

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.12.2015

Coram :

The Hon'ble Mr.Justice K.KALYANASUNDARAM

W.P.No.24783 of 2014

V.Subramanian

... Petitioner

Vs.

1.Government of Tamil Nadu
Rep.by its Secretary,
Co-operative Food and Consumer Protection Department
Fort St. George,
Chennai - 600 009.

2.The Registrar of Co-operative Societies,
Kilpauk, Chennai - 600 010.

3.Joint Registrar of Co-operative Societies,
Vellore Region, Sathuvacharry,
Vellore - 632 009.

4.The Vellore Co-operative Sugar Mills Limited,
N o.DS2, Rep. by its President,
(Near Tiruvalam R.S.)
Vellore Sugar Mill Post,
Vellore District 632 519.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India for issue of writ of declaration declaring that the action of the 1st and 2nd respondent in not sanctioning proportionate pension to the petitioner in accordance with Tamil Nadu Pension Rules read with G.O.Ms.No.638 dated 07.08.1990 with effect from 01.06.1994 being the date of the petitioner's superannuation from the services of the Co-operative Sugar Mills as illegal, arbitrary and contrary to law and consequently direct the respondent No.1 to 3 to pay pension for the services rendered from 01.06.1994 at the rate of 12% per annum and continue to pay pension.

For Petitioner : Mr.Balan Haridas

For Respondents : Mr.R.Bala Ramesh AGP.

O R D E R

By consent, this writ petition is taken up for disposal at the admission stage itself.

2. This writ petition has been filed for issuance of writ of declaration, declaring that the action of the 1st and 2nd respondent in not sanctioning proportionate pension to the petitioner, as illegal, arbitrary and contrary to law and consequently direct the respondents 1 to 3 to pay pension for the services rendered from 01.06.1960 to 06.07.1977.

3. The case of the petitioner is that he joined the services of the first respondent through Tamil Nadu Public Service Commission as Senior Inspector and joined duty on 01.06.1960. Subsequently, he was promoted as Co-operative Sub-Registrar on 07.12.1970 and was sent on deputation to the 4th respondent Co-operative Mill during April 1976. By order dated 06.06.1977, the 4th respondent absorbed the services of the petitioner as Office Manager and consequently he was relieved from the 1st respondent Department on the same day. Whiles, on attaining the age of superannuation, he retired from the services on 31.05.1994.

4. The petitioner would allege that he had rendered more than 17 years of service in the 1st respondent Department, so he is entitled to draw proportionate pension as per the Pension Rules. The respondents 1 to 3 have not extended the benefits of the Government orders in G.O.Ms.No.378 dated 18.04.1975, G.O.Ms.No.1921 dated 08.11.1983 and G.P.Ms.No.638 Finance (BPE) Department dated 07.08.1990.

5. It is further alleged that similarly placed person, one Mr.N.Sundaramurthy, filed W.P.No.1138 of 2000 questioning the action of the respondent in denying pension on the ground that he resigned his services and joined the services of the 4th respondent and this court, by order dated 02.01.2012 allowed the writ petition granting pension for the entire services rendered by him. However, in the Writ Appeal No.2289 of 2012 filed by the Government, the Division Bench of this Court has partly allowed the appeal directing the respondents to pay pension for the services rendered from 01.09.2004 being the date three years prior to the demand for pension. Therefore, the petitioner made representation to the 3rd respondent on 16.06.2014 requesting to sanction pension. Since it was not considered, the petitioner has come up with the present writ petition.

6. The claim of the petitioner was opposed by the respondents by filing counter stating that the petitioner has resigned from the services from 06.06.1977, which was duly accepted by the 3rd respondent. So, as per Rule 23 (1) of the

Tamil Nadu Pension Rules 1978, the petitioner is not entitled for the relief sought for in the writ petition. It is further stated that this writ petition was filed after 37 years from the date of resignation, based on the order passed in W.A.No.2289 of 2012 in a casual manner, so it is not maintainable. Further, the petitioner had submitted his resignation with sole intention of getting higher salary than the salary received from the Government services and therefore the resignation being pre-planned and purposeful, cannot be a technical resignation and prayed for dismissal of the writ petition.

7. The objections of the respondent were already considered and rejected by the Division Bench of this Court in W.A.No.2289 of 2012. The relevant paragraph is usefully extracted as follows -

9. In this regard, it is relevant to extract Rule 23 of the Tamil Nadu Pension Rules, which reads as follows :

"23. Forfeiture of service on resignation - (1) Resignation from service or post entails forfeiture of past service.

Provided that 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.

(2) Interruption in service in a case falling under the proviso to sub-rule (i), 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 or 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 the Government servant."

