



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.10.2017
CORAM :
THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

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W.P(MD)No.334 of 2011

K.Sethuramalingapandian

... Petitioner

vs.

The Director,
Tamil Nadu Khadhi and Village Industries Board,
Kuralagam,
Chennai - 108.

... Respondents

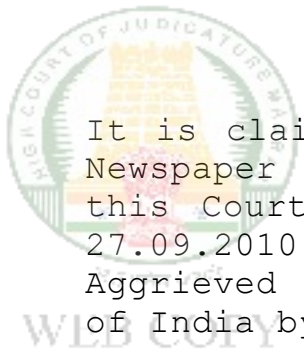
Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the respondent in his proceedings in O.Mu.No.95963/93/ஒய்வுதியம், dated 10.03.1994 and quash the same and consequently direct the respondent herein to pay the pension to the petitioner for the services rendered by the petitioner herein from 01.02.1963.

(Prayer amended vide order dated 05.10.2017,
made in M.P. (MD) No.1 of 2013 by PDAJ)

For Petitioner	: Mr.K.Hema Karthikeyan
For Respondent	: Mr.S.Sathishkumar
	Additional Government Pleader
Amicus Curiae	: Mr.P.Gunasekaran

ORDER

The petitioner, who was appointed as I Grade Assistant in the respondent/Tamil Nadu Khadi and Village Industries Board in the year 1952, had resigned from the said post on 24.10.1964 and his resignation was accepted by the respondent on 30.11.1964 by proceedings in No.Rc.60578/A4/64 with effect from the forenoon of 01.02.1963. Long thereafter, the petitioner claims to have made a representation to the respondent on 03.02.1988, requesting payment of pension as he had completed 12 years of service which was replied by the respondent by communication dated 21.04.1988, that persons who resigned from service are not entitled to pension in terms of Tamil Nadu Pension Rules, 1978. Another representation dated 22.11.1993, had been made by the petitioner to the respondent for payment of pension which was disposed by communication dated 10.03.1994, reiterating that it was not possible to grant pension to an employee, who had resigned from service in terms of Rule 23 of the Tamil Nadu Pension Rules, 1978.



It is claimed by the petitioner that on coming to know from the Newspaper Report that one Sankaran had been granted pension by this Court, he had sent a representation to the respondents on 27.09.2010 and thereafter, there was no response to the same. Aggrieved thereby, he had invoked Article 226 of the Constitution of India by way of this writ petition.

2.The petitioner had sought at the time of filing of this writ petition, the following relief:

"For the reasons stated in the accompanying affidavit it is prayed that this Hon'ble Court may be pleased to issue a writ or order or direction more particularly in the nature of Writ of Mandamus directing the respondent herein to pay the pension to the petitioner for the services rendered by the petitioner herein and to pass such further of other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

In application bearing M.P.(MD) No.1 of 2013 filed by the petitioner, this Court by order dated 05.10.2017 has permitted the petitioner to amend the relief sought for in the writ petition as follows:-

"For the reasons stated in the accompanying affidavit it is prayed that this Hon'ble Court may be pleased to issue a writ or order or direction more particularly in the nature of Writ of Certiorari, calling for the records of the respondent in his proceedings in O.Mu.No.95963 /93 / ஒய்வுதியம், dated 10.03.1994 and quash the same and consequently direct the respondent herein to pay the pension to the petitioner for the services rendered by the petitioner herein from 01.02.1963 and to pass such further of other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

3.Heard Mr.K.Hema Karthikeyan, the learned counsel appearing for the petitioner, Mr.S.Sathishkumar, the learned Additional Government Pleader appearing for the respondent and Mr.P.Gunasekaran, who has assisted this Court as Amicus Curiae.

4.Though the respondent has not filed any counter in this writ petition, the reason indicated in the impugned order for denial of pension to the petitioner is that in terms of the Rule 23 of the Tamil Nadu Pension Rules, 1978, the petitioner is not entitled to pension.

