

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.12.2019
CORAM
THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR
W.P.No. 32981 of 2014

G.Palanisamy

..Petitioner

Vs

1.The Secretary to the Government
Department of Higher Education,
St.George Fort,
Chennai.

2.The Commissioner of Technical Education,
Guindy,
Chennai-636 025.

3.The Management,
S.S.M. Institute of Textile Technology,
Kumarapalayam,
Namakkal-638183.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in Memo No. 14874/C4/2014 dated 21.7.2014 and quash the same and consequently direct the respondents to disburse the pension and other retirement benefit.

For Petitioner : M/s. S. Esai Rani

For Respondents : Mr .V.Kadhirvelu, Spl.GP -R1 & R2
Mr. B.Ravi Raja - For R3

सत्यमेव जयते

O R D E R

The prayer sought for in the Writ Petition is to call for the records of the 2nd respondent in Memo No. 14874/C4/2014 dated 21.7.2014 and quash the same and consequently direct the respondents to disburse the pension and other retirement benefit.

2. Brief facts of the case:

The petitioner has served 18 years in the 2nd respondent institution i.e from 01.02.1982 to 16.08.1998 and after

completion of 10 years of service as watchman, he was moved to selection grade and due to his family circumstances, he resigned from the job on 16.08.1999. Since the petitioner has put 18 years of service and worked under the aided college, he is entitled to payment of gratuity and pension. Further, as per G.O 2D No.132, dated 13.07.1992 he is eligible for payment of Pension and gratuity. He filed a writ petition in W.P. No.5146 of 2014 before this Court, seeking direction to the respondent to consider his representation and this Court by order dated 21.02.2014 has directed the 2nd respondent to consider the representation of the petitioner and pass orders. The 2nd respondent has passed an order in Memo No. 14874/4/2014, dated 21.07.2014, rejecting the claim made by the petitioner, which is impugned in the present petition. Challenging the same, the present writ petition is filed.

3. Heard both sides and perused the documents available on record.

4. According to the learned counsel for the petitioner, the petitioner has served more than 18 years as watchman in the 2nd respondent department, therefore he is entitled to the benefits under Section 4 of the Payment of Gratuity Act 1972 and as per G.O.2D No. 132, dated 13.07.1992, wherein the government granted relaxation of pension to a resigned employee namely Thiagarajan. Therefore, the petitioner is also entitled for the similar benefit.

5. The learned Special Government Pleader appearing for the respondents 1 & 2 submitted that as per Rule 23 (1) of Tamil Nadu Pension Rules, 1978, which is adopted to the employees of private aided polytechnic colleges, including the respondent college, resignation from service entails forfeiture past service. Consequently, no terminal benefits including gratuity is admissible to such employees, who relinquish their services on their own accord. He has further submitted that the G.O. (2D) No. 132, Education Department, dated 13.07.1992 was issued to one Thiagarajan as a special case, which is not applied to the facts of the present case. The said Thiagarajan was resigned in Government High School for taking up of appointment as Headmaster in Aided Private School without any break.

6. It is further submitted that with regard to Provident Fund, the employee is eligible to withdraw the same from the employer by submitting application in prescribed format, but the petitioner has not applied till date. If he applies, the same shall be considered and sanctioned by the concerned authorities.

7. The learned counsel appearing for the private college/3rd respondent herein has stated that the writ petitioner is entitled for the gratuity under the Special Provident Fund-cum-Gratuity Scheme. If the writ petitioner approaches the respondent college with proper application, the same shall be sanctioned by the College after completing formalities as required under Rules.

8. In the light of the submission made by both the learned counsel for the parties, it is relevant to extract the relevant portion of Rule 23 (1) of Tamil Nadu Pension Rules;

Resignation from a Service or Post entails forfeiture of past services:

"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."

9. Though the writ petitioner has strongly relied upon the G.O. (2D) No. 132 Education Department, Dated 13.07.1992, the said G.O was issued to the individual who resigned in Government High School for taking up of appointment as Headmaster in Aided Private School without any break. Whereas, the writ petitioner herein has resigned his job on his own violation and has not joined in any of the Government departments. Therefore, the aforesaid G.O and the Proviso to Rule 23(1) of Tamil Nadu Pension Rules will not apply to the facts of the present case. Hence the writ petitioner is not entitled for the pensionary benefits. Insofar as the Provident Fund is concerned, the writ petitioner can make application to the 3rd respondent college under the Special Provident Fund-cum-Gratuity in prescribed format.

10. In the result, the impugned order dated 21.07.2014 passed by the 2nd respondent is quashed. The writ petition is disposed of with the following directions;

(i). The writ petitioner is directed to make application to the 3rd respondent college under the Special Provident Fund-cum-Gratuity in prescribed format, within a period of two (2) weeks from the date of receipt of a copy of this Order.

(ii). On receipt of such application from the writ petitioner, the 3rd respondent college shall consider and sanction the benefits to the writ petitioner in accordance with Rules, after getting approval from the competent authority, within a period of four (4) weeks thereafter.

(iii). After receipt of such proposal from the 3rd respondent college, the same shall be considered by the 2nd respondent and pass appropriate orders as expeditiously as possible.

iv. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to the Government
Department of Higher Education,
St.George Fort,
Chennai.

2.The Commissioner of Technical Education,
Guindy,
Chennai-636 025.

+1cc to M/s.B.Ravi Raja, Advocate sr.105644

+1cc to Mr.Esai Rani Narasimman, Advocate sr.105587

W.P.No. 32981 of 2014

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nr 21/02/2020

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