



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2015

CORAM :

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

WEB COPY

Writ Petition (MD) Nos.461 and 106 of 2013

M.Rajeswaran ... Petitioner in W.P.No.461 of 2013

A.Murugesan ... Petitioner in W.P.No.106 of 2013

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation
(Madurai) Ltd.,
Bye Pass Road,
Madurai 625 016.

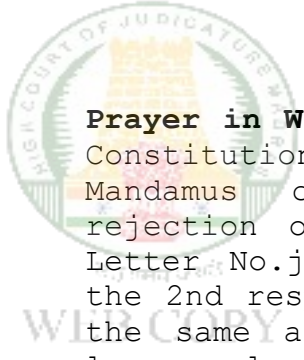
2.The General Manager,
Tamil State Transport Corporation
(Madurai) Ltd.,
Dindigul Region,
Dindigul-4. ... Respondents in W.P.No.461 of 2013

1.The Managing Director,
Tamil Nadu State Transport Corporation
(Madurai) Ltd.,
Bye Pass Road,
Madurai 625 016.

2.The General Manager,
Tamil State Transport Corporation
(Madurai) Ltd.,
Dindigul Region,
Dindigul.

3.The Deputy Manager (Accounts)
Tamil Nadu State Transport Corporation,
(Madurai) Ltd.,
Dindigul Region,
Dindigul 624 004. ... Respondents in W.P.No.106 of 2013

Prayer in W.P(MD)No.461 of 2013: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records connected with the impugned order of rejection of pensionary benefits passed by the 2nd respondent in his letter Ref.CAD/PF 51 dated 02.08.2012 and quash the same and consequently direct the respondents to sanction pension leave salary and other retirement benefits and also to settle the Post Retirement Benefit of Rs.67,800/- under the Post Retirement Benefit Scheme along with interest to the petitioner for his 14 years of qualifying service.



Prayer in W.P(MD)No.106 of 2013: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records connected with the impugned order of rejection of pensionary benefits passed by the 3rd respondent in his Letter No.jmngfh(kJ)/jpP.k/kfJ/x/166, dated 23.06.2005 and confirmed by the 2nd respondent in his Letter No.CAD/PF/50 dated 02.08.2012 and quash the same and consequently direct the respondents to sanction pension leave salary and other retirement benefits and also to settle the Post Retirements Benefits of Rs.67 800/- under the Post Retirement Benefit Scheme along with interest to the petitioner for his 16 years of qualifying service.

For Petitioners	: Mr.S.Govindan
For Respondents	: Mr.A.P.Muthupandian
(In both W.Ps)	

ORDER

Both these writ petitions have been filed challenging the order passed by the General Manager, Tamil Nadu State Transport Corporation (Madurai) Ltd., Dindigul Region, Dindigul, dated 02.08.2012 respectively wherein and whereby the claim of the petitioners seeking pension was rejected by stating that as per Pension Rule 16(e), the resigned employees is not eligible to get pension.

2.Though these writ petitions were filed in the year 2013, and sufficient time was granted on several occasions to file counter affidavit, the respondents have not chosen to file counter affidavit so far.

3.Learned counsel appearing for the petitioners submitted that the issue involved in this case, is no more *res integra*, in view of the decisions made by this Court as well as the Hon'ble Supreme Court. According to the learned counsel for the petitioners, even a resigned employee is entitled to get pension. In support of such submissions, he relied on the following decisions:

"i)In *D.Padmini Vs.Registrar General, High Court, Madras*) reported in (2008) 3 MLJ 241 (DB)

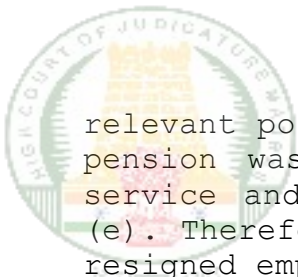
ii)In *M/s.J.K.Cotton Spg& Wvg. Mills Company Ltd., Kanpur Vs. State of U.P* reported in AIR 1990 SC 1808 and an unreported decision of a learned single Judge in W.P.(MD) No.7510 of 2010, dated 30.08.2010 (*S.Sankaran Vs.The Accountant General, Chennai and another*).