<https://hcservices.ecourts.gov.in/hcservices/>

5.At the outset, it requires to be pointed out that though it



is contended by the petitioner that the Tamil Nadu Pension Rules, 1978, which came into being from 01.01.1979 is not applicable to him as he has resigned his post as early as in the year 1964, no legal provision has been shown enabling him to receive pension from the respondent.

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6.The learned Amicus Curiae Mr.P.Gunasekaran points out that prior to the commencement of the Tamil Nadu Pension Rules, 1978 on 01.01.1979, the Madras Pension Code was in force and Rule 418, which was in *pari materia* with Rule 23 of the Tamil Nadu Pension Rules, 1978, reads as follows:

"RESIGNATION AND DISMISSALS

"418. a) Resignation of the public service, or dismissal or removal from it for misconduct, insolvency, inefficiency not due to age, or failure to pass a prescribed examination entails forfeiture of past service.

b) Resignation of an appointment to take up with proper permission, another appointment whether permanent or temporary, service in which counts in full or in part, is not a resignation of Public Service."

7.Rule 23 of the Tamil Nadu Pension Rules, 1978 reads as follows:

"23 (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."

8.The question as to whether an employee of the Government of Tamil Nadu, who had resigned from service is not entitled to pension in terms of Rule 23 of the Tamil Nadu Pension Rules, 1978 has been considered by a Division Bench of this Court in **A.I.Agnel Pillangovan v. Government of Tamil Nadu [(2016) 3 MLJ 839]** and it has been held in paras 7 and 8 as follows:



"7.Proviso to rule 23, makes it abundantly clear that there shall not be any forfeiture of past services, if the resignation is submitted to take up, with proper permission, another appointment whether temporary or permanent under the Government, where service qualifies. Exclusion is only to the specific instance of taking up another employment, whether temporary or permanent, with the permission of the competent authority.

8.As rightly observed by the Writ Court, when the provision is plain and unambiguous, there cannot be any addition or substitution of words. Resignation could be due to misconduct or adverse record or ill-health or family problems or for any other justifiable cause. When the statute has excluded all the above, with the only specific inclusion, for consideration of the past services, for pension, in the event of taking up another appointment, whether temporary or permanent, under the Government, with proper permission, benefit of the said proviso, cannot be extended to a cause of resignation due to ill-health. The Writ Court has adverted to the abovesaid aspect, placing reliance on the decisions of the Hon'ble Apex Court. ... "

9.Recently, a learned Judge of this Court by order dated 02.02.2017 in **W.P. (MD) No.1723 of 2017**, in the case of **Vallinayagi v. The Director of Medical and Rural Health Service and others**, considering a similar question has held as follows:

"4.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.

5.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, 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.''

10. In the light of the aforesaid legal position, there does not appear to be any infirmity in the impugned orders of the respondent and the petitioner has not established his entitlement to receive any pension from the respondent.

11. The petitioner had resigned from service as early as in 1964, but he had not chosen to make any claim for pension till 1988, and despite the rejection of such claim by the respondent, the same had not been impeached in the manner recognized by law. As such, the Petitioner cannot resurrect the stale claim by making fresh representations after the same had already been rejected, as pointed out by the Hon'ble Supreme Court in ***C. Jacob v. Director of Geology & Mining [(2008) 10 SCC 115]***. Resultantly, the Writ Petition has also to fail on the ground of inordinate delay and explained laches.

11. Accordingly, the Writ Petition stands dismissed without any order as to costs.

Sd/-

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To

The Director,
Tamil Nadu Khadhi and Village Industries Board,
Kuralagam,
Chennai - 108.

+ 1 CC TO MR.K.Hema Karthikeyan , ADVOCATE IN SR No.81822

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No.81929

sj

MK/KK/SAR-3/25.10.2017/5P/4C

W.P (MD) No.334 of 2011

05.10.2017