

C.Jacob vs Director Of Geology & ... on 3 October, 2008

Equivalent citations: AIR 2009 SUPREME COURT 264, 2008 AIR SCW 7233, 2009 LAB. I. C. 119, 2009 (2) SERVLJ 223 SC, (2009) 1 ALLMR 944 (SC), (2009) 2 MAD LJ 724, (2009) 2 SERVLJ 223, 2008 (13) SCALE 434, 2008 (10) SCC 115, (2008) 13 SCALE 434, (2009) 1 LAB LN 1, (2008) 4 SCT 604, (2009) 1 SERVLR 638, (2009) 1 ALL WC 85

Bench: Lokeshwar Singh Panta, R. V. Raveendran

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION(C)No.25795 of 2008
CC 11425/2008

C. Jacob

...Petitioner(s)

VS.

Director of Geology & Mining & Anr.

... Respondents

O R D E R

R. V. RAVEENDRAN J., IA 1 is allowed and the delay of 56 days condoned. We find no merit in this Special Leave Petition. However, as the questions raised in this petition arise repeatedly, we propose to pass a reasoned order after referring to the relevant facts.

2. The petitioner joined service as a Drill Helper in June, 1967, in the Regional Mining Cell, Trichy, in the erstwhile State Geology branch of Department of Industries and Commerce, State of Tamil Nadu. According to him, his services were terminated in the year 1982, in pursuance of a show cause notice dated 8.7.1982. Nearly eighteen years later, the petitioner gave representations dated 5.5.2000 and 21.7.2000 to the first respondent requesting that he may be taken back into service. As the enclosure (show cause notice dated 8.7.1982) to the said representation was incomplete, the first respondent called upon him to send the complete document. Instead of complying with the said request, the petitioner approached the Tamil Nadu Administrative Tribunal seeking a direction to the first respondent to dispose of his representation. The Administrative Tribunal disposed of the said application on 19.12.2002, without notice to the respondents, with a direction to the Director of Geology & Mining (first respondent), to consider petitioner's representation dated 21.7.2000 and

pass an order thereon within four months. In compliance with the said direction, the first respondent considered and rejected the petitioner's representations by order dated 9.4.2002. The relevant portions of the said order referring to the facts, is extracted below :

"The individual was sanctioned unearned leave on medical certificate for 25 days from 7.10.1980 to 31.10.1980 and he did not rejoin duty after the expiry of this leave. On perusal of the first page of the Memo No.19093/E2/80, dated 8.7.1982, the individual has taken up private employment and has applied for leave on loss of pay for two years from 1.1.1981 onwards vide his letter dated 1.1.1981. In the memo dated 19.2.1981 of the State Geologist, he was informed that his private employment is against the Government Servants' conduct rules and hence, disciplinary action would be taken against him if his explanation on the above was not received within 15 days from the date of receipt of the memo. The above memo was sent by Registered post to the address at Marthandam in Kanyakumari District through the Assistant Geologist, Regional Mines Cell, Tiruchi. The memo was returned to the Assistant Geologist, RMC, Tiruchi, undelivered.

Then another memo dated 6.8.1981 was issued to him calling for his explanation in 15 days time as to why disciplinary action should not be taken against him and his services terminated if explanations were not received in time. The above memo was sent by Registered Post Acknowledgement due to the address "Singaliar Street, Marthandam Post, Kanyakumari District". The receipt of the above memo was acknowledgment by his wife Smt. C. Stella Jacob, on 31.8.1981.

On 10.9.1981, Thiru M. Ramaswamy, Assistant Geologist, RMC, Tirunelveli contacted his wife with his Geological Assistant and had the information that he was working in India and refused to inform the exact concern where he was employed. The above information was reported by the Assistant Geologist, RMC, Tirunelveli in his letter dated 14.9.1981.

In spite of so many efforts taken by the office, he has not even responded to the memo, which was received by his wife. Therefore, show cause notice was issued to him vide memo dated 8.7.1982 by the State Geologist, Guindy by Registered Post (Acknowledgment Due) and the above memo was received by him. He absented himself from duty and kept silence for a long period (01.11.1980 to 4.5.2000). He has submitted representations (dated 5.5.2000 and 19.7.2000) and requested to permit him to rejoin duty. In his letter dated 5.5.2000, he has stated that due to illness he has not attended duty and subsequently, he was also terminated from service.

In this office letter (dated 28.8.2000) he has been requested to produce the copies of the memorandum and other records issued by the State Geologist to him. But, he has not produced the copies of the same. The erstwhile State Geology Branch of the Department of Industries and Commerce was upgraded as a separate Department of Geology and Mining and is functioning as a separate department with effect from 14.4.1983. The Government issued order dated 15.3.1989

permanently transferring the officers and staff of the State Geology Branch to the new Department of Geology and Mining. The name of Thiru C. Jacob is not finding a place in this GO.....