4.Per contra, learned counsel appearing for the respondents 1 to 3 submitted that only Pension Trust is the proper party to answer the issue raised by the petitioners and therefore, these respondents are not in a position to make any submissions by filing counter affidavit.

5.Heard both sides and perused the materials available on record.

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

6.It is not in dispute that both the petitioners were the employees of the respondent Corporation and resigned from service at the



relevant point of time. It is also not in dispute that their request for pension was rejected only on the reason that they have resigned from service and consequently, they are not eligible as per Pension Rule 16 (e). Therefore, the only issue involved in this case is as to whether the resigned employee is entitled to get pension or not.

7.A similar rule of the Madras High Court Service Rules came up for consideration before the Hon'ble Division Bench of this Court and after considering various aspects of the matter, the Hon'ble Division Bench in its decision reported in 2008 (3) MLJ 341, at paragraphs 9 to 11 of the said order observed as follows:-

9. For better appreciation, it is desirable to quote below the relevant portions of Rules-5, 21 and 23 of the Pension Rules:-

" 5. Regulation of claims to pension or family pension--
(1) Any claim to pension or family pension shall be regulated by the provisions of these rules in force at the time when a Government servant retires or is retired or is discharged or is allowed to resign from service or dies, as the case may be.

(2) The day on which a Government servant retires or is retired or is discharged or is allowed to resign from service, as the case may be, shall be treated as his last working day. The date of death shall also be treated as a working day."

" 21. Forfeiture of service on dismissal or removal.-- Dismissal or removal of a government servant from a service or post entails forfeiture of his past service."

" 23. Forfeiture of service on resignation.-- (1) Registration from a service of 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.

. "

10. Even at the outset, the argument of the counsel for the respondent is liable to be rejected, for, a reading of Rule-23 in isolation would lead to conflict amongst the provisions contained in the Rules.

If Rule-21 is read with Rule-5, it will be quite evident that dismissal or removal of a government servant from service or post entails forfeiture of his/her past service; therefore, such employee is not entitled for pension under Rule-5 and other Rules. The past service, for all purposes, having been forfeited, is accounted as 'zero' year of service and the calculation of pension/gratuity/leave encashment etc. would be 'nil'. So far as forfeiture of service on resignation is concerned, though a provision has been made under Rule-23, from a close and conjoint reading of Rule-5, it is evident that a person who is allowed to resign from service, is entitled for pension.



It is settled law that a statute must be read as a whole in its context and should be construed in such a manner so as to make it effective, workable and viable. If the meaning is plain and obvious, effect must be given in that sense irrespective of the consequences. The language of the statute should be read as it is and normally, addition or substitution of words is not permitted. Only in case of ambiguity or difficulty to interpret the statute, courts would look into the intention behind legislation of the statute and the object thereof, having regard to the rules of interpretation.

11. If the relevant Rules are read in the above context, it is apparent that not only a Government Servant, who retires or dies, is entitled to get pension, if otherwise eligible, but also an employee, who is allowed to resign from service, is entitled to such benefits by virtue of Rule-5. Though a plain reading of Rule-23 would give the meaning that resignation from a service or post entails forfeiture of past service as stipulated in case of dismissal or removal from service under Rule-21, the proviso to Rule-23 makes it clear that such 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. In other words, if a person, without permission, resigns on his own volition to join some other service, forfeiture of service is attracted under Rule-23 and similar will be the position where an employee against whom departmental/judicial proceedings are set in motion and he, in order to avoid such proceedings, resigns from service without permission.

On the other hand, an employee, who is, for any reason, allowed to resign from service, entitled for pensionary benefits by virtue of Rule-5. For illustration, if an employee, due to ill-health or family problems, wants to leave the service and for that, in the absence of any other rules to retire/voluntarily retire, submits resignation which has nothing to do with any other appointment or such resignation is not the result of any departmental proceeding having been launched against him, in that case, the employee is entitled for pensionary benefits under Rule-5.

