



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
08.04.2021	20.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. (MD) No.63 of 2019

and

C.M.P. (MD) Nos.362 & 2685 of 2019

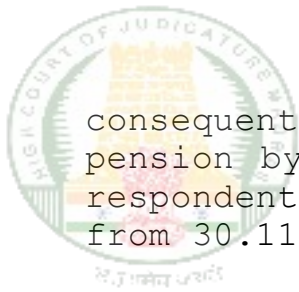
Against WP(MD)No.369 of 2018

- 1.The Secretary to Government
School Education Department
St.George Fort, Chennai-600 009
 - 2.The Director of Elementary Education
College Road, Chennai-600 006
 - 3.The District Elementary Educational Officer
Trichirappalli Division
Mannarpuram, Trichy-621 020
 - 4.The Assistant Elementary Educational Officer
Musiri Elementary Educational Division
Musiri, Trichy District-621 211 ... Appellants 1 to 4/
Respondents 1 to 4
- vs-
- 1.V.Thangaraj ... 1st Respondent/Writ Petitioner
 - 2.The Superintendent of Post Offices
Karur Division, Karur-639 001... 2nd Respondent/5th Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 12.02.2018, passed in W.P.(MD) No.369 of 2018, on the file of this Court.

Prayer in WP(MD). 369 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, call for the records in pertaining to the impugned order of the 1st Respondent vide his proceedings in Government Letter (1D) No. 381/Thoka 3(2)/2017 dated 28.06.2017 and set aside the same as arbitrary, illegal and without Jurisdiction and



consequently directing the Respondent to revise the Petitioners pension by including the past service rendered by him in the 5th respondents Postal Department for 13 years, 7 months and 1 day from 30.11.1983 to 30.06.1997.

For Appellants : Ms.S.Srimathy
Special Government Pleader

For Respondents : Mr.T.Vadivelan for R1
No appearance for R2

J U D G M E N T

T.S.SIVAGNANAM, J.

This writ appeal by the Education Department is directed against the order dated 12.02.2018 passed in W.P.(MD) No.369 of 2018.

2. The said writ petition was filed by the first respondent herein praying for is suance of a writ of certiorarified mandamus to quash the Government Letter, dated 28.06.2017 and consequently, revise his pension by including the past service rendered by him in the Postal Department for 13 years 07 months and 01 day from 30.11.1983 to 30.06.1997.

3. The first respondent / writ petitioner contended that he was appointed as a Postal Assistant on 30.11.1983 and promoted as Sub-Post Master. His name was sponsored by the District Employment Exchange for being considered for selection to the post of Secondary Grade Teacher and he was selected and appointed as Secondary Grade Teacher in the Tamil Nadu Education Department. He resigned from the Postal Department with effect from 30.06.1997 and joined as Secondary Grade Teacher on 01.07.1997. He retired from service on superannuation on 31.05.2014.

4. The first respondent / writ petitioner, after his retirement, submitted representations to the appellant - Department to consider his past service in the Postal Department along with the service rendered by him as Secondary Grade Teacher / BT Assistant and consequently, compute the pensionary benefits. The request made by the first respondent / writ petitioner was rejected by the first appellant vide order dated 28.06.2017, which is impugned in the writ petition stating that the the first respondent / writ petitioner having resigned from the Postal Department is not entitled to count the services rendered by him for the purpose of calculating the total length of service, after his retirement as a Secondary Grade Teacher / BT Assistant. The appellant - Department referred to Rule 12(4)(a) of the Tamil Nadu Pension Rules, 1978 to negative the claim of



the first respondent / writ petitioner. The said order dated 28.06.2017 was challenged by filing the writ petition, which has been allowed with certain directions.

