
(2006) 12 MAD CK 0047

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 8836 of 2006 and M.P. No"s. 1 and 2

M. Sarojini

APPELLANT

Vs

State of Tamil Nadu,
The Director of Public
Health and Preventive
Medicine and The
Deputy Director of
Health Services

RESPONDENT

Date of Decision: Dec. 12, 2006

Acts Referred:

- Penal Code, 1860 (IPC) - Section 34, 409, 420, 468, 477A
- Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 - Rule 17
- Tamil Nadu Pension Rules, 1978 - Rule 10, 11, 43(2), 49

Hon'ble Judges: N. Paul Vasanthakumar, J

Bench: Single Bench

Advocate: V. Venkatasamy, for the Appellant; K. Balasubramanian, Addl. Govt. Pleader, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

N. Paul Vasanthakumar, J.

In this writ petition, petitioner seeks to quash the G.O. Ms. (D) No. 223, Health Department, dated 3.3.1998 passed by the first respondent and the consequential order of the third respondent dated 21.8.2005 and to direct the respondents to sanction the pensionary benefits accrued after regularisation of the petitioner"s husband"s service including the suspension period as duty and family pension as per the Tamil Nadu Pension Rules.

2. The brief facts necessary for disposal of the writ petition as stated in the affidavit are as follows.

(a) Petitioner's husband Dr. K.R. Muthubabu was appointed as Assistant Surgeon in the Madras Medical Service in the year 1969 and he joined as Assistant Surgeon in E.S.I. Dispensary, Vickramasingapuram on 23rd July, 1969. Though the said appointment was temporary, later he was allowed to continue in service till his retirement. It is claimed that petitioner's husband discharged his duties to the satisfaction of his superiors and he got meritorious certificates also.

(b) While petitioner's husband was working as Medical Officer at Mukudal Primary Health Centre in Alankulam Taluk, Tirunelveli District, he was charged along with some other persons for the offences punishable under Sections 420, 409, 468, 477-A read with 34 IPC as if he cheated the Government by creating forged documents for the purposes of obtaining monetary benefits intended for the persons who had undergone vasectomy. Subsequently, the criminal cases were quashed by this Court on 6.3.1991 in Crl.M.P.Nos.1401, 1404, 1407,1410, 1413 and 1416 of 1988.

(c) Petitioner's husband was placed under suspension on 4.11.1975 by the then District Family Planning, Maternity and Child Health Officer, Tirunelveli for the same allegation and the said suspension order was revoked on 4.1.1977 and the suspension period was treated as on duty. Thereafter, petitioner's husband worked as Medical Officer till 28.1.1983 and again he was placed under suspension by G.O.Ms.No.95, Health and Family Department, dated 22.1.1983 and the said suspension was also revoked on 16.4.1990 and thereafter he worked till the date of his retirement on 30.6.1994.

(d) The Director of Primary Health Centre, Madras-6 initiated departmental proceedings against the petitioner's husband by framing charges in his proceedings dated 25.11.1989 under Rule 17(b) of the Tamilnadu Civil Services (Discipline and Appeal) Rules. The Tribunal for Disciplinary proceedings conducted enquiry and found that the charges framed against the petitioner's husband are proved. Based on the findings of the Tribunal, the first respondent imposed the punishment of "censure" in G.O.Ms.No.1332 Health and Family Welfare Department dated 15.12.1992. Thereafter, petitioner's husband was allowed to retire on the afternoon of 30.6.1994.

(e) Petitioner's husband sent a representation on 21.7.1994 to settle his retirement benefits to the second respondent. It was stated by the second respondent that the claim as to the retirement benefits will be considered only on receipt of final order from the Government as there is disciplinary case pending against him.

(f) then the petitioner's husband filed O.A.No.4501 of 1996 before the Tamil Nadu Administrative Tribunal for a direction to the respondents to settle the pensionary benefits due to him after regularisation of his services including the suspension period as duty. As the Tribunal has been closed, the original Application is now been transferred to the file of

the High Court, Madras, and the same is pending.

(g) Petitioner's husband died on 27.3.2002 and thereafter petitioner, as widow of Dr. K.R. Muthubabu, is pursuing with the respondents to get the retirement benefits, pension payable to her husband and for family pension. The third respondent by proceedings dated 21.8.2005 informed the petitioner that her husband's service was terminated by G.O. Ms. (D)No.223, Health Department, dated 3.3.1998 and therefore no provisional pension was sanctioned to the petitioner's husband. Petitioner sought for the termination order and received the same on 24.8.2006 from the second respondent. Due to the said order, petitioner is denied the arrears of pension payable to the petitioner's husband the date of his retirement from 1.7.1994 to 27.3.2002 and family pension from 28.3.2002 onwards. The said orders are challenged in this writ petition.

