



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.07.2019

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P[MD]No.6106 of 2013

D.Kanakaraj

... Petitioner

Vs.

- 1.The Secretary to Government,
Education Department,
Fort St. George,
Chennai - 600 009.
- 2.Principal Accountant General,
(Accounts and entitlement),
Chennai - 620 018.
- 3.The Director of School Education,
Chennai - 600 006.
- 4.The Chief Educational Officer,
Kanyakumari District,
Nagercoil - 629 001.
- 5.The District Educational Officer,
Kanyakumari District,
Nagercoil - 629 001.
- 6.The Superintending Engineer,
Tamil Nadu Highways Department,
Chennai Circle,
Chepauk,
Chennai - 600 006.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings of the third respondent in O.Mu.No.18976/R1/E3/2012 dated 25.10.2012, quash the same and consequently directing the respondents to grant me pensionary benefits for the period of 4 years 6 months 4 days of eligible service wherein the petitioner worked in the Highways Department as qualifying service for the purpose of calculation of the petitioner pension from the date of the petitioner retirement with all the retrospective benefits.



For Petitioner

: Mr.T.Arul

For Respondents 3 to 6

: Mrs.S.Srimathy
Special Government Pleader

For Respondent No.2

: Mr.P.Gunasekaran
Standing Counsel

WEB COPY

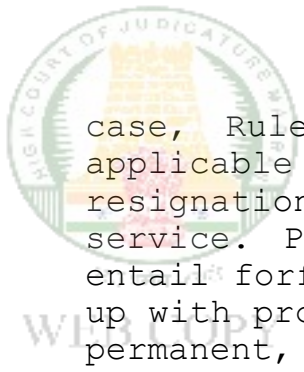
O R D E R

The order of rejection dated 25.10.2012, rejecting the claim of the writ petitioner for counting the services rendered by him as Clerk in Highways Department is under challenge in the present writ petition.

2.The writ petitioner was initially appointed as Lower Division Clerk in the Highways Department of Tamil Nadu by the Public Service Commission and served in the Highways Department from 30.11.1961 to 11.06.1967 in Chennai circle. On account of certain family circumstances, the petitioner resigned his job after 5 years 6 months and 11 days of service in the highways department. Subsequently, the writ petitioner joined as High School Assistant, in Amala Convent High School, Thuckalay, Kanyakumari District and served in the aided school from 01.09.1967 to 31.10.1967 and subsequently, he joined in Government Teachers Training Institute, Walajabad, Kanchipuram District and finally he retired from service on 28.02.1991. He retired as Headmaster in St.Antony's Government Aided Higher Secondary School. The grievances of the writ petitioner is that the services rendered by him in the post of Lower Division Clerk in the Highways Department is to be reckoned for the purpose of grant of pension and all terminal benefits.

3.Learned Counsel for the writ petitioner states that the writ petitioner served as a full member of the services and the qualifying services is to be calculated by adding the services of the writ petitioner rendered in the Highways Department. Contrarily, the pension is fixed based on the services rendered by him in the aided school alone. Thus, the petitioner is receiving lesser pension. It is further contended that the Government granted relaxation of rules in respect of many number of cases and the same benefit is to be extended to the writ petitioner also. It is contended that the Service Conditions Act provides power of relaxation to the Government and the Government has to study the case of the writ petitioner and grant relaxation in his favour so as to count the services rendered by him in Highways Department.

4.Learned Standing Counsel appearing on behalf of the Principal Accountant General disputed the contentions raised on behalf of the petitioner stating that the writ petitioner had resigned his post admittedly. His resignation was accepted by the Highways Department and he was relieved from the post. Thereafter, the writ petitioner secured appointment in an aided school. This being the factum of the



case, Rule 23 of the Tamil Nadu Pension Rules, 1978 would be applicable in the case of the writ petitioner. As per Rule 23, resignation from a service or post entails forfeiture of past service. Proviso to Rule 23 states 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.

5. Thus, the resignation for the purpose of taking up another appointment alone is permissible and in those circumstances, the earlier services can be reckoned as qualifying service for the purpose of pension. However, in the present case, the writ petitioner resigned his job from the Highways Department and joined as fresh candidate in an aided school. This being the factum of the case, as per Rule 23, the writ petitioner is not entitled for counting of his service in the post of Lower Division Clerk in Highways Department.

6. The service of the writ petitioner as Lower Division Clerk in Highways Department is from the year 1961 to 1967. The existing pension rules came into force during the year 1978.

7. Learned Standing Counsel for the Principal Accountant General reiterated that even as per the old pension rules, resignation entails forfeiture of past services. The very same provision was in force even under the old pension rules. This being the factum of the case, even as per the old pension rules, the services rendered by the writ petitioner cannot be counted for grant of pensionary benefits. Further, the judgment of this Court dated 03.10.2012 passed in W.P.[MD]No.618 of 2012 referred by the learned Counsel for the respondent reads as under:

"5. In support of the contention, the learned Counsel for the petitioner placed reliance on the judgment of the Hon'ble Division Bench of this Court in D.Vijayarangan Vs. Secretary, Sales Tax Appellate Tribunal (Addl. Bench), Madurai 20 and another [2009 Writ L.R. 12] wherein the Hon'ble Division Bench of this Court was pleased to hold that employee who resigns on ground of illness or ill-health and not because of misconduct or adverse record, and in case he is allowed to do so by the State, then he is entitled to same benefit which are allowed to those who resign to join another service under the State.

