



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2020

CORAM

THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No. 10211 of 2013

V.P. Chandru

...Petitioner

Vs

1.The State of Tamil Nadu,
Rep. By its Secretary,
Housing & Urban Development Department,
Fort St.George, Chennai-600009.

2. The Commissioner,
Town & Country Planning,
No.807, Anna Salai,
Chennai - 600 002.

3.The Accountant General
(Accounts & Entitlement)
No. 361, Anna Salai,
Chennai - 600 018.

... 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 proceedings of the 2nd respondent in L.Dis.No.51920/92/J2 dated 28.12.1992 and subsequent order in Na.Ka.No.9985/2008/K3 dated 27.07.2010 and quash the same and consequently direct the respondents, particularly the 2nd respondent to count the service of the petitioner in the post of Draughtsman Grade-III for the period for the period from 27.11.1978 to 28.02.1991 and sanction the pension and disburse the same along with interest.

For Petitioner : M/s.P.P.Shanmugasundaram

For Respondents : Mr.J.Ramesh,AGP - For R1 & R2
Mr. V.Vijayshankar - For R3



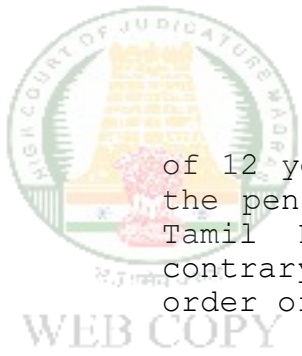
O R D E R

The prayer sought for in the Writ Petition is to calling for the records of the proceedings of the 2nd respondent in L.Dis.No.51920/92/J2 dated 28.12.1992 and subsequent order in Na.Ka.No.9985/2008/K3 dated 27.07.2010 and quash the same and consequently direct the respondents, particularly the 2nd respondent to count the service of the petitioner in the post of Draughtsman Grade-III for the period for the period from 27.11.1978 to 28.02.1991 and sanction the pension and disburse the same along with interest.

2. Brief facts leading to the writ petition is that the writ petitioner was appointed as Surveyor on 27.11.1978 in the office of the Town Planning at Sivagangai and promoted as Draughtsman Grade-3. After completion of 12 years of service, he resigned his service under Voluntary Retirement Scheme. The total period of qualified service of the petitioner in the Department was 12 years 3 months and 4 days. He applied for his pensionary benefits to the Government in the year 1992, the said proposal was forwarded to the 2nd respondent. But the 2nd respondent by his letter dated 28.12.1992 rejected the same by quoting Rule 41 of the Tamil Nadu State and Subordinate Service Rules. Again on 07.08.2007, he made a representation for sanction of pension based on the Newspaper report dated 26.07.2007, in which a decision of this Court was reported that even a Government Servant appointed on temporary basis and worked for 10 years also eligible for pension. After the said representation, the Assistant Director, Town Planning, Salem by his letter dated 27.11.2007 stated that due to lapse of more than 10 years from the petitioner's voluntary retirement, the entire records were destroyed and directed the petitioner to send necessary records so as to enable them to process the petitioner's request. Accordingly, the petitioner by his letter dated 14.01.2008 submitted necessary records to the 2nd respondent. But the 2nd respondent without considering the same, had passed the impugned order dated 27.07.2010 after lapse of two years, rejecting his claim. Challenging the same the present writ petition is filed.

3. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents 1 & 2 and the learned Standing Counsel appearing for the 3rd respondent and perused the documents available on record.

4. The learned counsel for the petitioner submitted that the impugned order passed by the 2nd respondent, rejecting his claim is contrary to the law as settled by this Court and the petitioner is entitled for the pensionary benefits on completion



of 12 years of service. Therefore, the 2nd respondent cannot deny the pensionary benefits to the petitioner by quoting Rule 41 of Tamil Nadu State and Subordinate Service Rules, which is contrary to the Tamil Nadu Pension Rules, 1976 and the earlier order of this Court.

