



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Writ Petition No.162 of 2012

S.John Peter

.. Petitioner

Vs.

1.State of Tamil Nadu rep. by
its Secretary
Finance Department
Fort. St. George
Chennai-600 009.

2.Director of Secondary School Education
DPI Complex
College Road, Chennai-600 006.

3.The Accountant General
Accountant General Office
Teynampet, Chennai-600 018.

4.The Correspondent
St. Joseph Higher Secondary School
Choolai, Chennai-112.

.. Respondents

(R4 impleaded as per order dated 11.01.2012
by KCJ in M.P.No.1 of 2012 in W.P.No.162/2012)

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Declaration declaring that the petitioner is entitled for pension on the service rendered as P.G. Assistant in St.Joseph Girls Higher Secondary School, Choolai, Chennai-12 from 03.07.1984 to 06.07.2000 on resignation.

For Petitioner	:	Mr.A.R.Nixon
For R1 & R2	:	Mr.P.Raja Government Advocate
For R3	:	Mrs.Hema Muralikrishnan
For R4	:	Batta due



O R D E R

Writ Petition is filed for issuance of a writ of Declaration declaring that the petitioner is entitled for pension on the service rendered as P.G. Assistant in St. Joseph Girls Higher Secondary School, Choolai, Chennai-12 from 03.07.1984 to 06.07.2000 on resignation.

2. According to the petitioner, he was appointed in a permanent vacancy in 4th respondent's school as P.G. Assistant in Commerce Department on 03.07.1984. After 16 years of service, due to his chronic health condition, the petitioner by letter dated 06.07.2000 submitted his resignation. The Correspondent of 4th respondent school indicated that the petitioner would be eligible for pension as he has rendered qualified period for pensionary benefits. The 4th respondent accepted the resignation of the petitioner on health reason and the same was communicated to the 2nd respondent. The petitioner is entitled for pension as he resigned his job on medical grounds. The respondents are estopped from questioning the same after accepting the resignation given by the petitioner. The petitioner made request to the respondents for pension. The respondents have not given any reply. Only after the petitioner filed application under Right to Information Act, the 3rd respondent sent a reply, but no order was passed based on the representation of the petitioner. As per Rule 98 of Voluntary Retirement Service, the petitioner is entitled to pension. The petitioner has resigned his post only on medical grounds and therefore, he is entitled for pension. In support of his contention, he relied on the following judgment of the Division Bench of this Court dated 05.04.2017 made in W.P.No.30277 of 2016 (Tmt.M.K.Sivakami vs. The Hon'ble Principal District Judge, City Civil Court, Chennai-104) and prayed for allowing the writ petition.

"23. We, therefore, hope and trust that the Government would spare appropriate attention immediately to this area because it has a general and universal application across the spectrum of all Government services. Even if a Proviso is added to Rule 23 for making payment of compassionate allowance to such cases of resignation, it would meet the ends of justice. We hope and trust that the State Government would take appropriate decision within the next three months and then communicate their decision to the Principal Accountant General for grant of pension in the form of compassionate allowance to the writ petitioner as well. The State Government will make sure that payment of such pension in the form of



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compassionate allowance becomes available to all the Government servants, who have tendered resignation purely for personal reasons, but not attributable to either their conduct or other factors as enumerated in the judgment of the Supreme Court."

3.The 2nd respondent filed counter affidavit. Mr.P.Raja, the learned Government Advocate appearing for the respondents 1 and 2 contended that the petitioner has resigned the post voluntarily. As per Rule 23 of the Tamil Nadu Pension Rules, resignation from a service or post, the past service rendered by the employee is forfeited. As per Rule 36(1) of the Tamil Nadu Pension Rules, only when a competent authority has certified a person to be permanently incapacitated in permanent service, a person will be entitled to invalid pension. As per Rule 56(3) of the Fundamental Rules, a Government servant, who has attained the age of 50 years or rendered 20 years of qualifying service can retire from service voluntarily. The petitioner has not retired from service, but the petitioner has resigned voluntarily and therefore, he is not entitled to any pension. In support of his contentions, the learned Government Advocate for the respondents 1 and 2 relied on the following judgment of the Division Bench of this Court dated 24.03.2016 made in W.A.No.454 of 2016 (A.I.Agnel Ilangoan vs. The Government of Tamil Nadu and others) and prayed for dismissal of the writ petition.

"2.Facts leading to the writ appeal, are that the appellant resigned from service on 21.01.2013 due to family circumstances. It was accepted by the Director of Local Fund Audit Department, Chennai, 2nd respondent, vide order dated 03.04.2013. After resignation, the appellant has sought for terminal benefits and pension, by invoking Section 23(1) of the Tamil Nadu Pension Rules, which reads as follows:-

'23.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.'

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13.In the light of the guiding principles of the Hon'ble Supreme Court, as to how statutes and



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sections have to be interpreted, we are not inclined to accept the contentions of the appellant, both on law and on facts. Having regard to the above principles of law, we are also constrained to observe that the decision in D.Vijayarangan's case, cannot be taken as a precedent, to be applied in similar circumstances."

4. In addition to the contention of the learned Government Advocate, the learned counsel appearing for the 3rd respondent contended that a person who does not fall under any of the clauses of the pension enumerated in Chapter V of Pension Rules is not entitled to pension. The petitioner does not come under any of the clauses of pension payable especially invalid pension. In support of her contention, she relied on the following judgment of the Hon'ble Apex Court reported in (2008) 10 SCC 115 (C.Jacob vs. Director of Geology and Mining and another).

