

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.12.2017

CORAM

THE HONOURABLE Mr. JUSTICE V.PARTHIBAN

W.P.No.18231 of 2012

S.Periyasamy

... Petitioner

Vs.

1.The Secretary to Government,
Transport Department,
Fort St. George, Chennai - 9.

2.The Managing Director,
Tamil Nadu State Transport
Corporation (Coimbatore) Ltd.,
Coimbatore.

3.O.Subramani
Staff No.928, Checking Inspector,
No.63E, Quide Millad Street,
Punjai Puliamatti,
Satyamangalam Taluk, Erode District.

4.The Managing Director,
Metropolitan Transport Corporation,
Pallavan Salai, Chennai - 2.

5.P.Rajendran
Checking Inspector,
General Secretary, Anna Thozhir Sangam,
Metropolitan Transport Corporation,
Pallavan Salai, Chennai - 2.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records letter No.2528/C2/2011-12 dated 05.04.2011 on the file of the first respondent and quash the same and direct the first and second respondents to reinstate the petitioner in service, with continuity of service, with back wages and other attendant benefits.

For Petitioner: Mr.L.Chandrakumar

For RR 1 & 4 : Mr.S.Gunasekaran
Additional Government Pleader

For RR 2 : Mr.S.Sairam

For RR 3 & 5 : No appearance

ORDER

The petitioner has approached this Court seeking the following reliefs:

to issue a Writ of Certiorari and Mandamus to call for the records letter No.2528/C2/2011-12 dated 05.04.2011 on the file of the first respondent and quash the same and direct the first and second respondents to reinstate the petitioner in service, with continuity of service, with back wages and other attendant benefits.

2.The petitioner was appointed as Junior Assistant on 10.04.1975 on daily wage basis in the 2nd respondent Corporation. He was subsequently regularised as Junior Assistant on 01.07.1976. After completion of six years of service, the petitioner was given first review on 01.05.1981; on completion of further 8 years of service, 2nd review benefit was given on 01.08.1989 and after completion of 10 years of service, the petitioner was given 3rd review benefit on 01.11.1999.

3.According to the petitioner, while he was in service, he met with an accident on 22.02.2008 and the petitioner undertook prolonged medical treatment. According to the petitioner, even after partially recovery, he was not able to effectively work as Junior Assistant. In view of his health condition, the petitioner submitted resignation on 01.12.2008. The petitioner claimed that he had suffered multiple injuries in both legs which resulted in 75% locomotor disability. The 2nd respondent, without ascertaining the reasons behind resignation of the petitioner, accepted the same on the same date itself i.e. on 01.12.2008.

4.After the acceptance of the resignation letter, the petitioner was relieved from service. Thereafter he had come to know about the protection given under the provisions of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 [hereinafter referred to as "PWD Act"]. Therefore, he had submitted representations for consideration of re-employment under the above said Act. However, the petitioner also cited similar circumstances wherein two other employees, who submitted their resignations and relieved from service, were granted re-employment with all benefits. However, not properly appreciating the representation of the petitioner, the 1st respondent, vide proceedings dated 05.04.2011, rejected the claim of the petitioner for re-employment with continuity of service. Since he has medically rendered his resignation which was accepted forthwith, the said proceeding is put to challenge in the present writ petition.

5. Upon notice, Mr. S. Gunasekaran, learned Additional Government Pleader has entered appearance for the respondents 1 and 4 and Mr. S. Sairam, learned standing counsel has entered appearance on behalf of the 2nd respondent/Corporation.

6. According to the counter affidavit filed on behalf of the 2nd respondent, it is submitted that the petitioner having submitted his resignation and persisted for its acceptance immediately, the same was accepted on 01.12.2008 itself as per the demand of the petitioner and therefore, it was not for the petitioner to complain about the acceptance of the resignation of the same day.

7. The learned counsel for the 2nd respondent would draw the attention of this Court to Section 32(b) of the Common Service Rules applicable to the transport employees which is reproduced below:

"32(b) "An employee shall, if he resigns or otherwise quits his appointment forfeit all the previous service under the corporation."

Provided that such forfeiture of previous service shall not disentitle him to any benefit like Gratuity, Provident Fund, etc., to which he may be entitled in respect of such service under Rule or Statute."

8. According to the above Section, the petitioner having resigned for the service of the Corporation, his entire service had been forfeited.

9. The learned counsel for the Corporation would further submit that the petitioner claimed for re-employment under the PWD Act cannot also be considered for the reason that he was not discharged from service on medical grounds by the Corporation and it was the claim of the petitioner that he had suffered multiple injuries. Therefore, the question of grant of any alternative employment under the above said Act did not arise.

