

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. No.22063 of 2016 and
W.M.P. Nos.18854 of 2016 and 21417 of 2017

E.P.Jayaraman

.. Petitioner

-vs-

1.The Commissioner,
Panchayat Union,
Sholingur, Vellore District.

2.District Elementary Educational Officer,
Vellore Division, Vellore.

3.District Collector,
Vellore District, Vellore.

4.Director of Elementary Education,
DPI Complex, College Road,
Chennai 600 006.

5.Director of Pension,
259, Anna Salai,
3rd Block, 2nd Floor,
DMS, Teynampet,
Chennai 600 018.

6.Accountant General,
361, Anna Salai,
Chennai 600 018.

7.Secretary to Government,
School Education Department,
Fort St. George, Chennai 600 009.

.. Respondents

Petition under Article 226 of the Constitution of India,
praying for the issue of a Writ of Certiorarified Mandamus,
calling for the records of the sixth respondent made in Pen
16/1/pt.5907 dated 02.05.2016 and quash the same and direct the
sixth respondent to sanction the pension to the petitioner in
terms of G.O. Ms. No.37 (School Education) dated 05.01.1983.

For Petitioner :: Mr.M.Palani

For Respondents:: Mrs.Hema Muralikrishnan
Standing Counsel for R6

Mr.V.Jayaprakash Narayanan,
Special Government Pleader
for R1 to R5 and R7

ORDER

This writ petition has been filed challenging the order dated 02.05.2016 made in Pen 16/1/pt.5907 passed by the sixth respondent and seeking a direction to him to sanction the pension in terms of G.O. Ms. No.37 (School Education) dated 05.01.1983.

2.The case of the petitioner is that he joined as a Secondary Grade Head Master on 29.04.1963 in the Nehruji Aided School in Edapalayam, Ammoor Post, Walajah Taluk, Vellore District. Due to family circumstances, he was forced to resign from the said post during September 1974 after serving 11½ years of service. While so, the Secretary to Government, School Education Department, the seventh respondent herein has issued a Government Order in G.O. Ms. No.1015 dated 05.06.1981 giving benefit of pension to those persons who resigned service from 01.04.1965 onwards. Thereafter, the said seventh respondent has issued another G.O. Ms. No.37 dated 05.01.1983 clarifying that the persons who have resigned prior to 1981 are not entitled to get any arrears of pension from the date of their resignation till 05.06.1981, but they are eligible for pension from 05.06.1981 and no arrears be allowed for the said period. The petitioner, after coming to know the fact that a similarly placed person as that of him, resigned from service in the year 1972, has applied for the pensionary benefits made under the said G.O. Ms. No.37 dated 05.01.1983. The said request was rejected by the concerned authority observing that the pension scheme was not applicable to those employees who forfeited their service, but applies only to those who completed the service and retired.

3.According to the petitioner, the said employee filed a Writ Petition in W.P. No.14732 of 2013 challenging the said order. However, the Madurai Bench of Madras High Court has directed the respondent therein to sanction the pension in accordance with the said G.O. Ms. No.37 dated 05.01.1983. Therefore, the petitioner applied for the pension before the sixth respondent herein claiming the benefit of the said G.O. on the basis of his representation dated 30.11.2015. Finding no response, he is before this Court.

