



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P (MD) No.12754 of 2011

WEB COPY

Maria Pilomin Ujans

.. Petitioner

vs.

1.The Government of Tamilnadu,
Rep. by its Secretary
Rural Development Department,
Fort St.George,
Chennai.

2.The District Collector,
Tuticorin,
Tuticorin District.

3.The Commissioner,
Thiruchenthur Panchayat Union Office,
Thiruchenthur,
Tuticorin
District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the third respondent in O.Mu.18367/2011(Va6) dated 05.04.2011 and quash the same and consequently direct the respondent Nos. 2 and 3 to calculate the petitioner's service and give the pension amount from 1974 to the petitioner.

For Petitioner : Mr.A.Rajaram

For Respondents : Mr.G.Muthukannan
Government Advocate

O R D E R

Ms.Maria Pilomin Ujans, while serving as a staff nurse in the year 1963 in Tiruchenthur Panchayat Union office, citing various reasons, resigned from the post by tendering resignation letter in the year 1974 and thereafter she also underwent a major surgery in her stomach. After sometime, she has given several representations to the third respondent/Commissioner, Tiruchenthur Panchayat Union Office for payment of pension, but the same were not considered. Finally, after repeated representations, the second respondent has



passed the impugned order, dated 05.04.2011, in O.Mu.No.18367/2011/(v6), rejecting the request of the petitioner for payment of pension. Aggrieved over the same, the petitioner has filed this writ petition, challenging the said order.

2. Learned counsel appearing for the petitioner has mainly contended that since a similar order was passed in W.P.(MD) No.7510 of 2010 in favour of one Sankaran for payment of pension, the same benefit may be extended to the petitioner.

3. A detailed counter affidavit has been filed by the second respondent/District Collector, Tuticorin, opposing the above prayer made by the petitioner.

4. Supporting the impugned order, dated 05.04.2011, the learned Government Advocate appearing for the respondents has heavily contended that the case of the petitioner has to be rejected *in limine*, on the ground of delay and laches, since she has come to this court so belatedly, when she has resigned from service in the year 1974. Adding further, he would submit that the contention made by the petitioner to apply the order passed by this Court in favour of one Sankaran in W.P.(MD).No.7510 of 2010, dated 30.08.2010 is also misconceived, since, the facts of the said case completely stands on a different footing, inasmuch as he served in Education department. Therefore, the Government order passed with regard to the Education Department, he pleaded, cannot be made applicable to the employees working in the Panchayat Union office.

5. He further submits that as per Rule 23 of the Tamilnadu Pension Rules, 1978, resignation from a service or post entails forfeiture of past service, provided that the 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. At this juncture, it is relevant to extract Rule 23 of the Tamil Nadu Pension Rules, 1978.

"23.Forfeiture of service on resignation:

(1) Resignation from a 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(1), due to the appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of



leave of 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."

6. Reading of the above Rule makes it clear 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. In the present case, it is not in dispute that the petitioner has not sought for any proper permission for getting another appointment in State Government. Admittedly, only due to medical and other reasons, she has resigned from service in the year 1974, therefore, the impugned order cannot be said to be arbitrary, further, the writ petition is hit by inordinate delay and laches, as the petitioner, who resigned from service in 1974, has slept out the matter for four decades.

7. In the result, this writ petition is dismissed. No Costs.

Sd/-

Assistant Registrar (P&A)

/True copy/

Sub Assistant Registrar

To

1. The Secretary to Government of Tamilnadu,
Rural Development Department,
Fort St.George, Chennai.
2. The District Collector,
Tuticorin, Tuticorin District.
3. The Commissioner,
Thiruchenthur Panchayat Union Office,
Thiruchenthur, Tuticorin District.

+1 CC to Mr.A.RAJARAM, Advocate, SR No.33894

W.P. (MD) No.12754 of 2011
29.06.2016

PJL

SH/SKS-RR:19.07.2016:3P/5C