10. According to the learned counsel appearing for the Corporation that the entire claim for seeking alternative employment under the PWD Act was a mere afterthought to secure employment by unjust demand. Therefore, he would strongly oppose to grant of any relief to the petitioner.

11. Per contra, Mr. L. Chandrakumar, learned counsel appearing for the petitioner would vehemently contend that the act of the 2nd respondent in accepting the resignation on 01.12.2008 itself without ascertaining the reasons for resignation from the petitioner is a mala fide act and the same was to be interfered with and moreover, he would contend that the resignation on medical reasons has to be construed as

one of voluntary retirement for the purpose of grant of pensionary benefits, even assuming that the petitioner was not entitled to alternative employment under PWD Act, as stated by the learned counsel appearing for the 2nd respondent.

12. In support of the above contention, the learned counsel for the petitioner would rely on the decision of this Court passed in W.P.(MD).No.461 and 106 of 2013 dated 02.03.2015 wherein the learned Judge of this Court under similar circumstances had observed as follows:

"10... Therefore, the intention to grant pensionary benefits is evident, even of those persons who take up another appointment as stated supra. Consequently, it would mean that resignation from service is not a disqualification in toto. If that be the position, this Court is unable to understand as to how a person who is permitted to enjoy the past services if he takes up another appointment after resignation, is not entitled to get pension in case, if he is not taking another appointment subsequent to such resignation. Certainly, it amounts to discrimination. Therefore, in view of the above decisions of the Hon'ble Division Bench of this Court as well as the Hon'ble Supreme Court, the denial of pension to the petitioners on the ground that they are resigned employees cannot be sustained. But at the same time, not at all the persons who tendered resignation are entitled to pension, unless the period of service so rendered by them comes within the pensionable service period as contemplated under the Rules."

13. The said order of the learned Single Judge was also upheld by the Division Bench of this Court dated 04.07.2017 in W.A.(MD).Nos.855 & 856 of 2017. The learned Division Bench of this Court, while following the Judgment of the Hon'ble Supreme Court of India, has held as follows:

"9. We have carefully gone through the materials on record.

10. It is relevant to point out that the learned single Judge was very much conscious that the case of the writ petitioners is to be adjudicated only with reference to Tamil Nadu State Corporation Pension Fund Trust Rules. This is evident from what is set out in Para.10 of the order made in the writ petitions. We entirely agree with the reasoning set out therein. This is a case of resignation on

health ground. The appellant corporation also chose to accept the resignation submitted by the writ petitioners.

11. In these circumstances, the act of resignation can very well be construed as an act of voluntary retirement. This proposition has been laid down in the decision of the Honourable Supreme Court reported in AIR 1990 SC 1808 (M/s. J.K. Cotton spg & wvg. Mills Company Ltd., Kanpur Vs. State of U.P.). As already pointed out, the plea of resignation on medical ground was not controverted by the appellant corporation before the learned single Judge.

12. We therefore find no justification to interfere with the common order made in W.P. (MD). Nos. 106 and 461 of 2013. Confirming the order dated 02nd March, 2015 made in W.P. (MD). Nos. 106 and 461 of 2013, we dismiss the instant writ appeals. No costs. Consequently, connected miscellaneous petitions are closed."

14. Therefore, the learned counsel would submit that a similar view may be taken to the facts and circumstances of the present case and allow the writ petition holding that the past services rendered by the petitioner before the date of his resignation can be counted for pensionary benefits, by construing the resignation as one of voluntary retirement.

15. This Court has considered the rival submissions of the counsels appearing for the parties, perused the pleadings and materials placed on record.

16. There appears to be some force in the contention put forth by the learned counsel for the petitioner that the resignation on the basis of medical ground cannot ipso facto result in forfeiture of entire past service as held by the learned Single Judge as well as by the learned Division Bench of this Court. In this case, admittedly the basis on which the resignation was submitted was on health grounds and this fact was fortified by the reasons mentioned in the rejection order of the first respondent dated 05.04.2007. That being the case, the forfeiture of entire past services of the petitioner from 1976 till 01.12.2009 is without any justification, as the petitioner would be deprived of the entire pensionary benefits, which was otherwise admissible to him, if only he had tendered voluntary retirement. It is also admitted fact that the petitioner had rendered a pensionable service and was otherwise entitled to pension.

