

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.26883 of 2014

and

M.P.No.1 of 2014

M.Gunasekaran

... Petitioner

Vs.

1.The Principal Secretary to Government,
Home (Tr II) Department,
Secretariat, Fort St. George,
Chennai - 9.

2.The Deputy Secretary to Government,
Transport Department (H2),
Secretariat, Fort St. George,
Chennai - 9.

3.The Transport Commissioner,
Chepauk, Chennai - 5.

... Respondents

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 of the second respondent impugned order in Lr.No.15350/H1/2012-5 dated 28.05.2013 and quash the same and consequently directing the first and second respondents to consider the petitioner's request to count the past service in the Motor Vehicle Maintenance Organisation from 15.05.1979 to 18.01.1986 for the purpose of the petitioner's pensionary benefits.

For Petitioner .. Mr.J.Saravanavel

For Respondents.. Mr.R.A.S.Senthilvel,
Addl. Govt. Pleader

ORDER

The petitioner has approached this Court seeking the following relief:

"to issue a writ of certiorari to quash the order in Lr.No.15350/H1/2012-5 dated 28.05.2013 and call for the records of the second respondent impugned order and consequently directing the first and second respondents to consider the petitioner's request to count the past service in the Motor Vehicle Maintenance Organisation from 15.05.1979 to 18.01.1986 for the purpose of the petitioner's pensionary benefits."

2.The case of the petitioner is that he was appointed as Helper in the Department of Motor Vehicles Maintenance Organisation at Chennai by order dated 15.05.1979. While he was working as Helper, he offered his resignation in order to take up employment in the Agricultural Engineering Department. The offer of resignation was eventually accepted by the Motor Vehicles Maintenance Organisation on 18.01.1986 only with the condition that he would not seek employment once again in the same organisation. After his selection, the petitioner was appointed as Agricultural Engineering Foreman by order dated 13.05.1986. While he was working in the Agricultural Engineering Department, he sought employment as Motor Vehicles Inspector Grade II against the vacancy notified. With due permission from the authority, he attended the interview and was thereafter selected and appointed to the post of Motor Vehicles Inspector Grade II. On being selected as Motor Vehicles Inspector Grade II, the petitioner was relieved from service from the Agricultural Engineering Department on 29.12.1987.

3.While serving as Motor Vehicles Inspector Grade II in the Transport Department, the petitioner is said to have made representation to the third respondent seeking for counting of his past service from 15.05.1979 to 18.01.1986 in the Motor Vehicles Maintenance Organisation and from 21.05.1986 to 29.12.1987 in the Agricultural Engineering Department for the purpose of qualifying service for pensionary benefits. In response to the request of the petitioner, a proposal was sent by the third respondent to the Government by proceedings dated 17.05.1997, 03.09.1997 and 21.03.2002. However, the request was rejected by the Government on 12.08.2002 only on the ground that the period of break in service was more than four months and the application seeking alternative employment in other service has not been routed through proper channel. Not satisfied with the rejection order, the petitioner had preferred further revision

seeking proper consideration of his request in terms of the Rules and Regulations governing the service conditions.

4. Thereafter, the first respondent vide order dated 17.08.2012, accepted the request of the petitioner in part and ordered for counting of his past service from 21.05.1986 to 29.12.1987 i.e. in the Agricultural Engineering Department for the purpose of qualifying service for pensionary benefits only. However, in respect of his earlier service from 15.05.1979 to 18.01.1986, the petitioner's request was not considered favourably. In the said circumstances, the petitioner is impelled to make further representation on 21.09.2012. Thereafter, it appears that service particulars were called for by the authorities concerned.

5. While matter stood thus, to the petitioner's dismay, an order dated 28.05.2013 was passed by the second respondent rejecting the request of the petitioner without assigning any reasons. Thereafter, the petitioner seemed to have renewed his request for proper consideration of his request, but however, no decision had been conveyed to him on his representation till the date of filing of the writ petition. In the meanwhile, the petitioner, on attaining the age of superannuation, retired from service on 31.08.2013.

