



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :26.06.2019
CORAM

THE HONOURABLE MR.JUSTICE **K.RAVICHANDRABAABU**
AND

WEB COPY THE HONOURABLE MR.JUSTICE **SENTHILKUMAR RAMAMOORTHY**
W.A.(MD)No.1658 of 2018

K.Kollappapillai

.. Appellant/Writ Petitioner

Vs.

1.The Principal Secretary to Government of Tamil Nadu,
Education Department,
Secretariat, Chennai - 9.

2.The Director of Elementary Education,
DPI campus, College Road,
Chennai - 39.

3.The Assistant Elementary Educational Officer,
Chinnamanur - 625515,
Theni District.

.. Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order dated 14.11.2018 passed in W.P(MD)No.184 of 2015.

Prayer in WP(MD). 184/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in his proceedings Letter No. 26524/Nee. Va. 2(2) / 2014 dated 25.11.2014 and quash the same and consequently direct the respondents to sanction the Pension and other Retirement Benefits in terms of G.O. Ms. No. 37, dated 05.01.1983 and in the light of the Division Bench Judgement of this Honourable Court reported in 2001 - Writ LR. 852 dated 27.07.2001 which was confirmed by the Honourable Supreme Court in SLP No. 22469 of 2001 dated 10.01.2002 and in the light of the Judgement of this Honourable Court reported in (2011) 1 MLI 1218 dated 22.11.2010.

For Appellant : Mr.S.Govindan

For Respondents : Mrs.S.Srimathy
Spl. Govt. Pleader

**JUDGMENT**

[Judgment of the Court was delivered by **K.RAVICHANDRABAABU, J.**]

This writ appeal is directed against the order made in W.P(MD) No.184 of 2015, dated 14.11.2018, in dismissing the writ petition filed by the appellant herein. In the writ petition, the order of the first respondent, dated 25.11.2014, was challenged with consequential direction to the respondents to sanction the pension and other retirement benefits to the writ petitioner in terms of G.O.Ms.No.37, dated 05.01.1983, and in the light of the Division Bench Judgment reported in **2001 - Writ L.R. 852** confirmed by the Apex Court in SLP No.22469 of 2001.

2.The brief facts, which are necessary for disposing this writ appeal, are as follows:-

The writ petitioner joined the service of educational department on 09.02.1970 as Secondary Grade Teacher. He went on medical leave between 07.06.1982 and 28.01.1983. After joining the duty on 31.01.1983, the writ petitioner tendered resignation letter on 01.02.1983 by citing health reasons. Consequent upon such letter of resignation, the writ petitioner was also relieved from service. It is stated that the pension proposal was sent later on 22.10.2008. However, the writ petitioner's request for grant of pension was rejected by passing the impugned order, dated 25.11.2014, on the reason that as per Rule 23 of the Tamil Nadu Pension Rules, resignation from a service entails forfeiture of past service and consequently, the petitioner is not entitled to claim pension. The said order was put to challenge before the Writ Court, which intturn, dismissed the writ petition by holding that a person, who has resigned after the crucial date knowing fully well about the impact of Rule 23, is not entitled for pension. The Writ Court also observed that the writ petitioner has not placed record satisfying the relaxation of Rule 23 before the Government and that he has not produced any records to show that his resignation is purely on health reasons. Thus, the Writ Court observed that the Government cannot be forced to relax Rule 23 without adequate reason and without concurrence of Finance Department. Therefore, the Writ Court found that the order of rejection passed by the first respondent, challenged in the writ petition, need not be interfered with.

3.Mr.S.Govindan, learned counsel for the appellant submitted that the issue involved in this case, is squarely covered by the decision made in W.P(MD)Nos.461 and 106 of 2013 dated 02.03.2015 confirmed in W.A(MD)Nos.855 and 856 of 2017 dated 04.07.2017 which again was confirmed by the Apex Court by dismissing the Special Leave Petition in order dated 19.02.2018 made in SLP No.4256 of 2018. Therefore, he contended that in view of the findings

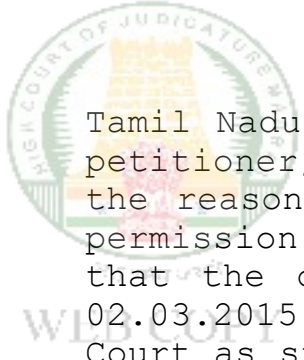


already rendered by this Court in respect of the same issue, which has been confirmed upto Apex Court, the petitioner is entitled to succeed notwithstanding the fact that the Government has chosen to reject the request of the petitioner to relax Rule 23.

