

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. 1793 of 2018

Poornima

... Appellant/Petitioner

-vs-

1. The Secretary to the Government of Tamil Nadu,
Department of School Education,
Secretariat,
Fort St. George,
Chennai - 600 009.
2. The Director of School Education,
College Road,
Nungambakkam,
Chennai.
3. The Chief Educational Officer,
Town Hall,
Coimbatore.
4. The Correspondent,
Pioneer Mills Higher Secondary School,
Jothipuram Post,
Coimbatore - 47.
5. The Director of Pension,
259, Anna Salai,
Block - 3, II Floor,
DMS Compound,
Teynampet, Chennai - 600 006.
6. The Accountant General,
(Accounts & Entitlement),
Tamil Nadu Office, 361,
Anna Salai,
Chennai - 600 018.

... Respondents/Respondents

PRAYER:- Writ Appeal filed under Clause 15 of Letter Patent, praying to set aside the order passed in W.P. No. 10876 of 2018 dated 27.04.2018.

Prayer in W.P.No.10876 of 2018:-

Writ Petition under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, to direct the respondents to disburse the family pension to the petitioner in terms of the service rendered by K.S.Kumaragurubaran within the time stipulated by his Court.

For Appellant : Mr.S.Mukund for Mr.V.Sivakumar

For Respondents: Mr. C. Munusamy,
Special Government Pleader
(for R1 to R3)

Ms.C. Yamini (for R4)

J U D G M E N T

(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.)

The intra-Court Appeal arises out of the order dated 27.04.2018 in W.P. No. 10876 of 2018 passed by the Learned Judge of this Court.

2. The husband of the Appellant, viz., K.S. Kumaragurubaran, who joined as Senior Grade Assistant on 24.02.1996 in Pioneer Mills Higher Secondary School, Jothipuram, Coimbatore resigned from that post on 05.02.2008, which was accepted by the District Educational Officer, Coimbatore on 30.06.2008. Long thereafter, the said K.S. Kumaragurubaran died in a road accident on 08.05.2017, leaving behind the Appellant as his legal heir.

3. The Appellant made a representation dated 20.02.2018 for family pension relying on G.O. Ms. No. 37, Department of Education Science and Technology dated 05.01.1983 issued by the Government of Tamil Nadu and the orders of this Court in Government of Tamil Nadu -vs- S.V. Paul Jeyaraj [(2001) 3 MLJ 430] and M. Subbiah -vs- Accountant General (Order dated 19.09.2014 in W.P. No. 14732 of 2013). As there had not been any response for the aforesaid claim made by the Appellant, she filed W.P. No. 10876 of 2018 for directing the Respondents to disburse the family pension for the services rendered by the said K.S. Kumaragurubaran.

4. The Learned Judge, who heard the Writ Petition, by order dated 27.04.2018 held that the Appellant was not entitled to any family pension in accordance with the Tamil Nadu Pension Rules, 1978, and dismissed the Writ Petition citing the consequences of resignation in Rule 41 of the Tamil Nadu State and Subordinate Service Rules, which reads as follows:-

"41. Consequences of resignation:- A member of a service shall if he resigns his appointment, forfeit not only the service rendered by him in the particular post held by him at the time of resignation but all his previous service under the Government. The reappointment of such person to any service shall be treated in the same way as a first appointment to such service by direct recruitment and all rules governing such appointment shall apply; and on such reappointment he shall not be entitled to count any portion of his previous service for any benefit or concession admissible under any rule or order: Provided that nothing contained in this rule shall effect the operation of proviso to rule 23 or of rule 25 of the Tamil Nadu Liberalised Pension Rules, 1978: *Provided further that a member of a service, who has resigned his appointment and contested in the General Election to Parliament or State Legislature or in the Elections to local bodies either as a party candidate or as an independent candidate, shall not be eligible for reappointment to any service. "

Aggrieved thereby, the Appellant has preferred this appeal.

5. We have heard Mr. S. Mukund, Learned Counsel appearing for the Appellant, Mr. C. Munusamy, Learned Special Government Pleader appearing on behalf of the First to Third Respondents, Ms. C. Yamini, Learned Counsel appearing for the Fourth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

6. The Learned Counsel for the Appellant contended that the husband of the Appellant had the requisite qualifying service of ten years for grant of pension, and as such, the Appellant is entitled to claim family pension.

7. The said submission is founded upon an erroneous premise that the qualifying period of service for the purpose of pension is only ten years in the case of voluntary retirement, contrary to the requirement of twenty years specified in Rule 42 of the Tamil Nadu Pension Rules, 1978, for the same, as highlighted in C. Jacob -vs- Director of Geology and Mining [(2008) 10 SCC 115]. That apart, Rule 23 of the Tamil Nadu Pension Rules, 1978, expressly deprives pension to a Government Servant, who resigns from service. The said rule reads as follows:-

"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."

This position of law has been reiterated by the Division Bench of this Court in A.I. Agnel Ilangoan -vs- The Government of Tamil Nadu [(2016) 3 MLJ 839] following the decisions of the Hon'ble Supreme Court of India in Union of India -vs- Braj Nandan Singh [(2005) 8 SCC 325]. When the husband of the Appellant was not entitled to pension, the question of granting family pension to the Appellant, does not arise.

8. On a perusal of the decisions of this Court in Government of Tamil Nadu -vs- S.V. Paul Jeyaraj [(2001) 3 MLJ 430] and M. Subbiah -vs- Accountant General (Order dated 19.09.2014 in W.P. No. 14732 of 2013) and G.O. Ms. No. 37, Department of Education Science and Technology dated 05.01.1983 issued by the Government of Tamil Nadu, relied by the Learned Counsel for the Appellant, we find that the same does not have any relevance to the claim made in this appeal.

9. As we do not find any merits in the Writ Appeal, the same is accordingly dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to the Government of Tamil Nadu,
Department of School Education,
Secretariat, Fort St. George,
Chennai - 600 009.

2. The Director of School Education,
College Road,
Nungambakkam,
Chennai.
3. The Chief Educational Officer,
Town Hall,
Coimbatore.
4. The Correspondent,
Pioneer Mills Higher Secondary School,
Jothipuram Post,
Coimbatore - 47.
5. The Director of Pension,
259, Anna Salai,
Block - 3, II Floor,
DMS Compound,
Teynampet, Chennai - 600 006.
6. The Accountant General,
(Accounts & Entitlement),
Tamil Nadu Office,
361, Anna Salai, Chennai - 600 018.

+1 cc to Mr.V.Sivakumar, Advocate SR.No.28870
+1 cc to The Government Pleader, SR.No.29808

AD(CO)
CSL/11.04.2019

W.A. No. 1793 of 2018

सत्यमेव जयते

WEB COPY