Thiru C. Jacob absented from attending duties without proper leave application. He has taken up private employment without prior permission which is against Government Servants' Conduct Rules and he has not turned up for duty in time. He has absconded from duty from 1.11.1980 to 4.5.2000 without intimating the reasons for absenting himself. As he has completely absconded from duty his name did not find a place in the list of officers and staff transferred to the new Department of Geology and Mining vide GO Ms. No.1/Industries (SIA 2) Department dated 15.3.1989 from the erstwhile State Geology Branch of the Department of Industries and Commerce. This clearly bring to light that the applicant was not considered as a regular employee of the Department of Industries and Commerce as he has not followed the relevant rules and absented from attending duties without proper leave application.

Thiru C. Jacob has not produced the second and subsequent pages of the memo issued to him by the State Geologist, Madras in RC NO.19093/E2/80 dated 8.7.1982 for perusal. It is evident from the available records that the individual stayed away from duty without any information to the office and taken up private employment without prior permission. Therefore, his request for permitting him to rejoin duty after a lapse of twenty years cannot be complied with.

3. On 10.3.2003, the petitioner filed an original application before the Tamil Nadu Administrative Tribunal for the following relief :

".....the applicant prays that this Hon. Tribunal be please to call for the records of the first respondent dated 9.4.2002 and direct the respondents to grant service benefits to the applicant within a time framed to be fixed by this Hon. Tribunal....."

In its counter to the said application, the respondents reiterated the reasons for rejection of the request, given in the order dated 9.4.2002. They also specifically pleaded:

"It is submitted that the erstwhile State Geology Branch was under the control of the Director of Industries and Commerce and during the year 1983 this Department of Geology and Mining was formed as a separate Department and functioning with effect from 14.4.1983 under the control of the respondent. Orders were issued by the government on GOMsNo.1, Industries (SIA 2) Department, dated 15.3.1989 permanently, transferring the officers and staff of the erstwhile State Geology Branch of the Industries and Commerce Department to the new Department of Geology and Mining and the name of the applicant is not finding a place in the GO which clearly bring to light that the applicant was not considered as a regular employee of the Department of Industries and Commerce and it is evident that the applicant's services were already terminated.

It is submitted that every efforts were taken to process the representations submitted by the applicant and the available records with the respondent were carefully

examined. Since some of the records are destroyed due to efflux of time, the applicant was requested to furnish the second page of the memo issued to him by the State Geologist, Madras, dated 8.7.1982 for perusal and the applicant has not furnished the same but only furnished the first page of the above memo with his representation dated 5.5.2000. It is submitted that in the second page there may be specific orders of the State Geologist with reasons for termination of the services of the applicant."

4. The said original application was transferred from the Tribunal to the Madras High Court. A learned Single Judge of the High Court by order dated 13.4.2006 held that the department failed to establish that it had followed the mandatory requirements of section 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules by issuing a charge- memo, holding an enquiry and passing an order of punishment. He therefore, declared the termination of petitioner's service in 1982 was illegal. As the petitioner was already 59 years old and it was impractical to hold an enquiry on account of the employee's health condition, the learned Single Judge disposed of the writ petition by declaring that the petitioner was deemed to have retired from service from 18.7.1982 and directing that pension be sanctioned from that date and that the entire arrears should be calculated and paid in eight weeks.

5. The order of the learned Single Judge was challenged by the respondents in an intra-court appeal. The Division Bench allowed the writ appeal by order dated 28.1.2008. The Division Bench held that the petitioner had not completed 20 years of qualifying service as on 18.7.1982, and therefore, he was not entitled to pension. The said order is under challenge in this petition. We propose to examine the following two issues arising in this case:

(i) The modus of representation adopted by several claimants/petitioners to get over the bar of limitation/ delay and laches.

(ii) Common error in assuming that 10 years service entitles a government servant of pension under the pension Rules.

The modus of `representation'

6. Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before Tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the Tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The Tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation. The courts/tribunals proceed on the assumption, that every citizen deserves a

reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

7. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

8. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of 'acknowledgment of a jural relationship' to give rise to a fresh cause of action.

