

A.V. Subramanian Vs. Chief Mechanical Engineer, Cochin Port Trust,

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Court : Kerala

Decided On : Mar-11-2015

Judge : Honourable Mr. Justice a.V.Ramakrishna Pillai

Appellant : A.V. Subramanian

Respondent : Chief Mechanical Engineer, Cochin Port Trust,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI WEDNESDAY, THE 11TH DAY OF MARCH 2015 20TH PHALGUNA, 1936 WP(C).No. 4999 of 2012 (Y) ----- PETITIONER(S): ----- A.V. SUBRAMANIAN, AGED 72 YEARS, S/O.LATE SHRI VELAYUDHAN, SREELAKSHMI, VRINDAVAN STREET, EVANNOOR, THRISSUR. BY ADV. SRI.N.ANILKUMAR. RESPONDENT(S): ----- 1. CHIEF MECHANICAL ENGINEER, COCHIN PORT TRUST, WEST ISLAND, KOCHI-682 009.

2. THE CHAIRMAN, COCHIN PORT TRUST, W.ISLAND, KOCHI-682 009. R1&2 BY ADV. SRI.V.ABRAHAM MARKOS, R1&2 BY ADV. SRI.BINU MATHEW, R1&2 BY ADV. SRI.TOM THOMAS (KAKKUZHIYIL), R1&2 BY ADV. SRI.ABRAHAM JOSEPH MARKOS, R1&2 BY ADV. SRI.ISAAC THOMAS & BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR. THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: rvs. WP(C).No. 4999 of 2012 (Y) APPENDIX

PETITIONER(S)' EXHIBITS : ----- EXT. P1: A PHOTOSTAT COPY OF THE

JUDGMENT

OF THIS HONOURABLE COURT IN WRIT PETITION (CIVIL) NO. 8551/2005 DATED 22/12/2009. EXT. P2: PHOTOSTAT COPY OF THE APPLICATION DATED 20/01/2011 SENT BY THE PETITIONER TO THE FIRST RESPONDENT. EXT. P3: A PHOTOSTAT COPY OF THE REMINDER LETTER DATED 06/05/2011 SUBMITTED BEFORE THE FIRST RESPONDENT. EXT. P4: A PHOTOSTAT COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE CHAIRMAN ON 11/05/2011. EXT. P5: A PHOTOSTAT COPY OF THE LETTER DATED 17/06/2011 ISSUED BY THE FIRST RESPONDENT. EXT. P6: A PHOTOSTAT COPY OF THE REPRESENTATION DATED 12/07/2011 SUBMITTED BY THE PETITIONER TO THE SECOND RESPONDENT. EXT. P7: A PHOTOSTAT COPY OF THE

JUDGMENT

OF THIS HONOURABLE COURT DATED 26/09/2011 IN WRIT PETITION (CIVIL) NO. 25517/2011. EXT. P8: A PHOTOSTAT COPY OF THE

ORDER

OF THE CHAIRMAN DATED 12/11/2011. RESPONDENT(S)' EXHIBITS : ----- NIL. /TRUE COPY/ P.A. TO JUDGE RVS. A.V. RAMAKRISHNA PILLAI, J ----- WPC No. 4999 of 2012 ----- Dated this the 11th day of March, 2015

JUDGMENT

Ext.P8 order, by which the Chairman of the respondent Port Trust rejected the petitioner's application for commutation of pension, is under challenge.

2. The petitioner was a former employee of the respondent Port Trust. During the period of employment, he was removed from service for unauthorised absence. This was challenged by the petitioner before this Court and this Court set aside the removal order and directed the Chairman of the respondent Port Trust to re-consider the matter. Thereafter, the removal was converted into compulsory

retirement. Consequentially, he was granted 2/3rd of the normal pension, which he would have been otherwise eligible under Rule 40(1) of the CCS Pension Rules, which is applicable to Cochin Port Trust. This was challenged before this Court by the petitioner again and this Court by Ext.P1 judgment quashed the aforesaid order WPC No.4999/2012 2 and directed to grant full pension to the petitioner.