10. In the light of the above statutory rule, particularly with reference to proviso to Rule 23, the appellants are not justified in denying the pension payable to the first respondent for the services rendered by him from 01.05.1959 till 22.07.1977 in Co-operative Department. However, the appellants are justified in contending that the first respondent is not entitled to get pension for the services rendered by him from 22.07.1977 to

31.03.2000 as he served in Vellore Co-operative Sugar Mills, which is a non-pensionable establishment.

8. Further, in the writ appeal, the first respondent/writ petitioner retired from the services on 31.03.2000 but he chose to submit his representation seeking pension only on 28.09.2007. In the above circumstances, the Division Bench of this Court held that the first respondent is entitled to seek arrears of pension three years prior to the demand made by him and further observed that the first respondent is not entitled to get interest for the arrears of pension payable from 01.09.2004.

9. In the instant case, the petitioner made a representation on 16.06.2014 seeking arrears of pension. The Division Bench judgment of this Court in W.A.No.2289 of 2012 is squarely applicable to the facts of this case. Hence, this court directs the respondents 1 to 3 to sanction and pay pension to the petitioner for the period of services rendered by him from 01.06.1960 to 06.07.1977, within a period of six months from the date of receipt of a copy of this order. If the arrears of pension payable from 01.07.2011 till 30.12.2015 is not sanctioned and paid within the period of six months, as mentioned above, the respondents are bound to pay 9% interest for the said arrears of pension.

10. In the result, the writ petition is allowed. No costs.
rgr

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Secretary,
Government of Tamil Nadu,
Co-operative Food and Consumer
Protection Department,
Fort St. George,
Chennai - 600 009.

2.The Registrar of Co-operative Societies,
Kilpauk, Chennai - 600 010.

3.Joint Registrar of Co-operative Societies,
Vellore Region, Sathuvacharry,
Vellore - 632 009.

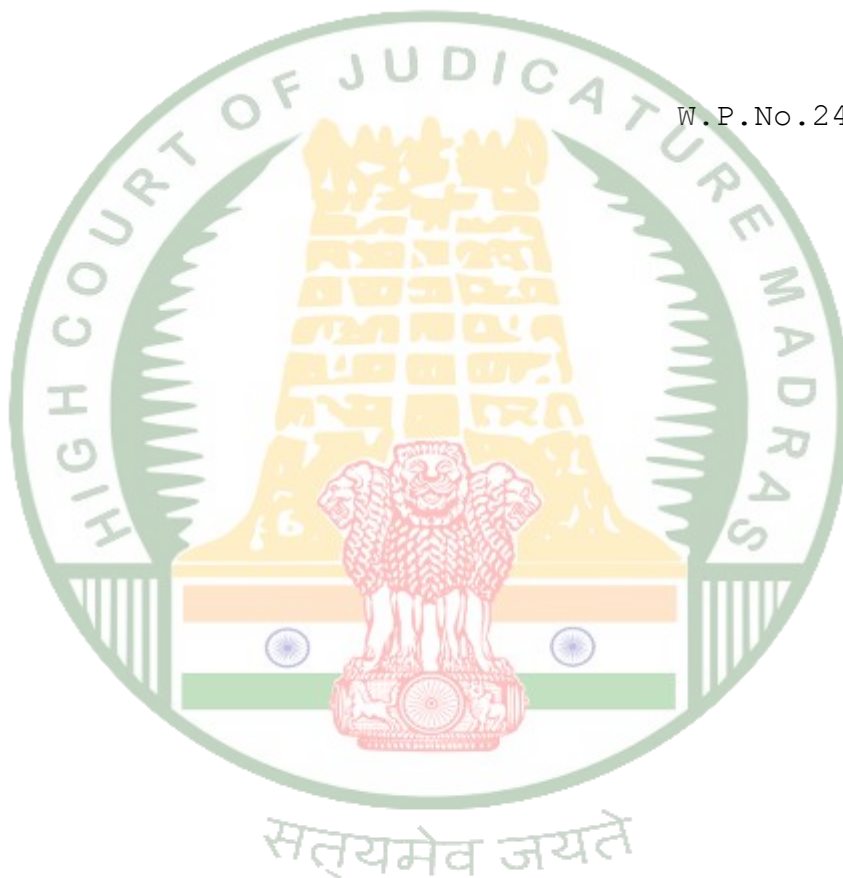
4.The President,
Vellore Co-operative Sugar Mills Limited,
No.DS2, (Near Tiruvalam R.S.)
Vellore Sugar Mill Post,
Vellore District 632 519.

+ 1 cc to Mr.Balan Haridas, Advocate Sr 13003

+ 1 cc to Mr.Balan Haridas, Advocate Sr 68719 (8/3/16)

KR/4/3/16

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