

(2010) 12 MAD CK 0254

Madras High Court

Case No: Writ Petition No. 9424 of 2010

V. Azhagaiah

APPELLANT

Vs

The Govt. of Tamil Nadu

RESPONDENT

Date of Decision: Dec. 9, 2010

Acts Referred:

- Tamil Nadu Pension Rules, 1978 - Rule 43(2), 82

Hon'ble Judges: K.N. Basha, J

Bench: Single Bench

Advocate: V. Suthakar, for the Appellant; Lita Srinivasan, Government Advocate, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

K.N. Basha, J.

The Petitioner has come forward with this petition seeking for the relief of quashing the proceedings of the 1st Respondent dated 9.4.2010 in letter bearing No. 28715/E4/2009-3 and further directing the first Respondent to grant minimum pension to the Petitioner from 1.9.2000 with all consequential benefits such as pension, arrears etc.

2. The case of the Petitioner is that he was working as an Assistant in the Rural Development Department at Tirunelveli District. Initially he was appointed as part time Clerk at Kadayam Panchayat with effect from 24.10.1964. The Petitioner was subsequently appointed as Junior Assistant with effect from 1.1.1991. The Petitioner, ultimately on reaching the age of superannuation, retired on 31.8.2000. The Petitioner has put in 9 year and 8 months of service i.e., from 1.1.1991 to 31.8.2000. In order to get the minimum pension, an incumbent has to put in atleast ten years i.e., twenty half yearly as qualifying service. In respect of the case of the Petitioner, he was shortage of 4 months to grant minimum pension. The Petitioner also remitted a sum of Rs. 644/-as pension contribution for a period of four months in

order to complete 10 years of service for grant of minimum pension.

3. The District Collector, Tirunelveli, the 3rd Respondent herein recommended the claim of the Petitioner on 20.7.2000 for grant of minimum pension and forwarded the papers to the Director of Rural Development, Chennai, the 2nd Respondent herein stating that prior to his appointment as Junior Assistant with effect from 1.1.1991, the Petitioner has put in uninterrupted service of 26 years 6 months and 7 days i.e., between 24.10.1964 and 31.12.1990 as part time panchayat clerk. The 3rd Respondent also placed reliance on the orders of the Tribunal in O.A. No. 6981/1996 dated 8.9.1997, in and by which the services rendered in the cadre of part time clerk was reckoned for the purpose of granting pension to a similarly placed individual. The 2nd Respondent forwarded the papers to the 1st Respondent. The 1st Respondent rejected the claim of the Petitioner on 1.2.2001 for grant of minimum pension on the ground that the services rendered by the Petitioner in the cadre of part time panchayat clerk cannot be taken into account for grant of pension.

4. The Petitioner again made a representation dated 4.9.2002 stating that there is only a shortage of one month for grant of minimum pension. The Petitioner further stated that if an incumbent has put in 19 half yearly and 3 months of service shall be considered as 20 half yearly service and the Petitioner has put in 19 half year and 2 months of service and technically there is a shortage of one month service to get minimum pension. But the said claim of the Petitioner was rejected by the 2nd Respondent on 11.10.2002. The Petitioner challenged the said order by filing O.A. No. 3180/2003 before the Tamil Nadu Administrative Tribunal and the said original application has been subsequently transferred to this Court, renumbered as W.P. No. 6961/2006. This Court passed an order dated 27.10.2009, setting aside the order passed by the 2nd Respondent dated 11.10.2002 and remitted back the matter to the 1st Respondent herein to consider the case of the Petitioner in terms of Rule 82 of the Pension Rules and pass an order with regard to the grant of minimum pension to the Petitioner within a period of 12 weeks from the date of receipt of a copy of the order.

5. The 1st Respondent by its letter dated 9.4.2010 informed the Petitioner that as per G.O. Ms. No. 408 Finance (Pension) dated 25.8.2009 only 50% of the service in full time panchayat Assistant can be considered as pensionable service and Rule 43(2) of the Tamil Nadu Pension Rules (hereinafter referred to as "Rules") contemplates that an incumbent is eligible for pension only when he renders minimum service of 10 years and in the instant case, the Petitioner has rendered only 19 half years and 2 months of service and as such the Petitioner does not satisfy Rule 43(2) of the Rules and thereby rejected the claim of the Petitioner. Being aggrieved against the said order, the Petitioner has preferred this petition with the above said prayer.