3. The petitioner alleges that immediately within the statutory period, i.e. within one year, he made an application for commutation and since no reply was given by the 1st respondent, he sent reminders. Ultimately, he submitted Ext.P4 representation, which was rejected by Ext.P5. Again, he submitted Ext.P6 representation. As there was no action on the part of the respondents, he moved this Court and this Court as per Ext.P7 directed the Chairman to pass orders on Ext.P6 representation. Ultimately, the Chairman of the respondent Port Trust, by Ext.P8, rejected his claim. The petitioner alleges that the reason stated in Ext.P8 order is against law, rules and facts.

4. In the counter affidavit filed by respondents 1 and 2, they admitted the fact that the petitioner was granted full pension as per the direction of this Court. However, regarding the prayer for commutation, it is averred that the commutation is normally applied for immediately after the pension is ordered, i.e. at the age of 60 and the same is generally granted. According to the respondents, the WPC No.4999/2012 3 petitioner submitted the application at the age of 72 years old and that too, after drawing full pension for a period of 17 years. Therefore, according to the respondents, if commutation is permitted at this stage, there is a possibility for the Management to suffer financial loss and the petitioner, on the other hand, is not prejudiced in any manner as he is drawing full pension every month. It was also submitted that Ext.P8 order passed by the Chairman is in compliance with law and rules. Therefore, the respondent Port Trust prays for a dismissal of the writ petition.

5. I have heard the learned counsel for the petitioner and the learned standing counsel for the respondent Port Trust.

6. The main argument advanced by the learned standing counsel for the respondent is that if commutation is allowed, the management may not be able to

recover the commuted amount which would cause loss to the Port Trust.

7. According to the learned standing counsel for the Port Trust, the petitioner could have applied for WPC No.4999/2012 4 commutation immediately after the pension was ordered in the year 2004 for the period from 1994.

8. In answer to the said submission, the learned counsel for the petitioner would submit that the petitioner was given pension only after a long battle with the respondents and therefore, though he demitted his office long back, he was not in a position to make an application for commutation. It is true that the petitioner is asking for commutation after about 20 years from the date on which he has demitted his office.

9. During the course of the argument, the learned counsel for the petitioner made available to me CCS Pension Rules, 1981. Chapter III of the Rules relate to the Commutation of Pension Without Medical Examination. In such cases, the applicant, who is in receipt of any pension referred to in Rule 12 and desires to commute a fraction of that pension any time after the date following the date of his retirement from service, can make an application for commutation within a period of one year from the date of retirement. However, the petitioner's case has to be dealt with under Chapter IV of the Rules which deals with WPC No.4999/2012 5 commutation of pension with medical examination. As per Rule 26(7), if as a result of the opinion of the Medical Board received by the Head of office under sub rule (6), the applicant becomes eligible to commute a fraction of pension originally applied for, the Head of Office shall determine the commuted value with reference to the Table applicable on the date the Medical Board recorded its opinion. It is also crucial to note that as per the table relating to commutation values for pension, it is evident that an employee is eligible to commute his pension till the age of 81. Of course, as the age advances, the commutation value would be decreasing.

10. It is crucial to note that the full pension of the petitioner was granted only in February 2010. Therefore, only after granting full pension, the petitioner could apply for commutation. The commutation paper was also submitted in proper time. By Ext.P1 judgment, this Court has directed to grant full pension to the petitioner.

The commutation right of the petitioner has never been taken away. As rightly pointed out by the learned counsel for the petitioner, the commutation is only a mode of paying WPC No.4999/2012 6 full pension. The petitioner is given an option to receive the full pension by commutation or not, as per rules. The time limit of one year for commutation is applicable only in cases of commutation without medical examination. No time limit is required for commutation with medical examination. Therefore, on a consideration of the entire materials now placed on record, this Court is of the view that Ext.P8 order is illegal. In the result, this writ petition is allowed. Ext.P8 is quashed. It is hereby declared that the petitioner is entitled to get his pension commuted. Formal orders to this effect shall be issued by the respondent Port Trust after completing the necessary formalities within a period of two months from the date of receipt of a copy of this judgment. sd/-A.V.RAMAKRISHNA PILLAI JUDGE css/ true copy P.S.TO JUDGE

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