

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

WP.No.32416 of 2013

and

MP.No.1 of 2013

R.Sampath

.. Petitioner

Vs.

- 1.The Secretary to Government,
School Education Department,
Fort St. George, Chennai 9.
- 2.The Director of High School Education,
College Road, Chennai 6.
- 3.The Chief Educational Officer,
Vellore District, Vellore.
- 4.The Accountant-General,
Accounts & Entitlements
3rd Block, DMS Compound,
Anna Salai, Chennai 6.
- 5.The District Educational Officer,
Vellore District, Vellore.
- 6.The Headmaster,
Government High School,
Thirukurumbur, Vellore District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in connection with the impugned order passed by him in OO.Mu.No.084836/R1/E2/2013 dated 15.10.2013 and quash the same, and consequently directing the respondents to sanction pension to the petitioner by taking into consideration half of the service rendered by the petitioner as a clerk from 1.7.85 to 7.10.07 along with the regular service rendered by the petitioner as a B.T. Assistant from 08.10.2007 to 31.05.2012 for the purpose of counting the qualifying service for pensionary benefits and grant him pension and other benefits and to grant such other further relief.

For Petitioner : Mr.M.Muthappan
For Respondents : Mrs.K.Bhuvaneswari
Government Advocate

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of certiorarified mandamus to call for the records of the 2nd respondent in connection with the impugned order passed by him in Oo.Mu.No.084836/ R1/ E2/2013, dated 15.10.2013 and quash the same and consequently direct the respondents to sanction pension to the petitioner by taking into consideration half of the service rendered by the petitioner as a Clerk from 1.7.85 to 7.10.2007 alongwith the regular service rendered by the petitioner as a BT Assistant from 8.10.2007 to 31.5.2012 for the purpose of counting the qualifying service for pensionary benefits and grant him pension and other benefits.

2. The facts in a nutshell are as under: The petitioner was appointed as a clerk in the PWD Employees Co-operative Society Limited, Vellore, on consolidated pay basis on 1.7.1985. Subsequently, he was absorbed as a Clerk based on a resolution passed by the Society on 1.6.1989 in the time scale of pay. The petitioner's salary was reduced and he was brought into the time scale of pay on 4.2.1991 . The petitioner continued in the said post till 7.10.2007.

3. It is stated that based on his employment exchange seniority, he was appointed as B.T. Assistant in the Government High School, Jayapuram, Vellore District vide proceedings of the Joint Director, Personnel of the School Education Department, dated 28.9.2007. The petitioner after resigning the post of Clerk from the society on 7.10.2007, joined as B.T. Assistant on 8.10.2007. The petitioner was superannuated from service on 31.5.2012.

4. The fifth respondent sent pension proposal of the petitioner to the fourth respondent on 28.3.2012. However, the fourth respondent returned the pension papers on the ground that orders are still awaited from the Government with regard to final closure of CPS amount and granting pension on resignation/retirement.

5. It is the case of the petitioner that as per G.O.Ms.No.408, Finance (Pension) Department, dated 25.8.2009, half service rendered in a non-provisionalised service, consolidated pay, daily wages, etc., will have to be taken into consideration for qualifying service for the purpose of pension. According to the petitioner, he has put in total pensionary service of 15 years and 4½ months. On the strength of the said

government order, the petitioner sent a representation to respondents 3 and 5. However, the second respondent vide proceedings dated 15.10.2013 rejected the claim of the petitioner on the ground that the petitioner had served as a Clerk in the co-operative society from 1985 to 2007 and half of the service rendered cannot be counted for the purpose of pensionary benefits. It was also stated in the said proceedings that the petitioner having resigned the previous employment, as per Rules 21 and 23 of the Tamil Nadu Pension Rules, his entire past service is wiped out and cannot be counted for the purpose of pensionary benefits.

6. Assailing the said order dated 15.10.2013, the present writ petition is filed.

7. It is the contention of the learned counsel appearing for the petitioner that the service rendered in a co-operative society cannot be wiped out inasmuch as the said society is under the control of the State Government.

8. The learned counsel for the petitioner further contended that merely because the petitioner resigned from the earlier service, the same cannot be a ground to deny half of the service benefits rendered by him in a co-operative society. He placed strong reliance on G.O.Ms.No.408, Finance (Pension) Department, dated 25.8.2009 to plead that half of the service rendered by him in co-operative society should be reckoned for the purpose of pensionary benefits.

9. The learned counsel for the petitioner further submitted that under identical circumstances, based on the order passed by this Court in W.P.No.7973 of 2011, one Amsaveni was granted pension by taking into account half of the service rendered by her as Noon Meal Organizer and the said view was also upheld by a Division Bench on an appeal by the Government and, therefore, the petitioner should be extended similar benefits.

