

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. No.11913 of 2013

Mrs.K.V.Vijayalakshmi

.. Petitioner

- Vs -

1.The District Educational Officer,
Salem.

2.M/s.St.Mariy's Girls Higher Secondary School,
Rep. By its Correspondent,
Salem 9. ... Respondents

Writ petitions filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorarified Mandamus, calling for the records in respect of the proceedings dated 31.08.2012 under Reference No.Na.Ka.No.1682/A4/2012 issued by the First Respondent declining to entertain Petitioner application for payment of pension for the services rendered with the Second Respondent herein and to quash the same and for a consequential direction to the first Respondent to pay the pension as contemplated under law.

For Petitioner : Mr.Kingston Jerold for
M/S.J.Ravi Shankar

For Respondents: Mr.A.N.Thambidurai, Spl.G.P for R1
: Arul Mary for
M/S.Father Xavier Associates for R2

ORDER

The writ petition has been filed by the petitioner to call for the records in respect of the proceedings dated 31.08.2012 under Reference No.Na.Ka.No.1682/A4/2012 issued by the First Respondent declining to entertain Petitioner application for payment of pension for the services rendered with the Second Respondent herein and to quash the same and for a consequential direction to the first Respondent to pay the pension as contemplated under law.

2.The case of the petitioner is that she was employed in the second respondent school from the year 1979 and the petitioner had rendered unblemished services with the second respondent school from 3.4.1972 to 4.10.1992. Due to domestic problems and personal inability in performing her duties, she tendered her resignation letter on 04.10.1992 and the same has been accepted and acted upon. It is the further case of the petitioner that the first respondent relieved the petitioner by making an endorsement on 01.07.1993 and that resignation has been accepted at request and relieved her from the duties. Thereafter, the petitioner submitted an application in combined form for general provident fund and pension to the first respondent, who is the appropriate authority to sanction pension, which was negatived by the 1st respondent, by impugned order dated 31.08.2012. Challenging the same the present writ petition has been filed by the petitioner with the above said prayer.

3.Learned counsel appearing for the petitioner submitted that the petitioner had submitted her resignation after putting in more than 13 years of service and the said resignation was submitted due to domestic problem and personal disabilities. It is further submitted that an employee, who resigns a job on medical ground is entitled to receive the pension. In support of this contention, reliance was placed on the decision of a Division Bench of this Court in D.Vijayarangan Vs. Secretary Sales Tax Appellate Tribunal & Ors. (2008 STPL-21771 Madras) wherein this Court, citing Rule 23 of the Tamil Nadu Pension Rules ordered payment of pension to person, who had resigned his post on the ground of ill health. Hence, he prays for allowing the writ petition.

4. On the above contention, this Court heard the learned counsel for the respondent and perused the materials available on record.

5. In Vijayaraghavan's case (supra), the Division Bench had dealt with the resignation of a person on medical grounds and in the said backdrop, held as under :-

"6. In the present case, we find that the petitioner proceeded on leave because of mental illness and submitted resignation letter on 2nd Aug., 1988. It is also not in dispute that the 1st respondent, by letters dated 9th Dec., 1988 and 4th May, 1989, instructed the petitioner to settle all the dues payable to the Government, and on payment of such dues, it was informed that the resignation of the petitioner was to be accepted, which was actually accepted after receipt of such dues by the State Government.

Thus, it will be evident that the petitioner was allowed to resign for which permission was accorded by the State on condition of payment of its dues. It is not the case of the respondent that the petitioner wanted to resign to join service in some other organisation and there was any proceeding for misconduct initiated against him. In fact, there was no allegation made by any of the respondents against the petitioner.

7. In such a situation, a question arise whether the service of an employee can be forfeited if person asks for resignation on the ground of ill-health, which is allowed by the State. Under Rule 23, a person is entitled for all benefits if he is allowed to resign for appointment in some other post under the Government. The rule is silent with regard to resignation, if given on the grounds of illness or ill-health for which permission is granted by the competent authority. In case, if it is held that the person, who has resigned because of illness or ill-health, as at par with the class of employees, who resign for misconduct or any adverse record, and the class of employees, who resign to join other government organisation are kept in a separate class for grant of pensionary benefits, in such case one may doubt Rule 23 violative of Article 14 vis-a-vis those who resign for illness or ill-health and is accepted by the competent authority. Therefore, we hold that those who resign because of illness or ill-health and not because of any misconduct or adverse record and are allowed to do so by the State are entitled for the same benefit which is allowed to those who resign to join another service under the State. Comparing the employees who are allowed to resign because of illness or ill-health at par with those employees who resign because of misconduct or adverse record will be otherwise violative of Article of the Constitution of India."

