

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.16848 of 2010
and M.P.No.1 of 2010

M.Natarajan

... Petitioner

-vs-

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

2. The Commissioner,
Office of Government Statistical Centre,
Guindy, Chennai-600 025.

3. Assistant Elementary Educational Officer,
Natham, Dindigul District.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the 2nd respondent in his order of rejection in Na.Ka.No.4326/u3/2008 dated 11.07.2008 and quash the same as null void and consequently, direct the 2nd respondent to count the past service rendered by the petitioner with effect from 01.03.1993 - 16.12.2006 for pensionable purpose and condone the delay of 16 days of actual interruption in service between Sarvaseva School and Government P.U.P.School, Pudupatty.

For Petitioner : Mr.Surya Prakasam
For Ms.R.K.Kalpana

For R1 & R3 : Mrs.P.Kavitha
Govt. Advocate

For R2 : Disd on 24.08.2016

O R D E R

The Writ Petition has been filed, challenging the order of the 2nd respondent made in Na.Ka.No.4326/u3/2008 dated 11.07.2008, whereby the request of the petitioner to count the past services rendered by the petitioner with effect from 01.03.1993 - 16.12.2006 for pensionable purpose, by condoning the delay of 16 days of actual interruption in service between Sarvaseva School and Government P.U.P.School, Pudupatty, has been rejected. The petitioner also sought for a suitable direction.

2. It is the case of the petitioner that he has been working in a Panchayat Union School, Natham Union, Dindigul District and he joined the service on 02.01.2007. Prior to joining the said school, he worked as a Secondary Grade Teacher in Sarvaseva School, an aided school at Valasai. The above post was a sanctioned secondary grade under regular appointment with effect from 01.03.1993 in the pay scale of Rs.1200-30-1560-40-2040 and he received all the benefits including GPF bearing No.SFA6/029792. It is the further case of the petitioner that on 16.12.2006, he resigned from the service of Secondary Grade Teacher at Sarvaseva School in proper manner and the Headmaster of the said school accepted his resignation. He got second appointment at Panchayat Union School, Pudupatty, Natham Taluk by proceedings in Na.Ka.No.2403/06/a4 dated 19.12.2006 of the District Educational Officer, Dindigul District on 02.01.2007 and the delay of 16 days of interruption between the services of two appointments had occurred on account of administrative process and not on the part of the petitioner. It is also the case of the petitioner that as per the prevalent rules in existence, the interruption of two services being eligible for pensionary benefits shall be covered by grant of leave and reiterating the same, though he made a representation to the 2nd respondent to condone the delay of 16 days so as to continue his old GPF and the 3rd respondent also recommended for merging his past services, the 2nd respondent rejected all his claim and refused to allot new GPF number. Aggrieved by the action of the 2nd respondent, the petitioner is before this Court, seeking to quash the order of the 2nd respondent.

3. The 3rd respondent has filed a counter affidavit dated 20.09.2010, inter alia stating that, the petitioner, while serving in the Sarvaseva School, an aided school, applied for appointment in Panchayat Union School and by virtue of his seniority in the Employment Exchange, he was selected and appointed as Secondary Grade Assistant in Panchayat Union Primary School and joined duty with effect from 02.01.2007. It was further stated in the counter that according to the Rules governing pension scheme, an employee joining a Government

Service either through TRB or Employment Exchange after 01.04.2003, is allowed to continue only under Contributory Pension Scheme, provided there is no break in service. The petitioner, after resigning the post from the previous school on 16.12.2006, joined the new school only on 02.01.2007 with a break of 16 days and there is no valid reason forthcoming from the petitioner for such delay and therefore, the petitioner is not entitled to any relief in this case.

4. Learned counsel for the petitioner submitted that when the petitioner resigned after obtaining prior permission and joined the new scheme, he is automatically entitled to be considered under the old GPF scheme and the refusal on the part of the 2nd respondent in allotting new GPF number is contrary to the settled proposition. In support of his submission, he relied upon a judgment of this Court in the case of Dr.M.Subramanian vs. State of Tamil Nadu and others [W.P.(MD) No.5620 of 2015] decided on 23.04.2015, and argued that the case of the petitioner therein was accepted by this Court and since the petitioner is also similarly placed as that of the petitioner therein, he is entitled to the relief sought for. For the sake of convenience, the relevant passage of the judgment is extracted below:

"5. It is seen that though the petitioner had applied to the post of Assistant Surgeon (Speciality) through proper channel and was selected on merits, he was not relieved from the position of Deputy Director of Preventive Medicine and pursuant to the intervention by this Court, he was subsequently relieved from the said post and that he resumed the new post, viz., Assistant Surgeon (Speciality) on 21.07.2014. However, to his utter shock, he was informed that he would be eligible only for Contributory Pension Scheme thereby discontinuing the old pension scheme.

