

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2017

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THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Writ Petition No.25674 of 2014

1. M.Dhinakaran (died)
2. D.Kanagavalli
3. D.Nandhini Sree Lakshmi
4. Sujithra Sree Lakshmi Petitioners

(P2 to P4 are substituted as L.Rs. of the deceased 1st petitioner as per order dated 2.8.17)

Versus

1. The State of Tamil Nadu
rep. by its Secretary to Government,
Public Works (F1) Department,
Fort St. George, Chennai-9.
2. The Chief Engineer,
Water Resources Department,
State Ground and Surface Water Resources
Data Centre, Taramani,
Chennai-113. ... Respondents

Prayer: This petition has been filed seeking for a Writ of Certiorarified Mandamus calling for the records in respect of the Order No.5931/F1/2014-1 dated 25.03.2014 issued by the 1st respondent and quash the same and consequently, direct the respondents to fix the pension and the other applicable related benefits on par with the prevailing rates and rules.

For Petitioner : Mr.R.Kothandaraman

For Respondents : Mr.R.A.S.Senthilvel,
Additional Government Pleader

O R D E R

The petitioner has approached this Court seeking the following reliefs:

To issue a Writ of Certiorarified Mandamus, calling for the

records in respect of the Order No.5931/F1/2014-1 dated 25.03.2014 issued by the 1st respondent and quash the same and consequently, direct the respondents to fix the pension and the other applicable related benefits on par with the prevailing rates and rules.

2. The petitioner was appointed in 1973 as Geological Assistant. Consequently, the same was re-designated as Assistant Geologist in Public Works Department (PWD). His services were also regularised in 1982. After rendering 13 years and 5 months service, he tendered his resignation on 04.04.1988 due to acute illness suffered by him. The resignation of the petitioner was also accepted by the competent authority on 21.02.1989. After being relieved from the post, due to his resignation which was due to his illness, the petitioner represented to the 2nd respondent on 24.02.2011 seeking for pro-data pension for the services rendered by him over 13 years.

3. However, the representation was rejected on 17.03.2011 stating that as per the provisions of the Tamil Nadu Pension Rules, 1978, the petitioner was not eligible for grant of pension since his resignation results in forfeiture of entire past services. The 1st respondent, who passed the rejection order relied on Rule 23 of the Tamil Nadu Pension Rules, 1978. Against the rejection order, the petitioner has approached this court assailing the same.

4. The Counsel appearing for the petitioner would submit that in similar circumstances, interpretation of Rule 23 of the Tamil Nadu Pension Rules came up for consideration before this Court on few occasions and this Court by categorical decisions has held that if the resignation is simplicitor, due to illness, the same will not result in forfeiture of service and the employee is entitled to pension on the basis of qualifying years of service put in by him or her. He would rely on a decision of this Court dated 15.12.2011 in W.P.No.5170 of 2011 in the matter of K.Devan vs. The District Forest Officer, Nilgiris South Division, Udagai, Nilgiris District. This Court has relied on the order passed by a Division Bench of this Court and finally held that the resignation due to health will not deprive the employee from the pension payable to him.

5. The operative portion of the order passed by this Court in para 5 is extracted below:

5. The ratio laid down by the Division Bench of this Court applies to the case on hand on all force. As discussed above, there is no dispute on the fact that the petitioner has resigned due to his ill-health.

Therefore, the petitioner is entitled to succeed and accordingly, a direction is issued to the respondent to pay the pension and other attendant benefits to the petitioner by taking into consideration his past conduct/services till the date of his resignation. The respondent is directed to pass appropriate orders, on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order. When the pensionary papers are computed by the respondent in accordance with the Rules, the amount payable to the petitioner will have to be given with 6% interest per annum from the date acceptance of the resignation till the date of actual payment, as the petitioner is nowhere at fault for the non-receipt of the said amount.''

6. The said view has been affirmed by the Division Bench of this Court in W.A.No.1651/2000 dated 08.07.2009. The learned Division Bench has 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.

7. The learned Counsel would draw this Court's attention by relying on a decision passed by a Single Judge in W.P.(MD) No.14732/2013 dated 19.09.2014 wherein similar view has been taken by this Court.

8. Upon notice, Mr.R.A.S.Senthilvel, learned Additional Government Pleader entered appearance and made his submissions.

9. It is also submitted by the learned Counsel for the petitioner that the petitioner is no more and died on 11.05.2017. In any event, as per the decisions of this Court, both Single Judge and Division Bench, the rejection by the authorities towards grant of pension to the petitioner by interpreting Rule 23 of the Tamil Nadu Pension Rules is per se bad in law and the same cannot be countenanced. As held by this Court by the learned Single Judge and the Division Bench, the petitioner is entitled to count his service for the grant of pro-data pension and in terms of the pension Rules.

10. In the case on hand, it is an admitted position that the petitioner had resigned his post only due to illness and no disciplinary action was contemplated against him. Therefore, the claim of the petitioner falls well within the four corners of the law laid down by this Court in the above said decisions.

This Court has no hesitation in allowing the present writ petition as prayed for since the claim of the petitioner is well supported by the legal dicta enunciated by this Court by giving a positive interpretation to Rule 23 of the Tamil Nadu Pension Rules.

11. In the above circumstances, the Writ Petition is allowed and the impugned Order No.5931/F1/2014-1 dated 25.03.2014 of the 1st respondent is set aside. The respondents are directed to sanction pension on the basis of the total service rendered by the petitioner from the date of his initial appointment and till the date of his resignation and grant all arrears payable from the date on which it became due and continue to pay the monthly family pension as admissible to the Legal Heirs of the petitioner after the death of the petitioner. The above said direction shall be complied with by the respondents within a period of four weeks from the date of receipt of a copy of this Order. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
State of Tamil Nadu,
Public Works (F1) Department,
Fort St. George, Chennai-9.
2. The Chief Engineer,
Water Resources Department,
State Ground and Surface Water Resources
Data Centre, Taramani,
Chennai-113.

+3cc to Mr.R.Kothanda Raman, Advocate SR.No.62943

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GN(05/10/2017)