



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.08.2016

C O R A M

WEB COPY

THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)No.15941 of 2016

and

W.M.P(MD)No.11677 of 2016

P.M.Jainullabdeen

.. Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. By its Secretary to Government,
School Education Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

3.The District Educational Officer,
Kumbakonam,
Thanjavur District.

4.The Correspondent,
Shaukathul Islam B.M.S.
Higher Secondary School,
Valoothoor - 614 210,
Thanjavur District.

5.The Principal Accountant General (A&E) Tamil Nadu,
361, Anna Salai,
Chennai - 600 018.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the fifth respondent in Letter No.P24/4/12413665/ADK, dated 20.06.2016 and to quash the same and consequently direct the respondent to settle retirement benefits to the petitioner including regular pension in the post of Teacher in the fourth respondent School as on the date of retirement on 30.06.2006 by taking into consideration of services rendered by the petitioner in Panchayat Union Service



from 06.12.1968 and 31.01.1984 with all consequential and other attendant benefits.

For Petitioner : Mr.G.Sankaran

For RR 1 to 3 : Mr.R.Anandharaj
Government Advocate

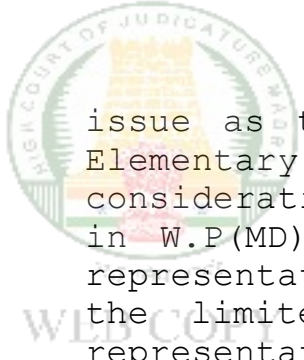
For R - 5 : Mr.P.Gunasekaran

ORDER

This Writ Petition has been filed for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the fifth respondent in Letter No.P24/4/12413665/ADK, dated 20.06.2016 and to quash the same and consequently direct the respondent to settle retirement benefits to the petitioner including regular pension in the post of Secondary Grade Teacher in the fourth respondent School as on the date of retirement on 30.06.2006 by taking into consideration of services rendered by the petitioner in Panchayat Union Service from 06.12.1968 and 31.01.1984 with all consequential and other attendant benefits.

2.Mr.R.Anandhraj, learned Government Advocate takes notice for the respondents 1 to 3 and Mr.P.Gunasekaran, learned counsel takes notice for the fifth respondent.

3.Mr.G.Sankaran, learned counsel appearing for the petitioner submitted that the petitioner was initially appointed as a Higher Grade Teacher in the Panchayat Union Middle School, Pasupathi Kovil, Papanasam Union, on 06.12.1968 and he was up-graded as Secondary Grade Teacher with effect from 01.01.1971. In the meantime, from 01.02.1984, the petitioner went on leave, on loss of pay, due to family circumstances and he was on continuous leave over the years for the very same reasons. In the said circumstances, he submitted an application on 14.03.1989 seeking for Voluntary Retirement citing family reasons and on that basis, he was relieved from service with effect from 31.01.1984. However, after 14 years from the date of resignation, the petitioner was appointed as a Secondary Grade Teacher in the fourth respondent School on 11.02.1998. His appointment was also approved by the Department and salary of the petitioner was fixed in Selection Grade Scale of Pay by taking into consideration of the services rendered in Elementary Education prior to resignation from 06.12.1968 to 31.01.1984, since G.O.Ms.No.992, Education Department, dated 22.06.1979 permits to count the past services rendered prior to resignation for pay fixation in the newly appointed post. Subsequently, the petitioner reached the age of superannuation on 30.06.2006 and his claim for regular pension and retirement benefits were not paid, as there was confusion over the

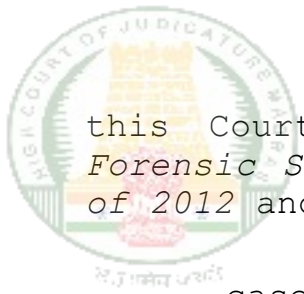


issue as to whether the services rendered by the petitioner in Elementary Education between 1968 and 1984 to be taken into consideration or not. Hence, the petitioner filed a Writ Petition in W.P(MD)No.7653 of 2014, seeking a direction to consider his representation. Accordingly, this Court on 30.04.2014, considering the limited prayer, directed the respondent to consider the representation of the petitioner and pass orders on merits and in accordance with law within a reasonable time.

4.Adding further, the learned counsel for the petitioner submitted that the third respondent-the District Educational Officer, Kumbakonam, forwarded a proposal to the fifth respondent-the Principal Accountant General (A & E) Tamil Nadu, Chennai, through the second respondent-the Director of School Education, DPI Campus, College Road, Chennai, recommending settlement of retirement benefits and regular pension by considering the services rendered in Elementary Education from 06.12.1968 to 31.01.1984 along with service rendered in the fourth respondent School from 11.02.1998 till the date of retirement on 30.06.2006. In-spite of the proposal made by the District Educational Officer to the fifth respondent through the Director of School Education, the Principal Accountant General (A & E) Tamil Nadu, Chennai, has wrongly rejected the case of the petitioner by passing the impugned order, dated 20.06.2016 and therefore, the same is liable to be set aside.