5. On the other hand, the learned Government Advocate submitted that the petitioner had resigned his post and his resignation was accepted vide proceedings in Rc.No.8174/91/K5 dated 09.04.1991. Further in his representation dated 14.01.2008 he has requested to sanction and pay his pensionary benefits as per G.O. Ms. No.37, Education Department dated 05.01.1983. The said G.O is applicable to Teachers in Government aided schools, who had resigned shall not be taken as precedent for Government Employees/Teachers in Government Schools.

6. The learned Government Advocate further submitted that a person who retired voluntarily is eligible for pensionary benefits. But, according to the Tamil Nadu Pension Rules, 1978, if a member of a service resigns his appointment has forfeited not only the service rendered by him in a particular post held by him at the time of resignation but all his previous service under the Government. Therefore, the rejection of the claim made by the petitioner is valid and does not require any interference.

7. Considering the facts and circumstances of the case and analysing the submissions made by both the parties, there is no dispute that the writ petitioner had resigned from service on completion of twelve years of service in the department. But, the writ petitioner had relied upon the G.O. No. 37 issued by the Education Department, dated 05.01.1983. As rightly stated in the counter affidavit filed by the respondents, the aforesaid Government Order was passed in favour of the Teachers who resigned in Government aided school. It is further clarified in the said G.O that the same shall not be taken a precedent for Government Employees/Teachers in Government Schools. Therefore, the said argument of the petitioner cannot be accepted by this Court on this aspect.

8. However, it is relevant to rely upon the decision of the Hon'ble Supreme Court reported in AIR 1990 SC 1808 in the case of M/s.J.K.Cotton Spg & Wvg Mills Co.Ltd, Kanpur Vs. State of U.P & Others. The relevant portion of the judgment is extracted below;

"8. The meaning of term 'resign' as found in the shorter Oxford Dictionary includes 'retirement'. Therefore, when an employee voluntarily tenders his resignation it is an act by which he voluntarily gives up his job. We are, therefore of the opinion that such a situation would be covered by the



expression 'voluntary retirement' within the meaning of Cl.(i) of Section 2 (s) of the State Act."

9. Further in another judgment reported in AIR 1990 SC 1219 in the case of Santhosh Gupta's case, the Hon'ble Supreme Court has held as follows;

"Voluntary retrenchment of a workman or the retrenchment of the workman on reaching the age of superannuation can hardly be described as termination, by the employer, of the service of a workman."

Here the word 'retrenchment' has reference to 'retirement'".

10. The aforesaid decisions of the Hon'ble Supreme Court are squarely applicable to the facts of the present case. It is clear from the aforesaid decisions of the Hon'ble Supreme Court, that a resignation will also amount to retirement. In the present case, the writ petitioner after rendering his 12 years of service in the respondent department, resigned his service. The writ petitioner's resignation was also accepted by the department vide Pro.Rc.No.8174/91/K5 dated 09.04.1991. Therefore, the contention of the respondent that as per Rule 41 of the Tamil Nadu State and Subordinate Rules and Rule 23 of Tamil Nadu Pension Rules, the writ petitioner is not eligible to claim pension cannot be accepted.

11. In view of the decision of the Hon'ble Supreme Court cited supra and considering the submissions made by either side, this Court is of the considered view that the writ petitioner is entitled to get pension for the service rendered by him.

12. Accordingly, the impugned proceedings of the 2nd respondent in L.Dis.No. 51920/92/J2 dated 28.12.1992 is quashed with the direction to the 2nd respondent that they shall consider the claim of the petitioner in the light of the decisions of the Hon'ble Supreme Court cited supra and pass appropriate orders within a period of twelve weeks from the date of receipt of a copy of this order.

13. With the above directions the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar



To

1.The Secretary,
Housing & Urban Development Department,
Fort St.George, Chennai-600009.

2. The Commissioner,
Town & Country Planning,
No.807, Anna Salai,
Chennai - 600 002.

3.The Accountant General
(Accounts & Entitlement)
No. 361, Anna Salai,
Chennai - 600 018.

+lcc to Mr.P.P.Shanmugasundaram, Advocate Sr.12837
+lcc to the Government Pleader Sr.13615

W.P.No. 10211 of 2013

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