

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2018

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.11029 of 2018
and
W.M.P.No.12938 of 2018

N.V.Selvaraj

... Petitioner

Versus

1.The Director of Technical Education,
Office of Director of Technical Education,
Sardar Patel Road,
Guindy,
Chennai - 600 025.

2.The Principal,
P.S.G. College of Technology,
Government Aided Autonomous College,
Affiliated to Anna University,
Peelamedu,
Coimbatore - 641 004.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the first respondent to dispose the petitioner's pension benefits as mentioned in G.O.Ms.No.1015, Education Department, dated 05.06.1981.

For Petitioner :: Mr.B.Ramamoorthy

For R1 :: Mr.P.Raja,
Government Advocate

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O R D E R

The relief sought for in this writ petition is to direct the first respondent to dispose the petitioner's pension benefits as mentioned in G.O.Ms.No.1015, Education dated 05.06.1981.

2.The learned Senior Advocate appearing on behalf of the writ petitioner made a submission that the writ petitioner had

completed B.E., (Mech) in P.S.G. College of Technology, Coimbatore in the year 1974. The writ petitioner was appointed as an Instructor in P.S.G. Polytechnic, Coimbatore - 641 004 and served with effect from 01.04.1965 to 30.06.1967. Thereafter, the writ petitioner served as an Instructor in P.S.G. College of Technology with effect from 01.06.1967, till the date of his resignation on 22.07.1981. He served as a 'Foreman Instructor' in the above said College. Accordingly, the writ petitioner has served for about sixteen years three months and twenty one days.

3.The writ petitioner has admitted the fact that he resigned from the above said post on 22.07.1981. Therefore, the respondents have not considered the case of the writ petitioner for grant of pension in accord with the Tamil Nadu Pension Rules, 1978. The learned counsel appearing for the writ petitioner cited the Government Order issued in G.O.Ms.No.1015, Education Department dated 05.06.1981 which states that the crucial dates from which the pension scheme for staff of Non-Government Educational Institutions was introduced for various categories of staff in Non-Government Educational Institutions and the crucial dates are mentioned in paragraph No.1 of the above said Government Order.

4.The learned counsel appearing for the petitioner by citing Paragraph 6 (ii) of the Government Order states that "Pension can be sanctioned even in cases where the incumbents had "RESIGNED" since they could not have foreseen the institution of pension scheme at the time they "RESIGNED". The very paragraph 6 (ii) of the Government Order is inapplicable in respect of the facts and circumstances of the present case on hand. The writ petitioner submitted his resignation and the same was accepted on 23.07.1981. On the date of the acceptance of the resignation, the Pension Rules, 1978 was in force. Therefore, the benefit granted in Paragraph 6 (ii) of the Government Order is not applicable to the writ petitioner. Though, the Government Order was issued on 05.06.1981, the benefit was granted in respect of the employees resigned prior to the crucial date mentioned in the Government Order.

5.This apart, the Tamil Nadu Pension Rules, 1978 came into force on 01.01.1979, since, the writ petitioner had resigned his job on 22.07.1981, the Pension Rules alone shall be applicable in respect of the facts and circumstances of the present case. Rule 23 provides "Forfeiture of service on resignation". Resignation from service or post entails forfeiture of past service and therefore, the case of the writ petitioner cannot be considered based on the Government Orders submitted.

6.The learned counsel appearing for the writ petitioner

cited the Order of Madurai Bench of Madras High Court passed in W.P.(MD).No.7510 of 2010 reported in CDJ 2010 MHC 6378 and the relevant paragraph No.11 is extracted here under:

"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, 1978. 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.1015, 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 persons who resigned after crucial date that too, after completing ten years of service as per Rule 12-a of the Tami Nadu Non-Government Teachers Pension Rules, 1958."

Even as per Paragraph No.11 of the above Order, it is clarified that the persons who voluntarily resigned prior to 1958 alone is eligible for pension under the Government Order.

7. This apart, after implementation of the Tamil Nadu Pension Rules, 1978, the same alone shall prevail over all other Government Orders, when the statutory Rules in force. The Government institutions are ordered and it cannot be implemented in respect of the pension scheme. Thus, even if any such Government Orders are passed contrary to the Pension Rules, the Pension Rules shall prevail and not the Government Orders.

8. This being the legal principles to be followed, there is no reason whatsoever to consider the claim of the writ petitioner for the purpose of grant of pension. Thus, the writ petitioner has not established even a Semblance of Right for the purpose of considering the prayer as such sought for in this writ petition.

9. Accordingly, the writ petition stands dismissed. Consequently, the connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS III)

//True copy//

Sub Assistant Registrar

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To

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+1cc to Government Pleader SR.No.32947

W.P.No.11029 of 2018

NRL (CO)
GN(17/05/2018)



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