioners, they were not entitled because the case of Abdul Rashid Rather was different. Even before us, nothing special or extraordinary fact or circumstance was shown to distinguish the case of Abdul Rashid Rather and of the present Appellants. In our opinion, therefore, the learned Single Judge was wholly justified in allowing the writ petition and the Division Bench ought not to have interfered with the said decision.

23. In fairness and in view of the fact that the decision in Abdul Rashid Rather had attained finality, the State authorities ought to have gracefully accepted the decision by granting similar benefits to the present writ Petitioners. It, however, challenged the order passed by the Single Judge. The Division Bench of the High Court ought to have dismissed the letters patent appeal by affirming the order of the Single Judge. The letters patent appeal, however, was allowed by the Division Bench and the judgment and order of the learned Single Judge was set aside. In our considered view, the order passed by the learned Single Judge was legal, proper and in furtherance of justice, equity and fairness in action. The said order, therefore, deserves to be restored.

The said judgment of the Hon''ble Supreme Court was followed by the Division Bench of this Court in W.A.(MD) Nos. 64, 111 to 126 of 2007 judgment dated 14.11.2008, by applying the principles of equality guaranteed under Article 14 of the Constitution of India.

13. In the judgment of the Hon''ble Supreme Court reported in *Shalimar Gas and Others Vs. India Oil Corpn. Ltd and Another*, , it has been held that the law should take humane and liberal view in the case of war widows and physically handicapped people etc., on equitable grounds. In the present case on hand, the Petitioner is a physically handicapped person and if the break in service is condoned, he will get pension. Hence by following the judgment of the Hon''ble Supreme Court, the break in service of 13 days of the Petitioner can be condoned, even if pension Rule 25 referred supra is not applicable to the Petitioner''s case on any ground.

14. As rightly contended by the learned Counsel for the Petitioner, even if the period of contingency service from 11.03.2003 to 23.03.2003 is treated as a break in service, the Department can very well condone the break in service as the Petitioner utilized the said period as a joining time, considering the Petitioner''s physical disability which is also not in dispute. How the Department should consider a small break in service for condonation was already considered by the Hon''ble Supreme Court in the decision reported in *Banaras Hindu University, Varanasi and another Vs. Dr. Indra Pratap Singh*, . In the said judgment, the Hon''ble Supreme Court upheld the order of the High Court directing condonation of break in service of three months and 20 days of a college lecturer for the purpose of awarding higher pay scale and designation as Reader.

15. Applying the said principle to the facts of this case, and in the light of the statutory provision contained in Rule 11(2) and 25 of the Tamil Nadu Pension Rules, 1978, and in view of the fact that the Petitioner having been initially appointed on 03.02.1978 and continued to serve in the department for a total period of 32 years and the Petitioner having been absorbed in the regular service from 24.03.2003, I hold that the Petitioner is entitled to get his 50% of the services, from 03.02.1978 till the date of his regularisation, counted for the purpose of calculation of pensionable service. Half of the thirteen days break in service from 11.03.2003 to 23.03.2003 need not be counted as pensionable service. The Petitioner''s pensionable service comes to 19 years 7 months and 25 days. Thus the Petitioner is entitled to succeed. The Respondents having shown sufficient cause to deny pension till date, the Petitioner is not entitled to get interest as claimed in this writ petition.

16. On the basis of the above findings as well as the facts and circumstances of this case, the order of the second Respondent dated 11.03.2011 is quashed and the Respondents are directed to count 50% of the Petitioner''s contingent service from 03.02.1978 to 10.03.2003 and regular service from 24.03.2003 to 30.04.2010 as pensionable service. The first Respondent is directed to send the

proposal to the third Respondent within a period of four weeks from the date of receipt of a copy of this order and the third Respondent is directed to consider the sanction of pension to the Petitioner from 01.05.2010 within a period of six weeks, thereafter. The writ petition is disposed of with the above directions. Consequently, connected miscellaneous petitions are closed. No costs.