6. Rules are very clear to the extent that the service rendered either in temporary or in permanent department shall have to be taken into consideration for the purpose of pension, even if any interruptions exist. Apart from the above, a perusal of the Clarification (supra) as to the pointed question reveals that in the event of a Government Servant resigning the post so as to take another post in the State Government with due approval / permission / through proper channel, the employee will be allowed in the old pension scheme, which means in other words that the period shall not be treated as break in service, which is also endorsed by the learned

Government Advocate appearing for R1 and R2 and learned counsel for R3. Though the petitioner has merely sought for disposal of his representation dated 29.01.2015 in this writ petition, this Court thinks it fit to mold the relief in exercise of its power under Article 226 of the Constitution of India.

7. Accordingly, this Writ Petition is allowed. The second respondent is directed to pass appropriate orders by treating the period as continuous one and not break in service on due extension of the petitioner's old pension scheme in MEDL/134299, within a period of one month from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed."

5. Per contra, learned Government Advocate appearing for R1 and R3 contended that the petitioner has chosen to join the new school on his own volition and he was completely aware of the fact that his service in the new school would be a non pensionable job. She further contended that when there was not much distance between two schools, the delay in joining the new school cannot be condoned in the absence of any eventuality put forth by the petitioner. Therefore, she prayed for dismissal of the Writ Petition.

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

7. It is seen that the petitioner previously served in one Sarvaseva School and resigned from there to join another school, namely, a Panchayat Union School, Natham Union, Dindigul District. The petitioner's request for including him under the old pension scheme and allotment of new GPF number, by counting his past services, was negatived by the 2nd respondent. The petitioner, in support of his submission, referred to Rule 23 of Tamil Pension Rules to state 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. For the sake of brevity, Rule 23 is extracted hereunder:

"23. Forfeiture of service on resignation - (1)
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.

(2) Interruption in service in a case falling under the proviso to sub- rule (1), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to the Government servant."

8. A careful reading of Rule 23 of Tamil Pension Rules makes it clear that resignation from a service or post entails forfeiture of past service. In Paragraph No.4 of the affidavit of the petitioner, it has been averred that he resigned from the service of Secondary Grade Teacher at Sarvaseva School on 16.12.2006 for the personal reasons and the Headmaster of that school accepted his resignation and granted approval. As per the proviso to Rule 23, the forfeiture clause will not be put into operation in case the resignation was submitted with a view to take up another appointment with due permission of the previous employer. In the present case on hand, the petitioner submitted his resignation for his personal reasons as per his own averments and it is not known as to whether the previous employer approved the resignation of the petitioner in order to permit him to take up the new assignment or it was a simple approval of his resignation. In such an event, the Rule referred to by the petitioner will not come in aid of the petitioner.

9. Secondly, the judgment of this Court (cited supra) quoted by the learned counsel for the petitioner is not applicable to the case of the petitioner, as the same is distinguishable, inasmuch as in the said case, the delay in joining the new post occurred on account of the fact that the petitioner therein was not relieved from the post by his erstwhile employer and pursuant to the intervention by this Court, he was subsequently relieved from the post and that he joined the new post and therefore, this Court held that the petitioner therein was entitled to be included under the Old Pension Scheme and the case of the petitioner herein does not fall within that ambit.

10. In addition to the above, it is seen that the petitioner sought for quashing of the order of the 2nd respondent dated 11.07.2019 and as per the docket sheet, the Writ Petition against R2 was ordered to be dismissed as early as on 24.08.2016 on account of non compliance of the requirements of the Registry / non payment of batta. Since then, four years have gone by and there is no proof adduced to show that the petitioner has taken

any steps to revive the Writ Petition against R2 and hence, the Writ Petition fails on technical ground also.

11. In view of what is stated hereinabove, finding no substance in the arguments put forth by the petitioner, the Writ Petition is dismissed, as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CJ Conf.)

//True Copy//

Sub Assistant Registrar

To:

1. The Secretary to Government,
Education Department,
Fort St.George,
Chennai-600 009.
2. The Commissioner,
Office of Government Statistical Centre,
Guindy, Chennai-600 025.
3. The Assistant Elementary Educational Officer,
Natham, Dindigul District.

+lcc to the Government Pleader, Sr.No.26113

W.P.No.16848 of 2010

sv(co)
rr ii (20/11/2020)