

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.19725 of 2010

R.Subramaniam

...Petitioner

vs.

1. The Secretary to Government,
Highways and Minor Ports Department,
Fort St. George, Chennai 600 009.
2. The Chief Engineer,
National Highways (NH),
Chepauk, Chennai 600 005.
3. The Superintending Engineer,
National Highways (NH),
Salem - 4.
4. The Divisional Engineer,
National Highways (NH),
Coimbatore - 18.
5. The Accountant General (A & E)
of Tamil Nadu,
Chennai 600 018.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus calling for the records pertaining to the orders passed by the 4th Respondent in Ka.No.2424/2009/A2/dated 24.09.2009 and quash the same and direct the 1st Respondent to consider the grant of relaxation to Tamilnadu Pension Rules, 1978, so as to enable the Petitioner to get the pensionary benefits.

For Petitioner : Mr.S.Kamadevan

For Respondents 1 to 4 : Mr.A.Zakir Hussain,
Government Advocate

For 5th Respondent : Mrs.Hema Muralikrishna

O R D E R

Petitioner has come up with the present Writ Petition challenging the order dated 24.09.2009 passed by the 4th Respondent vide proceedings in Ka.No.2424/2009/A2 and for a consequential direction to the 1st Respondent to consider the grant of relaxation to Tamilnadu Pension Rules, 1978, so as to enable him to get the pensionary benefits.

2. According to the Petitioner, he was appointed as Road Inspector in the National Highways Department in the year 1973 and served till 1989, after putting continuous service of 16 years. Due to his family circumstances, he was forced to resign the job without knowing the consequences and his resignation was duly accepted by the Department and he was relieved from duty on 09.11.1989.

3. It is the case of the Petitioner that, he is entitled to get pension and other benefits in accordance with the Tamil Nadu Pension Rules, 1978 and hence, he made a representation to the 1st Respondent on 04.09.2009 to sanction pension. His request was forwarded to the 2nd Respondent and in turn, to the 4th Respondent. The 4th Respondent, in the impugned proceedings stated that, after serving the Respondent Department for 16 years, the Petitioner resigned his job with the permission of the Department and that, Government servants who resigned the job are not entitled to get pensionary benefits. Challenging the said order, the Petitioner is before this Court.

4. In the counter filed by the 4th Respondent, it is stated that, the Petitioner had resigned the job from the Respondent Department on his own accord and without anyone's compulsion and that, he is not at all entitled to claim pension, as the Government has decided not to sanction pension to those who resigned voluntarily.

5. Heard the learned counsel for the parties.

6. Learned counsel appearing for the 5th Respondent has relied on a decision rendered by this Court in W.P.(MD) No.9688 of 2015, dated 22.06.2015 in the case of A.I.Agnel Ilangoan vs. Government of Tamil Nadu, wherein, it has been categorically held that, an employee who has resigned from service, is not entitled to any terminal benefits or pension. Relevant portion of the said order reads thus:

"3. The Hon'ble Supreme Court in the case of Union of India and others vs. Braj Nandan Singh, reported in (2005) 8 SCC 325, has held as follows:

5. In order to appreciate rival submissions Rule 26 which is the pivotal provision needs to be quoted. The same reads as under:

"26. Forfeiture of service on resignation (1) Resignation from a service or post, unless it is allowed to be withdrawn in the public interest by the Appointing Authority, entails forfeiture of past service.

(2) 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."

Rule 26 as the heading itself shows relates to forfeiture of service on resignation. In clear terms it provides that resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the Appointing Authority, entails forfeiture of past service. The language is couched in mandatory terms. However, sub-rule (2) is in the nature of an exception. It provides that 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. Admittedly this is not the case in the present appeal. Rule 5 on which great emphasis was laid down by the learned counsel for the respondent deals with regulation of claims to pension or family pension. Qualifying service is dealt with in Chapter III. The conditions subject to which service qualifies are provided in Rule 14. Chapter V deals with classes of pensions and conditions governing their grant. The effect of Rule 26 sub-rules (1) and

