

THE DIRECTOR GENERAL, BORDER SECURITY FORCE
AND ORS.

A

v.

DEENAMMA SANUEL

DECEMBER 12, 2007

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[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Border Security Force Rules, 1969:

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r.19—Employee permitted to resign in terms of r.19—Claim for pension—High Court directing the authorities to decide the representation within the stipulated time—HELD: It is for the authorities to consider the question of eligibility—If employee has any grievance against their decision, she can take appropriate remedy as available in law.

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The instant appeal was filed by the Department challenging the judgment of the High Court whereby it directed the authorities to dispose of the representation of the respondent-employee claiming that she having been permitted to resign in terms of Rule 19 of the Border Security Force Rules, 1969, was entitled to pension.

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It was contended for the appellants that the respondent was not eligible for pension as she completed only 18 years and three months of service.

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Disposing of the appeal, the Court

HELD: It is for the appellants to consider the question of eligibility. Neither the Single Judge nor the Division Bench of the High Court decided about the eligibility. The only direction given was to consider the representation. It was open to the appellants to reject the representation by deciding the issue of eligibility. If the respondent has any grievance to such rejection, she can take appropriate remedy as

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A available in law. [Para 6 and 7] [467-D, E, F]

Union of India v. Rakesh Kumar etc., [2001] 2 SCR 927, relied on.

Jos. v. Border Security Force, (1999) 3 KLT 904, cited.

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 928 of 2002.

From the final Judgment and Order dated 30.8.2000 of the High Court of Kerala at Ernakulam in Writ Appeal No. 1588 of 2000.

C Sunita Sharma and Sushma Suri for the Appellants.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Heard learned counsel for the appellants.

D 2. Challenge in this appeal is to the judgment of a Division Bench of the Kerala High Court dismissing the writ appeal filed by the appellants. Challenge in the writ appeal was to the order passed by a learned Single Judge in O.P. No.4287 of 2000. The High Court relied on some earlier decisions to hold that a person resigning under Rule 19 of the Border Security Force Rules, 1969 (in short 'the Rules') is entitled to pension if he is eligible. The writ appeal was dismissed and the appellants were directed to dispose of the representation of the respondent in the light of the judgment referred to i.e. *Jos. v. Border Security Force*, (1999) 3 KLT 904. Relying upon this judgment, the learned Single Judge had directed the respondents in the writ petition to consider the representation of the appellant within a stipulated time.

E 3. Learned counsel for the appellants submitted that the respondent was not eligible for pension as she had completed only 18 years and three months of service. Strong reliance is placed on a decision of this Court in Civil Appeal No.6166 of 1999 and connected cases, disposed of on 30.03.2001.

G 4. This Court, *inter-alia*, observed as follows:-

H "In the result, there is no substance in the contention of the

learned counsel for the respondents that on the basis of Rule 49 A
of the CCS (Pension) Rules or on the basis of G.O., the
respondents who have retired after completing qualifying service
of 10 years but before completing qualifying service of 20 years
by voluntary retirement, are entitled to get pensionary benefits.
*Respondents who were permitted to resign from service under B
Rule 19 of the BSF Rules before the attainment of the age of
retirement or before putting such number of years of service,
as may be necessary under the Rules, to be eligible for
retirement are not entitled to get any pension under any of the C
provisions under CCS(Pension) Rules. Rule 49 only prescribes
the procedure for calculation and quantification of pension amount.
The G.O. dated 27.12.1995 does not confer additional right of
pension on the BSF employee.”*

(Italics for emphasis) D

5. There is no appearance on behalf of the respondent inspite of
service of notice.

6. In view of what has been stated by this Court, it is for the
appellants to consider the question of eligibility. Neither the learned Single E
Judge nor the Division Bench decided about the eligibility. The only
direction given was to consider the representation.

7. It was open to the appellants to reject the representation by
deciding the issue of eligibility. If the respondent has any grievance to such F
rejection, she can take appropriate remedy as available in law. We,
therefore, dispose of the appeal holding that the representation be disposed
of, if pending within three months after deciding the question of eligibility.
Needless to say if the respondent has any grievance, she can agitate it
before an appropriate forum.

8. The appeal is disposed of accordingly. No costs. G

R.P.

Appeal disposed of.