



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 09.11.2018
DELIVERED ON : 14.11.2018
CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
W.P(MD)No.184 of 2015

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K.Kollappa Pillai .. Petitioner

Vs.

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

2.The Director of Elementary Education,
DPI Campus, College Road,
Chennai.

3.The Assistant Elementary Educational Officer,
Chinnamanur - 625 515,
Theni District.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent in his proceedings Letter No.26524/Nee. Va. 2(2) / 2014 dated 25.11.2014 and quash the same and consequently direct the respondents to sanction the Pension and other Retirement Benefits in terms of G.O.Ms.No.37 , dated 05.01.1983 and in the light of the Division Bench Judgement of this Honourable Court reported in 2001 - Writ LR. 852 dated 27.07.2001 which was confirmed by the Honourable Supreme Court in SLP No. 22469 of 2001 dated 10.01.2002 and in the light of the Judgement of this Honourable Court reported in (2011) 1 MLJ 1218 dated 22.11.2010.

For Petitioner : Mr.R.Rengaramanujam

For Respondents : Mrs.S.Srimathy,
Special Government Pleader.

ORDER

This writ petition has been filed praying to issue a writ of certiorarified mandamus calling for the records of the first respondent in his proceedings in Letter No.26524/Nee.Va.2(2)/ 2014, dated 25.11.2014 and quash the same and consequently direct the respondents to sanction the pension and other retirement benefits in terms of G.O.Ms.No.37, dated 05.01.1983 and in the light of various Judgments of this Court.

2.Heard the learned counsel appearing for the petitioner as well as the learned Special Government Pleader representing the respondents.



3. Brief facts of the case of the petitioner:

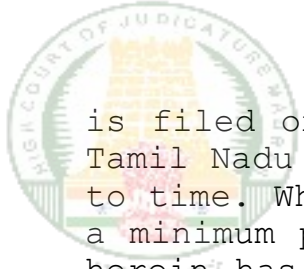
(i) The writ petitioner herein jointed as Secondary Grade Assistant at T.P.Vai Vellalar Uravinmurai Gurukkal Middle School, Chinnamanur on 09.02.1970. He went on medical leave between 07.06.1982 and 28.01.1983 and joined duty on 31.01.1983. He tendered resignation on medical ground on the next day and he was relieved from service. The law as per Pension Rules, a person who resigned, is not entitled for any pension. As an exception, if the Department of the Government is satisfied that the operation of the said Rule caused hardship, then recording the reason, can dispense with or relax the requirement of that rule to such extent and subject to such exceptions and conditions as it may consider necessary. The Government passed G.O.Ms.No.37, Education, Science and Technology Department, dated 05.01.1983, wherein it has clarified the entitlement of pension for the teaching staff of aided schools, who resigned before the relevant crucial dates.

(ii) Relying upon this G.O. which extends pensionary benefit to teaching staff of aided school w.e.f. 01.03.1968 and relying upon Rule 23 and 82 of the Tamil Nadu Pension Rules, the petitioner has sought for pension. Since no positive order was passed on his request, he filed a writ petition in W.P(MD)No.4101 of 2011 seeking direction to the respondents therein to sanction pensionary benefit. The said writ petition was dismissed observing that the petitioner after resigning from the service slept over for a long period of 25 years and given a representation in the year 2008, the same was considered and rejected by the authorities on 02.12.2008 holding that the petitioner is not entitled to the benefit of pension, as he resigned from the post of teacher and forfeiture of his service. After rejection of his representation, the writ petitioner kept quiet for another 2 more years and thereafter preferred writ petition in the year 2011. So, considering the merits of the case and the law, confirmed the order of rejection passed by the fourth respondent therein.

(iii) Thereafter, the writ petitioner has preferred W.A(MD) No.274 of 2013. When it was taken up for hearing, the petitioner sought leave of the Court to withdraw the appeal and make a representation to the authorities to relax Rule 23 of Tamil Nadu Pension Rules [forfeiture clause]. Accordingly, the writ petitioner has given a representation to the authorities to consider his representation for grant of pension in the light of G.O.Ms.No.37 and Rule 82, which gives the discretionary power to the authority to relax the forfeiture of pension contemplated under Rule 23 of the Tamil Nadu Pension Rules.