(2) cannot be lost sight of while deciding the question of entitlement of pension. The High Court was not justified in its conclusion that the rule was being torn out of context. After the past service is forfeited the same has to be excluded from the period of qualifying service. The language of Rule 26 sub-rules (1) and (2) is very clear and unambiguous. It is trite law that all the provisions of a statute have to be read together and no particular provision should be treated as superfluous. That being the position after the acceptance of resignation, in terms of Rule 26 sub-rule (1) the past service stands forfeited. That being so, it has to be held that for the purpose of deciding question of entitlement to pension the respondent did not have the qualifying period of service. There is no substance in the plea of the learned counsel for the respondent that Rule 26 sub-rules (1) and (2) has limited operation and does not wipe out entitlement to pension as quantified in Rule 49. Said Rule deals with amount of pension and not with entitlement.

4. This Court, in the case of D.R.Premkumari vs. The Director, The Directorate of Forensic Science, Chennai and another (W.P.(MD) No.618 of 2012) decided on 03.10.2012 and also in the case of K.Ramasamy vs. The Principal Secretary to Government, Chennai and others (W.P.(MD) No.15959 of 2012) decided on 23.12.2014, has categorically held that an employee, who has resigned from service, is not entitled to any terminal benefits or pension.

5. In view of catena of judgments, referred to above, this Court is not inclined to grant the relief sought by the petitioner. Hence, the writ petition is dismissed. No costs."

7. Aggrieved by the order passed in the said Writ Petition, the Petitioner therein viz. A.I.Agnel Ilangovan, went on appeal before a Division Bench of this Court in Writ Appeal (MD) No.454 of 2016 and by a judgment dated 24.03.2016, this Court, dismissed the said Appeal. Relevant portion of the said judgment reads thus:

"4. Placing reliance on paragraph 7 of the order made in D.Vijayarangan vs. Secretary, Sales Tax Appellate Tribunal, reported in 2009 Writ L.R 12, Mr.N.Dilip Kumar, learned counsel for the appellant/petitioner, assailed the correctness of the order impugned in the instant appeal. Paragraph 7 of the order made in D.Vijayarangan's case is reproduced hereunder:-

"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 resigns 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.

7. Proviso to rule 23, makes it abundantly clear that there shall not be any forfeiture of past services, if the resignation is submitted to take up, with proper permission, another appointment whether temporary or permanent under the Government, where service qualifies. Exclusion is only to the specific instance of taking up another employment, whether temporary or permanent, with the permission of the competent authority.

8. As rightly observed by the Writ Court, when the provision is plain and unambiguous, there cannot be any addition or substitution of words. Resignation could be due to misconduct or adverse record or ill-health or family problems or for any other justifiable cause. When the statute has excluded all the above, with the only specific inclusion, for consideration of the past services, for pension, in the event of taking up another appointment, whether temporary or permanent, under the Government, with proper permission, benefit of the said proviso, cannot be extended to a case of resignation due to ill-health. The Writ Court has adverted to the abovesaid aspect, placing reliance on the decisions of the Hon'ble Apex Court.

13. In the light of the guiding principles of the Hon'ble Supreme Court, as to how statutes and sections have to be interpreted, we are not inclined to accept the contentions of the appellant, both on law and on facts. Having regard to the above principles of law, we are also constrained to observe that the decision in D.Vijayarangan's

case, cannot be taken as a precedent, to be applied in similar circumstances. In view of the above discussion and decisions, the writ appeal is dismissed. No costs. "

8. As it has been categorically held by this Court in Agnel Ilangoan's case that, an employee, who has resigned from service, is not entitled to any terminal benefits or pension and that, when the said decision has been upheld by a Division Bench of this Court, this Court is not inclined to grant the relief sought by the Petitioner herein. Hence, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

(aeb)

To:

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Highways and Minor Ports Department,
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2.The Chief Engineer,
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5.The Accountant General (A & E) of Tamil Nadu,
Chennai 600 018.

Order in
W.P.No.19725 of 2010

SKS (CO)
KKV/21/08/2020