



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.07.2020

DELIVERED ON : 01.09.2020

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

WP(MD).No.13950 of 2011

T.S. Lakshmanan : Petitioner

Vs.

1.The Secretary to Government,  
Rural Development and  
Panchayat Raj Department,  
Fort St. George,  
Chennai -9.

2.The District Collector,  
P.D. Section,  
Tirunelveli.

: Respondents

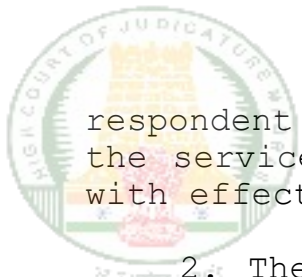
Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the 1<sup>st</sup> respondent in his proceedings G.O.(IT). No.435 Rural Development and Panchayat Raj (P.A4) Department dated 08.09.2011 confirming the order passed by the 2<sup>nd</sup> respondent in his proceedings N6/46481/2009, dated 29.07.2009 and quash the same and further direct the 2<sup>nd</sup> respondent to pass order sanctioning pension to the petitioner for the service rendered by him in the office of the second respondent with effect from 04.07.1977 with all arrears.

For petitioner : P.T.S.Narendravasan

For Respondents : Mr. D.Muruganandham  
Additional Government Pleader

### ORDER

This Writ Petition has been filed to quash the impugned order passed by the 1<sup>st</sup> respondent, dated 08.09.2011 in G.O.(IT).No.435 Rural Development and Panchayat Raj (P.A4) Department, confirming the order passed by the 2<sup>nd</sup> respondent in his proceeding No. N6/46481/2009, dated 29.07.2009 and further direct the 2<sup>nd</sup>



respondent to pass order sanctioning pension to the petitioner for the service rendered by him in the office of the second respondent with effect from 04.07.1977 with all arrears.

2. The service matrix of the petitioner that are required for this writ petition are as follows:

The petitioner was appointed as a Lower Division Clerk by order dated 13.03.1959. He worked as a Lower Division Clerk from 23.03.1959 to 30.09.1965 and thereafter, promoted as Upper Division Clerk with effect from 01.10.1965. The petitioner's service was regularized in the cadre of Assistant by the second respondent herein on 03.06.1968 with effect from 01.10.1965 and accordingly, he served as Assistant from 01.10.1965 to 03.07.1977. Thus, the petitioner put in a total continuous and uninterrupted service of 18 years 3 months and 10 days as on 03.07.1977. He submitted his resignation on 03.07.1977 and the same was accepted by the second respondent and subsequently, he was relieved on 04.07.1977 by the second respondent vide order dated 04.07.1977.

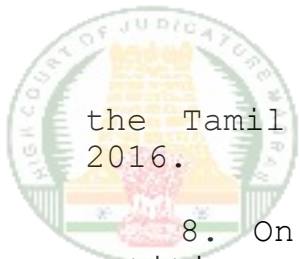
3. The learned counsel appearing for the petitioner submitted that the petitioner was served as a Lower Division Clerk in the second respondent office and resigned the post after completing 18 years 3 months and 10 days. Subsequently, he has joined in the Pandian Grama Bank as Manager and after putting in service, he retired from the said Bank. With respect to the service rendered in the second respondent office having putting service of 18 years is entitled to pension and hence, he made a representation to the respondents and the same was rejected. Challenging the same the petitioner has filed this Writ Petition.

4. In support of his contention, the learned counsel appearing for the petitioner relied on the order of this Court, dated 18.12.2015 made in W.P(MD).No. 21959 of 2015 (***Durai raj Vs. The Secretary to Government, Education Department and others***).

5. Mr. D. Muruganandham, learned Additional Government Pleader appearing for the respondents would contend that the petitioner resigned the job on 04.07.1977 and as such, he is not eligible for pensionary benefits as per Rule 41 of the Tamil Nadu State and Subordinate Service Rules and Rule 23 of the Tamil Nadu Pension Rules.

6. I have heard the learned counsel appearing on either side and perused the materials available on record.

7. It is the case of official respondents that once the petitioner resigned the post, his service rendered in the previous post cannot be counted for pension in the new post and also draw the attention of this Court by citing the proviso under Section 49 of



the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

8. On perusal of the connected matters it is seen that the petitioner herein was appointed as Lower Division Clerk (Junior Assistant) in Rural Development and Local Administration Department on 23.03.1959 and then, promoted as Assistant by the proceeding of the second respondent, dated 07.09.1965 and joined duty on 01.10.1965 and worked upto 03.07.1977. While he was working as Assistant in the Collectorate, Panchayat Development Section, Tirunelveli, he had resigned his job on 04.07.1977 and his resignation was accepted by the second respondent vide order, dated 04.07.1977. Subsequently, the petitioner got appointment in Pandian Grama Bank, Sattur. He had submitted a petition on 10.07.2009 and on 20.07.2009 (pensioners grievance day petition) to the second respondent with a request to grant pension to him. As he is not eligible for pension as per the said rules, his request had been rejected. Once again he had submitted a petition on 04.11.2009 requesting to grant pension and the same has also been rejected by the second respondent for the same reason. In such circumstances, the petitioner had submitted a appeal petition to the first respondent herein on 27.01.2010, against the orders of the second respondent. Thereafter, he had filed a writ petition in W.P(MD). No. 4754 of 2011 before this Court with a prayer to dispose the said appeal petition within a time frame. This Court by order, dated 26.04.2011 dispose of the writ petition with a direction to the respondents therein to dispose of the appeal petition, dated 27.01.2010 within a period of eight weeks.