4. On the other hand, the learned Special Government Pleader appearing for the respondents submitted that in view of the specific prohibition contemplated under Rule 23 of the Tamil Nadu Pension Rules, the petitioner, who has resigned from the post, without taking any further employment under any Government services, is not entitled to seek for pension based on his resignation. In other words, it is the contention of the learned Special Government Pleader that the writ petitioner is entitled to get the pension only when he has chosen to take another appointment with proper permission, after the resignation, otherwise, in view of Rule 23, he is not entitled to the pensionary benefits.

5. We have given our careful consideration to the submissions made by both parties and the order passed by the Writ Court.

6. The only objection raised by the respondents for not providing pensionary benefits to the writ petitioner is that Rule 23 of the Tamil Nadu Pension Rules entails forfeiture of past service on resignation from service, if the person who resigned, has not taken another appointment with proper permission after such resignation. In this case, the writ petitioner admittedly did not take another appointment after resignation. On the other hand, the resignation itself was due to his health issues. The said fact is evident from his letter of resignation dated 01.02.1983. It is not in dispute that the said resignation was accepted and he was also relieved from service. It is also seen that after a long time, the pension proposal was also sent on 22.10.2008. It is true that the very same petitioner approached this Court and filed a writ petition before this Court in W.P(MD) No.4101 of 2011 challenging an order dated 02.12.2008 holding that the petitioner was not eligible for pension as per G.O.Ms.No.37, Education, Science and Technology Department, dated 05.01.1983. It is also true that the said writ petition came to be dismissed on 07.11.2012 and that the petitioner filed writ appeal (MD) No.274 of 2013 against the order of the Writ Court. It is further seen that the said writ appeal was dismissed as withdrawn on 09.07.2013, however, by granting liberty to the writ petitioner/appellant therein to approach the first respondent Government seeking relaxation of Rule 23 of the Tamil Nadu Pension Rule with further direction to the Government to consider the said application and pass orders on merits and in accordance with law. Consequent upon the said order, the petitioner made a submission to the Government which came to be rejected, by passing the impugned order in the present writ petition. Therefore, the only question to be considered in this case is as to whether the Rule 23 of the



Tamil Nadu Pension Rule, refused to be relaxed in the case of the petitioner, will stair at him and deny the benefit of pension on the reason that he has not taken another appointment with proper permission after his resignation. We are of the considered view that the decision made in W.P(MD)Nos.461 and 106 of 2013 dated 02.03.2015 confirmed by the Division Bench as well as the Apex Court as stated supra on the same issue will come to the rescue of the writ petitioner herein, since an identical Rule as that of Rule 23 of the Tamil Nadu Pension Rule was considered therein, namely, Rule 16(a) of the Tamil Nadu State Transport Corporation Pension Fund Rules and the Writ Court, has allowed the writ petition therein and directed the respondents to consider the claim of the petitioners therein seeking for pension and pass appropriate orders. The relevant finding and observation at paragraphs 10 of the order made in the above writ petition is extracted hereunder:-

"10. Even though the present case involves the Tamil Nadu State Transport Corporation Pension Fund Rules more particularly with regard to Rule 16(a) of the same, the ratio laid down in the above decisions in respect of the resigned employees is equally applicable to the respondent corporation as well. Further, the perusal of the above said Rule would indicate that resignation from service is not a total disqualification for availing pensionary benefits in all cases and on the other hand, proviso to Rule 16(a) contemplates that a resignation shall not entail forfeiture of past services, if it has been submitted to take up with proper permission another appointment, under Government Department / State Public Sector Undertaking/Board. In such cases, the pensionary benefits shall be transferred to the new employer's pension fund. Therefore, it is evident that even though the employee has tendered resignation and if such employees is to take up another appointment under another Department of the Government or State Public Sector undertaking or Board, he is not losing his past services nor there is any forfeiture of such services. Therefore, the intention to grant pensionary benefits is evident, event o such of those persons who take up another appointment as stated supra. Consequently, it would mean that resignation from service is not a disqualification in toto. If that be the position, this Court is unable to understand as to how a person who is permitted to enjoy the past services if he takes up another appointment after resignation, is not entitled to get pension in case, if he is not taking another appointment subsequent to such resignation. Certainly, it amounts to discrimination. Therefore, in view of the above decisions of the Hon'ble Division Bench of this Court as well as the Hon'ble Supreme Court, the denial of pension to the petitioners on the ground that they are resigned employees cannot be