6. The facts in issue as to the service of the petitioner in the 2nd respondent school, her initial appointment and her resignation are not disputed. It is the stand of the petitioner that due to her ill-health and domestic problem she submitted her resignation. However, she has not been sanctioned pension as per Rule 23 of the Tamil Nadu Pension Rules. Though such is the stand of the petitioner, however, the materials on record

reveal that the resignation letter tendered by the petitioner is not on medical grounds.

7. It is not disputed that Rule 23 of the Tamil Nadu Pension Rules provides for payment for pension to person, who has put in the necessary qualifying service and then resigns his job on medical grounds. Even the respondents are not disputing the said rule. Equally, there are a catena of decisions of the Courts, which have consistently held that resignation on medical grounds after putting in the necessary qualifying service, the employee is entitled for pension. If resignation has not been tendered on medical grounds, there is no provision in the rule for payment of pension. The decision of the Division Bench of this Court in Vijayaraghavan's case (supra) has also reiterated the said position and held that resignation of medical grounds would entitle an employee to pension. However, on other grounds, the employee, who resigns the job is not entitled to pension.

8. A perusal of the resignation letter submitted by the petitioner discloses that the petitioner has resigned her job citing domestic problems and there is no mention about any ailment in the said resignation letter. Though it is the stand of the petitioner that it is only on account of ailment she has submitted her resignation, however, the said fact cannot be inferred from the said letter, as there needs to be a conclusive stand accompanied by medical records to treat an employee's resignation on medical grounds. In the case on hand, the resignation letter does not reveal that the resignation was tendered on account of medical ailment and in such circumstances, this Court cannot draw an inference that on account of the age of the petitioner, the resignation has been submitted on account of ill-health. Therefore, the ratio laid down in Vijayaraghavan's case (supra) would not be of any help to the petitioner. The petitioner having submitted her resignation letter not on the ground of ill-health, but otherwise, the impugned order of the respondents rejecting the case of the petitioner for pensionary benefits is wholly justified and no interference is warranted.

9. For the reasons aforesaid, this writ petition is devoid of merits and accordingly the same is dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

The District Educational Officer,
Salem.

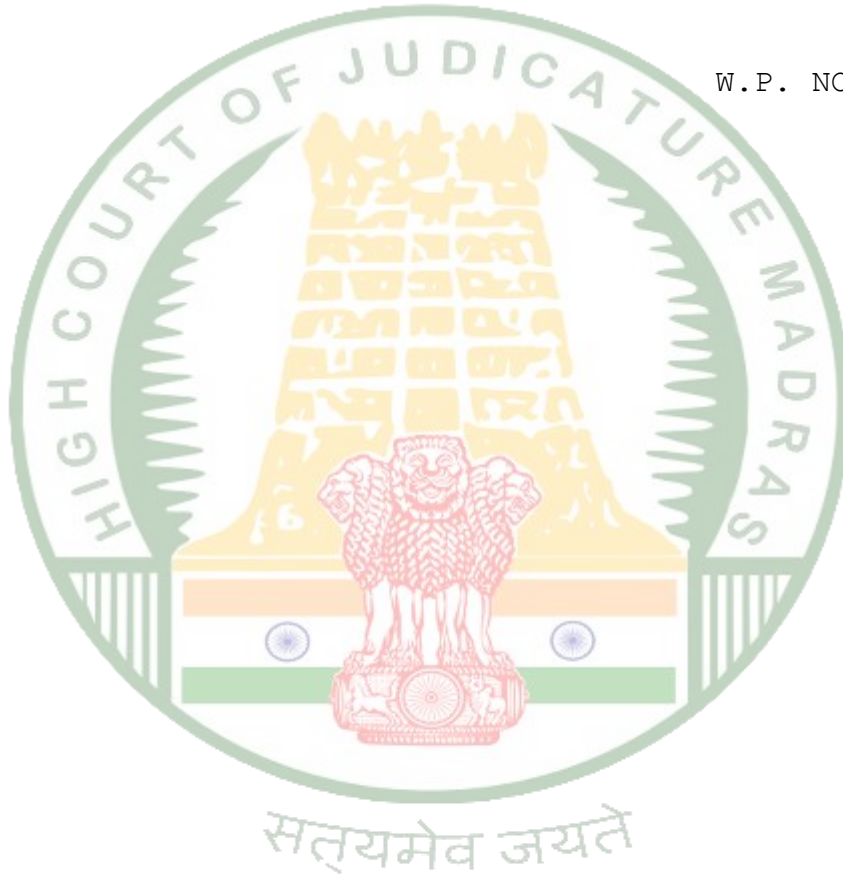
+1 cc to M/s.Father Xavier Associates,sr.28966

+1 cc to Mr.J.Ravishankar,advocate,sr.29021

+1 cc to Government Pleader,sr.29002

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