9. When a government servant abandons service to take up alternative employment or to attend to personal affairs, and does not bother to send any letter seeking leave or letter of resignation or letter of voluntary retirement, and the records do not show that he is treated as being in service, he cannot after two decades, represent that he should be taken back to duty. Nor can such employee be treated as having continued in service, thereby deeming the entire period as qualifying service for purpose of pension. That will be a travesty of justice. Where an employee unauthorizedly absents himself and suddenly appears after 20 years and demands that he should be taken back and approaches court, the department naturally will not or may not have any record relating to the employee at that distance of time. In such cases, when the employer fails to produce the records of the enquiry and the order of dismissal/ removal, court cannot draw an adverse inference against the employer for not producing records, nor direct reinstatement with back-wages for 20 years, ignoring the cessation of service or the lucrative alternative employment of the employee. Misplaced sympathy in such matters will encourage indiscipline, lead to unjust enrichment of the employee at fault and result in drain of public exchequer. Many a time there is also no application of mind as to the extent of financial burden, as a result of a routine order for back-wages.

10. We are constrained to refer to the several facets of the issue only to emphasize the need for circumspection and care in issuing directions for 'consideration'. If the representation is on the face of it is stale, or does not contain particulars to show that it is regarding a live claim, courts should desist from directing 'consideration' of such claims.

11. The present case is a typical example of 'representation and relief'. The petitioner keeps quiet for 18 years after the termination. A stage is reached when no record is available regarding his previous service. In the representations which he makes in 2000, he claims that he should be taken back to service. But on rejection of the said representation by order dated 9.4.2002, he filed a writ petition claiming service benefits, by referring the said order of rejection as the cause of action. As noticed above, the learned Single Judge examined the claim, as if it was a live claim made in time, finds fault with the respondents for not producing material to show that termination was preceded by due enquiry and declares the termination as illegal. But as the appellant has already reached the age of superannuation, the learned Single Judge grants the relief of pension with effect from 18.7.1982, by deeming that he was retired from service on that day. We fail to understand how the learned Single Judge could declare a termination in 1982 as illegal in a writ petition filed in 2005. We fail to understand how the learned Single Judge could find fault with the department of Mines and Geology, for failing to prove that a termination made in 1982, was preceded by an enquiry in a proceedings initiated after 22 years, when the department in which appellant had worked had been wound up as long back as 1983 itself and the new department had no records of his service. The appellant neither produced the order of termination, nor disclosed whether the termination was by way of dismissal, removal, compulsory retirement or whether it was a case of voluntary retirement or resignation or abandonment. He significantly and conveniently, produced only the first sheet of a show cause notice dated 8.7.1982 and failed to produce the second or subsequent sheets of the said show cause notice in spite being called upon to produce the same. There was absolutely no material to show that the termination was not preceded by an enquiry. When a person approaches a court after two decades after termination, the burden would be on him to prove what he alleges. The learned Single Judge dealt with the matter as if he the appellant had approached the court immediately after the termination. All this happened, because of grant of an innocuous prayer to 'consider' a representation relating to a stale issue.

Pension for service of less than 20 years

12. In this case, taking advantage of the fact the department did not have any records and by not producing the order terminating his service, the petitioner vaguely alleged that he was 'terminated' from service in the year 1982, without specifying whether it was by way of dismissal, removal or compulsory retirement or otherwise. If his termination was by way of dismissal or removal, he would have forfeited his past service as also his pension and gratuity under the pension Rules. Even if it assumed that he was not dismissed or removed, but was retired from service, the question is whether he is entitled to pension on the basis of 14 years of service.

13. The appellant relied on Rule 43(2) of the Tamil Nadu Pension Rules, 1978 ('TNP Rules' for short) to contend that on completion of 10 years of service, a government servant is entitled to pension. Relevant portion of the said rule is extracted below:

"(2) In the case of a government servant, retiring in accordance with the provisions of these rules after completing qualifying service of not less than 10 years, the amount of pension shall be appropriate amount as set out below namely :"

(emphasis supplied) As similar contention is frequently raised under the corresponding Rule 49(2)(b) of CCS Pension Rules ('CCSP Rules' for short), we will for convenience refer to the corresponding provisions of CCSP Rules also.

14. Rule 43(2) relied on by the petitioner falls under Chapter VI of TNP Rules (corresponding to Rule 49(2)(b) in chapter VII of CCSP Rules) dealing with 'Regulation of amount of pension'. The said rule relates to quantum and lays down how the pension of a retired government servant should be calculated if he is entitled to pension. Entitlement to pension is governed by Chapter V of the said Rules, which enumerates the classes of pension and conditions for entitlement. The enumerated classes of pension are :

Classes of Pension (vide Chapter V of Pension CCSP Rules TNP Rules Rules)

(i) Superannuation pension (Rule 35) Rule 32

(ii) Retiring pension (Rule 36) Rule 33

(iii) Pension on absorption in or under a corpo- (Rule 37) Rule 34 ration, company or body owned/controlled by State/Central Government (Rule 37A)

(iv) Invalid pension (Rule 38) Rule 36

(v) Compensation pension payable on discharge owing to abolition of the post (Rule 39) Rule 38

(vi) Compulsory retirement pension (Rule 40) Rule 39

(vii) Compassionate allowance to Government servants who forfeit their pension on being dismissed (Rule 41) Rule 40
A government servant, whose case does not fall under any of the classes of pensions enumerated in Chapter V, is not en-

titled to pension. If a government servant is not able to make out entitlement to any class of pension specified in chapter V of the pension Rules, there is no question of having recourse to the rules in the chapter dealing with regulation of amount of pension (chapter VI of TNP Rules or chapter VII of CCSP Rules) for determining the quantum of pension.

