



For Respondents: Mr.R.Sankarasubbu for R1
No appearance for R2

JUDGMENT
(Made by PARESH UPADHYAY, J.)

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1. Challenge in this appeal is made to the order dated 17.02.2020 recorded on W.P.No.10211 of 2013. This appeal is by the respondent / State Authorities.

2. Learned Additional Government Pleader for the appellant has submitted that the petitioner had resigned from the service and was not entitled to pension under the service rules and the direction by learned Single Judge to grant pension is unsustainable and therefore this appeal be allowed. Attention of the Court is also invited to the satisfaction recorded by learned Single Judge in para : 7 where the case of the State is accepted on facts, however it is submitted that it is only on the proposition of some judgment of the Supreme Court of India which was not applicable in the facts of the case, ultimately relief is granted. Learned Additional Government Pleader has also relied on the decisions of the Supreme Court of India in the case of (i) Reserve Bank of India and another v Cecil Dennis Solomon and another reported in (2004) 9 SCC 461 and (ii) Bses Yamuma Power Limited v Ghanshyam Chand Sharma and another reported in (2020) 3 SCC 346 to contend that the proposition of law referred by learned Single Judge is not the good law, for the case on hand. It is submitted that this appeal be allowed.

3. On the other hand, learned advocate for the respondent / original writ petitioner has submitted that the petitioner had put in more than ten years of service and therefore he was entitled to pension because the end of service after ten years is to be treated as voluntary retirement, if the concerned employee has not crossed the age of superannuation. It is submitted that learned Single Judge can not be said to have committed any error while granting that relief and therefore no interference be made by this Court. Learned advocate for the respondent / writ petitioner has relied on the following decisions (i) Tmt.M.K.Sivakami v The Principal District Judge and others recorded on W.P.No. 30277 of 2016 dated 05.04.2017, (ii) K.Supriya v Union of India and others recorded on W.P.No.13189 of 2015 dated 14.06.2017, (iii) N.V.Selvaraj v The Director of Technical Education reported in CDJ 2019 MHC 4843 and (iv) The State of Tamil Nadu and another v M.Dhinakaran (Died) and others reported in CDJ 2019 MHC 495 to support his case. It is submitted that this appeal be dismissed.

4. Having heard learned advocates for the respective parties and having considered the material on record, this Court



finds as under:-

4.1 The facts are not in dispute. The petitioner had joined the service as Surveyor in the Town and Planning Department on 27.11.1978. He had resigned from service with effect from 28.02.1991. He had put in 12 years 03 months and 04 days of service at the time of his resignation. His date of birth was 01.06.1956 and therefore on the date of resignation he was aged less than 35 years.

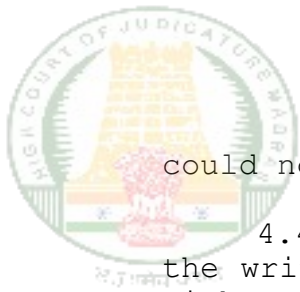
4.2 The writ petitioner was working in Town and Country Planning Department of the State of Tamil Nadu. The service conditions of the employees of the State of Tamil Nadu, more particularly of this Department are governed by the statutory rules called "The Tamil Nadu Pension Rules, 1978". The entitlement of pension is regulated by said set of rules which is statutory in nature. Rule 56(3)(a) of the Rules, as it stood then, reads as under:-

"A Government servant who has attained the age of fifty-years or who has completed twenty years of qualifying service may retire from service by giving notice of not less than three months in writing direct to the appointing authority with a copy marked to his immediate superior officer for information before giving such notice, he may satisfy himself by means of reference to such authority that he has completed the required number of years of qualifying service."

Rule 41 of the Rules, reads as under:-

"A member of a service shall if he resigns his appointment, forfeit not only the service rendered by him in the particular post held by him at the time of resignation but all his previous service under the Government."

