



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2021

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

WEB COPY

W.A. (MD)No.532 of 2021
and C.M.P. (MD) No.2336 of 2021

S.Vijayalakshmi

... Appellant/Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Rep. by the Secretary to Finance Department,
Fort St. George,
Chennai.
- 2.The Director of Pension Department,
No.254, Annasalai,
2nd Floor, DMS Compound,
Teynampet,
Chennai.
- 3.The Additional Director General of Prison,
Prisionary Department,
No.1, Gandhi Irvin Road,
Egmore,
Chennai - 8.
- 4.The Deputy Inspector General of Prison,
Trichy Range,
Trichy District.
- 5.The Superintendent of Prison,
Trichy,
Trichy District.

... Respondents/Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent against the order passed by this Court in W.P.(MD)No.15830 of 2015, dated 15.12.2020.

Prayer in WP(MD). 15830/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus or any other appropriate writ, or order, or direction, in the nature of a Writ, to call for the records pertaining to the order made in No. 18/R.T.I/2014 dated 10.09.2014 passed by the 4th respondent and quash the same and consequently direct the 4th respondent to forward the service register and propels of the service rendered by the petitioners husband namely Sangapillai from 13.01.1979 to 26.12.1988 and further direct the respondents No. 1 to 3 to revise the pensionary benefits by



reckoning the service rendered by the P.Sangapillai in the prison department, from 13.01.1979 to 26.12.1988 as qualifying service and pay the arrears of the amount as well as consequent monthly pension to the petitioner.

For Appellant : Mr.Mohammed Imran
for M/s.Ajmal Associates

For Respondents : Mr.K.P.Krishnadoss
Special Government Pleader

J U D G M E N T

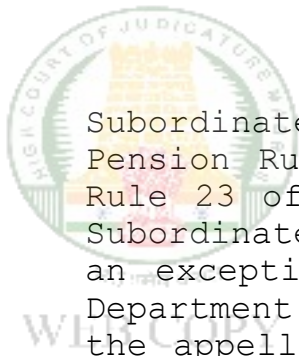
(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The appellant's husband was working as Grade-II Warder in Prison Department from 13.01.1979 to 26.12.1988. On the request made by him, on 26.12.1988, an order was passed accepting his resignation. The order says that he will not claim anything based upon the post, which he resigned, though it indicates that it took note of the reasons for the resignation. He died on 13.09.2004. After his death, the appellant made a request for reckoning the service rendered in the Prison Department along with the services rendered as a teacher. First of the representation was made in 2010, followed by number of others, leading to correspondence between the appellant and the respondents. Thereafter, the impugned order was passed on 10.09.2014. After making an appeal, followed by another set of representations, the appellant filed the Writ Petition. Learned Single Judge dismissed the Writ Petition on two grounds viz., delay and laches and on the application of Rule 23 of the Tamil Nadu Pension Rules, 1978.

2.Learned counsel for the appellant submitted that Rule 41 of the Tamil Nadu Subordinate Service Rules, 1955, is subject to Rule 23 of the Pension Rules, 1978. The aforesaid provision makes it very clear that forfeiture of service on resignation will not apply when a person resigns from the Government job and takes another one under the same Government. For better appreciation, he placed reliance on both Rule 41 of Tamil Nadu Subordinate Service Rules, 1955 and Rule 23 of the Tamil Nadu Pension Rules, 1978.

3.Learned Special Government Pleader appearing for the respondents submitted that there is no interference is required, since his resignation was accepted subject to the condition that he would forego all his rights in the erstwhile employment.

4.Coming to the first issue, pension is a matter of right. It is also a fundamental right. Therefore, delay and laches and acquiescence being one of practical objection and not on law, will not take away the right of the party in approaching this Court. On the second issue, we are in agreement that Rule 41 of the Tamil Nadu



Subordinate Service Rules, 1955, is subject to Rule 23 of Tamil Nadu Pension Rules, 1978. In fact, there is no much difference between Rule 23 of Tamil Nadu Pension Rules and Rule 41 of the Tamil Nadu Subordinate Service Rules except the proviso. The proviso carved out an exception that only when resigns from the erstwhile Government Department and thereafter join the Government service. This is what the appellant's husband did. Even in the application, he wanted to go to School Education Department. The reference made in the order permitting him to resign to the effect that he will not claim anything in the erstwhile department has to be construed in the light of the Rules governing. There cannot be any direction contrary to the Rules. Even the said sentence has to be seen in the contextual that he cannot claim any other relief, which is law does not permit. Therefore, we are not inclined to accept the reasons given by the learned Single Judge.

5. In such view of the matter, this Writ Appeal is allowed and the order passed by the learned Single Judge in W.P.(MD)No.15830 of 2015, dated 15.12.2020, is set aside. Consequently, the respondents are directed to take into consideration the service rendered by the appellant's husband in the Prison Department and thereafter, compute the pension. The said endeavour shall be made within eight weeks from the date of receipt of a copy of this judgment. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

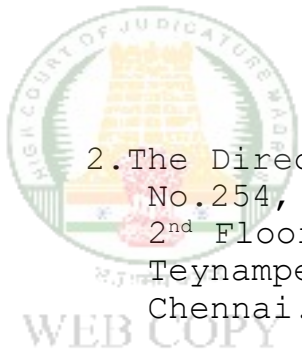
Sub Assistant Registrar(CS)

sj

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 Finance Department,
Government of Tamil Nadu,
Fort St. George, Chennai.



2.The Director of Pension Department,
No.254, Annasalai,
2nd Floor, DMS Compound,
Teynampet,
Chennai.

3.The Additional Director General of Prison,
Prisionary Department,
No.1, Gandhi Irvin Road,
Egmore,
Chennai - 8.

4.The Deputy Inspector General of Prison,
Trichy Range,
Trichy District.

5.The Superintendent of Prison,
Trichy,
Trichy District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-11810[F] dated
17/03/2021)

+1 CC to M/s.SPL GP (SR-11999[F] dated 17/03/2021)

W.A. (MD) No. 532 of 2021
16.03.2021

MJ(CO)
TR(28.04.2021) 4P 8C