4.Learned counsel appearing for the petitioner would submit that the order passed by the sixth respondent is contrary to law and suffers from perversity. Placing reliance on the judgment of the Division Bench of this Court in the case of Government of Tamil Nadu vs. S.V.Paul Jeyaraj reported in 2001 Writ L.R. 852 submitted that when a teacher resigned his service while working in a High School after put in 18 years 7 months and 25 days, though sent a representation on 06.06.1967 seeking pensionary benefits under the "Teachers Pension Scheme" relying upon G.O. Ms.No.1015 dated 05.06.1981, the same was rejected and therefore he approached this Court by way of a Writ Petition. This Court, heavily relying on the aforementioned G.O. and more particularly, paragraph 6(ii) holding that pension could be sanctioned even in case where the concerned incumbent had resigned and also on the another Government Order in G.O. No.37 dated 05.01.1983 clarifying the aforementioned G.O. Ms.No. 1015, has held that the petitioner therein was undoubtedly entitled to the pension and that the petitioner had already put in more service than the minimum required service for pension and that the petitioner therein had resigned from the service on 01.06.1967 while the crucial date as per the said G.O. for the grant of pension was 01.03.1968 and that the petitioner's resignation was even prior to the crucial date. Finally, the Division Bench while confirming the judgment of the learned Single Judge, has observed that the provision has to be interpreted as giving concessions even to the persons who have resigned earlier to the institution of the said pension scheme and that the G.O. Ms. No.37 dated 05.01.1983 is very clear and directed the Government to finalise the pension of the teacher within three months and therefore the learned counsel for the petitioner pleaded that the petitioner is also entitled to get the pension as prayed for by him.

5.In support of his contention, he also relied on a decision of the Madurai Bench of Madras High Court in Writ Petition (MD) Nos.461 and 106 of 2013 wherein the learned Single Judge following a judgment of the Apex Court in a decision reported in AIR 1990 SC 1808 (M/s.J.R.Cotton Spg & Wvg. Mills Company Ltd. Kanpur vs. State of U.P. and following the decision made in W.P. (MD) No.7510 of 2010 dated 30.08.2010 observing that 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 and that the resignation from service is not a total disqualification for availing pensionary benefits in all cases and on the other hand, proviso to Rule 16(3) contemplates that a resignation shall not entail

forfeiture of past services, if it has been submitted to take up with proper permission and in such cases, the pensionary benefits shall be transferred to the new employer's pension fund and though the employee has tendered resignation, he was not losing his past services and the denial of pension to the petitioners on the ground that they are resigned employees cannot be sustained, but at the same time, not all the persons who tendered resignation are entitled to get pension, unless the period of service so rendered by them comes within the pensionable service period as contemplated under the Rules, has remitted the matter back to the respondents to consider the claim of the petitioners seeking for pension, if the period of service rendered by those persons would entitle to receive pension.

6. Again referring to the order of the Division Bench of this Court dated 04.07.2017 passed in W.A. (MD) Nos.855 and 856 of 2017, learned counsel for the petitioner would argue that the Division Bench has held that the learned Single Judge was very much conscious that the case of the writ petitioners was to be adjudicated only with reference to Tamil Nadu State Corporation Pension Fund Trust Rules while confirming the above said order dated 02.03.2015 made in W.P. (MD) Nos.106 and 461 of 2013 and dismissed the writ appeals filed by the Transport Corporation respondent therein.

7. In this connection, learned counsel for the petitioner pleaded that the resignation of the petitioner cannot amount to forfeiture of pension and the delay in approaching this Court cannot be put against the petitioner and taking support from G.O. Ms. No.37 dated 05.01.1983 he would contend that no records are available to verify the service particulars and on this ground he prayed for allowing the petition.

8. Counter affidavits have been filed by the District Elementary Educational Officer, Vellore Division, Vellore, the second respondent herein and by the Accountant General, Chennai, the sixth respondent herein.

9. Mr. V. Jayaprakash Narayanan, learned Special Government Pleader appearing on behalf of respondents 1 to 5 and 7 would submit that the claim made by the petitioner with regard to G.O. Ms. No.37 dated 05.01.1983 is wholly misconceived. The reason is that in the said G.O., the Government has clarified that pension can be sanctioned even in cases where the incumbents had resigned, as they could not have foreseen the introduction of the pension scheme at the time of their resignation. In the instant case, the petitioner had resigned in September 1974 i.e. very much after the cut off date namely 31.05.1958 specified by the Government and hence he had resigned from the post only

after the introduction of the pension scheme knowing fully well that by resignation, he was forfeiting his entire past service.

