

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.08.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 12093 OF 2013

and

M.P.No.1 of 2013

1 R.Veerasamy

... Petitioner

Vs

1. The State of Tamil Nadu ,
rep. by its Secretary Education Department
Fort.St.George, Chennai-600 009.
2. The District Elementary Educational Officer,
Villupuram,
Villupuram District.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorarified Mandamus, calling for the records relating to the Order passed by the 2nd respondent in Mu.Mu.No.Aa4/960/2002 dated 23.07.2002 and quash the same, thereby direct the respondents to sanction pensionary benefits with 18% interest to the petitioner.

For Petitioner : Mr.A.R.Nixon

For Respondents : Mr.A.N.Thambidurai, Spl.G.P

ORDER

The writ petition has filed by the petitioner, to call for the records relating to the Order passed by the 2nd respondent in Mu.Mu.No.Aa4/960/2002 dated 23.07.2002 and quash the same, thereby direct the respondents to sanction pensionary benefits with 18% interest to the petitioner.

2.The case of the petitioner is that the petitioner was originally appointed as Secondary Grade Teacher in the year 1963, in the Panchayat Union Elementary School, Sangalikuppam in Melmalayanur Union of Villupuram District and his services were regularized from 2.4.1964 and thereafter the petitioner was

transferred to some other Panchayat Union schools in the same Union and served till 2.5.1986. For almost 22 years 10 months and 6 days, he continuously worked as a Teacher and, thereafter due to his health problem and family condition, the petitioner was forced to resign his job on 2.5.1986 and his resignation was also accepted by the respondents and thereafter, the petitioner made a representation in the year 2002, seeking payment of pension, which was negatived by the 2nd respondent, by order dated 23.7.2002, specifically stating that the petitioner's request cannot be considered, since there was no precedent in this aspect. 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 his resignation after putting in more than 22 years of service and the said resignation was submitted due to ill health. However, after attaining the age of superannuation, the petitioner had submitted his representation for payment of pension, which was due to him and the negation by the respondents is per se impermissible. The rejection of the representation on the ground that the petitioner had resigned his job not on medical ground, but on his own willingness is wholly unsustainable. In support of his 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. Per contra, learned Special Government Pleader appearing for the respondents, referring to the counter affidavit filed by the 2nd respondent submitted that the petitioner had resigned his job on his own private affairs as is evident from the letter of resignation submitted by him, which was accepted by the District Educational Officer Tindivanam by proceeding dated 2.5.1986. It is the further contention of the learned Special Government Pleader that after a lapse of nearly six years, the petitioner had made representation in the year 2002 to the District Elementary Education Officer, Villupuram/ the 2nd respondent herein, for sending pension proposal to the Accountant General, Chennai, for sanction of pensionary benefits to him. Since there was no precedent for sanction of pensionary benefits in case of persons resigning on private affairs, the case of the petitioner was rejected and further the Rules also does not prescribe provision of pensionary benefit for persons, who had resigned on private affairs. Therefore, there is no illegality or irregularity in the order passed by the respondents and, hence, no interference is called for with the said order.

5.It is the further submission of the learned Special Government Pleader that against the order impugned, the petitioner had already filed W.P.No. 20974 of 2008, which was dismissed by this this Court vide order dated 8.3.2011. The petitioner has not stated anything about the other writ petition already filed by him and, therefore, it is clear that the petitioner has approached this Court with unclean hands and, hence, the present petition is liable to be dismissed.

6.This Court heard the rival submissions of the learned counsel on either side and pursued the materials available on records.

7. A perusal of the records reveals the petitioner, after putting in 22 years 10 months and 6 days of service, had submitted his resignation letter on 2.5.1986, which was accepted and he was relieved from service. However, only on completion of 58 years of age, he made a representation to the respondents to pay pension, which was negatived by the 2nd respondent vide order dated 23.7.2002, stating that his request could not be considered as there is no previous example in this regard. It is also evident from the record that WP.No.20974 of 2008, was filed by the petitioner seeking a direction to the respondents to consider his representation dated 30.3.2005, and this Court by its order dated 8.3.2011, dismissed the petition holding that the writ petitioner had resigned from service on 20.05.1986, and after a lapse of six years, the representation has been filed and the rejection thereof does not warrant any interference. Further, against the order passed in the writ petition, the petitioner preferred writ appeal in W.A. No.1302 of 2011, which was dismissed by the Division Bench of this Court, on 27.11.2012. However, liberty was granted to the petitioner to assail the order of the 2nd respondent, if so advised, before the appropriate forum. From the above orders it is evident that the representation of the petitioner has been rejected, which is under challenge in the present writ petition.

