

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2019

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.4123 of 2019

N.V.Selvaraj

.. Appellant/ Petitioner

vs.

1.The Director of Technical Education,
Office of Director of Technical Education,
Sardar Patel Road,
Guindy, Chennai - 600 025.

2.The Principal,
P.S.G. College of Technology,
Government Aided Autonomous College,
Affiliated to Anna University,
Peelamedu,
Coimbatore-641 004.

.. Respondents/ Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 28.04.2018 passed in W.P.No.11029 of 2018 on the file of this Court.

Prayer in W.P.No.11029 of 2018:

Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Mandamus to direct the first respondent to dispose the petitioner pension benefits as mentioned in G.O.Ms.No.1015 Education department, dated 05.06.1981.

For Appellant

: Mr.B.Ramamoorthy

For Respondents

: Mr.V.Kadhirvelu
Special Government Pleader
(Higher Education)

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

Heard learned counsel for the appellant.

2. The grievance of the appellant is that he should not be discriminated for awarding of pension on the ground that such Rules stood forfeited on resignation. Rule 23 of the Tamil Nadu Pension Rules, 1978, reads as under:

"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.

(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."

3. The appellant, admittedly, resigned on 22.07.1981.

4. The contention of learned counsel for the appellant is that in view of the terminology as used in the Government Order dated 05.06.1981, pension can be sanctioned even in cases where the incumbents have resigned since they could not have foreseen the institution of pension scheme at the time they resigned. Further, to buttress his submissions, learned counsel for the appellant has relied upon the decision of the learned Single Judge of this Court in the case of S.Sankaran v. The Accountant General (Accounts & Entitlement) and another, reported in CDJ 2010 MHC 6378. Paragraphs 9 to 11, which are extracted herein under:

"9. According to me, the first respondent without properly appreciating the meaning of the word 'resignation' as interpreted in the order of the

Supreme Court denied the pension to the petitioner on the ground that the petitioner resigned from the post and therefore, he is not entitled to claim pension. Further, even though he has completed ten years of service and as per Rule 12-a of the Tamil Nadu Non-Government Teachers Pensions Rules 1958, only in the case of discharge or retirement after serving for 10 years, the persons are eligible for pension.

10. It is more profitable to extract para: 8 of the judgment reported in AIR 1990 SC 1808, M/s.J.K.Cotton Spg. & Wvg.Mills Co.Ltd, Kanpur Vs. State of U.P and others to appreciate the facts.

"8. 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 Section 2 (s) of the State Act. In Santosh Gupta's case (AIR 1990 SC 1219), Chinnappa Reddy, J. observed as under (at p.1220 or 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'.)

11. Therefore, it is clear from the above judgment of the Hon'ble Supreme Court that a resignation will also amount to retirement and in that case, the petitioner satisfies the condition of Rule 12-a of the Tamil Nadu Pension Rule, 1978. Further, it is seen from the impugned order that pensions were granted to those persons who resigned prior to 1958 without any claim for arrears prior to 1958 vide G.O.Ms.No.1015, Education, dated 05.06.1981 and G.O.Ms.No.37, Education dated 05.01.1983. Therefore, when the first respondent has granted pension to those persons who voluntarily resigned prior to 1958, the first respondent is not justified in denying the relief to a person who

resigned after crucial date that too, after completing ten years of service as per Rule 12-a of the Tamil Nadu Non-government Teachers Pension Rules, 1958."

5. We have considered the submissions raised and we find that the Government Order relied on by learned counsel for the appellant cannot come to the aid of the appellant as per the indication given therein, inasmuch as, the appellant had admittedly resigned after the issuance of the said Government Order. Apart from this, the 1978 Rules being statutory in nature, cannot be contradicted by taking aid of the Government Order dated 05.06.1981.

6. The question of applying the law in the case of S.Sankaran (supra) does not arise inasmuch as the reliance placed by the learned Single Judge on the Apex Court judgments in the case of M/s.J.K.Cotton Spinning and Weaving Mills Co. Ltd., Kanpur v. State of U.P. and others, reported in AIR 1990 SC 1808 and in the case of Santosh Gupta v. State Bank of Patiala, reported in (1980) 3 SCC 340 were not dealing with any Rule that may have any similar or semblance of parity with Rule 23 as presently involved in this case.