10.Learned Special Government Pleader would further submit that mere completion of ten years of service does not entail the petitioner for pension as claimed by him and even for voluntary retirement from service which cannot be equated with that of resignation, one has to complete 20 years of qualifying service or should have attained 50 years of age, then only pensionary benefits are payable. Hence, the petitioner is not eligible to get pensionary benefits.

11.Mrs.Hema Muralikrishnan, learned Standing Counsel appearing on behalf of the sixth respondent would submit that the petitioner has admittedly resigned from the service of the State Government and there is no records available to verify the service particulars of the petitioner to sanction pension, more particularly after a huge lapse of 42 years. When there are no evidence or document produced by the petitioner that there was a resignation which was accepted by the respondent department, giving direction to the respondents to pay pension is wholly unsustainable in law.

12.I fully agree with the arguments advanced by the learned Standing Counsel appearing for the sixth respondent. Firstly, when the petitioner claims to have resigned from the post of Secondary Grade Headmaster in the Nehruji Aided School in Edapalayam after put in 11 ½ years of service, he has not placed on record the most crucial document from his side that he had resigned from service and that was accepted by the competent authority. No piece of any evidence is produced by the petitioner to show that he had resigned from service in a particular month and year. A certificate dated 22.01.2016 and a certificate dated 23.01.2016 issued by one G.Vasudevan, Retired Junior Deputy Inspector of School, Walajapet stating that the petitioner has served as a Head Master in the Panchayat Union Primary School, Edapalayam, Sholingar were produced by the petitioner. The aforementioned two certificates obtained by the petitioner are wholly unacceptable as the same are bereft of reliability. The impugned order passed by the sixth respondent shows that the petitioner resigned from service in September 1974. It is not known on what basis the Accountant General, Chennai, the sixth respondent herein has come to the conclusion that the petitioner resigned from service in September 1974, when there is no iota of evidence to show that he has submitted his resignation and the same has been accepted by the competent authority.

13. Secondly, there has been a huge delay of 42 years in approaching this Court by way of filing this writ petition. In this context, it is relevant to extract paragraphs 15 and 16 of the judgment of this Court in the case of C. Jacob vs. Director of Geology and Mining and another reported in 2008 10 SCC 115:

'15. The present case is a typical example of "representation and relief". The petitioner keeps quiet for 18 years after the termination. A stage is reached when no record is available regarding his previous service. In the representations which he makes in 2000, he claims that he should be taken back to service. But on rejection of the said representation by order dated 09.04.2002, he filed a writ petition claiming service benefits, by referring the said order of rejection as the cause of action. As noticed above, the learned Single Judge examined the claim, as if it was a live claim made in time, finds fault with the respondents for not producing material to show that termination was preceded by due enquiry and declares the termination as illegal. But as the petitioner has already reached the age of superannuation, the learned Single Judge grants the relief of pension with effect from 18.07.1982, by deeming that he was retired from service on that day. We fail to understand how the learned Single Judge could declare a termination in 1982 as illegal in a writ petition filed in 2005. We fail to understand how the learned Single Judge could declare a termination in 1982 as illegal in a writ petition filed in 2005. We fail to understand how the learned Single Judge could find fault with the Department of Mines and Geology, for failing to prove that a termination made in 1982, was preceded by an enquiry in a proceedings initiated after 22 years, when the department in which the petitioner had worked had been wound up as long back as in 1983 itself and the new department had no records of his service.

16. The petitioner neither produced the order of termination, nor disclosed whether the termination was by way of dismissal, removal, compulsory retirement or whether it was a case of voluntary retirement or resignation or abandonment. He significantly and conveniently, produced only the first sheet of a show-cause notice dated 08.07.1982 and failed to produce the second or subsequent sheets of the said show cause notice in spite of being called upon to produce the same. There was absolutely no material to show that the termination was not preceded by an enquiry. When a person approaches a Court after two decades after termination, the burden would be on him to prove what he alleges. The learned Single Judge dealt with the matter as if he the petitioner

had approached the court immediately after the termination. All this happened, because of grant of an innocuous prayer to "consider" a representation relating to a stale issue.'

