

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.A.No.1805 of 2018

- 1 THE GOVERNMENT OF TAMIL NADU
REP.BY ITS SECRETARY CO.OPERATIVE FOOD AND
CONSUMER PROTECTION DEPARTMENT FORT.ST.
GEORGE SECRETARIAT CHENNAI.
- 2 THE REGISTRAR OF COOPERATIVE
SOCIETIES KILPAUK CHENNAI-600 010.
- 3 JOINT REGISTRAR OF CO.OPERATIVE
SOCIETIES VELLORE REGION SATHUVACHARI
VELLORE. ... Appellants/Respondents

Vs

- 1 V. SUBRAMANIAN
- 2 THE VELLORE COOPERATIVE
SUGAR MILLS LTD. NO.D.S2 REP BY ITS
PRESIDENT (NEAR TIRUVALAM R.S) VELLORE
SUGAR MILLS POST VELLORE DT. ... Respondents /Petitioner
4th Respondent

Writ Appeal filed to set aside the order passed in
W.P.No.24783/2014 dated 17.12.2015

Prayer in W.P.No.24783 of 2014:Petition filed under Article 226 of the Constitution of India to issue a Writ of declaration declaring that the action of the 1st and 2nd respondent in not sanctioning proportionate Pension to the petitioner in accordance with Tamil Nadu Pension Rules read with G.O.Ms.No.638 dated 7.8.1990 with effect from 1.6.1994 being the date of the petitioner superannuation from the services of the Co-operative Sugar Mills as illegal arbitrary and contrary to law and consequently direct the respondent No.1 to 3 to pay pension for the services rendered from 1.6.1994 at the rate of 12% per annum and continue to pay pension.

For appellant : Mr.S.T.S.Moorthy, A.A.G,
for Mr.L.P.Shanmugasundaram, Spl.G.P.

For Respondents : Mr.Balan Haridas

J U D G M E N T

(made by K.K.SASIDHARAN, J.)

The first respondent who was working as a Cooperative Sub Registrar was deputed to the Vellore Cooperative Sugar Mills on Foreign Service Terms with the approval of the Government, along with another employee by name Thiru.Sundara Murthy. The appellants sanctioned pension to the said Thiru.Sundara Murthy, taking into account his earlier service in the Government. However, when a similar claim was made by the first respondent, it was rejected on the ground of delay and laches. The order was set aside by the writ court and a direction was issued to grant pension to the first respondent. The said order is under challenge at the instance of the State.

2. The learned Additional Advocate General contended that the first respondent opted to serve in the Vellore Cooperative Sugar Mills Ltd. It was a voluntary Act. Accordingly, he was relieved from the earlier service. According to the learned Additional Advocate General, since transfer of service was sought by the first respondent, the earlier service was forfeited.

3. The learned counsel for the first respondent on the other hand submitted that under similar circumstances, appellants entertained the claim made by Thiru.Sundara Murthy and he was granted pension. According to the learned counsel, both the appellant and Thiru.Sundara Murthy opted to join the service of the Vellore Cooperative Sugar Mills after obtaining permission from the Government. The learned counsel therefore contend that in view of Rule 23 of the Tamil Nadu pension Rules, the first respondent is right in claiming pension.

4. The first respondent was appointed as Senior Inspector of Cooperative Societies, pursuant to the selection made by the Madras Public Service Commission. He was appointed on 1 June 1960. The first respondent was later promoted as Sub Registrar by order dated 7 December 1970. Subsequently, pursuant to the proceedings dated 20 April 1970, on the file of the Joint Registrar, North Arcot Region, Vellore, the first respondent was deputed to the Vellore Cooperative Sugar Mills on foreign service terms. He was relieved from the Government service on 14

April 1976. The first respondent joined duty on 22 April 1976 in the Vellore Cooperative Sugar Mills. Thereafter, he was appointed as Office manager in the Mill. The special officer forwarded the request to take up the assignment in the Vellore Cooperative Sugar Mills to the Director of Sugar Mills. The Director granted permission and accordingly, pursuant to the proceedings dated 10 June 1977, the respondent joined service. The Government accepted the resignation by order dated 30 July 1977 and he was relieved from Government service.

5. The first respondent made a claim for pro rata pension as his resignation was with the permission granted by the Government.

6. Similar to the case of the first respondent, another person by name Thiru.Sundara Murthy also opted to serve in the Vellore Cooperative Sugar Mills. Subsequently, Thiru.Sundara Murthy resigned from service, with the permission of the Government. Since pro rata pension was not given to him, a writ petition was filed before this Court in W.P.No.1138 of 2009, and it was allowed by order dated 2 January 2012. The related appeal filed by the appellant in W.A.No.2289 of 2012 was dismissed by the Division Bench. Thereafter, the said order was implemented by the Government by issuing an order in G.O.Ms.123 Cooperation, Food and Consumer Protection (CH1) Department, dated 14 October 2015.

7. The respondent is similarly situated. His case was also recommended by the Joint Registrar, Vellore Zone for payment of pro rata pension. However, the request was rejected in an arbitrary manner.

8. The Tamil Nadu pension rules contain a specific provision for forfeiture of service on resignation. The proviso to Rule 23 clearly gives an indication that 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.

9. In the subject case, the appointment in the Vellore Cooperative Sugar Mills was with the permission given by the Director of Sugar. The first respondent took permission from the Government for submitting the resignation. It is a matter of record that the resignation submitted by the first respondent was accepted by the Government and he was relieved from service and only thereafter, he took charge as Chief Manager in the Vellore Cooperative Sugar Mills.

10. The appellants were not correct in taking two different stand; one in the case of Thiru.Sundara Murthy and a totally

different stand in the case of the first respondent. Since the first respondent took up the new employment only with the permission given by the Government, he is entitled to the benefit of the proviso to Rule 23(1) of Pension Rules. We are therefore of the view that the learned Single Judge was justified in allowing the claim made by the first respondent.

11. In the upshot, we dismiss the intra court appeal. No costs. Consequently, C.M.P.No.14555 of 2018 is also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1 The Secretary
Government of Tamil Nadu
Co-operative Food
and Consumer Protection Department
Fort St. George, Secretariat, Chennai-9.
- 2 The Registrar of Co-operative
Societies, Kilpauk, Chennai-10.
- 3 The Joint Registrar of
Co-operative Societies, Vellore Region,
Sathuvacharry, Vellore-632 009.
- 4 The Joint Registrar,
Vellore Zone.

+1cc to the Government Pleader Sr.29821
+1cc to Mr.Balan Haridas, Advocate Sr.29089

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