3. The learned Counsel for the petitioner submitted that the petitioner's husband was permitted to retire after getting permission from the Director of Medical and Rural Health Services (PHC Wing), Chennai-6 and the permission was granted by the Directorate and therefore petitioner's husband was allowed to retire on superannuation on 30.6.1994 and that in the said order, no reservation having been made to pass any subsequent order, the respondents are bound to sanction pension to the petitioner. The learned Counsel also submitted that the impugned Government Order is only a termination of temporary appointment from 30.6.1994 by order dated 3.3.1998, on the ground that the petitioner's husband's appointment was on temporary basis.

4. Heard the learned Additional Government Pleader for the respondents.

5. The point for consideration is as to whether the order passed by the respondents terminating the petitioner's husband from service retrospectively from the date of superannuation is sustainable, particularly when he was allowed to retire from service on reaching the age of superannuation on 30.6.1994.

6. (a) In the decision reported in [State Bank of India Vs. A.N. Gupta and Others](#), the Honourable Supreme Court held that once an employee ceased to be in the service of the bank, continuation of disciplinary proceedings was not permissible unless there was a specific provision to this effect in the relevant rules.

(b) In [Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others](#), the Honourable Supreme Court considered clause 3(c) of Regulation 44 of the Orissa State Financial Corporation Staff Regulations, 1975 and in para 7 held thus,

7. In view of the absence of such a provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30-6-1995, there was no authority vested in the Corporation for

continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement.

(c) In the decision reported in [The State of Tamil Nadu Vs. R. Karuppiyah, Inspector of Police \(Under Orders of Suspension\) and The Registrar, Tamil Nadu Administrative Tribunal](#), in para 29, a Division Bench of this Court held as under,

29. From the above note it is also clear that to proceed against a Government servant, who is under suspension on a charge of misconduct, after his retirement, the fulfilling of the requirements under Rule 56(1)(c) of the Fundamental Rules is a mandatory one, otherwise, the competent authority cannot have any jurisdiction on the retired Government servant to proceed against him and the non-compliance of the said rule has vitiated all the proceedings initiated against the first respondent and therefore, the same are not sustainable under law and are liable to be set aside.

(d) A Division Bench of this Court, in a recent decision reported in [P. Muthusamy Vs. Tamilnadu Cements Corporation Limited](#), taking note of the service rules of TANCEM, held that retiring a person with liberty to continue disciplinary proceeding, after superannuation, is illegal and without jurisdiction, in the absence of such a provision in the service rules.

7. In this case, admittedly, petitioner's husband was appointed in the medical service in the year 1969, though on temporary basis he was allowed to continue in service till his retirement on 30.6.1994. There is no break-in-service. The requisition letter of the Deputy Director of Health Services, Sankarankoil, addressed to the Director of Medical and rural Health Services (PHC Wing), Madras-6 dated 3.6.1994 reads as under,

DEPARTMENT OF PUBLIC HEALTH AND PREVENTIVE MEDICINE

From	To
Dr. S. Duraisamy, MBBS, DPH., Deputy Director of Health Services, Sankarankoil.	The Director of Medical and Rural Health Services (PHC Wing) Madras-6.

R. No. 435/A1/94, dt.3.6.94

Sir,

Sub: TAMIL NADU MEDICAL SERVICES -
Dr. K.R. Muthubabu, Assistant
Surgeon, PHC, Elayarasanendali ½ due
to retire on superannuation on the

Afternoon of 30.6.94 இல் ½ Reg.

Ref: 1. This Office R. No. 435/A1/94,
dt.17.1.94 and reminders.
2. R.No.2310/PHCs.5/A2/94,
dt.19.4.94 of the Director of
Medical and Rural Health
Services (PHCs), Madras-6.

I invite your kind attention to this office reference cited and I request that necessary permission may please be issued to relieve Dr.K.R.Muthubabu, Assistant Surgeon on his retirement on the Afternoon of 30.6.94.

DEPUTY DIRECTOR OF HEALTH
SERVICES, SANKARANKOIL.

In fact the Government in letter No. 61597/1.2/90-20, dated 28.6.1994 granted permission and the petitioner was allowed to retire and the retirement order reads as follows,

R. No. 435/A1/94 Office of the Deputy
Director of Health
Services, Sankarankoil,
dt. 30.6.94.

Sub: ESTABLISHMENT இல் ½ Tamil Nadu Medical
Services இல் ½ Dr. K.R. Muthubabu,
Assistant Surgeon, PHC, II
Illayarasanandal - permitted to
relieve on the afternoon of
30.6.94 on attaining superannuation
- regarding.

Ref: 1. Govt.Letter No. 61597/1.2/90-20,
dt.28.6.94

2. R. No. 2310/PHC.V/94.A2 dt.30.6.94
of the Director of Medical and
Rural Health Services (PHC)
Wing, Madras-6.

In pursuance of the instructions issued in the reference cited, Medical Officer, PHC, Ilayarasanendal is requested to relieve Dr.K.R.Muthubabu, Assistant Surgeon, PHC, Ilayarasanendal on the afternoon of 30.6.94, on attaining the age of superannuation, and submit a report to this office at once.

