



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 12.02.2018
CORAM :
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

W.P. (MD) No.369 of 2018
and
WMP (MD) No.419 of 2018

V.Thangaraj

... Petitioner

Vs.

1. The Secretary to Government,
School Education Department,
St.George Fort, Chennai - 600 009.
2. The Director of Elementary Education,
College Road, Chennai - 600 006.
3. The District Elementary Educational Officer,
Trichirappalli Division,
Mannarpuram, Trichy-621 020.
4. The Assistant Elementary Educational Officer,
Musiri Elementary Educational Division,
Musiri, Trichy District - 621 211.
5. The Superintendent of Post Offices,
Karur Division,
Karur - 639 001.

... Respondents

Prayer: Writ petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in pertaining to the impugned order of the first respondent vide his proceedings in Government Letter (1D) No.381/தொக 3(2)/2017 dated 28.06.2017 and set aside the same as arbitrary, illegal and without jurisdiction and consequently directing the respondent to revise the petitioner's pension by including the past service rendered by him the fifth respondent's Postal Department for 13 years, 7 months and 1 day from 30.11.1983 to 30.06.1997.

For petitioner : Mr.T.Vadivelan

For Respondents : Mrs.S.Srimathy,
Special Government Pleader
for R1 to R4

**ORDER**

The petitioner was appointed as a Postal Assistant on 30.11.1983. He was subsequently promoted as Sub-Post Master also. While so, he came to be sponsored by the District Employment Exchange based on his seniority and educational qualification for the post of Secondary Grade Teacher. He got selected as Secondary Grade Teacher in Tamil Nadu Education Department. Therefore, he resigned from the Postal Department with effect from 30.06.1997. He joined as Secondary Grade Teacher on 01.07.1997. He retired on 31.05.2014.

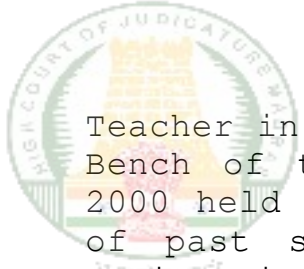
2.The Government of Tamil Nadu sanctioned pension to the petitioner by taking into account the services of 17 years put in by him as Secondary Grade Teacher/BT Assistant. The services put in by him in the postal department was not taken into account to compute his pensionary benefits. Aggrieved by the same, the petitioner submitted representations. The first respondent however by impugned order dated 28.06.2017 rejected the petitioner's request. The same is challenged in the writ petition.

3.The learned Special Government Pleader appearing for the respondents 1 to 4 wanted this Court to sustain the impugned order for the reasons assigned in the order itself. Though the fifth respondent was served and his name is also printed in the cause list, he has not chosen to enter appearance.

4.The facts are not in dispute. The petitioner was a Central Government employee from 1983 till 30.06.1997. He was a State Government employee with effect from 01.07.1997 till the age of superannuation. The Government of Tamil Nadu has issued G.O.No.404 Finance (BPE) Department dated 06.06.1991 providing for counting of services rendered in Central Government while calculating the pension for the retired State Government employees. In the impugned order what has been referred to is Rule 12(4) (a) (ii) of Tamil Nadu Pension Rules, 1978.

5.This Court is of the view that invocation of the said Rule is not appropriate because the said Rule pertains to temporary Central Government employees who have appointed in the State Government services. In the present case, the petitioner was holding a regular post in Central Government in the Postal Department. Therefore, rejecting the case of the petitioner on the said ground is clearly inappropriate. Similarly, referring to Rule 23 of the Tamil Nadu Pension Rules is also incorrect.

6.In the present case, the petitioner resigned his Central Government post only because he was selected as a Secondary Grade



Teacher in Tamil Nadu Education Department. The Hon'ble Division Bench of this Court by order dated 08.07.2009 in WA.No.1651 of 2000 held that resignation simpliciter will not entail forfeiture of past service; only in those cases where a person submits resignation because of any allegation or proceedings which otherwise would have attracted punishment like dismissal or removal from service, the provisions of Rule 23 will be attracted forfeiting the past service. Therefore, both the grounds on which the impugned order is resting are shaky and unsustainable. The order impugned in this writ petition is quashed.

7.The learned Special Government Pleader submitted that proposal will have to come from the fifth respondent. However, it may not be necessary because all the relevant details are already available with the respondents 1 and 2. As rightly pointed out by the learned counsel appearing for the writ petitioner, the second respondent has already set out all the relevant details in his communication dated 13.02.2017. The first respondent is therefore directed to re-examine the entire issue in the light of the G.O.Ms.No.404 Education (BPE) Department dated 06.06.1991 and pass appropriate orders in accordance with law within a period of eight weeks from today.

8.The writ petition is allowed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar

To

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2. The Director of Elementary Education,
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Musiri, Trichy District - 621 211.



5. The Superintendent of Post Offices,
Karur Division,
Karur - 639 001.

+1cc to Mr.T.Vadivelan, Advocate Sr.No.47746
+1cc to The Spl. Government Pleader Sr.No.48593

SKM

VB/JC/SAR3/24.05.2018/4P/8C

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12.02.2018