(iv) The Secretary to the Government after considering the representation, extracted G.O.Ms.No.37, which has fixed the crucial date for the pension scheme and relaxation of Rule 23 in respect of teachers, who have resigned before pension scheme was made applicable, has rejected the request stating that the request is contrary to the Rules. The petitioner has resigned after G.O.Ms.No.37 came into force, knowing fully well about the impact of Rule 23.

(v) Challenging the said rejection, the present writ petition

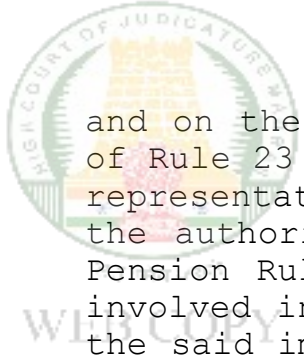


is filed on the ground that the impugned order is violative of the Tamil Nadu Pension Rules and the Government instructions issued time to time. When Pension Rules prescribe 10 years qualifying service as a minimum period for payment of pensionary benefits, the petitioner herein has served nearly thirteen years and he is entitled for his pension. As per G.O.Ms.No.37, pension can be sanctioned even in cases where the incumbent has resigned. Therefore, denial of pension without examining the instruction of the Government shows the non-application of mind. Hence, the impugned order is liable to be quashed.

(vi) It is also pointed out that the third respondent, Assistant Elementary Educational Officer, who is the appointing authority has recommended grant of pension to the petitioner. Whereas, the higher authority, namely, the Principal Secretary to Government, has failed to consider the said recommendation. When the third respondent is the competent authority to sanction pension, the first respondent ought not to have overlooked the recommendation of the third respondent.

4. Further the learned counsel representing the writ petitioner would also submit that there are several Judgments of this Court wherein the Court has directed the authorities to consider the pension request sympathetically and the Government has passed favourable orders granting pension. While so pension being a continuous cause of action, for the sole reason that the petitioner has approached the authority for pension after considerable delay, cannot be a reason to reject the request. While Rule 82 mandates the authority to consider relaxation of any Rule, on the basis of equity. Therefore, depriving the petitioner his pensionary benefit on the ground of delay is unsustainable.

5. The learned Special Government Pleader has filed a counter, wherein it is stated that the Government has issued G.O.Ms.No.37, dated 05.01.1983 clarifying the earlier order passed by the Government regarding eligibility for pension in respect of those who have retired before the crucial date. Pension scheme for teaching staff worked in the aided schools was introduced vide G.O.Ms.No.1109, dated 31.05.1958 w.e.f. 01.04.1955. Vide G.O.Ms.No.1505, dated 24.09.1968, it was clarified that those who retired before the crucial date of passing G.O., were allowed to get pension from 01.03.1968. By virtue of G.O.Ms.No.37, it was further clarified that teaching staff who resigned from the post before 31.05.1958, were also made eligible for pension. The reason for extending the benefit to the teaching staff who resigned before 31.05.1958 was that, on the date of resignation they would not have expected that Government will in future introduce pension scheme for teaching staff in aided schools. Therefore, on the basis of equity and on representation made by teaching staff who resigned before G.O.Ms.No.1109, dated 31.05.1958, the said relaxation by way of clarification, the Government issued G.O.Ms.No.37, dated 05.01.1983. Whereas the petitioner herein submitted his resignation on 31.01.1983 after passing of G.O.Ms.No.1109, dated 31.05.1958, which extended the pensionary benefits to teaching staff in aided schools



and on the date of resignation the writ petitioner was fully aware of Rule 23 which disentitle him pensionary benefit. Pursuant to the representation given by the petitioner, the first respondent who is the authority to consider relaxation of Rule 23 of the Tamil Nadu Pension Rules as empowered under Rule 82, has considered the facts involved in this case and has rightly rejected the request. Since the said impugned order is passed after due application of mind and applying the right law, the writ petition is to be dismissed.

6.The crucial point involved in this case is that whether the impugned order passed by the first respondent bristles with non-application of mind, lack of authority or against the settled principle of law?