Sd/-S.DURAISAMY
DEPUTY DIRECTOR OF HEALTH
SERVICES, SANKARANKOVIL.

8. After so permitting the petitioner to retire, the Secretary to the Government, Health and Family Welfare Department, Madras -9 addressed a letter dated 24.5.1995 to the Director of Public Health and Preventive Medicine, Madras-6 stating that the petitioner's husband was appointed under Rule 10(a)(i) provisions and he is eligible for pension. In the said letter it is also stated that since the disciplinary action initiated against the petitioner's husband has not been finalised and he is eligible for pension, disciplinary action against him has to be pursued now under the Tamil Nadu Pension Rules, 1978 and the petitioner's husband shall be sanctioned with provisional pension. But no disciplinary proceeding was continued after the retirement of the petitioner's husband and no charge memo was issued to him under the Tamil Nadu Pension Rules, 1978. However, the impugned order G.O.(D) No. 223 Health and Family Welfare Department, dated 3.3.1998 was issued stating that in modification of the relief order issued in the Government Letter dated 28.6.1994, the Government terminated the temporary appointment of the petitioner's husband with effect from 30.6.1994 afternoon.

9. The said order cannot be issued by the first respondent since the petitioner's husband was allowed to retire without any reservation of right. Once the petitioner's husband was allowed to retire, there is no jurisdiction to terminate him, that too after four years after his retirement. If a person is to be terminated he has to be issued with termination order prior to his date of retirement or reservation of such right should be stated in the order allowing retirement. A retired employee cannot be terminated merely on the ground that initially he was temporarily appointed. Petitioner's husband died on 27.3.2002 and the petitioner is the widow of the deceased employee, who has applied for pension and other terminal benefits, including family pension, for which a reply was given on 21.8.2005 stating that the petitioner's husband's service was terminated by the Government by order dated 3.3.1998 with effect from 30.6.1994. The said action of the respondents in terminating the petitioner's husband's service from the date of his superannuation, that too after four years of the date of his retirement is totally arbitrary, illegal and contrary to the service rules and Fundamental Rules.

10. The respondents cannot contend that merely because the deceased employee was appointed temporarily in the year 1969, his services can be terminated after his retirement. Power of termination is available only if a person continues in employment. Here the petitioner's husband was not in service on the date when the termination order was passed. Further, retrospective termination is also not permissible under law.

11. As per rule 43(2) of the Tamil Nadu Pension Rules, 1978, if a Government servant retires after completing 10 years of qualifying service, he is entitled to get sanction of pension. Rule 11 of the Tamil Nadu Pension Rules, 1978 reads as follows,

11. Commencement of qualifying service $\frac{1}{2}$ (1) Subject to the provisions of these rules, qualifying service of a Government Servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. In the case of a Government servant retiring on or after the 1st October, 1969, temporary or officiating service in a pensionable post whether rendered in a regular capacity or not shall count in full as qualifying service even it is not followed by confirmation.

From the above rule it is clear that qualifying service of the Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in officiating or in temporary capacity. In the case of the Government servant retiring on or after 1st October, 1969, temporary or officiating service in a pensionable post, whether rendered in a regular capacity or not shall count in full as qualifying service even it is not followed by confirmation. As per rule 49 of the Tamil Nadu Pension Rules, 1978, the petitioner as the widow of the deceased Government Servant, is entitled to get family pension.

12. Here, the petitioner's husband was appointed in Government Health Department. Admittedly it is a pensionable post and therefore there is no dispute with regard to the eligibility of the petitioner's husband to get pension and other retirement benefits as he was allowed to retire. As per the above referred judgments the respondents have no jurisdiction even to proceed against the petitioner's husband departmentally after retirement i.e., after 30.6.1994.

13. Taking note of all the above facts and circumstances, I am inclined to allow the writ petition. The impugned orders are set aside. Respondents are directed to grant arrears of pension to the petitioner from 1.7.1994 to 27.3.2002 and the retirement benefits of her husband and sanction family pension from 28.3.2002 onwards in favour of the petitioner. The arrears of pension payable to the petitioner's husband and the family pension along with retirement benefits shall be calculated and paid to the petitioner within a period of eight weeks from the date of receipt of copy of this order. Since the petitioner is widow of the Government Servant, and the Government servant having been denied pension during his lifetime and having regard to the erroneous manner in which the order is passed by the Government terminating the petitioner's husband's service in the year 1998 with effect from the date of his retirement i.e., on 30.6.1994, petitioner is entitled to get cost of Rs. 3,000/-. Connected miscellaneous petitions are closed.