8.The representation of the petitioner has been rejected on the ground that the petitioner had resigned from service on private affairs and not on medical grounds. A perusal of the resignation letter submitted by the petitioner discloses that the petitioner has resigned on private affairs and there is no mention about any ailment in the said resignation. Therefore, it cannot be held that the petitioner was suffering from any ailment, as projected by the learned counsel for the petitioner in the absence of any whisper in the resignation letter to infer otherwise.

9.The reliance placed on the decision of the Division Bench of this Court in Vijayaraghavan's case (supra) would not be of

any help to the petitioner as in the said case, the Division Bench had dealt with the resignation of a person on medical grounds and in the said backdrop, held that the Pension Rules permit payment of pension for persons, who had submitted resignation on medical grounds. The relevant portion of the order of the Division Bench is 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 14](#) of the Constitution of India."

10. In the present case, the resignation of the petitioner being not on medical grounds and it is for private reasons, the order of the Division Bench would not be in any way useful to the petitioner. The order of the 2nd respondent being on the basis of the provisions as is found in the Pension Rules, and the petitioner not being able to point out anything to his benefit in the said Rules, this Court is of the considered opinion that the relief sought for to strike down the impugned order has passed by the 2nd respondent cannot be acceded to and is liable to be rejected.

11. Further, the petitioner had not sought for the payment of pension on his being relieved from service and had waited for more than six years to submit his representation claiming pension. Though it is the stand of the petitioner that on his attaining the age of superannuation, he had sought for pension by submitting the representation, this Court is at a loss to understand as to what superannuation has to do with the case of the petitioner claiming pension on his being relieved from service.

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

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The State of Tamil Nadu ,
Secretary Education Department
Fort.St.George, Chennai-600 009.

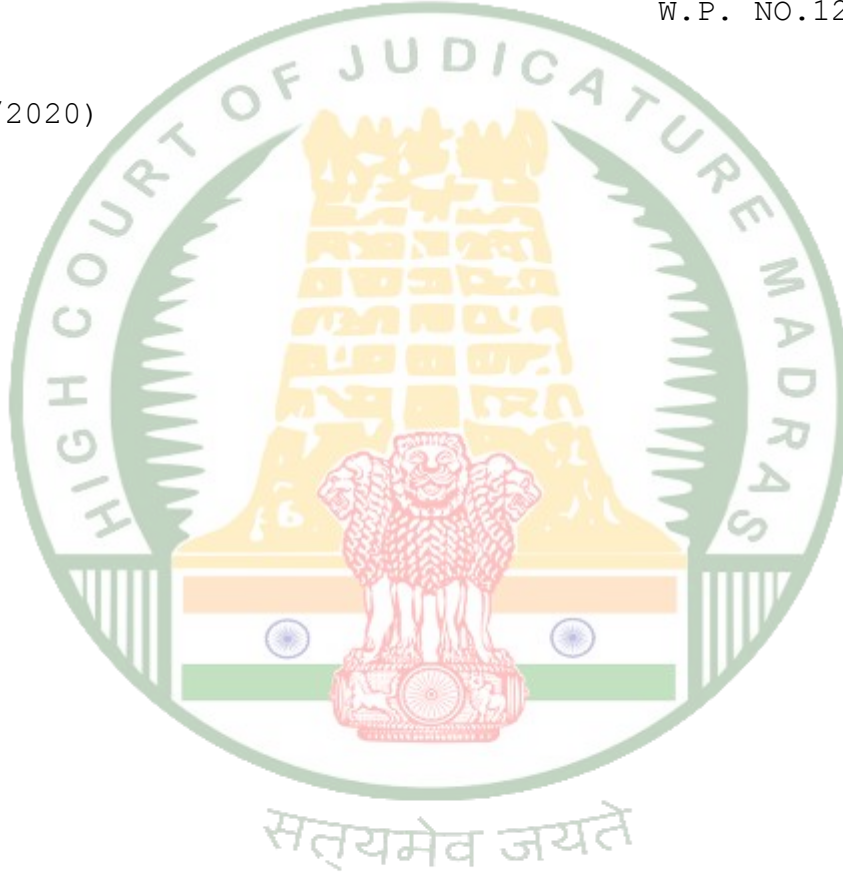
2. The District Elementary Educational Officer,
Villupuram,
Villupuram District.

+1cc to Mr.A.R.Nixon, Advocate, SR no.25916, dt:4.8.2020

+1cc The Government Pleader, High Court, Madras,
in SR.26112, dt:4.8.2020

W.P. NO.12093 OF 2013

MR (CO)
RV (08/09/2020)



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