8. The Hon'ble Supreme Court in a decision reported in AIR 1990 SC 1808 (In M/s. J.K. Cotton Spg & Wvg. Mills Company Ltd., Kanpur Vs. State of U.P.) has considered the same issue and observed at paragraphs 6 to 8 as follows:-

"6. We may now examine the question from another angle, namely, whether an employee whose resignation has been accepted by the employer falls within the first exclusion clause to the definition of the term 'retrenchment'. There can be no doubt that a resignation must be voluntarily tendered for if it is tendered on account of duress or coercion, it ceases to be a resignation. It is not the result of the employee expressing a desire to quit service. In the present case the High Court has come to the conclusion that the employee had tendered his resignation



voluntarily. Does termination of service brought about by the acceptance of resignation fall within the expression 'voluntary retirement'? The meaning of the terms 'resign' and 'retire' in different dictionaries is as under :

Name of the Dictionary	Meaning of 'Resign'	Meaning of 'Retire'
Black's Law Dictionary (5th edn.)	Formal renouncement or relinquishment of an office	To terminate employment or service upon reaching retirement age
Shorter Oxford English Dictionary (Revised edn. of 1973)	To relinquish, surrender, give up or hand over (something); esp., an office, position, right, claim, etc. To give up an office or position; to retire.	The act of retiring or withdrawing to or from a place or position
The Random House Dictionary (College edn.)	To give up an office, position etc.; to relinquish (right, claim, agreement etc.)	To withdraw from office, business or active life.

7. From the aforesaid dictionary meanings it becomes clear that when an employee resigns his office, he formally relinquishes or withdraws from his office. It implies that he has taken a mental decision to sever his relationship with his employer and thereby put an end to the contract of service. As pointed out earlier just as an employer can terminate the services of his employee under the contract, so also an employee can inform his employer that he does not desire to serve him any more. Albeit, the employee would have to give notice of his intention to snap the existing relationship to enable the employer to make alternative arrangements so that his work does not suffer. The period of notice will depend on the period prescribed by the terms of employment and if no such period is prescribed, a reasonable time must be given before the relationship is determined. If an employee is not permitted by the terms of his contract to determine the relationship of master and servant, such an employment may be branded as bonded labour. That is why in *Central Inland Water Transport Corporation v. Brojo Nath Ganguly*⁷ this Court observed as under : (SCC p. 228, para 111)

"By entering into a contract of employment a person does not sign a bond of slavery and a permanent employee cannot be deprived of his right to resign. A resignation by an employee would, however, normally require to be accepted by the employer



in order to be effective".

8. In the present case the employee's request contained in the letter of resignation was accepted by the employer and that brought an end to the contract of service. The meaning of term 'resign' as found in the Shorter Oxford Dictionary includes 'retirement'. Therefore, when an employee voluntarily tenders his resignation it is an act by which he voluntarily gives up his job. We are, therefore, of the opinion that such a situation would be covered by the expression 'voluntary retirement' within the meaning of clause (i) of Section 2(s) of the State Act. In Santosh Gupta case⁴ Chinnappa Reddy, J. observed as under : (SCC p. 342, para 5)

"Voluntary retrenchment of a workman or the retrenchment of the workman on reaching the age of superannuation can hardly be described as termination, by the employer, of the service of a workman."

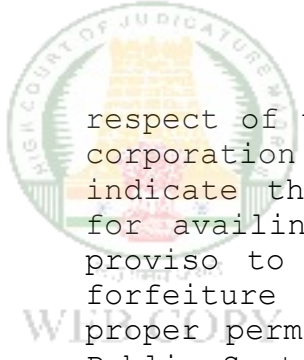
(Here the word 'retrenchment' has reference to 'retirement'.)