15. Admittedly the petitioner was not 'superannuated'; nor was he absorbed in any corporation/company/body owned by state/central government; nor did he retire on account of any infirmity which incapacitated him for service; nor was he discharged on abolition of his post. Nor is he claiming compassionate allowance (on being dismissed/removed after putting in service of an

extent which would entitle him to pension but for the dismissal/removal). The only other categories of pension are compulsory retirement pension and the retiring pension. A government servant compulsorily retired from service as a penalty, may be granted by the authority competent to impose such penalty, pension at a rate not less than two-third admissible to him on the date of his compulsory retirement. If a government servant is not otherwise admissible to pension, he cannot obviously be granted pension on compulsory retirement. There is no such grant in this case. That leaves us with retiring pension.

16. Rule 33 of TNP Rules provides that a retiring pension shall be granted to a government servant who retires, or is retired, in accordance with the provisions of Rule 42 of the said Rules. Rule 42 of TNP Rules provides that a government servant, who under fundamental Rule 56(d), retires voluntarily or is required by the appointing authority to retire in public interest shall be entitled to a retiring pension. (corresponding Rule 36 of CCSP Rules which provides that a retiring pension shall be granted to a Government servant who retires, or is retired, in advance of the age of compulsory retirement in accordance with the provisions of Rules 48 or 48-A of those Rules or Rule 56 of the Fundamental Rules or Article 459 of the Civil Service Regulations and to a Government servant who on being declared surplus, opts for voluntary retirement in accordance with Rule 29 of those Rules). The provision relating to retiring pension makes it clear that a minimum of 20 years qualifying service is required for retiring pension. It does not entitle a government servant to retiring pension on completion of ten years service. Therefore, the petitioner is not entitled to retiring pension

17. The petitioner contends that if the minimum service for entitlement to retiring pension was 20 years and not 10 years, Rule 43(2) would not have stated "qualifying service of not less than 10 years". He contended that as Rule 43(2) of the TNP Rules (Rule 49(2)(b) of CCSP Rules) refers to "not less than 10 years service", any government servant who has put in service of 10 years or more is entitled to retiring pension. The said contention is misconceived. As stated earlier, the said rule does not relate to 'entitlement' of pension nor does it prescribe the conditions for eligibility, but only provides how the amount of pension should be calculated in cases where the retiring Government servant is entitled to pension under the chapter V of the pension rules. The said Rule regulates the 'amount' of pension not only in case of retiring pension, but in case of all classes of pension. Under Chapter V, in certain situations, a Government servant may be eligible for pension even where the service is less than ten years. Rules 32, 36, and 38 of TNP Rules (Rules 35, 38 and 39 of CCSP Rules) do not prescribe any minimum service for being entitled to pension, where the cessation of service is on account of superannuation, or on account of bodily or mental infirmity or on account of abolition of his post. When Rule 43(2) of TNP Rules (Rule 49(2)(2) of CCSP Rules) refers to payment of pension to a person who has a qualifying service of not less than 10 years, it does not mean that the minimum period of service prescribed for retirement pension is reduced to 10 years or that government servants who are dismissed/removed/compulsorily retired by way of punishment, or those who voluntarily retire before reaching the age of superannuation with less than 20 years of qualifying service, become entitled to pension. Rule 43(2) of TNP Rules (Rule 49(2)(b) of CCSP Rules), as noticed earlier, comes into play only when the Government servant is entitled to any of the classes of pension enumerated under Chapter V of the Pension Rules. Therefore, when Rule 43(2) of TNP Rules (or Rule 49(2)(b) of CCSP Rule) dealing with the quantum

of pension refers to a government servant re- tiring in accordance with the said rules after completing qualifying service of not less than 10 years, it does not mean that pension is payable to persons who have not com- pleted the required minimum number of years (20 years) of service or to persons who have forfeited their service on dismissal/removal from service. Therefore, the appellant is not entitled to pension.

18. Special leave petition is therefore dismissed as hav- ing no merit.

.....J [R. V. Raveendran]
.....J [Lokeshwar Singh Panta] New Delhi;

October 3, 2008.