4.3 Thus, there is two fold adversity against the writ petitioner. There is specific rule in the form of Rule 41 that in the event of his resignation, and in this case it is the resignation, earlier service would stand forfeited. The petitioner could not have claimed the pension. Further Rule 56 (3)(a) stipulates, when voluntary retirement could have been opted. It is after completion of 20 years of service. The petitioner had not met with that condition as well. Therefore, on both the grounds this Court arrives at the conclusion that the denial of pension by the State Authorities way back in the year 1992 could not be said to be illegal in any manner. There



could not have been any interference in the said decision.

4.4 There are additional factors which shall weigh against the writ petitioner. Though pension was denied in the year 1992, with some representations after more than one and half a decade, the stale claim was attempted to be revived by earning rejection of his claim once more. Writ petition was filed in the year 2013. The same is allowed in the year 2020. The direction by learned Single Judge would entail financial burden on the State for three decades. We find that, this was not the case where there was either any necessity or even any scope to exercise discretion under Article 226 of the Constitution of India.

4.5 There are still additional factors which would weigh in favour of the appellant. The case of the respondent (writ petition) was not accepted on facts, as reflected in para : 7 of the order. The said paragraph reads as under:-

"7. Considering the facts and circumstances of the case and analysing the submissions made by both the parties, there is no dispute that the writ petitioner had resigned from service on completion of twelve years of service in the department. But, the writ petitioner had relied upon the G.O. No. 37 issued by the Education Department, dated 05.01.1983. As rightly stated in the counter affidavit filed by the respondents, the aforesaid Government Order was passed in favour of the Teachers who resigned in Government aided school. It is further clarified in the said G.O that the same shall not be taken a precedent for Government Employees/Teachers in Government Schools. Therefore, the said argument of the petitioner cannot be accepted by this Court on this aspect."

4.6 We note the above finding of learned Single Judge, with affirmation.

4.7 Having held as above, we further note that immediately thereafter, learned Single Judge has considered it proper to grant relief to the writ petitioner on the basis of some decisions of the Supreme Court reference to which in paras : 8 & 9 i.e., AIR 1990 SC 1808 and AIR 1990 SC 1219. We find that these two judgments can not be applied in the facts of this case nor the same lays down law how the case like the one on hand can be regulated. We find that, the satisfaction recorded in the order under challenge in para : 10 is unsustainable and therefore the same needs to be interfered with. At this



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juncture, we note that, so far proposition of law is concerned, we find that, it is decision of the Supreme Court of India in the case of Reserve Bank of India (supra) which will be applicable with full force in the facts of this case. We find that the reference to the decision of the Supreme Court of India in AIR 1990 SC 1219, on the face of the decision of the Supreme Court of the year 2004 is an error apparent on the face of record which may call for interference in this intra-court appeal. We note that, the order of learned Single Judge was already stayed by the co-ordinate Bench vide order dated 22.03.2022.

4.8 Learned advocate for the writ petitioner has submitted that compassionate pension can also be considered. We find that, this is not the case where the discretion can be exercised to grant even compassionate pension. This argument is therefore rejected. So far the authorities relied on behalf of the writ petitioners are concerned, the same shall not have any applicability, more particularly on the face of the decision of the Supreme Court of India referred above.

4.9 In totality, we find that this appeal needs to be allowed by setting aside the order of learned Single Judge.

5. In view of above, the following order is passed.

5.1 This appeal is allowed.

5.2 The impugned order dated 17.02.2020 recorded on W.P.No.10211 of 2013 is set aside.

5.3 No costs. C.M.P.No.4588 of 2022 would not survive.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssm

To:

1. The Secretary, The State of Tamil Nadu
Housing & Urban Development Department,
Fort St.George, Chennai - 600 009.



2. The Commissioner,
Town and Country Planning,
No.807, Anna Salai,
Chennai - 600 002.

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3. The Accountant General
(Accounts & Entitlement),
No.361, Anna Salai,
Chennai - 600 018

COPY TO
The Section Officer,
Writ Section,
High Court, Madras-104.

+1cc to Mr.Hema Muralikrishnan, Advocate, S.R.No.35018
+1cc to the Government Pleader, S.R.No.35315

W.A.No.664 of 2022

KK(CO)
CT/28/06/2022