6. Mr. V. Suthakar, learned Counsel appearing for the Petitioner would contend that the 1st Respondent, without invoking Rule 82 of the pension rules by relaxing the

requirement of putting 20 half year service, has passed the impugned order as per the provision under Rule 43 (2) of the Rules. It is pointed out by the learned Counsel for the Petitioner that this Court while earlier setting aside the order of the 1st Respondent, has specifically directed the 1st Respondent to consider the case of the Petitioner in terms of Rule 82 of the Pension Rules. But, ignoring the said specific direction, the 1st Respondent once again reiterated the stand that in view of Rule 43(2), the Petitioner is not entitled to claim for the grant of minimum pension. The learned Counsel for the Petitioner would further contend that the Petitioner has put in 26 years, 6 months and 7 days of service between 24.10.1964 and 31.12.1990 as part time panchayat clerk and considering the same, the Respondents 2 & 3 also recommended the case of the Petitioner for grant of minimum pension but, the 1st Respondent overlooked the said recommendations. It is contended that this Court as per the earlier order given a specific direction to the 1st Respondent to consider the claim of the Petitioner only with a view to relax Rule 43(2) of the Rules by invoking Rule 82 as the said relaxation cannot be done straight away through the orders of this Court. Therefore, it is contended that the impugned order is liable to be set aside and the 1st Respondent is directed to grant the relief sought for by the Petitioner.

7. Per contra, Mrs. Lita Srinivasan, learned Government Advocate would contend that there is no infirmity or illegality in the impugned order passed by the 1st Respondent. It is contended that in view of Rule 43(2) of the Rules requiring 20 half yearly service for grant of minimum pension, the 1st Respondent cannot invoke Rule 82 for relaxation of condition stipulated under Rule 43(2) of the Rules. It is further contended that allowing the pension to the Petitioner alone by relaxing the said Rule will be a discrimination against similarly placed persons. The learned Government Advocate by placing reliance on a decision of the Hon"ble Apex Court in [Union of India and Others Vs. Rakesh Kumar etc.,](#), contended that in respect of similar provision under the Border Security Force Rules, the Hon"ble Apex Court has held that grant of any relief contrary to the statutory rule is liable to be set aside. It is contended that there is also a similar provision under Rule 88 in respect of power to relax under the Central Civil Services Rules, 1972 and it is submitted that the said rule will be applicable to the Border Security Force. It is contended that inspite of availability of the said specific rule under Rule 88, the Hon"ble Apex Court has not given any finding to the effect of using such power to relax. Therefore, it is contended that the 1st Respondent has rightly rejected the claim of the Petitioner.

8. I have carefully considered the rival contentions put forward by either side and perused the entire materials available on record including the impugned order as well as the earlier order passed by this Court in W.P. No. 6961 of 2006 dated 27.10.2009 and also the counter filed by the Respondents.

9. The core question involved in this matter is to the effect that Petitioner can seek the relief of minimum pension by including the part time services rendered by the

Petitioner while calculating the qualifying service.

10. This Court, while setting aside the order passed by the 1st Respondent has given a specific direction to the 1st Respondent to consider the case of the Petitioner in terms of Rule 82 of the Pension Rules. It is relevant to refer the exact portion of the said order of this Court dated 27.10.2009 in W.P. No. 6961/2006, which is extracted hereunder:

3. The ground on which the impugned order has been passed is, in fact, in accordance with law. But, pension is a welfare measure and the object of the same is to provide livelihood to the retired person till his death. It is also to be admitted that as per Rules, certain conditions have to be complied with. As far as the Petitioner is concerned, the total service rendered by him including part-time service in the Respondent Panchayat is nearly 35 years. But, the only lacuna is lack of 4 months full-time service and for want of the same, even minimum pension has been denied to him. Under Rule 82 of the Pension Rules, the Government is vested with the power of relaxation and if the Government is satisfied that a portion of any of the Rules causes hardship in any particular case, the Government may, for reasons to be recorded in writing, relax the particular rule to extend the benefit to the employee concerned. As far as the case on hand is concerned, even the Director of Rural Development, and also the Collector, by letter dated 20.7.2000 and 20.10.2000 respectively have recommended the case of the Petitioner for sanction of minimum pension. But, the same has been rejected. Now, when under Rule 82 of the Pension Rules, the Government is vested with the power to grant relaxation, taking note of the fact that the Petitioner has rendered part-time service for a period of 26 years; that he is in lack of 4 months full-time service to become eligible for minimum pension, though he has served for a period of 15 years in the Respondent Panchayat and also the recommendations of the District Collector and the Director of Rural Development, exercising the power under Rule 82, the case of the Petitioner can be considered. In view of this, the impugned order is set aside and the matter is remitted back to the 1st Respondent to consider the case of the Petitioner in terms of Rule 82 of the Pension Rules and pass orders with regard to grant of minimum pension within a period of 12 weeks from the date of receipt of a copy of this order. The writ petition is disposed of accordingly. No costs.