7. The Government Order referred to by the learned Single Judge, therefore, in our opinion, cannot be utilised for the purpose of reading down the Rule itself, which clearly prohibits the benefit of pension by forfeiture. The Statute being express, with no ambiguity therein, is a Rule which has been framed under Article 309 of the Constitution of India, which aspect does not appear to have been dealt with by the learned Single Judge. We are not persuaded to accept the analogy of the learned Single Judge as pressed into service, but at the same time, we may observe that the Government Order dated 05.06.1981 itself appears to be a dilution of the impact of Rule 23 by the Government itself.

8. Our interpretation hereinabove will therefore not affect the benefit that may accrue to any other person in the light of the Government Order dated 05.06.1981. But insofar as the appellant is concerned, we find on record that the appellant had put in more than ten years of service and in the given circumstances was entitled to retire voluntarily and also receive pension had he done so. Instead the appellant chose to resign and therefore, it will be open to the Government to consider any such relaxation that may be permissible and admissible on the peculiar facts of the case.

9. The appeal is, accordingly, consigned to records without interfering with the impugned judgment with the said observations. No costs. In view of the order passed in C.M.P.No.25214 of 2019 and C.M.P.No. SR 61248 in W.A.No. SR 61237 of 2019, no order is required to be passed in C.M.P.No.25768 of 2019 and the same is closed.

Sd/-
Assistant Registrar(CS IV)

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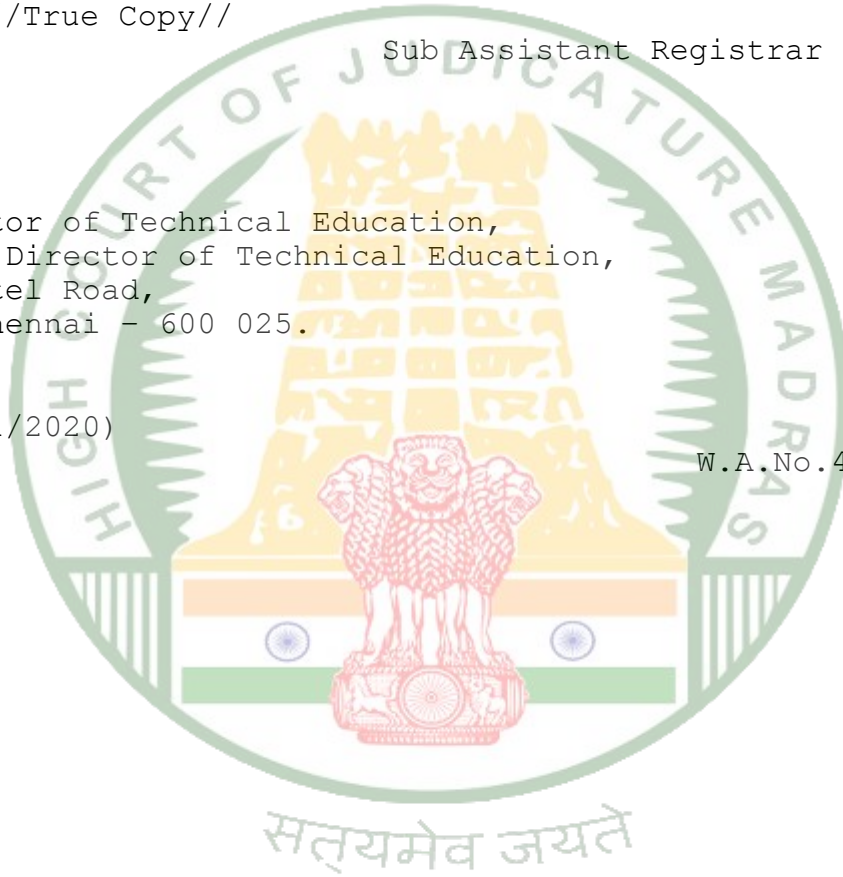
Sub Assistant Registrar

bbr
To:

The Director of Technical Education,
Office of Director of Technical Education,
Sardar Patel Road,
Guindy, Chennai - 600 025.

mr
A.SK(06/01/2020)

W.A.No.4123 of 2019



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