

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03-11-2016

(Orders reserved on 20-10-2016)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.34878 of 2016

J.Gethsia Gunavathy

.. Petitioner

Vs.

1. The Accountant General,
(Accounts and Entitlement),
Tamil Nadu,
No.361, Anna Salai,
Chennai-600 018.
 2. The Assistant Elementary Educational Officer,
Panruti,
Cuddalore District.
 3. The Secretary,
Sri P.Muthaiyar Primary School,
Panruti,
Cuddalore-607 106.
- .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent's order made in No.P24/1/12413871/ADK, dated 30.08.2016, quash the same and direct the first respondent to disburse the pension along with arrears and pension benefits to the petitioner.

For Petitioners : Mr.T.Padmanabhan

For Respondents : Mrs.Hema Muralikrishnan for R-1
Mr.K.Dhananjayan, Spl.G.P. for RR-2 & 3

ORDER

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent's order made in No.P24/1/12413871/ADK, dated 30.08.2016, quash the same and direct the first respondent to disburse the pension along with arrears and pension benefits to the petitioner.

2. It is the case of the petitioner that she was initially appointed on temporary basis in the third respondent-School in 1986 and her service was regularised in 1987 and designated as Secondary Grade Assistant from 04.06.1987 to 03.03.2003. On completion of 16 years of service, she voluntarily retired from service, pursuant to which, her health status has worsened and was completely bed-ridden. She underwent three major surgeries and therefore, she was not in a position to make a representation before the authorities for her service benefits. At last, the petitioner approached the third respondent with regard to her pensionary benefits. The third respondent, on receipt of the representation from her with necessary papers, recommended and forwarded the same to the second respondent, who in turn recommended and forwarded it to the first respondent on 30.05.2016. The first respondent, who is the disbursing authority, without scrutinising the papers, passed the impugned order, dated 30.08.2016, stating that as per the Tamil Nadu Pension Rules, in Rule 23, the resignation will forfeit the past service rendered by the petitioner. Challenging the said order dated 30.08.2016, the petitioner has come forward with this Writ Petition for the relief stated supra.

3. When the Writ Petition is taken up for consideration, learned counsel for the petitioner, by relying upon a judgment of a Division Bench of this Court in Writ Appeal No.1651 of 2000, dated 08.07.2009 in the case of the State of Tamil Nadu and another Vs. V.Jesudoss and another, submitted that in an identical situation, the Division Bench, in the said judgment, observed as follows:

"10. Under proviso to Rule 23, it would be evident that the resignation shall not entail forfeiture of past service if it has been submitted to take up with proper permission for another appointment. It is not clear that if a person submits a simplicitor resignation and against whom no proceedings is pending or allegation is pending and if he wants to take rest in his life or is suffering from ailment, whether in such case, resignation will amount to forfeiture of past service. In such case where the resignation is simplicitor, not because of any departmental proceeding or any allegation and has been accepted by the competent authority, if they are equated with those dismissed or removed from service, according to us, it will render two unequal as equal and will be violative of Article 14 of the Constitution of India.

11. In the aforesaid background, to uphold Rule 23 as not violative of Article 14 of the Constitution of India, it is to be held that resignation simplicitor will not entail forfeiture of past service; only in those cases where a person submits resignation because of any allegation or proceedings which otherwise would

have attracted punishment like dismissal or removal from service, the provisions of Rule 23 will be attracted forfeiting the past service.

... ..

15. We are not inclined to accept that the first respondent having resigned from service, his services stood forfeited for the purpose of pension. ... "

By relying upon the above judgment of the Division Bench, learned counsel for the petitioner submitted that by quashing the impugned order, a direction may be issued to the first respondent to disburse the pension along with arrears.

4. Countering the above submissions, learned counsel for the first respondent, by filing counter affidavit, submitted that the petitioner resigned from service on 03.03.2003 after serving as Secondary Grade Assistant from 04.06.1987 to 03.03.2003. As per Rule 23 of the Tamil Nadu Pension Rules, resignation entails forfeiture of past service and no pensionary benefits, is admissible. If an employee resigns his post, he is not entitled to pension, irrespective of the number of years of service rendered. The petitioner had served for nearly more than 15 years and she had submitted resignation letter, which was accepted by the authorities and she was relieved from service on 03.03.2003. It is further submitted that there is no Rule provision for granting pension to a person who had resigned his/her service and acceptance of resignation is a routine administrative function and the same does not confer any right of pension to a resigned person. Hence, learned counsel for the first respondent prayed for dismissal of the Writ Petition.