6. Upon notice, Mr. R.A.S. Senthilvel, learned Additional Government Pleader entered appearance on behalf of the respondents and filed a detailed counter affidavit resisting the claim of the petitioner.

7. Mr. J. Saravanavel, learned counsel appearing for the petitioner would submit that non-consideration of the request of the petitioner was contrary to the letter and spirit of Rule 23 (1) of the Tamil Nadu Pension Rules, 1978. It provides 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. He would submit that originally resignation in the Motor Vehicles Maintenance Organisation was submitted only for taking up employment in the Agricultural Engineering Department and the officials in the Organisation were aware of it and only after getting their permission, the resignation was submitted and the same was also accepted only with the condition that the petitioner would not seek employment once again in the same Organisation. In the said circumstances, learned counsel for the petitioner would submit that the rejection of the petitioner's request for counting of service from 15.05.1979 to 18.01.1986 cannot be countenanced both in law and on facts.

8. When the matter was taken up for arguments earlier, the learned Additional Government Pleader was specifically enquired about the circumstances under which the original letter of resignation was submitted since according to the learned counsel for the petitioner the copy of the resignation letter was not available and it could be available on the files of the Motor Vehicles Maintenance Organisation. Time was granted for producing the files. Today, the learned Additional Government Pleader would circulate a letter stating that the issue was in relation to the period 31 years ago. In spite of due diligence, the files could not be traced.

9. Be that as it may, the learned counsel appearing for the petitioner would submit that the petitioner had indeed submitted his resignation only with a view to take up employment in other Government service, which fact has not been seriously disputed. Even if the same is disputed, the respondents are unable to produce any files to prove the contrary. In any event, from the circumstances of the case, it can be safely inferred that the petitioner had originally submitted his resignation and the same having been accepted only with the condition as stated above viz., he would not seek employment once again in the same Organisation, which of course, meaning that he would be well within his right to seek employment alternatively in any other Government or other service. Such being the case, the case of the petitioner squarely falls within the four corners of proviso to Rule 23 of The Tamil Nadu Pension Rules, 1978. Learned counsel for the petitioner would also submit that as per Rule 25, there is provision for condonation of delay, which is extracted below:

25. Condonation of interruption in service:- (1) In the absence of a specific indication to the contrary in the Service Book, an interruption between two spells of Civil Service rendered by a Government servant shall be treated as automatically condoned and the pre-interruption service treated as qualifying service.

(2) Nothing in sub-rule (1) shall apply to interruption caused by resignation, (or) removal from service or for participation in strike.

(3) The period of interruption referred to sub-rule (1) shall not count as qualifying service.

10. Learned counsel appearing for the petitioner relied on the decision of the Division Bench of this Court in D. Vijayarangan Vs. Secretary, Sales Tax Appellate Tribunal (Addl. Bench), Madurai (2008 (6) CTC 700), wherein it has been

held that the employees when allowed to resign to join another service are entitled to the pensionary benefits.

11.Although, an attempt has been made by the learned Additional Government Pleader appearing for the respondents to resist the claim of the petitioner, the respondents have not come up with the strong case to deny the relief prayed for by the petitioner.

12.In view of the above discussion and the narrative, this Court has no hesitation in allowing the writ petition. In the said circumstances, the impugned order dated 28.05.2013 is set aside and the first respondent is directed to pass orders for counting of service rendered by the petitioner in the Motor Vehicles Maintenance Organisation from 15.05.1979 to 18.01.1986 for the purpose of paying pensionary benefits. The first respondent is directed to pass orders as above within a period of two months from the date of receipt of a copy of this order.

13.The writ petition stands allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal Secretary to Government,
Home (Tr II) Department,
Secretariat, Fort St. George,
Chennai - 9.
- 2.The Deputy Secretary to Government,
Transport Department (H2),
Secretariat, Fort St. George, Chennai - 9.
- 3.The Transport Commissioner,
Chepauk, Chennai - 5.

+ 1cc to M/s. J. Saravana Vel, Advocate SR.59372
+ 1 cc to the Government Pleader Sr.60011

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CP(CO)
Eu 5.09.17