14.A perusal of the above judgment would show that when a person approaches a Court after two decades after termination, the burden would be on him to prove what he claims. In the present case, the petitioner has come to this Court so belatedly after four decades beyond usual delay and hence the heavy burden lies upon him to prove his case by way of filing all necessary documents, that he resigned but not deserted or abandoned the job, but the same has not been done. Therefore, this Court is unable to entertain this stale claim made in this writ petition for the simple reason that no purpose would be served by giving direction to the respondents to look into the case of the petitioner since no document would be available today due to the long passage of time. Accordingly, this writ petition is dismissed. No costs. Consequently, connected W.M.Ps are also dismissed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner,
Panchayat Union,
Sholingur, Vellore District.

2.District Elementary Educational Officer,
Vellore Division, Vellore.

3.District Collector,
Vellore District, Vellore.

4.Director of Elementary Education,
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5.Director of Pension,
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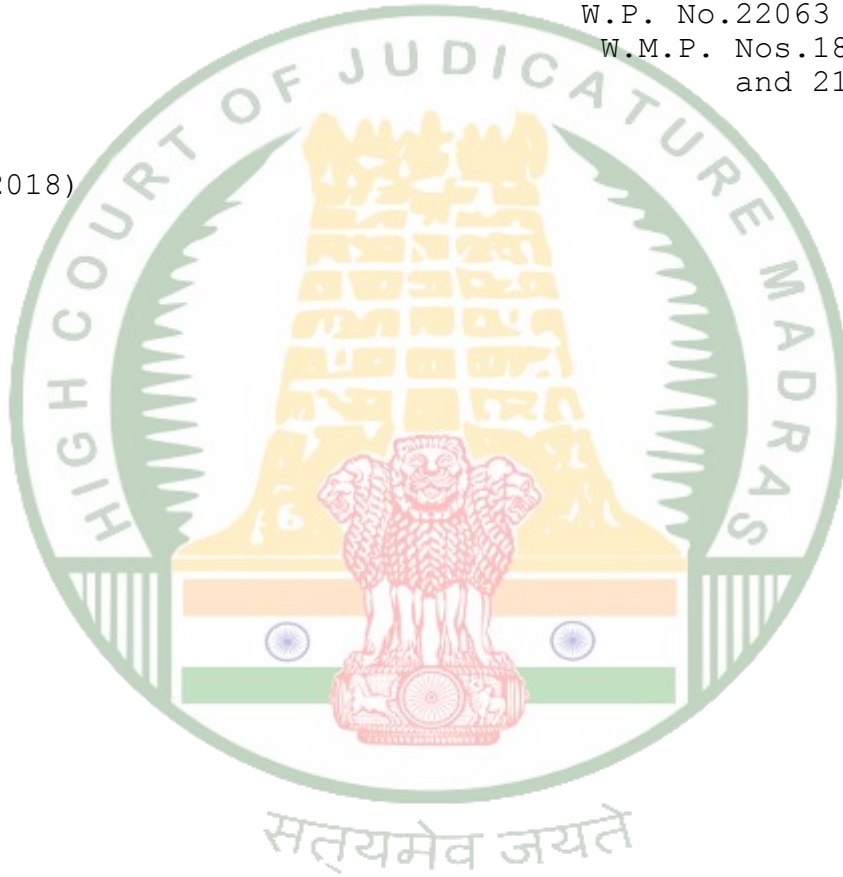
6.Accountant General,
361, Anna Salai,
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7.Secretary to Government,
School Education Department,
Fort St. George, Chennai 600 009.

+1cc to Mr.HEMA MURALIKRISHNAN, Advocate, S.R.No.34836
+1cc to Mr.M.PALANI, Advocate, S.R.No. 34703

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W.M.P. Nos.18854 of 2016
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VBA(CO)
TR(22/06/2018)



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