5.Adding further, the learned counsel for the petitioner submitted that when the Educational Department has accepted the case of the petitioner whether the services rendered by the petitioner in Elementary Education from 16.12.1968 to 31.01.1984 should be taken into account only for the pension benefits, the fifth respondent ought not to have come into the way. They should accept the proposal forwarded by the third respondent to the fifth respondent through the second respondent, this Court finds no merit on the submission of the learned counsel for the petitioner.

6.When the petitioner joined the teaching service as a Higher Grade Teacher in the Panchayat Union Middle School, Pasupathi Kovil, Papanasam Union on 06.12.1968 and upgraded as Secondary Grade Teacher with effect from 01.01.1971, but, unfortunately, he submitted an application for Voluntary Retirement with effect from 31.01.1984 stating some family circumstances. In those days, the Tamil Nadu Pension Rule was very clear that a person taking voluntary retirement without seeking prior approval from the competent authority would amount to resignation of earlier service entails forfeiture of past service and pensionary benefits are not permissible. This issue has also been succinctly considered by



this Court in *R.Premkumari Vs. the Director, the Directorate Forensic Science Department, Chennai and another in W.P(MD)No.618 of 2012* and the relevant portion is also extracted hereunder:-

"6.Though this judgement prima facie supports the case of the Workman, but with due respect to the Honorable Division Bench, this judgement cannot be taken as a precedent, in view of the judgement of the Honorable Supreme Court in *Union of India and others Vs. Brajnandan Singh [(2005) 8 SCC 325]*, where in the Honble Supreme Court was pleased to lay down as under:

5. In order to appreciate rival submissions Rule 26 which is the pivotal provision needs to be quoted. The same reads as under:

26.Forfeiture of service on resignation

(1)Resignation from a service or post, unless it is allowed to be withdrawn in the public interest by the Appointing Authority, entails forfeiture of past service.

(2)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. Rule 26 as the heading itself shows relates to forfeiture of service on resignation. In clear terms it provides that resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the Appointing Authority, entails forfeiture of pat service. The language is couched in mandatory terms. However, sub-Rule(2) is in the nature of an exception. It provides that 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. Admittedly this is not the case in the present appeal. Rule 5 on which great emphasis was laid down by the learned counsel for the respondent deals with regulation of claims to pension or family pension. Qualifying service is dealt with in Chapter III. The conditions subject to which service qualifies are provided in Rule 14. Chapter V deals with classes of pensions and conditions governing their grant. The effect of Rule 26 sub-Rules (1) and (2) cannot be lost sight of while deciding the question of entitlement of pension. The High Court was not justified in its conclusion that the rule was being torn out of context. After the past service is forfeited the same has to be excluded from the period of qualifying service. The language of Rule 26 sub-



Rules (1) and (2) is very clear and unambiguous. It is trite law that all the provisions of a statute have to be read together and no particular provision should be treated as superfluous. That being the position after the acceptance of resignation, in terms of Rule 26 sub-Rule (1) the past service stands forfeited. That being so, it has to be held that for the purpose of deciding question of entitlement to pension the respondent did not have the qualifying period of service. There is no substance in the plea of the learned counsel for the respondent that Rule 25 sub-Rules (1) and (2) has limited operation and does not wipe out entitlement to pension as quantified in Rule 49. Said Rule deals with amount of pension and not with entitlement.

6. It is well settled principle in law that the Court cannot read anything into statutory provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislature.

7. It is not possible for this Court to add words to the statutory rules, to hold that a person who resigned from service on medical ground or for some other reason can be treated at par with those employees who resign to join other service. The Rule 23 of Pension Rules is clear that a resignation results in forfeiture of service which disentitles the Government employees to pension.

8. For the reasons stated, there is no merit in this writ petition which is ordered to be dismissed, but with no order as to costs."

7. Therefore, since the issue has been once and for all decided by both this Court as well as by the Apex Court as mentioned supra, this Court is not able to find any error in the impugned order. Therefore, this Writ Petition fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AS)

/True Copy/



To

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Rep. By the State of Tamil Nadu,
School Education Department,
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2.The Director of School Education,
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Chennai - 600 006.

3.The District Educational Officer,
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Thanjavur District.

4.The Principal Accountant General (A&E) Tamil Nadu,
361, Anna Salai,
Chennai - 600 018.

+One cc to The Special Government Pleader, SR.No.47688
+One cc to Mr.P.Gunasekaran, Advocate, SR.No.47793
+One cc to Mr.G.Sankaran, Advocate, SR.No.47927

ps

RL/8C/6P/CK/16/9/2016

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