17. In view of the well considered decisions of the learned Single Judge and also the learned Division Bench of this Court as aforementioned, the present writ petitioner is also entitled to the relief, as granted to the employees covered under the aforesaid decisions. Although the original prayer in the writ petition is for reinstatement of the petitioner with continuity of service with back wages etc. however, during the course of argument, the learned counsel appearing for the petitioner would confine his relief urging this Court to consider and pass orders in terms of the directions issued by the learned Single Judge, which was confirmed by the learned Division Bench of this Court in the above said writ petitions and the writ appeals.

18. Having considered the submissions made by the learned counsel for the petitioner, this Court is of the view that the petitioner having rendered more than 30 years of service cannot be denied the entire past service and deny him the entire pension benefits which he was otherwise entitled to had he gone on voluntary retirement in terms of the regulation. That being the case, the present resignation considering the facts and circumstances of the case has to be construed as one of voluntary retirement, which would entitle the petitioner for claiming all the pensionary benefits that was admissible to him under the Rules. As held by the Courts that not all resignations cannot entail forfeiture of service and in the present case, the resignation cannot be visited by the forfeiture of entire past service put in by the petitioner for over 30 years.

19. In the above said circumstances, this Court sets aside the impugned order of the 1st respondent in letter No.2528/C2/2011-12 dated 05.04.2011 and directs the respondents 1 and 2 to treat the resignation of the petitioner on 01.12.2008 as one voluntary retirement and count the entire past service rendered by the petitioner till the date of resignation for grant of pensionary benefits to the petitioner. The above said direction shall be complied with by the respondents/competent authority within a period of eight weeks from the date of receipt of copy of this order.

20. With the above direction, the Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Sgl

To

1.The Secretary to Government,
Transport Department,
Fort St. George, Chennai - 9.

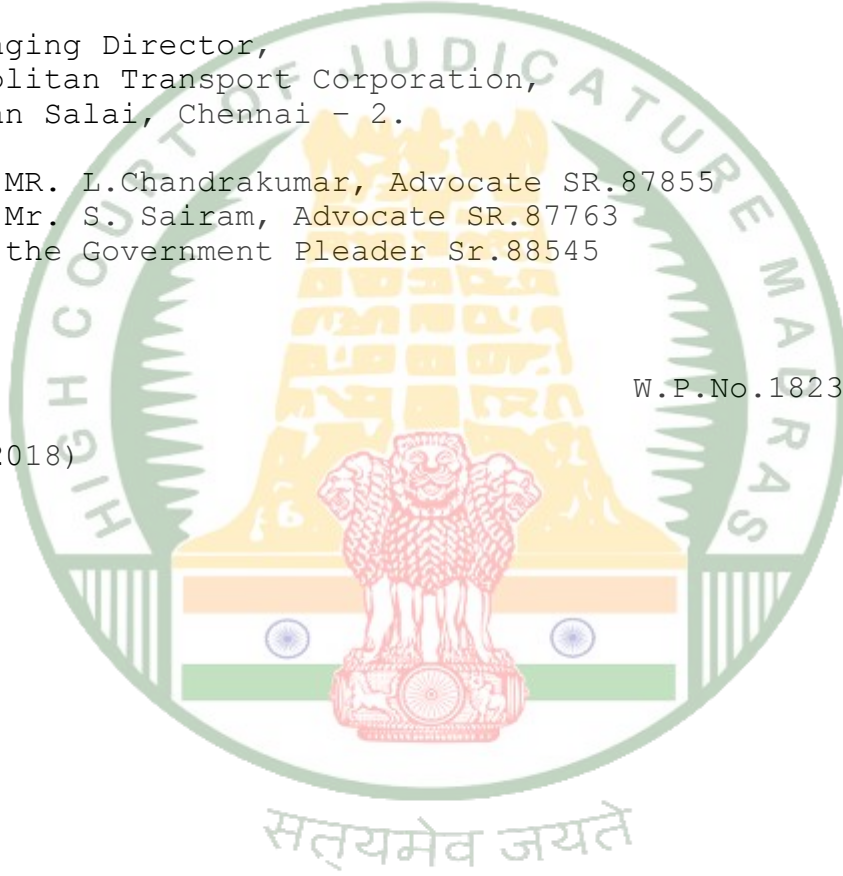
2.The Managing Director,
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Pallavan Salai, Chennai - 2.

+ 1 cc to MR. L.Chandrakumar, Advocate SR.87855
+ 1 cc to Mr. S. Sairam, Advocate SR.87763
+ 1 cc to the Government Pleader Sr.88545

AK(CO)
EU(17/01/2018)

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