"19. Rule 43(2) relied on by the petitioner falls under Chapter VI of TNP Rules (corresponding to Rule 49(2)(b) in Chapter VII of CCSP Rules) dealing with 'Regulation of amount of pension'. The said Rule relates to quantum and lays down how the pension of a retired government servant should be calculated if he is entitled to pension. Entitlement to pension is governed by Chapter V of the said Rules, which enumerates the classes of pension and conditions for entitlement. The enumerated classes of pension are:

Classes of Pension (vide Chapter V CCSP Rules TNP
of the Pension Rules) Rules

(i) Superannuation pension	Rule 35	Rule 32
(ii) Retiring pension	Rule 36	Rule 33
(iii) Pension on absorption in or under a corporation, company or body owned/controlled by State/Central Government	Rule 37	Rule 34
	Rule 37A	
(iv) Invalid pension	Rule 38	Rule 36
(v) Compensation pension payable on discharge owing to abolition of the post	Rule 39	Rule 38
(vi) Compulsory retirement pension	Rule 40	Rule 39
(vii) Compassionate allowance to Government servants who forfeit their pension on being dismissed or removed	Rule 41	Rule 40



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20. A government servant, whose case does not fall under any of the classes of pensions enumerated in Chapter V, is not entitled to pension. If a government servant is not able to make out entitlement to any class of pension specified in chapter V of the pension Rules, there is no question of having recourse to the rules in the chapter dealing with regulation of amount of pension (chapter VI of TNP Rules or chapter VII of CCSP Rules) for determining the quantum of pension.

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23. The petitioner contends that if the minimum service for entitlement to retiring pension was 20 years and not 10 years, Rule 43(2) would not have stated "qualifying service of not less than 10 years". He contended that as Rule 43 (2) of the TNP Rules (Rule 49(2) (b) of CCSP Rules) refers to "not less than 10 years' service", any government servant who has put in service of 10 years or more is entitled to retiring pension. The said contention is misconceived. As stated earlier, the said Rule does not relate to 'entitlement' of pension nor does it prescribe the conditions for eligibility, but only provides how the amount of pension should be calculated in cases where the retiring Government servant is entitled to pension under Chapter V of the Pension Rules. The said Rule regulates the 'amount' of pension not only in case of retiring pension, but in case of all classes of pension."

5. Heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondents 1 and 2, learned counsel for the 3rd respondent and perused the materials available on record.

6. From the materials available on record, it is seen that the petitioner had resigned his job by his letter dated 06.07.2000. In the letter, he has stated that he resigned his job due to his health condition on his own will and wish. After resigning, the petitioner sought for pension and the same was rejected on the ground that the petitioner has resigned his job and thereby forfeited the service rendered by him. As per Rule 12(a) of the Rules and Order on Pension Scheme for staff on Non-Government Educational Institutions, a teacher shall be eligible for pension on any one of the following six grounds:

"(i) On retirement by reasons of his attaining



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the age of superannuation under Rule 9 or voluntary retirement after completing a qualifying service of 30 years or

(ii) On discharge, due to abolition of post, or

(iii) On discharge due to closure of schools or consequent on the withdrawal of recognition of schools or

(iv) On discharge due to invalidation on medical grounds, or

(v) On retirement on the date of commencement of the school year just preceding his completion of 55 years or 60 years age as the case may be in order to avoid dislocation in the middle of the school year or

(vi) On discharge due to compulsory retirement as a measure of punishment."

The petitioner does not come under any one of the above grounds.

7. The petitioner is contending that he has resigned his job on medical grounds and therefore, he is entitled to pension. The 2nd respondent in the counter affidavit referred to Rule 36(1) of the Tamil Nadu Pension Rules. As per the said Rule, a Government servant is entitled to invalid pension only if appropriate Medical Authority decides that he is permanently incapacitated for further service and may be granted invalid pension. In the present case, the petitioner was not certified by any authority that the petitioner to be invalid to continue in service before his resignation. The petitioner has not made out any case for grant of invalid pension when he voluntarily resigned from service without there being certified by appropriate Medical Authority. As per Rule 23(1) of Tamil Nadu Pension Rules, if a person resigns from a service or post, his past service is forfeited. The said Rule reads as follows:

"23. 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.

8. As per 56(3) of the Fundamental Rules, Rules 23(1) and 36 of Tamil Nadu Pension Rules and Rule 12(a) of the Rules and Order on Pension Scheme for staff on Non-Government Educational Institutions, the petitioner is not entitled for the relief sought for in the writ petition. The judgment relied on by the learned counsel for petitioner is not applicable to the present



case as the petitioner has not placed any material to show that the Government acted as per observation of the Division Bench. On the other hand, the judgments relied on by the learned Government Advocate for respondents 1 & 2 and counsel for 3rd respondent are squarely applicable to the facts of present case.

9. In the result, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.State of Tamil Nadu rep. by
its Secretary
Finance Department
Fort. St. George
Chennai-600 009.

2.Director of Secondary School Education
DPI Complex
College Road, Chennai-600 006.

3.The Accountant General
Accountant General Office
Teynampet, Chennai-600 018.

+1cc to Mr.A.R.Nixon, Advocate sr.53073
+1cc to Government Pleader sr.4075

W.P.No.162 of 2012

rr(co)
nr 06/08/2019