

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

W.A.No.2482 of 2012
and M.P.No.1 of 2012

The Accountant General (A & E),
O/o.Accountant General (A & E),
361, Anna Salai, Teynampet,
Chennai - 18. ... Appellant/5th Respondent

Vs

- 1.K.Kolandaivel
- 2.The Secretary to Government
of Tamil Nadu,
School Education Department,
Secretariat, Chennai - 9.
- 3.The Director of School Education,
Nungambakkam, Chennai.
- 4.The Chief Educational Officer,
Namakkal District, Namakkal.
- 5.The Director of Stationery and
Printing, Chennai - 2. ... Respondents/Petitioners/
Respondents 1 to 4

Appeal preferred under Clause XV of Letters Patent against
the order dated 09.02.2012 made in W.P.No.9834 of 2011.

Prayer in WP No.9834 of 2011:-

Writ Petition filed under Article 226 of Constitution of
India for issuance of writ of mandamus directing the first
respondent to take into account half of the service of the
petitioners in contingent establishment in the Stationary and
Printing Department from 14.02.1972 to 28.02.1978 and the
petitioner service from 1.3.1978 to 28.01.1982 in regular

establishment along with his service from 29.01.1982 to 30.06.2007 in the school education department to arrive at the total qualifying service and consequently revise the pensionary monetary benefits consequent on his retirement on 30.06.2007 on attaining the age of superannuation.

For Appellant .. Mr.V.Vijay Shankar

For Respondents .. Mr.V.Thirupathi for R1

Mr.C.Munusamy, Spl. Govt. Pleader
for R2 to R5

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This writ appeal has been preferred by the fifth respondent in the writ petition, being aggrieved with the order of the learned single Judge, who, by placing reliance upon Rule 23 of the Tamil Nadu Pension Rules, 1978 (for short 'the Pension Rules'), was pleased to allow the writ petition by directing the appellant to take into consideration the past services rendered by the first respondent/writ petitioner as a Drawing Master.

2. Heard the learned counsel appearing for the appellant, learned counsel appearing for the first respondent and the learned Special Government Pleader appearing for respondents 2 to 5.

3. Learned counsel appearing for the appellant submits that the first respondent/writ petitioner was initially appointed as contingent staff in the year 1972 and subsequently appointed as Carpenter on regular basis. Thereafter, the first respondent/writ petitioner was appointed as Drawing Master at Government High School, Penandur on 29.01.1982 and his resignation was accepted by the order dated 18.08.1982, which makes it very clear that the first respondent/writ petitioner will have no right or claim over his past service in the department. The first respondent/writ petitioner has also suppressed the factum of his earlier employment. Even otherwise he is deemed to have given up his right, if any, what is required is a prior consent before joining. Therefore, the order of the learned single Judge would require interference.

4. Learned counsel appearing for the first respondent/writ petitioner would submit that as facts are not in dispute to the effect that the first respondent/writ petitioner is indeed working with the Stationery and Printing Department, the learned single Judge rightly applied Rule 23 of the Pension Rules.

5.The fact remains that the first respondent/writ petitioner was working as Drawing Master at Government High School, Penandur on 29.01.1982. Prior to his joining, his resignation was accepted by the Deputy Director of Stationery and Printing on 18.08.1982. Rule 23 of the Pension Rules speaks about the forfeiture of service on resignation. But proviso speaks about an exception with respect to forfeiture of the past service in a case where an employee gets appointment with the Government. Though, in the case on hand, a prior permission was not obtained, the question for consideration is as to whether the first respondent/writ petitioner was working earlier under the Stationery and Printing Department or not and if it is so, resignation is accepted or not. Both these questions are to be answered in favour of the first respondent/writ petitioner. It is no doubt true that he ought to have obtained permission prior to his appointment and joining as a Drawing Master. Perhaps it could have been a ground to disqualify him and cancel the subsequent appointment. Apparently, no action was taken for the aforesaid conduct of the first respondent/writ petitioner. In this proceedings, what he seeks is computation of the period in which he was working earlier with another Wing of the Government. In other words, he seeks the aforesaid period for consideration in terms of Rule 23 of the Pension Rules.