9. Let us consider the relevant rule, governing the grievance of the petitioner:

Rule 23 of the Tamil Nadu Pension Rules reads as follows:

*"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."*

10. On combined reading of the connected Rules it is seen that as per Rule 41 of the Tamil Nadu State and Subordinate Service Rules and Rule 23 of Tamil Nadu Pension Rules, the petitioner is not eligible to get pension since he had already resigned the job.

11. In the decision relied on by the petitioner, cited supra, it is held that Rule 25 of said Rules since being beneficial piece of legislation, same should be liberally interrupted so as not to



defeat very purpose of Rules and prayed that the petitioner was eligible for benefit of Rule 23 of the Tamil Nadu Pension Rules.

12. In the Division Bench Judgment of this Court reported in **2016(3) MLJ 839 (A.L. Agnel Ilangovan Vs. Government of Tamil Nadu and others)** it is held that an employee who has resigned from service is not entitled to any terminal benefits or pension. The said Division Bench Judgment of this Court is also taken note of the case of D.R. Premkumari V. 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 V. Principapl 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".

13. The Hon'ble Supreme Court in the case of **State of Punjab and others vs. Gurbaran Singh**, in Civil Appeal No.2411 of 2019, has held that :

(a) Rule 26 as the heading itself shows relates to forfeiture of service on resignation.

(b) 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.

(c) 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.

14. In the three Bench Judgment of the Hon'ble Supreme Court reported in **2019 (4) SCC 479 (Senior Divisional Manager, Life Insurance Corporation of India and others Vs. Shree Lal Meena)** it is held that:

"(a) The resignation entails forfeiture of service and in service jurisprudence, concepts of resignation and retirement have different connotations and hence, employee resigning cannot seek benefit of pension scheme especially when resignation is one of the disqualifications for seeking pensionary benefits under relevant regulations.

(b) As per Service law extension of benefit to employees otherwise not covered by the Regulations on



the ground that public sector companies are model employers and pension regulations are beneficial legislations and impropriety and it is held that this issue cannot be dealt with on charity principle.

(c) When legislature, in its wisdom brings forth certain beneficial provisions in form of Pension Regulations from particular date on particular terms and conditions, aspects, which are excluded cannot be included by implication. The provisions should be read as they are unless there is some confusion or they are capable of another interpretation.

(d) Besides, they involve financial implications and it would be inadvisable to expand them beyond their contours. In terms of the Pension Rules, 1995 resignation entails forfeiture of entire past service and consequently, does not pensionary benefits.

(e) When the Pension Rules are applicable, and an employee resigns, the consequences are forfeiture of service under Rule 23 of the Pension Rules. Thus, any attempt to apply the Pension Rules to the respondent would be a self-defeating argument. Further, judicial pronouncements in this behalf must be read for the law they lay down, by reference given to the factual matrix. Lines or sentences here and there and they lay down should not be read in absolute terms, dehors the factual matrix in the context of which those observations are made.

(f) The relevant legal principles enunciate that voluntary retirement is a concept read into condition of service, which has to be created by statutory provision, while resignation is the unilateral determination of an employer-employee relationship, whereby an employee cannot be a bonded labour.

(g) There are some observations on the principles of public companies being model employers and provisions of pension being beneficial legislations. However, the issue cannot be dealt on charity principle. When the legislature, in its wisdom, brings forth certain beneficial provisions in the form of Pension Regulations from a particular date and on particular terms and conditions, aspects which are excluded cannot be included in it by implication.

(h) The provision will have to be read as they read unless there is some confusion or they are capable of



another interpretation. Moreover, while framing such schemes, there is important aspect of them being of a contributory nature and their financial implications.

(i) Such financial implications are both, for the contributors and for the State. Thus, it would be inadvisable to expand such beneficial schemes beyond their contours to extend them to employees for whom they are not meant for by the legislature. The impugned orders are unsustainable and liable to be set aside.

(j) The state claims cannot be allowed."

15. In view of the law laid down by the Hon'ble Supreme Court and the Division Bench of this Court, I am of the considered view that the order dated 18.12.2015 made in W.P(MD).No. 21959 of 2015 (**R. Durairaj Vs. The Secretary to the Government, Education Department and others**) is no longer good law as the same stands overruled.

16. In view of the law laid down by the Hon'ble Supreme Court and the Division Bench Judgment of this Court as stated supra and on the factual consideration of the service matrix of the petitioner, this Court finds that the petitioner had resigned his job on 04.07.1977. As per Rule 41 of Tamil Nadu State and Subordinate Service Rules and Rule 23 of Tamil Nadu Pension Rules, the petitioner is not eligible for pension. Based on the said rules, the Government had passed such order and hence, as per the statutory rules as interpreted by the Hon'ble Supreme Court and followed by this Court, there is no provision to grant pension to the person who resigned the job. Hence, this Court is of the considered view that this Court has left with no other option but to reject this petition.

17. Accordingly, this Writ Petition is dismissed. No costs.

Sd/-

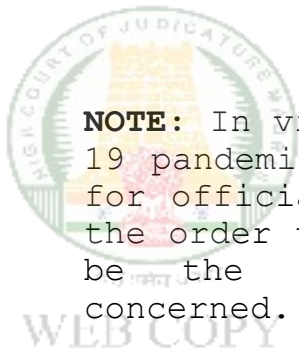
Assistant Registrar (Cr1.Side)

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Sub Assistant Registrar(CS)

trp



**NOTE:** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Secretary to Government,  
Rural Development and  
Panchayat Raj Department,  
Fort St. George,  
Chennai -9.

2.The District Collector,  
P.D. Section,  
Tirunelveli.

+1 CC to Mr.PT.S.NARENDRAVASAN, Advocate SR-15608.

ORDER MADE IN  
WP(MD).No.13950 of 2011  
01.09.2020

CS(07.09.2020) 7P 4C