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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :10.06.2016
CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P (MD) No.262 of 2015

and

M.P. (MD) No.1 of 2015

P.Sivasubramanian

.. Petitioner

vs.

1.The Accountant General (A&E),
Office of the Accountant General,
No.361, Anna Salai,
Chennai-18.

2.The Secretary to Government School
Education Department,
Fort St.George,
Chennai-600 009.

3.The Director of School Education,
College Road,
Chennai-600 006.

4.The Chief Educational Officer,
Tuticorin District,
Tuticorin-3.

5.The District Educational Officer,
Tuticorin District, Tuticorin-3.

6.The Director,
Pension Payment Directorate,
No.259, Annasalai, Block-3 II Floor,
DMS Compound, Teynampet,
Chennai-6.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus directing the respondents to pay arrears of pension from 01.11.1985 to till date with interest and subsequent monthly pension besides gratuity payable to the petitioner.

For Petitioner

:Mr.T.Selvan

For Respondents

: Mr.P.Gunasekaran
for R.1

: Mr.M.Murugan
Government Advocate

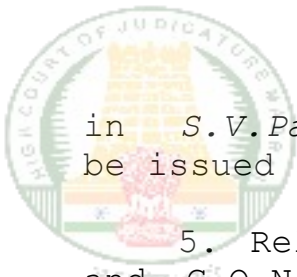
ORDER

Mr.P.Sivasubramanian has brought this Writ Petition, seeking for the issuance of a Writ of Mandamus, directing the respondents to pay arrears of pension from 01.11.1985 to till date with interest and subsequent monthly pension besides gratuity due and payable to him.

2. The learned counsel appearing for the petitioner submitted that the petitioner, after joining as Junior Assistant in Kamaraj High School, Nalumavadi, Tuticorin District, on 27.06.1967, had received permanent scale from 27.06.1968. While he was continuously working, on completion of 18 ½ years, due to his family problem, he had resigned from service on 01.11.1985, from the service of the said School. However, after tendering his resignation from service with effect from 01.11.1985, he has not been paid with any pension.

3. Adding further, the learned Counsel appearing for the petitioner would submit that as he is put in 18 ½ years of service, he is entitled to receive his pension. After waiting for long time, the petitioner came to know from the newspaper dated 26.10.2014 that the Madurai Bench of Madras High Court was pleased to order by giving a direction to the Authorities concerned to consider the pension of one M.Subbiah, who has already served as Teacher, from 1955 to 1972 and to pay his pension, who has also resigned from service like him. Therefore, he has made a representation to the respondents on 14.11.2014 requesting them to process his pension proposal and provide him pension, gratuity at an early date, but finding no response from the respondents, he has come before this Court with this Writ Petition.

4. Placing reliance on the judgment of this Court in the case in *The Government of Tamil Nadu and another Vs. S.V.Paul Jayaraj* reported in (2001)3 MLJ 430, the learned Counsel for the petitioner submitted that this Court, in the above judgment, has held that a teacher who has resigned even after the crucial date can be sanctioned pension by the respective authorities competent to sanction, even without any specific orders from the higher authorities or of the Government condoning the resignation in each individual case. This would clinch the issue in favour of the petitioner also. Therefore, the case of the petitioner has to be considered positively. In order to bring his case under the cover of *S.V.Paul Jayaraj* case, he would submit that this Court has categorically held that a teacher who resigned even after the crucial date i.e., on 01.04.1955, is also entitled to get the pension, since the resignation does not amount to forfeiture of pension. In the present case, the petitioner's date of resignation falls on 01.11.1985, which is after the crucial date 01.04.1955. Therefore, applying the ratio laid down by this Court



in *S.V.Paul Jayaraj* case as mentioned supra, a direction should be issued to the respondents to pay his pension.

5. Relying upon two G.Os viz., G.O.No.1015 dated 05.06.1981 and G.O.No.37, dated 05.01.1983, the learned Counsel for the petitioner would further contend that pension can be sanctioned even in cases where the incumbents had resigned since they could not have foreseen the institution of Pension Scheme at the time they resigned. These two G.Os have been liberally interpreted by this Court in the aforesaid mentioned *S.V.Paul Jayaraj* judgment. Therefore, the petitioner may be sanctioned pension, he pleaded.