10. Per contra, the learned Government Advocate appearing on behalf of the respondent authorities submitted that the service rendered by the petitioner in a co-operative society, which is governed by elected members and elected body of members, cannot be considered to be a pensionable service. It is further submitted that the co-operative society service is not non-provincialized service and, therefore, the benefits conferred under G.O.Ms.No.408, Finance (Pension) Department, dated 25.8.2009 cannot be extended to the petitioner.

11. The learned Government Advocate further submitted that as per Rules 21 and 23 of the Tamil Nadu Pension Rules, on resignation, the past service of the employee cannot be counted

for any purpose and inasmuch as the petitioner herein has resigned from his previous service, the past service of the petitioner cannot be reckoned for the purpose of granting pensionary benefits.

12. Heard the learned counsel on either side and perused the documents available on record.

13. The Government issued G.O.Ms.No.408, Finance (Pension) Department, dated 25.8.2009, wherein Rule 11 of the Tamil Nadu Pension Rules was amended. As per the said government order, the service rendered in a non-provincialized service, consolidate pay, honaririum and daily wages alone only can be counted for award of pension. By virtue of the said amendment, the State Government observed 50% of the services of the persons who are employees after 01.01.1961 on consolidated pay, honorarium and daily wages and who were absorbed in regular service prior to 01.04.2003 would be entitled to take into account 50% of their services prior to regularization for the purpose of pension.

14. A Division Bench of this Court in The Principal Secretary, Social Welfare and Nutritious Meal Programme Department and others v. M.Palanikani, reported in 2014 SCC Online Mad 11594, interpreting G.O.Ms.No.408, Finance (Pension) Department, dated 25.8.2009 and the subsequent government order in G.O(Ms) No. 6, Social Welfare and Nutritious Meals Scheme Department, dated 06.01.2010, held as under:

"24. A reading of G.O(Ms) No. 6, Social Welfare and Nutritious Meals Scheme Department, dated 06.01.2010, reveals that in the first paragraph itself, the benefit of G.O(Ms)No.408, Finance (Pension) Department, dated 25.08.2009, has been extracted and in paragraph No. 2, it has been mentioned that the persons similarly placed like the respondents in the writ appeals have sought for the said benefit being extended to them also. The Director of Social Welfare recommended their request. Based on the representation and the recommendation of the Director of Social Welfare, the first appellant had extended the said benefits to the respondents and similarly placed persons like them. As the benefit contained in G.O(Ms) No.408, Finance (Pension) Department, dated 25.08.2009, has been extended to the respondents and others, the conditions contained in G.O(Ms) No.408, Finance (Pension) Department, dated 25.08.2009 would also apply to G.O(Ms) No. 6, Social Welfare and Nutritious Meals Scheme Department, dated 06.01.2010 By G.O No. 41, Finance

(Pension) Department, dated 09.02.2010, the first appellant amended Rule 11 of the Rules and thereby included the benefit rendered in G.O(Ms)No.408, Finance (Pension) Department, dated 25.08.2009 Further, by G.O(Ms) No. 34, Social Welfare and Nutritious Meals Scheme Department, dated 14.03.2013, the first appellant clarified that the persons, who got appointed before 01.04.2003 only are entitled for counting 50% of their services rendered in Noon Meal Organizers and ICDS, for pensionary benefits."

15. A reading of the above decision of the Division Bench makes it amply clear that in relation to Noon Meal Organizers, a separate government order, being G.O(Ms)No.6, Social Welfare and Nutritious Meals Scheme Department, dated 06.01.2010, was issued extending the benefits as in the case of G.O.Ms.No.408, Finance (Pension) Department, dated 25.8.2009. Therefore, the petitioner cannot draw comparison with the case of Amsaveni, referred supra, who was employed as Noon Meal Organizer, inasmuch as her services are governed by a separate government order.

16. That apart, it is not in dispute that the service rendered by the petitioner is in a co-operative society and not in Government service under the non-provincialized service. Therefore, certainly this Court cannot extend the benefits of G.O.Ms.No.408, Finance (Pension) Department, dated 25.8.2009 to the petitioner, who was not in a non-provincialized service.

17. Be that as it may, it is not in dispute that the petitioner has resigned from the past service. The said act of the petitioner attracts Rule 23 of the Tamil Nadu Pension Rules, which postulates that resignation from service or post entails forfeiture of past service.

For the foregoing reasons, this writ petition is devoid of merits and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

vs

To

- 1.The Secretary to Government,
School Education Department,
Fort St. George, Chennai 9.
 - 2.The Director of High School Education,
College Road, Chennai 6.
 - 3.The Chief Educational Officer,
Vellore District, Vellore.
 - 4.The Accountant-General,
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Anna Salai, Chennai 6.
 - 5.The District Educational Officer,
Vellore District, Vellore.
 - 6.The Headmaster,
Government High School,
Thirukurumbur, Vellore District.
- +1 cc to Mr.M.Muthappan, Advocate, S.R.No.57356
- +1 cc to the Government Pleader, S.R.No.57472

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and
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SSM(18/03/2019) .

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