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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2021

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.22305 OF 2009

R.Govindarajulu,

...Petitioner

-Vs-

1.The Director of Local Fund Audit,
Kuralagam,
IV Floor,
Chennai - 600 108.

2.The Commissioner,
Dindugal Municipality,
Dindugal,
Dindugal District.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the first respondent in Mu.Mu.No.15966/09/Na.O.Sa (1) dt.02.07.2009 and quash the same and direct the first respondent to count the panchayat union service rendered by the petitioner from 15.12.1975 to 18.01.1983 along with the Municipal service rendered by him from 19.01.1983 to 31.3.2008 as qualifying service for the purpose of pension and grant him all consequential benefits.

For Petitioner : Mr.P.Mohanraj

For R1 & R2 : Mr.T.Sampath Kumar
Government Advocate

ORDER

This Writ Petition has been filed to call for the records relating to the impugned order of the 1st respondent in Mu.Mu.No.15966/09/Na.O.Sa (1) dt.02.07.2009 and quash the same and direct the 1st respondent to count the Panchayat Union Service rendered by the petitioner from 15.12.1975 to 18.01.1983 along with the Municipal Service rendered by him from 19.01.1983



to 31.3.2008 as qualifying service for the purpose of pension and grant him all consequential benefits.

2. Learned counsel for the petitioner would submit that the petitioner has joined the service as a Siddha Medical Officer (Special Grade), in Thiruppathur Panchayat Union (Sivgangai District). Thereafter he was selected for appointment in Pollachi Municipality on 19.01.1983. Hence he submitted an application to resign from the post of Siddha Medical Officer at Thiruppathur Panchayat Union (Sivgangai District) on 18-01-1983. Even though the petitioner had stated in the letter of resignation that he was resigning on account of family circumstances it was only with a view to take up appointment in Municipal Service on the next day and the said resignation letter was accepted by the Panchayat Union on the next date of joining the Pollachi Municipality viz. on 19.01.1983.

3. He would further submit that the petitioner after rendering his service in the second respondent Municipality, attained the age of Superannuation and he retired from the service on 31.03.2008. The petitioner has rendered his service in the Panchayat Union from 15.12.1975 to 18.01.1983 (7 years and 1 month) and Municipal Service from 19.01.1983 to 31.03.2008 (25 years 1 month and 13 days). While counting the qualified service for pension the service rendered by the petitioner in Panchayat Union service was left out and only the service rendered in the Municipal service was counted. As a result the petitioner has not been allowed for full Pension since the said qualifying service is less than 30 years. If the service rendered by the petitioner in the Panchayat Union service from 15.12.1975 to 18.01.1983 along with the Municipal Service from 19.01.1983 to 31.03.2008 as qualifying service for the purpose of pension, the petitioner will get full pension. The petitioner would submit that he took up appointment in municipal service with proper permission as required under Rule 23 (1) of the Tamil Nadu Pension Rules, 1978 and hence the petitioner is entitled for a full pension period if the petitioner's service in Panchayat Union is also taken into account.

4. Learned counsel would further contend that the petitioner had made a representation to count his service period rendered in the Panchayat Union Service as qualifying service, the 2nd respondent / the Commissioner, Dindigul Municipality had sent that proposal to the 1st respondent / the Director of Local Fund Audit vide its proposal in Na.Ka.7525/2008/B2 dated 30.06.2008. However, the 1st respondent issued an impugned order in Mu.Mu.No.15966/2009/Na.O.Sa (1) dated 02.07.2009, stating that the said service cannot be counted since the petitioner has resigned from the service on account of his family circumstances. The said request made by the petitioner was



rejected by the 1st respondent vide the impugned order. Therefore the petitioner has preferred the present writ petition seeking for quashing of the same.

5. Counter has been filed by the 1st respondent. In the counter the averments made in the affidavit were denied. According to the 1st respondent, Tamil Nadu Pension Rules 1978 Rule 23, " (1) Resignation from a service or post entails forfeiture of past service, provided that the 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."

6. In the view of the above said Rule, the Director of Local Fund Audit Department, the 1st respondent herein had rejected the proposal vide its Letter No. Mu. Mu. No. 15699/MPV(1)/2009, dated 02.07.2009 stating that the service could not be counted for calculation of pension as per Rule 12 of Tamil Nadu Pension Rules 1978, since petitioner did not get any proper permission from his previous service. Thus he is not entitled for the period of service rendered in Panchayat Union for calculation of pension.

7. On reading of the aforesaid Rule of Tamil Nadu Pension Rules 1978 Rule 23, it clearly states that the petitioner has to obtain permission from the authority for taking another appointment whether it is temporary or permanent, but on considering the facts and circumstances of this case the petitioner has stated in the affidavit that the petitioner has resigned from the services only on account of the family circumstances. According to the petitioner even though the reasons stated in the resignation letter that the petitioner is resigning only due to the family circumstances, the real intention is take up appointment in the Municipal services. However, as per the petitioner, the petitioner has satisfied the condition of submitting his resignation only for the purpose of taking appointment in another better institution but such reasons has not been stated in the application submitted by the petitioner, accordingly, the 1st respondent has rightly rejected the said request of the petitioner. Therefore, there is no merit in the submission made by the petitioner. It is further seen from the records that the petitioner had made a representation only in the year of 2008 to the authorities that is after his retirement. Therefore, the said Tamil Nadu Pension Rules 1978 Rule 23, is not applicable to the petitioner and hence this Court does not find any infirmity or illegality in the impugned order passed by the 1st respondent.



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8. In the result, this writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar (CS-VI)

// True Copy //

Sub Assistant Registrar

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To

1. The Director of Local Fund Audit,
Kuralagam, IV Floor,
Chennai - 600 108.

2. The Commissioner,
Dindugal Municipality,
Dindugal,
Dindugal District.

+1cc to Mr. P. Rajendran, Advocate SR.No.66424

+1cc to the Government Pleader SR.No.67904

W.P.No.22305 of 2009

GSM(CO)
RVM(12/01/2022)