



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.11.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P(MD)No.22979 of 2016

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V.Gabriel

.. Petitioner

Vs.

1.The Accountant General

(Accounts and Entitlement),

Tamil Nadu,

Office at No.361, Anna Salai,

Chennai - 600 018.

2.The Commissioner,

Madurai Municipal Corporation,

Annamaligai, Thallakulam,

Madurai - 625 002.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned order No.Ma.Ni.31/18158/2015 dated 31.08.2016 issued by the second respondent and quash the same as illegal and consequently direct the first respondent to release the petitioner's entire pension amount with 12% interest and other benefits to the petitioner.

For Petitioner : Mr.T.Murugan

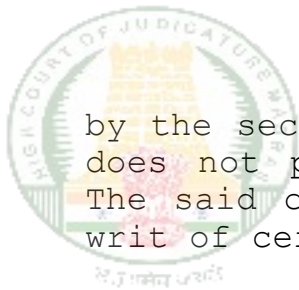
For Respondent No.1 : Mr.P.Gunasekaran

For Respondent No.2 : Mr.T.S.Mohammed Mohideen

ORDER

Heard the learned counsel appearing for the petitioner, learned counsel appearing for the first respondent as well as the learned counsel appearing for the second respondent.

2.The petitioner herein was appointed as Town Planning Surveyor and Building Draftsman Grade I under the second respondent Corporation on 04.05.1962. While in service, he obtained Bachelor of Engineering Degree in Civil Engineering by pursuing part time study at Madurai Kamaraj University. After obtaining B.E. Degree, he applied for the post of Junior Engineer in Arunachal Pradesh Government and got selected. Hence, he resigned his post as Town Planning and Building Inspector and joined the service in Arunachal Pradesh. His resignation was accepted by the second respondent on 27.09.1979. After retiring from the service in Arunachal Pradesh, the petitioner herein has made a representation to the second respondent to consider his 17 years 4 months and 20 days of qualifying service for pension. The said request has been declined



by the second respondent stating that the Tamil Nadu Pension Rules, does not provide for pension to the employees who have resigned. The said communication dated 31.08.2016 is under challenge in this writ of certiorarified mandamus.

3. The learned counsel appearing for the writ petitioner would submit that having rendered about 17 years of service in the second respondent Corporation, the petitioner herein is entitled for a reasonable pension. Referring the Judgment of the Hon'ble Supreme rendered in M/s.J.K.Cotton Spg. & Wvg. Mills Company Ltd., Kanpur v. State of U.P. And Others reported in AIR 1990 SC 1808, the learned counsel would submit that employee voluntarily tenders his resignation cannot be considered as a person retrenched from service and therefore the benefits tendered to employees voluntarily retired should also be extended to the employee, who has voluntarily tendered resignation. To buttress his submission, the learned counsel would refer paragraph No.8 of the said Judgment, which reads as under:

"8. In the present case the employee's request contained in the letter of resignation was accepted by the employer and that brought an end to the contract of service. The meaning of term 'resign' as found in the Shorter Oxford Dictionary includes 'retirement'. Therefore, when an employee voluntarily tenders his resignation it is an act by which he voluntarily gives up his job. We are, therefore, of the opinion that such a situation would be covered by the expression 'voluntary retirement' within the meaning of Cl.(i) of Sec.2(s) of the State Act. In Santosh Gupta's case (AIR 1980 SC 1219), Chinnappa Reddy, J. observed as under (at p.1220 of AIR):

"Voluntary retrenchment of a workman or the retrenchment of the workman on reaching the age of superannuation can hardly be described as termination, by the employer, of the service of a workman".

(Here the word 'retrenchment' has reference to 'retirement'.)

The above observation clearly supports the view which commends to us. We are, therefore, of the opinion that the High Court was not right in concluding that because the employer accepted the resignation offer voluntarily made by the employee, he terminated the service of the employee and such termination, therefore, fell within the expression 'retrenchment' rendering him liable to compensate the employee under S.6N. We are also of the view that this was a case of 'voluntary retirement' within the meaning of the first exception to Sec.2(s) and therefore the question of grant of compensation under S.6N does not arise. We, therefore, cannot allow the view of the High Court to stand".

4. The learned counsel appearing for the second respondent



would submit that the terms resignation, retrenchment and retirement have different connotation in Service Jurisprudence, more particularly, when the Pension Rules distinguishes employee who resigns voluntarily and employee who retires on attaining superannuation. Under Rule 23 of the Tamil Nadu Pension Rules, there is a specific clause which forfeits right of pension to an employee who has tendered resignation voluntarily. As far as this petitioner is concerned, he has resigned the post voluntarily in order to get a better employment elsewhere. Even at the time of accepting his resignation, his request to lien was rejected and having fully aware of the consequence, the petitioner has tendered resignation and had joined service elsewhere. After several years of his resignation, he has made a request to the second respondent to consider his service for pensionary benefit. After appreciating the request in the light of the Tamil Nadu Pension Rules, the request of the petitioner has been rightly rejected. Hence, there is no merit in the writ petition.

5.Considering the rival submissions, this Court finds that when there is a specific Rule which forfeits the right of claiming pension by any employee, who has resigned voluntarily as a matter of right, the request of granting pension cannot be considered unless and until there is some reasonable ground which warrants relaxation of Rule 23 of Tamil Nadu Pension Rules, which reads 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".

6.As far as the facts of the present case is concerned, the petitioner herein has resigned for better job. On the day of resignation, he was aware of the fact that he will not be entitled for any pension. While so, when there is no legal right on his part to seek for pension, order of the second respondent rejecting the request applying the law in force, cannot be found fault. The writ petition is liable to be dismissed on two grounds; firstly under Rule 23 of the Tamil Nadu Pension Rules, there is a forfeiture clause which disentitle the employee, who resigned voluntarily from service and secondly the petitioner herein has resigned voluntarily



in order to join a better job and the request for pension is made very belatedly which suffers laches. Hence, the writ petition is dismissed. No costs.

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Sd/-

Assistant Registrar(Records)

Sub Assistant Registrar(CS-III)

To

1.The Accountant General
(Accounts and Entitlement),
Tamil Nadu,
Office at No.361, Anna Salai,
Chennai - 600 018.

2.The Commissioner,
Madurai Municipal Corporation,
Annamaligai, Thallakulam,
Madurai - 625 002.

+1CC to Mr.T.Murugan, Advocate, SR.No.96597

+1CC to Mr.P.Gunasekaran, Advocate, SR.No.96267

+1CC to Mr.T.S.Mohammed Mohideen, Advocate, SR.No.96206

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