6. Though this judgment prima facie supports the case of the Workman, but with due respect to the Hon'ble Division Bench, this judgment cannot be taken as a precedent, in view of the judgment of the Hon'ble Supreme Court in Union of India and others Vs. Brajnandan Singh [(2005) 8 SCC 325], wherein the Hon'ble Supreme Court was pleased to lay down as under:



(1) Resignation from a service or post, unless it is allowed to be withdrawn in the public interest by the Appointing Authority, entails forfeiture of past service.

WEB COPY

(2) 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 & "Rule 26 as the heading itself shows relates to forfeiture of service on resignation. In clear terms it provides that resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the Appointing Authority, entails forfeiture of past service. The language is couched in mandatory terms. However, sub-rule (2) is in the nature of an exception. It provides that 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. Admittedly this is not the case in the present appeal. Rule 5 on which great emphasis was laid down by the learned Counsel for the respondent deals with regulation of claims to pension or family pension. Qualifying service is dealt with in Chapter III. The conditions subject to which service qualifies are provided in Rule 14. Chapter V deals with classes of pensions and conditions governing their grant. The effect of Rule 26 sub-rules (1) and (2) cannot be lost sight of while deciding the question of entitlement of pension. The High Court was not justified in its conclusion that the rule was being torn out of context. After the past service is forfeited the same has to be excluded from the period of qualifying service. The language of Rule 26 sub-rules (1) and (2) is very clear and unambiguous. It is trite law that all the provisions of a statute have to be read together and no particular provision should be treated as superfluous. That being the position after the acceptance of resignation, in terms of Rule 26 sub-rule (1) the past service stands forfeited. That being so, it has to be held that for the purpose of deciding question of entitlement to pension the respondent did not have the qualifying period of service. There is no substance in the plea of the learned Counsel for the respondent that Rule 26 sub-rules (1) and (2) has limited operation and does not wipe out entitlement to pension as quantified in Rule 49. Said Rule deals with amount of pension and not



with entitlement.

6. It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent & quot;

7. It is not possible for this Court to add words to the statutory rules, to hold that a person who resigned from service on medical ground or for some other reason can be treated at par with those employees who resign to join other service. The Rule 23 of Pension Rules is clear that a resignation results in forfeiture of service which disentitles the government employee to pension."

8. This apart, Rule of relaxation cannot be exercised in a routine manner even by the competent authorities of the Government. Rules, statutes are to be implemented strictly. Grant of relaxation is an exception. Relaxation cannot be granted in a routine manner. Only on exceptional cases where there is a gross injustice in a particular case, then alone the rule can be relaxed by the Government. The relaxation of rules granted in favour of one person cannot be cited as a precedent for the purpose of granting relaxation in all other cases. In other words, exceptions cannot be cited as legal precedent. Such Government orders cannot be followed for years together so as to make the rule or statute ineffective.

9. Thus, following the rule is a procedure and relaxation is an exception. Exception can never be a precedent nor be followed by the Government to grant relaxation continuously for number of years in so many cases. Such practice will lead to favouritism and result in corrupt activities by the executive of the State. Such a practice should be deprecated by the Constitutional Courts in many number of cases. This being the legal principle to be followed the contention of the writ petitioner that his case has to be considered for grant of relaxation deserves no merit consideration.

10. Beyond all grounds raised by the writ petitioner, the writ petitioner retired from service on 28.02.1991 and the present writ petition is filed on 12th April 2013, after a lapse of 22 years from the date of his retirement. Thus, the writ petition is highly belated and liable to be rejected on the ground of laches also. Even at the time of filing of the writ petition, the petitioner was aged about 80 years and now he would be around 86 years. Under these circumstances, the writ petitioner has not established any acceptable ground for the purpose of considering the relief as such sought for in the present writ petition.



11. Accordingly, the writ petition stands dismissed. No costs.

WEB COPY

// True Copy //

Sd/-

Assistant Registrar (CS-II)

Sub Assistant Registrar (CS)

To

1. The Secretary to Government,
Education Department,
Fort St. George, Chennai - 600 009.

2. Principal Accountant General,
(Accounts and entitlement),
Chennai - 620 018.

3. The Director of School Education,
Chennai - 600 006.

4. The Chief Educational Officer,
Kanyakumari District,
Nagercoil - 629 001.

5. The District Educational Officer,
Kanyakumari District,
Nagercoil - 629 001.

6. The Superintending Engineer,
Tamil Nadu Highways Department,
Chennai Circle,
Chepauk, Chennai - 600 006.

+1 CC to M/s.T.ARUL, Advocate (SR-73107[F] dated 03/07/2019)

+1 CC to M/s.P.GUNASEKARAN, Advocate (SR-73164[F] dated
03/07/2019)

+1 CC to M/s.SPL GP (SR-73529[F] dated 04/07/2019)

W.P[MD]No.6106 of 2013
02.07.2019