5. The learned Writ Court was of the view that the first respondent / writ petitioner having resigned from the Central Government post only because he was selected as a Secondary Grade Teacher in the appellant - Department, his resignation is simpliciter and therefore, will not entail forfeiture of past service and only when a person submits resignation because of any allegation or proceedings which otherwise would have attracted punishment like dismissal or removal from service, the provisions of Rule 23 will be attracted forfeiting the past service. With this reasoning, the learned Writ Court quashed the proceedings, which was impugned before it and directed the first respondent / writ petitioner's case to be re-examined. Challenging the same, the appellant - Department is before us.

6. We have elaborately heard Ms.S.Srimathy, learned Special Government Pleader appearing for the appellant - Department and Mr.T.Vadivelan, learned counsel appearing for the first respondent / writ petitioner.

7. The short question, which falls for consideration in this appeal is whether the first respondent / writ petitioner is entitled to claim that the services rendered by him in the Postal Department from 30.11.1983 to 30.06.1997 should be included for calculating his total length of service, after he retired from service on superannuation as a Secondary Grade Teacher / BT Assistant on 31.05.2014.

8. Before we examine this question, we are of the view that the writ petition itself could not have been entertained as it is barred by inordinate delay and laches. The first respondent / writ petitioner being fully conscious of the consequences, resigned his service in the Postal Department and joined the appellant - Department as a Secondary Grade Teacher in the year 1997 precisely on 01.07.1997. The first respondent / writ petitioner did nothing thereafter nor prior to joining the appellant - Department as a Secondary Grade Teacher. The first respondent / writ petitioner did not raise any such claim while in service as a Secondary Grade Teacher and for the first time, he raised such a plea by a representation given during 2015 i.e. after he retired from service on superannuation on 31.05.2014. Therefore, on this ground alone, the writ petition was liable to be dismissed. However, the learned Single Bench having dealt with the case on merits, we are constrained to examine the correctness of the impugned order.



9. The undisputed fact is that the first respondent / writ petitioner had resigned from the Postal Department and his resignation was accepted with effect from 30.06.1997. The order accepting the resignation clearly indicates that the first respondent / writ petitioner is not entitled for any terminal benefits. Therefore, it is clear that all benefits, which will accrue to an employee on attaining the age of superannuation, will stand forfeited, if he / she resigns from the service. Therefore, the question of distinguishing the order of resignation as a resignation simpliciter or otherwise would not arise in the facts and circumstances of the present case.

10. The first respondent / writ petitioner cannot bring his case under Rule 26(9), which deals with what is commonly known in service jurisprudence as "technical resignation". This resignation is acceptable in cases where the Government servants apply for post in the same or other departments through proper channel and on selection, they are asked to resign the previous post for administrative reasons, the benefit of past service may, if otherwise admissible under rules, be given for purposes of fixation of pay in the new post treating the resignation as a "technical formality". Though the first respondent / writ petitioner would contend that he had obtained prior permission from the Postal Department for applying for being selected in the appellant - Department, the Postal Department has not treated the resignation as a "technical formality", but, treated it as a normal resignation making it clear that the first respondent / writ petitioner is not entitled for any benefits. Therefore, the premise under which the first respondent / writ petitioner proceeded was wholly unsustainable. The case of the first respondent / writ petitioner would clearly fall within the ambit of Rule 23(i) of Tamil Nadu Pension Rules, 1978 which states that resignation from a service or post entails forfeiture of past service. Therefore, the order and direction issued by the Writ Court, impugned before us, calls for interference.

11. In the result, the writ appeal is allowed and the order dated 12.02.2018 passed in W.P.(MD) No.369 of 2018, is set aside and consequently, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

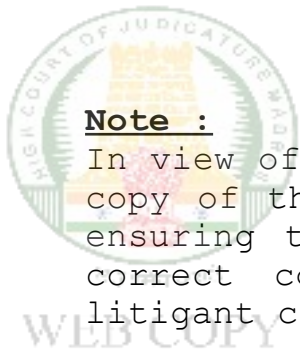
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Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)



Note :

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To

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JUDGMENT

IN

W.A. (MD) No.63 of 2019

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PK(CO)

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