

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2019

CORAM:

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

W.A.No.2770 of 2018
and
WMP.No.22847 of 2018

- 1 THE STATE OF TAMIL NADU
REPRESENTED BY ITS
SECRETARY TO GOVERNMENT
PUBLIC WORKS (F1) DEPARTMENT
FORTST.GEORGE
CHENNAI - 600009
- 2 THE CHIEF ENGINEER
WATER RESOURCES DEPARTMENT
STATE GROUND AND SURFACE WATER
RESOURCES DATA CENTRE
TARAMANI CHENNAI - 113
- ...
- appellants
- Vs
- 1 M.DHINAKARAN (DIED)
- 2 D.KANGAVALLI
- 3 D.NANDHINI SREE LAKSHMI
- 4 SUJITHRA SREE LAKSHMI
(SUBSTITUTED AS LEGAL HEIRS OF THE DECEASED
1ST PETITIONER IN THE WP BY AN ORDER DATED
02/08/2017)
- ...
- respondents

Appeal filed against to set aside the order dated 31/08/2017 in Writ Petition No.25674/2014, which was filed under Article 226 of the Constitution of India, seeking to issue Writ of Certiorarified Mandamus Calling for the records in respect of the Order No.5931/F1/2014-1 dated 25.03.2014 issued by the first respondent and quash the same and consequently direct the respondents to fix the pension and the other applicable related benefits on par with the prevailing rates and rules.

For appellant : Mrs.A.Srijeyanthi, Spl.G.P.

For Respondents 2 to 4 : Mr.R.Kothandaraman,

J U D G M E N T
(made by K.K.SASIDHARAN, J.)

The learned Single Judge directed the appellants to sanction pension to the deceased first respondent on the basis of his total service from the date of initial appointment to the date of resignation and pay the entire arrears, notwithstanding Rule 23 of the Tamil Nadu Pension Rules forfeiting the past service on resignation. The appeal is directed against the order dated 31 August 2017 in W.P.No.25674 of 2014.

2. The predecessor-in-interest of the respondents 2 to 4 Thiru.M.Dhinakaran, (hereinafter referred to as "employee") was appointed as Geological Assistant in the year 1973. The post was subsequently re-designated as Assistant Geologist in the Public Works Department. His service was regularized in the year 1982. The employee had put in 13 years and 5 months of service. The employee resigned on 21 January 1987 due to illness. The resignation was accepted by the Competent Authority by order dated 21 February 1989. The employee thereafter submitted an application on 24 February 2011, seeking pension on pro rata basis, taking into account the continuous service of 13 years and 5 months. The representation was rejected on the ground that Rule 23 provides for forfeiture of past service in case of resignation from service. The order was challenged by the employee before the writ court. The employee died during the currency of the writ petition and his legal representatives were impleaded as petitioners 2 to 4 in the writ petition.

3. The facts are not in dispute. The employee had completed 13 years and five months of service as on the date on which the application for voluntary retirement was submitted. The counter affidavit filed on behalf of the Public Works Department indicates that the employee was suffering from spinal cord problem and that was the reason for his resignation. The employee earlier took extraordinary leave on many occasions in view of his medical problems relating to spinal cord. Therefore, it is very clear that the resignation was only on account of the health issues. The resignation was accepted by the Disciplinary Authority. The request made by the employee for sanctioning pension was rejected only on the basis of Rule 23 of the Tamil Nadu Pension Rules, 1978 providing for forfeiture of service on resignation.

4. The learned single Judge by placing reliance on the judgment of the Division Bench in State of Tamil Nadu vs. V.Jesudoss and anr., (judgment dated 8.7.2009) in W.A.No1651 of 2000, allowed the writ petition. The Division Bench in V.Jesudoss was of the view that resignation simplicitor will not entail forfeiture of past service. The Division Bench opined that only in those cases where the person submits resignation because of any allegation or proceeding, which otherwise would have attracted punishment like dismissal or removal from service, then alone the provisions of Rule 23 would be attracted forfeiting the past service.

5. This judgment was relied on for taking a decision that Rule 23 would not be applicable in case the resignation is simplicitor like the one in the present case.

6. There is a contrary view taken by another Division Bench of this Court in A.I.Agnel Ilangovan vs. Secretary to Government, Finance Department, State of Tamil Nadu, dated 24 March 2016 in W.A.(MD) No.454 of 2016. The Division Bench in A.I.Agnel Ilangovan, referred to an earlier judgment of the Supreme Court in Union of India vs. Braj Nandan Singh, 2005 (8) SCC 325 and held that court cannot read anything into a statutory provision which is plain and unambiguous. The Division Bench opined that Rule 23 is very clear that resignation from service or post would entail forfeiture of past service. The judgment of the Division Bench in V.Jesudas was not brought to the notice of the Division Bench in A.I.Agnel Elangovan. The Division Bench therefore followed the law laid down by the Supreme Court in a matter relating to Rule 26 of the Central Service Rules, (Standing Rules) and held that in view of the similarity of the provision, Rule 23 of the Tamil Nadu Pension Rules would operate with full vigour in case of resignation of service, voluntarily.