6.When facts are not in dispute, the mere fact that permission has been granted and resignation was accepted subsequent to the post in which he has joined cannot be a ground to decline the counting of the period of service rendered by the first respondent/writ petitioner in the earlier Department. By their own conduct, the appellant and other respondents allowed the mistake committed by the first respondent/writ petitioner. When the same has been condoned, it cannot be put against him in a different form. Thus, we do not find any error in the order passed by the learned single Judge warranting interference. After all, under Rule 23 of the Pension Rules, the first respondent/writ petitioner is entitled to count only half of the services rendered in the earlier Department.

7.With the above observation, the writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government
of Tamil Nadu,
School Education Department,
Secretariat, Chennai - 9.

2.The Director of School Education,
Nungambakkam, Chennai.

3.The Chief Educational Officer,
Namakkal District, Namakkal.

4.The Director of Stationery and
Printing, Chennai - 2.

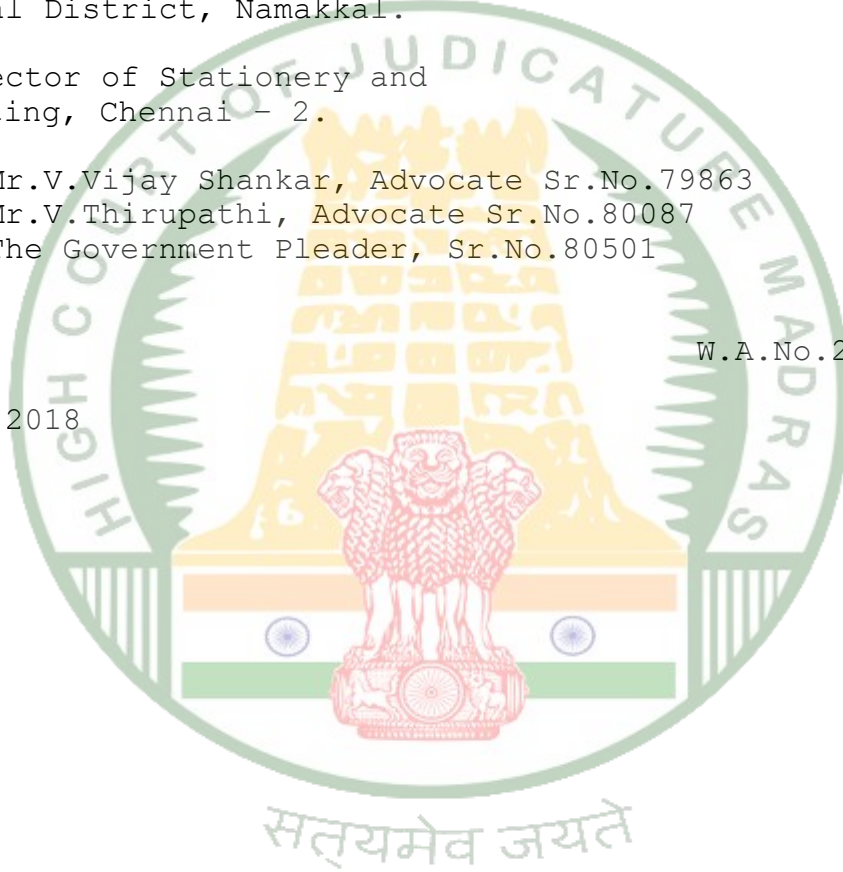
+1 cc to Mr.V.Vijay Shankar, Advocate Sr.No.79863

+1 cc to Mr.V.Thirupathi, Advocate Sr.No.80087

+1 cc to The Government Pleader, Sr.No.80501

W.A.No.2482 of 2012

GJ(CO)
CSL/27.12.2018



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