The above observation clearly supports the view which commends itself to us. We are, therefore, of the opinion that the High Court was not right in concluding that because the employer accepted the resignation offer voluntarily made by the employee, he terminated the service of the employee and such termination, therefore, fell within the expression 'retrenchment' rendering him liable to compensate the employee under Section 6-N. We are also of the view that this was a case of 'voluntary retirement' within the meaning of the first exception to Section 2(s) and therefore the question of grant of compensation under Section 6-N does not arise. We, therefore, cannot allow the view of the High Court to stand."

9. The above decision of the Hon'ble Apex Court followed by a learned single Judge of this Court in his decision made in W.P.(MD) No.7510 of 2010, dated 30.08.2010 wherein the learned single Judge has observed at paragraph 11 as follows:-

"11. Therefore, it is clear from the above judgment of the Hon'ble Supreme Court that a resignation will also amount to retirement and in that case, the petitioner satisfies the condition of Rule 12-a of the Tamil Nadu Pension Rule, 1976. further, it is seen from the impugned order that pensions were granted to those persons who resigned prior to 1958 without any claim for arrears prior to 1958 vide G.O.Ms.No.1016, Education, dated 05.06.1981 and G.O.Ms.No.37, Education, dated 05.01.1983. Therefore, when the first respondent has granted pension to those persons who voluntarily resigned prior to 1958, the first respondent is not justified in denying the relief to a person who resigned after crucial date that too, after completing ten years of service as per Rule 12-a of the Tamil Nadu Non Government Teachers Pension Rules 1958".

10. Even though the present case involves the Tamil Nadu State Transport Corporation Pension Fund Rules more particularly with regard to Rule 16(e) of the same, the ratio laid down in the above decisions in



respect of the resigned employees is equally applicable to the respondent corporation as well. Further, the perusal of the above said Rule would indicate that resignation from service is not a total disqualification for availing pensionary benefits in all cases and on the other hand, proviso to Rule 16(e) contemplates that a resignation shall not entail forfeiture of past services, if it has been submitted to take up with proper permission another appointment, under Government Department/State Public Sector Undertaking/ Board. In such cases, the pensionary benefits shall be transferred to the new employer's pension fund. Therefore, it is evident that even though the employee has tendered resignation and if such employee is to take up another appointment under another Department of the Government or State Public Sector undertaking or Board, he is not losing his past services nor there is any forfeiture of such services. Therefore, the intention to grant pensionary benefits is evident, even to such 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.

11. It is to be pointed out that the learned counsel appearing for the respondents is not in a position to canvass the correctness or otherwise of the order impugned in these writ petitions by placing any other contra decisions.

12. As the impugned orders are passed by one of the respondents to these writ petitions, there is no point in saying that the pension trust is the necessary party and therefore, they have to be impleaded as party respondent to answer the issue raised by the petitioners.

13. Accordingly, I find no justification in the contention raised by the learned counsel appearing for the respondents. Consequently, the writ petitions are allowed and the impugned orders are set aside and the matter is remitted back to the respondents to consider the claim of the petitioners seeking for pension and pass appropriate orders, if the period of service rendered by them would entitle them to receive pension. Such exercise shall be completed by the respondents within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(Per.Admn)

\\True copy\\

Sub Assistant Registrar



To

1.The Managing Director,
Tamil Nadu State Transport Corporation
(Madurai) Ltd.,
Bye Pass Road,
Madurai 625 016.

2.The General Manager,
Tamil State Transport Corporation
(Madurai) Ltd.,
Dindigul Region,
Dindigul-4.

3 The Deputy Manager (Accounts)
Tamil Nadu State Transport Corporation,
(Madurai) Ltd.,
Dindigul Region,
Dindigul 624 004.

+1 CC TO M/S.A.P.MUTHU PANDIAN, ADVOCATE SR.NO.9885

+2 CC TO M/S.S.GOVINDAN, ADVOCATE SR.NO.9853

Writ Petition (MD) Nos.461 and 106 of 2013
02.03.2015

SMS

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