11. A reading of the above said order makes it crystal clear that this Court has given a positive direction to the 1st Respondent to consider the claim of the Petitioner in terms of Rule 82 of the Pension Rules and pass orders with regard to the grant of minimum pension within a period of 12 weeks from the date of receipt of a copy of the order. But unfortunately, the perusal of the impugned order dated 9.4.2010 passed by the 1st Respondent reveals that the 1st Respondent has simply reiterated the similar stand to the effect that as per Rule 43(2) of the Tamil Nadu Pension Rules, 1978, pension shall be sanctioned to those who rendered a minimum of 10 years of service. But the Petitioner has rendered only 19 half years and 2 months of

service and as such the Petitioner does not satisfy Rule 43(2) of the Rules and accordingly, rejected the claim of the Petitioner. The fact remains that the 1st Respondent has simply overlooked and ignored the specific direction given by this Court in its order dated 27.10.2009 to relax the said order by invoking Rule 82.

12. It is seen that this Court has considered the claim of the Petitioner in the light of the services rendered by the Petitioner for a period of nearly 35 years and pointed out that the only lacuna is lack of 4 months full time service. It is pointed out by this Court in the said order that under Rule 82, the Government is vested with the power of relaxation and if the Government is satisfied that a portion of any of the Rules causes hardship in any particular case, the Government may, for reasons to be recorded in writing, relax the particular rule to extend the benefit to the employee concerned. But the 1st Respondent has simply ignored all these observations of this Court.

13. A reading of the counter filed by the Respondents also does not disclose any reason for not invoking Rule 82 except stating that the Petitioner has to satisfy the requirements contemplated under Rule 43(2) of the Rules and further stated that there should not be any discrimination in respect of similarly placed persons by granting the relief sought for by the Petitioner. The learned Government Advocate by placing reliance on the decision of the Hon'ble Apex Court in Union of India and Others Vs. Rakesh Kumar etc., contended that in respect of similar provision under the Border Security Force Rules, the Hon'ble Apex Court has held that grant of any relief contrary to the statutory rule is liable to be set aside. It is contended by the learned Government Advocate that there is also a similar provision under Rule 88 in respect of power to relax under the Central Civil Services Rules, 1972 and it is submitted that the said rule will be applicable to the Border Security Force. It is also contended by the learned Government Advocate that inspite of availability of the said specific rule under Rule 88, the Hon'ble Apex Court has not given any finding to the effect of using such power to relax. But the perusal of the above said decision of the Hon'ble Apex Court would reveal that the said decision was rendered in respect of Border Security Force Rules 1969 and it is seen that no such similar provision like Rule 82 has been considered by the Hon'ble Apex Court. However, the learned Government Advocate would submit that in respect of Border Security Force, the Central Government has to invoke only the Central Civil Services Rules, 1972. However, I am unable to countenance such contention of the learned Government Advocate for the simple reason that the reading of the decision of the Hon'ble Apex Court itself makes it abundantly clear that there is a separate rules framed for Border Security Force viz., BSF Rules 1969 and in the said rules, there is no indication of any similar provision like that of Rule 82 vesting power to relax any specific rule and contemplate certain terms and conditions for giving the relief of pensionary benefits.

14. In view of the above said factors, this Court is left with no other alternative except to set aside the impugned order passed by the first Respondent dated 9.4.2010 in letter bearing No. 28715/E4/2009-3 and the matter is again remitted back to the 1st Respondent to consider the claim of the Petitioner by invoking Rule 82 of the Tamil Nadu Pension Rules and pass orders with regard to the grant of minimum pension to the Petitioner within a period of 12 weeks from the date of receipt of a copy of this order.

15. With the above direction, the petition is disposed of.