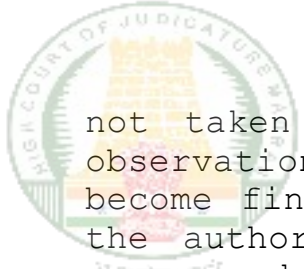
sustained. But at the same time, not at all the persons who tendered resignation are entitled to pension, unless the period of service so rendered by them comes within the pensionable service period as contemplated under the Rules."

7. While passing the said order, the Writ Court has taken note of the order passed by the Division Bench reported in **2008(3) MLJ 341**, which has specifically dealt with the very same Rule 23 of the Tamil Nadu Pension Rules. The above said order made in W.P (MD) No. 461 and 106 of 2013 was confirmed by the Division Bench in W.A (MD) Nos. 855 and 856 of 2017 dated 04.07.2017, wherein a specific observation is made at paragraph 10 of the order to the effect that the Division Bench was entirely agreeing with the reasons set out in paragraph 10 of the order made by the Writ Court. The observation of the Division Bench is extracted hereunder:-

"10. It is relevant to point out that the learned single Judge was very much conscious that the case of the writ petitioners is to be adjudicated only with reference to Tamil Nadu State Corporation Pension Fund Trust Rules. This is evident from what is set out in para. 10 of the order made in the writ petitions. We entirely agree with the reasoning set out therein. This is a case of resignation on health ground. The appellant corporation also chose to accept the resignation submitted by the writ petitioners."

8. The said order of the Division Bench was further put to challenge before the Apex Court by way of Special Leave Petition No. 4256 of 2018 and the Apex Court dismissed the SLP by observing that it is not inclined to interfere with the impugned judgment. It is stated now before this Court that after the disposal of the said SLP, a review was sought to be filed with delay before the Division Bench and the said application for condonation of delay was also dismissed. Therefore, it is evident that the view expressed by this Court in W.P (MD) Nos. 461 and 106 of 2013 more particularly that the authorities cannot make discrimination between a person who take employment after resignation and a person who does not take employment after resignation, while considering the claim for pension, has become final and thus, binding on the respondents herein as well.

9. In view of the above order passed by this Court covering the very same issue in favour of the writ petitioner, we find that the Writ Court is not justified in rejecting the writ petition. At this juncture, we would like to point out that even though the first respondent has chosen to reject the request for relaxation of Rule 23, in view of the order passed in W.P (MD) Nos. 401 and 106 of 2013 dated 02.03.2015 confirmed upto the Supreme Court, it is not open to the respondents to consider whether the rule is relaxed or not for considering the claim of the petitioner like person who resign and



not taken further employment. In other words, in view of the observations made in W.P(MD)No.401 and 106 of 2013 which have become final and binding on all parties, it is to be noted that the authorities while applying Rule 23 cannot discriminate the persons who resigned and not taken fresh employment on account of some reasons including health issues. Therefore, we find that the appellant is entitled to succeed in this appeal. Accordingly, the writ appeal is allowed and the impugned order of the first respondent challenged in the writ petition is set aside. Consequently, the respondents are directed to consider the claim of the appellant for pension and other benefits in pursuant to his resignation and pass appropriate orders on the same in the light of the order passed in this writ appeal. Such exercise shall be done by the respondents within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To

- 1.The Principal Secretary to Government of Tamil Nadu,
Education Department,
Secretariat, Chennai - 9.
- 2.The Director of Elementary Education,
DPI campus, College Road,
Chennai - 39.
- 3.The Assistant Elementary Educational Officer,
Chinnamanur - 625515,
Theni District.

+1 CC to M/s.S.GOVINDAN, Advocate (SR-71562[F] dated 26/06/2019)

+1 CC to M/s.SPL GP (SR-72133[F] dated 28/06/2019)

SKN

W.A. (MD) No.1658 of 2018
26.06.2019

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