7. Since there are two divergent views expressed by two Division Benches of this Court, it would not be possible to confirm the order passed by the learned Single Judge. The proper course is to refer the matter to a larger Bench for an authoritative pronouncement.

8. The learned counsel for the respondents submitted that the employee is no more and that it would be in the interest of the legal representatives to decide the matter as expeditiously as possible. The learned counsel submitted that the legal representatives have no means even to survive and as such, helping hand of this Court should be extended to them.

9. The learned counsel by producing a copy of the order in G.O.Ms.142 Home (Courts-V) Department dated 24 January 1989,

submitted that under similar circumstances, the Government invoked Rule 82 of the Tamil Nadu Pension Rules and by relaxing the provisions of Rule 23, granted pension to a former employee of the High Court.

10. Even though Rule 23 provides for forfeiture of service on resignation, Rule 82 gives power to the Government to relax the operation of the said rule. Rule 82 reads thus :-

82. Power to relax : Where any Department of the Government is satisfied that the operation of any of these rules causes undue hardship in any particular case, the Department, may by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exception and conditions as it may consider necessary for dealing with the case in a just and equitable manner:

Provided that no such order shall be made except with the concurrence of the Finance Department.

11. In order to invoke Rule 82, the parties must demonstrate that operation of a particular rule causes them undue hardship. The legal representatives of the employee very clearly demonstrated that they are put to undue hardship on account of the denial of pension and that too after a period of 13 years and 5 months of continuous service without any blemish. The employee was constrained to submit application for resignation on account of his illness. The appellants also fairly confirmed the health condition of the employee which made him to submit the resignation. There is also a precedent shown by the Government by exercising power conferred under Rule 82 of the Tamil Nadu Pension Rules. We are therefore of the view that this is a fit case to invoke the power under Rule 82 of the Tamil Nadu Pension Rules, 1978.

12. We set aside the order dated 25 March 2014 rejecting the request for granting pension in view of Rule 23 of Tamil Nadu Pension Rules 1978. We direct the first appellant to invoke Rule 82 of the Tamil Nadu Pension Rules, 1978 and pass appropriate orders for granting pension to the respondents taking into account the continuous service rendered by the employee prior to his voluntary retirement. Such exercise shall be completed on or before 30 April 2019.

13. The intra court appeal is disposed of with the above direction. No costs. Consequently, C.M.P.No.22847 of 2018 is closed.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

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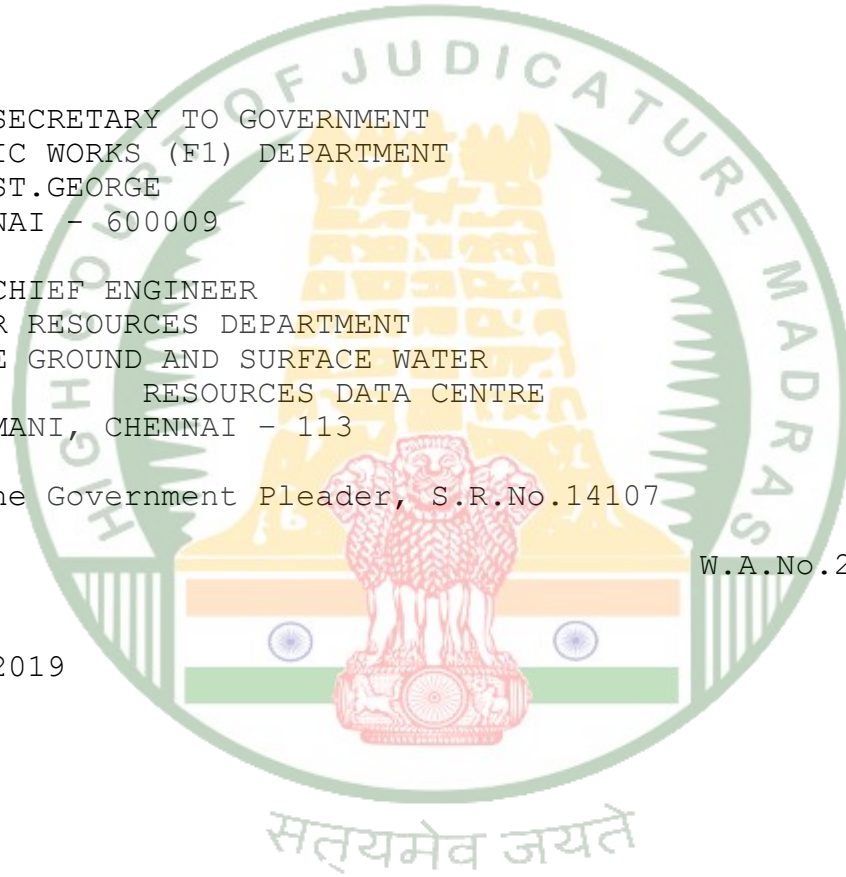
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+1cc to the Government Pleader, S.R.No.14107

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GP(CO)
CS/25/02/2019



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