6. Opposing the above prayer, Mr.P.Gunasekaran, learned Counsel appearing for the first respondent urged this Court to dismiss the writ petition for three reasons. Firstly, the petitioner has not explained the huge and unexplained delay of 29 long years for not pursuing his request. After he resigned from his teaching service on 01.11.1985, taking a ground that he has come to know from the newspaper dated 26.10.2014 that the Madurai Bench of Madras High Court was pleased to order by giving a direction to the Authorities concerned to consider the pension of one M.Subbiah who also resigned like the petitioner, he has simply mentioned that he has given a representation on 14.11.2014. In the meanwhile, several orders have been passed by this Court. In the case of *A.I.Agnel Ilangovan Vs. The Government of Tamil Nadu represented by its Secretary and Others* reported in 2016(2) LLN 254(DB) (Mad.) it is clearly held that in the case of *D.Vijayarangan V. Secretary, Sales Tax Appellate Tribunal* reported in 2008(6) CTC 700, decided by the Honourable Division Bench of High Court would not apply to the facts of present case, as the petitioner in that case sought resignation citing ill health, which is not so in present case of the petitioner. Moreover this Court in the recent judgment referring to Rule 23 of Tamil Nadu Pension Rules, 1978 has clearly held that the resignation amounts to forfeiture of service. Therefore, any resignation is submitted without proper permission of the competent Authority either to take up another appointment under State Government or Central Government, such resignation will certainly and definitely amount to forfeiture of pension. Therefore, in the present case, the petitioner has not mentioned anywhere that at the time of resignation, on 01.11.1985, he has obtained prior permission of the competent Authority. Hence, Rule 23 of Tamil Nadu Pension Rules, 1978 will clearly apply to the present case, as held by the Division Bench of this Court in *A.I.Agnel Ilangovan's* case as cited supra.

7. Adding further, he would submit that with regard to delay, taking reliance from the judgment of the Honourable Apex Court in *Jacob Vs. Director of Geology and Mining and Another* reported in (2008) 10 Supreme Court Cases 115, he would further submit that a writ petition filed with undue and unreasonable



delay would be rejected at the threshold itself on the ground of delay and latches, because due to long delay of 29 years, the petitioner's service records would have been destroyed long time ago.

8. Heard the submissions made by the learned Counsel for the petitioner and the learned Counsel appearing for the respondents.

9. In the present case, admittedly 29 years had lapsed from the date of resignation on 01.11.1985. After a lapse of 29 long years, the petitioner has given a representation on 14.11.2014, requesting the respondents that he may be given pension, in view of the subsequent order passed by this Court. Since the petitioner had resigned in the year 1985, it would not have been known that all his service records would be kept under safe custody. Even if a direction is given to the respondents, it will cause immense hardship and embracement to both the department and the petitioner.

10. Again relying upon another order passed by me in *K.Kolappa Pillai Vs. Secretary to Government of Tamil Nadu, Education Department and Others* in W.P.(MD)No.4101 of 2011, dated 07.11.2012, on the question of delay dismissing the writ petition due to delay of 18 years, it has been further contended that when this Court has already taken a view that a teacher after joining service in the year 1947, after putting in service of 18 years 7 months 25 days resigning from the School with huge delay of 30 years, in view of long delay of 30 years in making his claim, such stable claim cannot be entertained. The said order passed by this Court will clearly apply to the present case of the petitioner, since in the present case, there has been a delay of 29 years. Therefore, this Court finds merits on the submissions made by the learned Counsel appearing for the respondents. As rightly mentioned by the petitioner, having resigned from his service on 01.11.1985, the petitioner has approached this Court with huge and unexplained delay of 29 years. Therefore, this Court is not inclined to entertain such stable claim. Hence, this Writ Petition fails and accordingly, it is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub-Assistant Registrar

To

1.The Accountant General (A&E),
Office of the Accountant General,
Accounts Department, Anna Salai, Chennai-18.



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No.259, Annasalai, Block-3 II Floor,
DMS Compound, Teynampet,
Chennai-6.

+One cc to Mr.P.Gunasekaran, Advocate, SR.No.29450

+One cc to Mr.T.Selvan, Advocate, SR.No.29570

+One cc to The Special Government Pleader, SR.No.29765

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RL/10C/5P/KBM/17/8/2016

W.P. (MD) No.262 of 2015

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