5. Heard the learned Special Government Pleader appearing for the respondents 2 and 3 on the above lines.

6. Keeping in mind the above submissions made on either side, I have carefully considered the same and perused the materials available on record.

7. Learned counsel for the first respondent relied on a judgment of the Supreme Court reported in 2008 (10) SCC 115 (C.Jacob Vs. Director of Geology and Mining and another) (S.L.P. (C).No.25795 of 2008, dated 03.10.2008), in which, the Apex Court observed as follows:

"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. 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."

8. Learned counsel for the first respondent also relied on order of this Court, dated 14.02.2011 in W.P.No.25545 of 2010, wherein, similar relief as prayed for by the petitioner herein, was rejected.

9. On a reading of the above judgment of the Supreme Court, it is clear that minimum 20 years of qualifying service is required for retiring pension. Otherwise, it does not entitle a Government servant to retiring pension. In the instant case, the petitioner has resigned from service within 20 years, i.e. after 16 years of service, in 2003 and only after a lapse of 13 years, she has made a representation to the authorities, which was duly rejected by the first respondent by passing the impugned order, by relying on Rule 23, which states that the resignation will forfeit the past service rendered.

10. Therefore, while applying the dictum laid down by the Apex Court in the said judgment, I am of the considered view that the petitioner is not entitled for the relief sought for in this Writ Petition. The Writ Petition is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

CS

Copy to

1. The Accountant General,
(Accounts and Entitlement),
Tamil Nadu,
No.361, Anna Salai,
Chennai-600 018.

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2. The Assistant Elementary Educational Officer,
Panruti,
Cuddalore District.

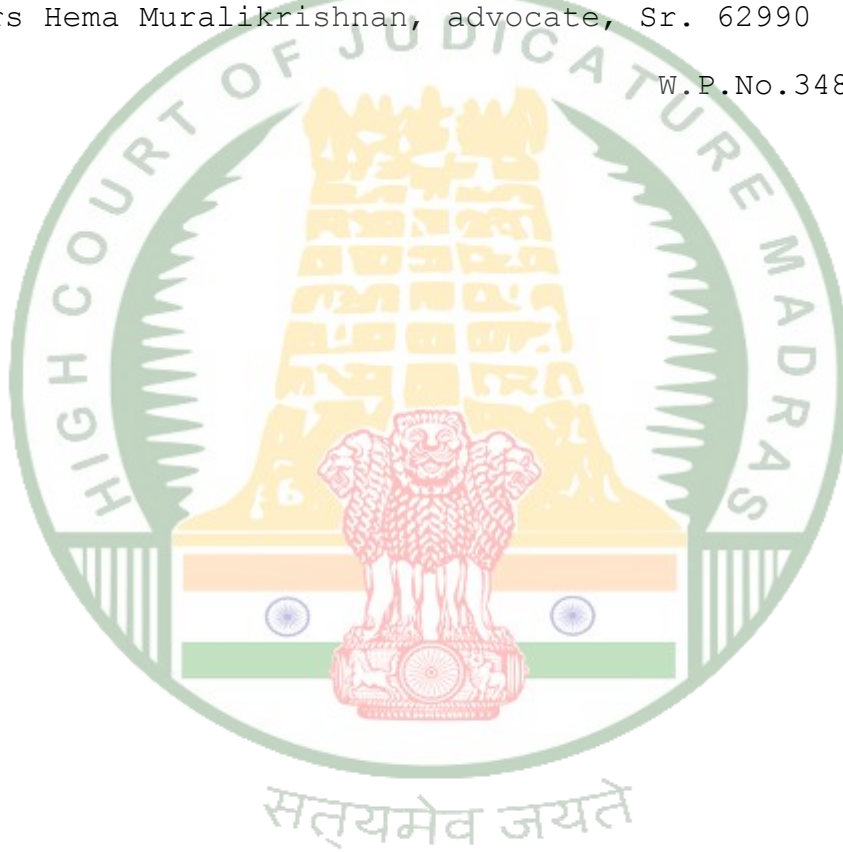
3. The Secretary,
Sri P.Muthaiyar Primary School,
Panruti,
Cuddalore-607 106.

1 cc to Mr.T. Padmanabhan, advocate, Sr. 62883

1 cc to Mrs Hema Muralikrishnan, advocate, Sr. 62990

W.P.No.34878 of 2016

LRS (CO)
kk 8/12



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