

(2011) 09 MAD CK 0203

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 10428 of 2008

S. Abubacker, Ex-Naik, CISF
7211198, No. 101 Ettayapuram
Road, Thoothukudi - 628 002,
Tamil Nadu

APPELLANT

Vs

The Secretary to Government of
India, Ministry of Home Affairs,
(Central Industrial Security Force
Station), New Delhi and The
Directorate General, Central
Industrial Security Force,
(Ministry of Home Affairs), Block
No.13, CGO Complex, Lodhi
Road, New Delhi - 3

RESPONDENT

Date of Decision: Sept. 14, 2011

Acts Referred:

- Central Civil Services (Pension) Rules, 1972 - Rule 26(1)(2), 37, 49

Hon'ble Judges: Vinod K. Sharma, J

Bench: Single Bench

Advocate: R. Jayaraman, for the Appellant; K.K. Senthilvelan Assistant Solicitor General, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

The Honourable Mr. Justice Vinod K. Sharma, J.

The Petitioner prays for issuance of a Writ, in the nature of Mandamus, for directing the Respondents, to pay the arrears of pay, and pension from the date of resignation / retirement till the date of filing of the writ petition, and sanction the pension for the future.

2. The writ petition is opposed by the Respondents, by raising the preliminary objection, that it suffers from the vice of delay and laches, as the Petitioner resigned from service in the year 1984, and was informed on 23.09.1992, for the first time, about the rejection of his claim, with regard to pension, whereas the writ petition was filed in 2008.

3. There is force in the contention. The writ petition suffers from delay, and laches. It was only in absence of a rejection of the claim, that the Petitioner could claim, that pension, being a recurring cause of action, the writ petition was maintainable.

4. However, keeping in view the fact, that this Court admitted, the writ petition in the year 2008, it is being decided on merits.

5. The Petitioner was appointed, as Security Guard, in the Central Industrial Security Force on 15.02.1972, and was confirmed on 06.02.1980. The Petitioner resigned from service in the year 1984, after putting in service of 12 years and 7 months. The Petitioner claims, that he made number of representations for grant of pension, but it was only on 23.09.1992, that for the first time, the Petitioner was informed, that he was not entitled to pension, as resignation resulted in forfeiture of service under Rule 26 of the CCS (Pension) Rules (hereinafter referred to as "the Rules").

6. In spite of the fact, that the representation of the Petitioner was rejected on 23.09.1992, he continued making representations, which were again rejected on 07.01.2005, 18.02.2005, and 09.03.2006. It was, thereafter, that the Petitioner served a legal notice, and filed the present writ petition. The Petitioner also requested the Respondents, for relax of the Rules, as special case, to grant pension to the Petitioner.

7. The writ petition is opposed, by the Respondents, firstly, on the ground, that the writ suffers from delay, and laches, as referred to above, and that the Government Servant is entitled to pension on completion of minimum service of 20 years. The Petitioner, is not entitled to grant of pension. Further more, in view of Rule 26 of the Rules, the resignation results in forfeiture of service.

8. Rule 26 of the Rules reads as under:

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.

(3) Interruption in service in a case falling under Sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the

Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him.

(4) The appointing authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely:

- i. that the resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation
- ii. that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper
- iii. that the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days
- iv. that the post, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available.

(5) Request for withdrawal of a resignation shall not be accepted by the appointing authority where a Government Servant resigns his service or post with a view to taking up an appointment in or under a private commercial company or in or under a Corporation or Company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government.

(6) When an order is passed by the appointing authority allowing a person to withdraw his resignation and to resume duty, the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service.

(7) A resignation submitted for the purpose of Rule 37 shall not entail forfeiture of past service under the Government.

9. On consideration, I find force in the contentions, raised by the learned Assistant Solicitor General.

10. Besides the fact, that the writ suffers from delay, and laches, the Petitioner is not entitled to pension, as he had not completed 20 years of service, as stipulated under Rules. Further more, in view of Rule 26 of the Rules, the resignation resulted in forfeiture of service.

11. This view finds support from the judgment of the Hon'ble Supreme Court in the case of Union of India (UOI) and Others Vs. Braj Nandan Singh, , wherein the Hon'ble Supreme Court has been pleased to lay down as under:

5. In order to appreciate rival submissions Rule 26 which is the pivotal provision needs to be quoted. The same reads as under:

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, Anr. appointment, whether temporary or permanent, under the Government where service qualifies.

Rule 26 as the heading itself shows relates to forfeiture of service on resignation. In clear terms it provides that 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. The language is couched in mandatory terms. However, Sub-rule (2) is in the nature of an exception. It provides that 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. Admittedly this is not the case in the present appeal. Rule 5 on which great emphasis was laid down by the Learned Counsel for the Respondent deals with Regulation of claims to pension or family pension. Qualifying service is dealt with in Chapter

III. The conditions subject to which service qualifies are provided in Rule 14. Chapter V deals with classes of pensions and conditions governing their grant. The effect of Rule 26 sub-rules (1) and (2) cannot be lost sight of while deciding the question of entitlement to pension. The High Court was not justified in its conclusion that the rule was being torn out of context. After the past service is forfeited the same has to be excluded from the period of qualifying service. The language of Rule 26 sub-rules (1) and (2) is very clear and unambiguous. It is trite law that all the provisions of a statute have to be read together and no particular provision should be treated as superfluous. That being the position after the acceptance of resignation, in terms of Rule 26 Sub-rule (1) the past service stands forfeited. That being so, it has to be held that for the purpose of deciding question of entitlement to pension the Respondent did not have the qualifying period of service. There is no substance in the plea of the Learned Counsel for the Respondent that Rule 26 sub-rules (1) and (2) has limited operation and does not wipe out entitlement to pension as quantified in Rule 49. The said rule deals with amount of pension and not with entitlement

12. Consequently, for the reasons stated hereinabove, there being no merit in this writ petition, it is ordered to be dismissed, but with no order as to costs.