

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.10138 of 2013

S.Dakshinamoorthy

...Petitioner

-vs -

1.The Government of Tamil Nadu rep. by
Secretary to Government,
School Education Department,
Fort St. George,
Chennai - 600 009.

2. The Secretary to Government,
Finance (Pension) Department,
Fort St. George,
Chennai - 600 009.

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

4. The Chief Educational Officer,
Vellore District,
Vellore.

5. The Director of Animal Husbandry
and Vetrinary services,
Central Office Buildings,
Block II,
DMS Compound,
Chennai - 600 006.

6. The Assistant of Animal Husbandry,
Arani,
Vellore District.

7. The Accountant General,
Teynampet,
Chennai - 600 008.

...Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India to issue writ of Mandamus directing the respondents to count the 50% of service rendered by the petitioner in the post of Contingent Menial for a period from 29.09.1976 to 14.06.1982 and the entire service rendered by the petitioner in the post of Attendant in the Animal Husbandry Department for a period from 15.06.1982 to 22.10.1983 and add the same to the service rendered by the petitioner in the Education Department in the post of Drawing Master for a period from 22.10.1983 to 31.05.2011 and thereafter calculate the pensionary benefits and fix the last drawn pay and then grant pensionary benefits including arrears of pension.

For Petitioner :Mr.R.Saseetharan
For Respondents :Mr.S.Suresh Kumar,
Government Advocate,
for R1, R3 & R4.
Mr.S.Thangavel,
Spl. Govt. Pleader
for R2, R5 & R6
M/s.J.Sreevidhya,
ACGSC for R7

ORDER

Petitioner has come up with this Writ Petition seeking a direction to the Respondents count the 50% of service rendered by the petitioner in the post of Contingent Menial for a period from 29.09.1976 to 14.06.1982 and the entire service rendered by the petitioner in the post of Attendant in the Animal Husbandry Department for a period from 15.06.1982 to 22.10.1983 and add the same to the service rendered by the petitioner in the Education Department in the post of Drawing Master for a period from 22.10.1983 to 31.05.2011 and thereafter calculate the pensionary benefits and fix the last drawn pay and then grant pensionary benefits including arrears of pension.

2. According to the Petitioner, he was appointed as Contingent Menial on a consolidated pay of Rs.200/- per month at Veterniary Dispensary, Mangala Maamundur vide proceedings dated 20.09.1976 of the Assistant Director of Animal Husbandry, as per the List sponsored by the Employment Exchange and he joined the post on 29.09.1976. After completion of five years of service as on 01.01.1982, the Petitioner was promoted to the post of Attendant, by an order dated 11.06.1987 of the Assistant Director of Animal Husbandry, and was fitted to the regular time scale of pay of Rs.250-400.

3. Thereafter, as he got appointment as Drawing Master at Government High School, Rishivanthiyam, Kallakurichi Taluk, Villupuram District, the Petitioner resigned from the post of Attendant, Veterinary Department on 22.10.1983. He joined as Drawing Master at Government High School, Rishivanthiyam on the same day, i.e. on 22.10.1983 itself and retired from service on 31.05.2011 after rendering 28 years.

4. In the pension proposal sent to the Accountant General, the Petitioner's net qualifying service was calculated as 31 years, 1 month and 21 days including the service rendered by the Petitioner in the Department of Animal Husbandry. But, the Accountant General has sanctioned pension only for the service rendered in the Education Department, i.e. for a period of 27 years, 7 months, 10 days and refused to take into account the service rendered by the Petitioner for the period from 29.09.1976 to 22.10.1983 in the Animal Husbandry Department on the ground that, the service rendered by him in the Animal Husbandry Department as Contingent Menial and as Attendant are not permanent service.

5. The Petitioner made a representation to the Respondents on 09.02.2012 to count the service rendered by him in the post of Contingent Menial and Attendant in the Animal Husbandry Department for calculation of qualifying service and to sanction pensionary benefits. As no orders were passed on his representation, the Petitioner is before this Court with the present Writ Petition.

6. Learned counsel for the Petitioner contended that, the stand of the Respondents is contrary to the Pension Rules as well as G.O.Ms.No.408, dated 25.05.2009. He drew the attention of this Court to G.O.Ms.No.437, dated 23.06.1988 and G.O.Ms.No.118, dated 14.02.1996, which provide for counting of 50% of service on consolidated pay rendered by the employee before the regular appointment of absorption in the service. He also drew the attention of this Court to the proviso to Rule 23 of the Tamil Nadu Pension Rules, which provides that, whenever, the Government Servant resigns a particular post from one Department, in order to join another post in another Department, the service can be taken into account.

7. Learned Special Government Pleader appearing for the Respondents, with reference to paragraph 7 of the counter Affidavit submitted that, as per G.O.Ms.No.118 (Finance Department), dated 14.02.1996, the service under non-pensionable establishment should have been continuous, followed by absorption in pensionable establishment without break. But, due to the resignation submitted by the Petitioner, nexus between one Department and another Department was given a go by. Had

the Petitioner sought proper permission to join in another service, his service would have been counted. According to the learned counsel, due to the resignation submitted by the Petitioner, there is violation of Rule 23 of the Pension Rules, and hence, the Petitioner is not entitled to the relief sought for by him.

8. Heard the learned counsel on either side and perused the material documents available on record.

9. Facts of the case are not in dispute. As per Rule 23 of the Tamil Nadu Pension Rules, 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. In the case on hand, it is not known as to whether the Petitioner has resigned the post of Attendant in Animal Husbandry Department with proper permission or not and the said aspect can be clarified only by the Respondents.

10. Hence, without expressing any opinion on the merits of the case, this Court directs the Respondents herein to consider the Petitioner's representation dated 09.02.2012 on merits and in accordance with law and pass appropriate orders preferably within a period of six (6) months from the date of receipt of a copy of this order.

In fine, Writ Petitions are disposed of with the above direction. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

(vsi2/aeb)

To:

1.The Secretary to Government,
Government of Tamil Nadu,
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Chennai - 600 009.

WEB COPY

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+1 CC to Mr.R.Saseetharan, Advocate sr 37679
+1 CC to The Government Pleader sr 37932.
+1 CC to M/s.J. Sreevidya, Advocate sr 37735.

W.P.No.10138 of 2013

BR(CO)
SP(31/12/2020)

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