



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 11.01.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No. 28736 of 2011

P.Thamilarasn

..Petitioner

vs.

1.The Principle Accountant General,
Office of the Principle Accountant General (A&E)
361, Anna Salai, Chennai-18.

2.The Branch Officer,
Office of the Principle Accountant General (A&E)
361, Anna Salai, Chennai-18.

3.The Director,
Directorate of School Education,
Chennai-600006.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings vide AG(A&E) PEN P11/1/11100050/RTD/2009-2010 dated 29.05.2009 office of the Principle Accountant General (A&E) Tamil Nadu and quash the same insofar refusing to consider the period of service rendered by the petitioner from 18.08.1982 to 06.10.1988 in the Chennai Metropolitan Water Supply and Sewerage Board Government of Tamil Nadu and direct the respondents 1 and 2 to pay the revised pension from the date of retirement and to continue to pay along with other gratuity and commuted value pension.

For Petitioner : Mr.U.Karunakaran

For Respondents : Mrs.T.S.Selvarani,
Standing Counsel - R1 &R2
Mr.V.Nanmaran, AGP- R3

O R D E R

This writ petition is filed challenging the impugned proceedings dated 29.05.2009 issued by the 1st respondent and quash the same insofar refusing to consider the period of service rendered by the petitioner from 18.08.1982 to



06.10.1988 in the Chennai Metropolitan Water Supply and Sewerage Board Government of Tamil Nadu and direct the respondents 1 and 2 to pay the revised pension from the date of retirement and to grant other benefits.

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2. The learned counsel for the petitioner has submitted that the writ petitioner appointed as Post Graduate Teacher in History in the Government Higher Secondary School in the year 1988 and retired from service on attaining the age of superannuation on 31.05.2009. After retirement, the petitioner's pension was fixed at Rs.5933/- without taking into account of his earlier service rendered as Junior Assistant in Chennai Metropolitan Water Supply and Sewerage Board, Madras from the year 1982 to 1988. The petitioner's application to calculate the pension by considering his earlier service was rejected considered by the respondent by stating reason that earlier the petitioner has not served in Government service and it is only quasi Government undertaking establishment. According to the petitioner, he is entitled to the pension for the service rendered in Chennai Metropolitan Water Supply and Sewerage Board, Madras from the year 1982 to 1988. The rejected order passed by the first respondent is illegal and the same is liable to be set aside on the ground that the petitioner has submitted his application s per Rule 23(1) of Tamil Nadu Pension Rules.

3. Per contra, the learned standing counsel appearing for the 1st & 2nd respondent submitted that CMWSSB is only a Tamil Nadu Government undertaking which is not a Government Department. As per Rule 2 of the Tamil Nadu Pension Rules, the pension is applicable only to the Government servants appointed to services and posts in connection with the affairs of the state which are borne on pensionable establishment whether temporary or permanent. As per Rule 12(1) of Tamil Nadu Pension Rules, the service of the Government servant shall not qualify for pension unless his duties and pay are regulated by the government or under conditions determined by the Government and Rule 12(2) states that for the purpose of Sub-rule (1) the expression 'service' means service under the Government and paid by Government from the consolidated fund of the state or a local fund administered by that Government but does not include service in a non-pensionable establishment unless such service is treated a qualifying service by the Government.

4. The learned standing counsel has further submitted that as per G.O.Ms.No.404 Finance (BPE) Department dated 06.06.1991 when an employee of Central Government/Central Autonomous Body is absorbed in State Government/State Autonomous Body or vice versa, by accepting pro-rata pension liability, the service can be counted. The above benefits are extend to those who secure employment on his volition provided such applications are forwarded by the previous



department/autonomous body concerned. In respect of past cases of directly recruited employees on extension of the above benefits each individual case shall be examined as per Rules. Therefore, according to the learned counsel for the respondents, the State Government has to decide the case whether to include the previous service rendered by the petitioner in CMWSSB along with his service as teacher in Government Schools. In the instant case on hand, no order has been passed by the Government, therefore the impugned order passed by the 1st respondent is perfectly valid and the writ petition is liable to be dismissed.

5. Heard both sides and perused the documents available on record.

6. The preliminary ground raised by the learned counsel for the petitioner is that the petitioner had rendered service as Junior Assistant in Chennai Metropolitan Water Supply and Sewerage Board, Madras from the year 1982 to 1988 and thereafter he joined as PG Assistant in Government Higher Secondary School in the year 1988 and retired from service. He was granted pension without taking into account the service rendered by him as Junior Assistant in Chennai Metropolitan Water Supply and Sewerage Board, Madras. According to the learned counsel for the petitioner as per 23(1) of Tamil Nadu Pension Service Rules, the petitioner is eligible for pension for the earlier service rendered by him. Therefore, it is for the Government to include his earlier service along with the present service and grant pensionary benefits.

7. On perusal of the counter affidavit filed by the 1st & 2nd respondents, it is clearly stated that the petitioner has resigned his earlier job in CMWSSB and joined as PG Assistant in Government Higher Secondary School. The petitioner has relied upon Rule 23(1) of Tamil Nadu Pension Rules. As per the said Rule '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. The stand taken by the respondent in the counter affidavit is that there was no proper entry in the petitioner's service register whether the resignation has been submitted with proper permission. In the absence of the same the services under CMWSSB cannot be counted as qualifying service as per the aforesaid Pension Rules.

8. Further, it is also clear that as per G.O.Ms.No.404 Finance (BPE) Department dated 06.06.1991, the Government is the authority to decide the case whether to include the previous service in CMWSSB along with regular Government service, but in the present case, no order have been obtained from the Government to count the same. Therefore, in the absence of any order from the Government, the request of the



petitioner to count his earlier service along with the present service for pensionary benefit cannot be considered.

9. In view of the above discussions, this Court is of the view that the 1st respondent has rightly rejected the application made by the petitioner requesting to include his earlier service along with the present service and passed the impugned order. This Court finds no valid grounds to interfere with the impugned order passed by the 1st respondent. Accordingly, the writ petition stands dismissed as devoid of merits. However liberty is granted to the petitioner to work out his remedy before the authority concerned. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principle Accountant General,
Office of the Principle Accountant General (A&E)
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- 3.The Director,
Directorate of School Education,
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+1 cc to Government Pleader Sr.NO. 2746

W.P.No.28736 of 2011

MT(CO)
A.SK(02.02.2022)