



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.02.2017

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P(MD)No.1723 of 2017

Vallinayaki

... Petitioner

vs.

1. The Director of Medical and Rural Health Service,
O/o. Director of Medical and Rural Health Services,
Chennai-6.

2. The Joint Director of Medical and
Rural Health Services, (Admin),
Kumbakonam,
Thanjavur District.

3. The Principal Accountant General,
O/o. Principal Accountant General (Accounts &
Entitlements) Tamilnadu,
No.361, Anna Salai,
Chennai-600 018.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records pursuant to the order passed by the 1st respondent through his proceedings in Ref.No.4134/A2/2/2016 dated 14.12.2016 quash the same and consequently directing the 1st respondent to issue pension and all retirement benefits to the petitioner.

For Petitioner : Mr.M.Subash Babu

For Respondents : Mr.M.Rajarajan

Government Advocate for R1 & R2

Mr.P.Gunasekaran for R3

ORDER

The prayer in this writ petition is for issuance of a Writ of Certiorarified Mandamus, calling for records pursuant to the order passed by the 1st respondent through his proceedings in Ref.No.4134/A2/2/2016 dated 14.12.2016, quash the same and consequently direct the 1st respondent to issue pension and all retirement benefits to the petitioner.



2.The case of the petitioner is that she served as a Staff Nurse in Thiruvaiyaru Government Hospital, Thanjavur, from 24.05.1991 to 06.06.2004 and thereafter she submitted a resignation letter and the same was accepted. Thereafter, the petitioner made a representation dated 11.01.2016 seeking to sanction pension and the same has been rejected vide impugned order, citing Rule 23 of the Tamil Nadu Pension Rules.

3.The petitioner further submits that the Government have issued G.O.Ms.No.1015, dated 05.06.1981 allowing pension to the resigned persons, which has been considered by the Division Bench of this Court in **Government of Tamil Nadu and another vs. S.V.Paul Jeyaraj**, reported in **CDJ 2001 MHC 347**, wherein, based on G.O.Ms.No.1015, dated 05.06.1981, benefit of pension was extended to a resigned employee therein. Therefore, following the said judgment, the petitioner should also be granted pension.

4.Rule 23 of the Tamil Nadu Pension Rules deals with 'Forfeiture of service on resignation', which reads as follows:-

"(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 two 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."

5.Rule 23 of the Tamil Nadu Pension Rules states about forfeiture of pension on resignation. Therefore, after the acceptance of the petitioner's resignation, her past services stands automatically forfeited and she is not entitled to pension. Admittedly, the said Rule has not been considered and it is also well settled that Government order cannot override the statutory provisions and hence, in terms of Rule 23 of the Tamil Nadu Pension Rules, once the petitioner's resignation is accepted, then she is not entitled to the relief sought for.

6.With regard to the contention of the petitioner that in similar case, the Hon'ble Division Bench has granted the similar relief, it is relevant to consider the judgment of the Hon'ble Supreme Court in **Padma Sundara Rao v. State of Tamil Nadu**,
<https://hcservices.ecourts.gov.in/hcservices/>



reported in (2002) 3 SCC 533, has held as follows:-

''9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board*. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.''

7. In the judgment relied upon by the counsel for the petitioner, there is a non consideration of Rule 23 of the Tamil Nadu Pension Rules and thus the same cannot have an application to the facts of this case.

With the above observations, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Director of Medical and Rural Health Service,
O/o. Director of Medical and Rural Health Services,
Chennai-6
2. The Joint Director of Medical and
Rural Health Services, (Admin),
Kumbakonam,
Thanjavur District.

+ 1 CC TO Mr.M.SUBASH BABU, ADVOCATE IN SR No. 6026
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 6006
+ 1 CC TO Mr.P.GUNASEKARAN, ADVOCATE IN SR No. 6391

NBI

TE/PM-PN : 17/02/2017 : 3P/6C

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