7.G.O.Ms.No.37, dated 05.01.1983 is a self-explanatory order. As pointed out by the learned Special Government Pleader, taking note of various representations and the factual matrix involved in extending the pensionary benefit to the teaching staff of aided schools, Government has taken note of cases of resignation before crucial date and after crucial dates and passed the G.O. The relevant portion of the G.O. is extracted below:

"2. Many beneficiaries under G.O.Ms.No.1505 dt.24-9-68 would have found it difficult to produce service particulars to claim pension. It is likely that in some cases service registers might have been either lost or misplaced. In very many cases it would be even difficult to check the service details and then calculate pension eligibility due to sheer lapse of time. To obviate hardship and difficulties the authorities sanctioning pension were in Govt. memo no.21344/E6/68-5, Education, Dt.18-11-1968) authorised to sanction the minimum pension in all such cases where Teachers Service registers are not available or it is difficult to verify service particulars of the applicant.

3. When authorising sanction of pension from 1-3-68 (under G.O.Ms.No.1505/24-9-68) to Arumariammal who served as teacher in non-Government schools from 1912 to 1928 in G.O.Ms.No.1196, Education, dt.15-7-75, the Government enunciated the following general principal regarding admissibility of Pension to Persons who had resigned before the relevant crucial dates:

"At the time the teacher "resigned" from service no one could have foreseen the institution by the Government of any pension scheme for teachers in non-Government service and it did not matter then whether one "resigned" from service or "left" service or got one-self discharged as physically unfit on production of Medical Certificate, It is considered hard to deny pension in such cases even though such teachers may technically be said to have "resigned". It is in this spirit that instructions



were issued in Memo.No.21344/E6/68 5 Education, dt.18-11-1968 allowing the sanction of minimum pension even in cases where records like "Teachers' service Registers are not available of where it is difficult to verify the service particulars of Teachers".

4. Even in cases of "resignation" after the crucial dates, the Government have in a number of hard cases of particular individuals, relaxed the stipulations and allowed retirement benefits to "resigned" teachers also.

5. When Pension was sanctioned from 5-6-81 to non-teaching staff etc., who had retired before the crucial dates, the following specific orders were issued.

(i) the minimum pension admissible may be sanctioned on the basis of collateral evidence even where service books are not available and where no records are available to verify the service particulars.

(ii) 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".

(iii) In the case of Invalidation on Medical grounds Pension can be sanctioned even in cases where the procedure prescribed in the Tamilnadu Pension code had not been followed (G.O.1483, Edn./27-8-73).

6. As regard those who retired before the crucial dates, in the case of non-Teaching staff etc. who were given Pension benefits in para 6 of the G.O.1015/5-6-81 permitting the allowing of pension to 'Resigned' persons also; but there are no such general instructions permitting the allowing of pension to "Resigned" teachers (who were given pension benefits from 1-3-68 as per G.O.Ms.No.1505/dt.24-9-68). Orders are however being issued in individual cases of such teachers who had "resigned" before the crucial dates. In this context, the Accountant General has asked for a clarification on the following two points:-

(i) Whether it is the intention of the Government to allow pension to all the teaching staff of Aided and Local Body Schools and Teaching Staff of Aided Colleges who had "resigned" from service prior to the respective crucial date/dates of the respective Government order introducing pensionary benefits?

(ii) and if so, whether they are eligible to draw pension from 1-3-63 with reference to Government Order Ms.No.1505, Edn., dt.24-9-68 read with Government Memo, No.21344/E8/68-5, Edn. dt.18-11-68.

7. The Government now clarify point (i) above in the affirmative i.e., the staff in question may be sanctioned pension by the respective authorities competent to



sanction pension (without the need for any specific orders of any higher authority or of Government condoning the "resignation" in each Individual case).

8. However, as regard point (ii) above, the Government directed that the persons benefited with reference to the above clarification need be allowed pension only from 5-6-81 and that no arrears need be allowed for period prior to 5-6-81".

8. Rule 23 of the Tamil Nadu Pension Rules is as below:

"Forfeiture of service on resignation: - (1) Resignation from a service or 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.

(2) Interruption in service in a case falling under the proviso to sub-rule (1), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to the Government servant".

9. Rule 82 of the Tamil Nadu Pension Rules is as below:

"Power to relax.- Where any Department of the Government is satisfied that the operation of any of these rules causes under hardship in any particular case, the Department may by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner:

Provided that no such order shall be made except with the concurrence of the Finance Department".

10. On a cumulative reading of G.O.Ms.No.37 in the light of Rules 23 and 82 of the Tamil Nadu Pension Rules, it is amply clear that a person who has resigned after the crucial date knowing fully well about the impact of Rule 23, is not entitled for pension. However, in case if the Government is of the opinion that the said Rule has to be relaxed for just and equitable cause, the concerned Department of the Government can relax subject to concurrence of the Finance Department.

11. In this case, the Department of the Government namely, first respondent has considered the facts and found that there is no just or equitable cause to relax Rule 23. No doubt, the third respondent herein has recommended for sanctioning pension to the



writ petitioner, but he is not the authority to relax the embargo under Rule 23 of the Tamil Nadu Pension Rules. It is the first respondent who has to take a decision on equity and also the concurrence of the Finance Department is required while relaxing the condition.

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12. In this case, the first respondent has taken a decision that the writ petitioner herein has resigned the post voluntarily knowing fully well about the implication, more particularly, the forfeiture clause under Rule 23. On the date of his resignation, he was also aware of the fact that the pension scheme has been extended to teaching staff of private aided institutions. While so after lapse of several years citing his health reason, the writ petitioner seeks relaxation under Rule 82 exception to the General Rule 23. To substantiate that, his request to be viewed sympathetically, the petitioner herein should have at least placed some records to indicate the compelling reason for resigning.

13. The learned counsel appearing for the writ petitioner states that due to health condition, he could not continue the service, hence resigned. Except the said submission, there is no material placed before the authority to consider his representation and relax the rule. When no hardship, just or equitable cause placed before the authority at the first instance, the Court cannot look into the reasonableness of the order passed by the authority refusing to exercise its discretion which is prima facie just and fair.

14. The learned counsel appearing for the writ petitioner would rely upon some of the Judgments passed by this Court which are related to grant of pension to the employee, who resigned voluntarily. Particularly, the Judgments rendered by the Division Bench in *M.K. Sivakami v. Hon'ble Principal District Judge, City Civil Court, Chennai - 104* and *Others* reported in (2017)4 MLJ 329 and *D. Padmini v. Registrar General, High Court, Madras* reported in (2008)3 MLJ 241.

15. Both these cases on facts we find that the petitioners have placed some materials to show that they resigned from the post due to serious illness which has prevented them from continuing the service. Mere completion of 10 years of service alone is not a criteria for according sanction to a resigned employee. His service must be satisfactory to the employer. He should place before the authority adequate record to justify the relaxation of Rule 23. In this case, the writ petitioner has not placed record that his service was satisfactory. Also he has not produced any record to show his resignation was purely due to ill-health. So, the learned Single Judge while disposing the earlier writ petition filed by this writ petitioner has observed as below:

"8. in the present case, even though, he resigned, after putting in about 12 years, 11 months and 20 days of service, in the year 1983, he never made



any effort to claim pension and he kept quite for about 10 years. Therefore, when no record would be available regarding his previous service, to consider his claim in view of the long delay of 30 years in making his claim, the stale claim of the petitioner is to be dismissed, as the petitioner is guilty of long lapses.

9. Further, the petitioner, after resigning from the service of teacher, slept over for a long period 25 years and all of a sudden made his representation in 2008 and the same was also rejected by the impugned order, dated 02.12.2008, holding that the petitioner is not entitled to the benefit of pension, as he resigned from the post of teacher, which entails forfeiture of his past service and again, he ironically kept quite for 2 more years from the date of the impugned order. Therefore, the petitioner has slept over the matter. In the first instance, there has been a long lapse of delay of 25 years, without any reason and even after the impugned order was passed, he, once again, delayed the matter for 2 years is not taking any further steps. Hence, this petition is hopelessly barred by time".

16. The first respondent cannot be forced to relax Rule 23 without adequate reason and without concurrence of Finance Department. In this case, the writ petitioner has no sufficient cause to consider relaxation of Rule 23. Therefore, the first respondent has rightly rejected the representation assigning reasons.

17. In the light of the above fact, this Court finds no error in the order passed by the first respondent rejecting the representation given by the petitioner seeking relaxation of Rule 23 of the Tamil Nadu Pension Rules. Accordingly, this writ petition is dismissed. No costs.

Sd/
Assistant Registrar(AD-I)

/True copy/

Sub Assistant Registrar(CS-III)

To

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

2. The Director of Elementary Education,
DPI Campus, College Road,
Chennai.

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

3. The Assistant Elementary Educational Officer,
Chinnamanur - 625 515,

Theni District.

+1cc to Mr.K.RENGARAMANUJAM, Advocate, SR.No.95246



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