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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2022

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.28864 of 2013

A.Chandran

... Petitioner

Vs.

1.The Accountant General (A&E),  
Office of the Accountant General (A&E) Tamil Nadu,  
Chennai - 18.

2.The Chief Educational Officer,  
Raja Street, Coimbatore.

3.The District Educational Officer,  
Office of the District Educational Office,  
Near old Railway Station,  
Erode Town, Erode District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records in proceedings of the 1<sup>st</sup> respondent in Pension 25/3/12505071/12-13/ADK/Misc/29U dated Nil which communicated by the 3<sup>rd</sup> respondent through his proceedings in Na. Ka. No. 3140/A5/2012 dt 28.1.2013 and quash the same as illegal, incompetent and unconstitutional and further direct the respondents to issue pension taking into account of 35 years of continuous service i.e. from 6.2.1973 to 31.5.2008.

For Petitioner : Mr.V.Raghavachari

For R1 : M/s.Hema Muralikrishnan  
Senior Standing Counsel

For R2 & R3 : Mr.P.Ganesan  
Government Advocate



## O R D E R

The petitioner herein had initially joined as a Secondary Grade Assistant in Government High School, Vagarayampalayam, on 06.02.1973. After his services were regularised with effect from 21.03.1974, he had resigned from the post of Secondary Grade Assistant on 12.08.1983 for the purpose of joining as P.G. Assistant (English) in the C.S.I. Boys Higher Secondary School, Coimbatore. This resignation was after obtaining prior permission of the 2<sup>nd</sup> respondent and for the purpose of joining the subsequent School. During his services with the C.S.I. Boys Higher Secondary School, Coimbatore, he was promoted as Head Master and transferred to C.S.I. Boys Higher Secondary School, Erode, on 03.12.1999. Subsequently, he had retired from the services on 31.05.2008.

2. Through the impugned order dated 30.01.2013, the 1<sup>st</sup> respondent herein had taken the petitioner's 25 years of service under the C.S.I. Boys Higher Secondary School alone for the purpose of calculating the pensionary benefits. According to the petitioner, his earlier services under the Government High School also requires to be calculated for the purpose of pension.

3. Rules 23 and 24 of the Tamil Nadu Pension Rules, provides that, when a Government employee obtains prior permission and thereafter resigns for the purpose of joining the subsequent Government employment, his past services in the earlier employment should be considered for the purpose of calculating the pensionary benefits. This aspect was considered by me in a decision rendered in the case of K.Rathinavelu v. Government of Tamil Nadu and others [W.P.No.9538 of 2013, dated 04.03.2022]. By placing reliance on the decision of the Hon'ble Division Bench of this Court, I had held that the Government servant's past service requires to be taken into account for the purpose of calculating pensionary benefits. The relevant portion of the order passed in W.P.No.9538 of 2013 is extracted hereunder :

"4. Rule 23 and Rule 24 of the Tamil Nadu Pension Rules reads as follows:-

23. Forfeiture of service on resignation -

(1) 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



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where service qualifies.

(2) Interruption in service in a case falling under the proviso to sub-rule (1), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to the Government servant.

24. Effect on interruption in service -

(1) The interruptions in service shall not entail forfeiture of past service except when a person was removed and re-employed. The actual interruptions in service shall not, however, count for pension.

(2) The services rendered in temporary or permanent department or in substantive office shall also count for pension even if any interruptions exist.

5. As per the proviso to the aforesaid rules, the resignation of a Government servant requires to be done with proper permission, for the purpose of another appointment.

6. The learned counsel for the fifth respondent places reliance on the entry in the service register dated 31.08.1976 and submitted that since the entry does not reveal that the resignation was for the purpose of joining another Government service, the benefit under Rule 23 will not be applicable to the petitioner. Such an inference drawn from the entry in the service register seems unacceptable. For this purpose, it would be appropriate to refer to certain dates of the petitioner's resignation and the subsequent Government employment.

7. Admittedly, the petitioner herein had resigned from the earlier employment on 31.08.1976 and joined the fourth respondent-College on 03.09.1976, which is after 2 days. The fifth respondent seems to have drawn a negative inference from the entry in the service records. While comparing the dates of the resignation and the subsequent joining of the Government College, which is after about 2 days, a positive inference requires to be drawn that the resignation from the earlier employment was only for



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the purpose of joining the fourth respondent-College. This proposition can be forfeited by an order of the Hon'ble Division Bench of this Court in the case of D.Vijayarangan Vs. The Secretary, Sales Tax Appellate Tribunal and another reported in 2009 Writ L.R. 12, whereby, the Division Bench had expanded the scope of Rule 23 to include even resignations based on the ground of illness. The relevant portion of the order reads as follows:-

"7.In such a situation, a question arise whether the service of an employee can be forfeited if person asks for resignation on the ground of ill-health, which is allowed by the State.

Under Rule 23, a person is entitled for all benefits if he is allowed to resign for appointment in some other post under the Government. The rule is silent with regard to resignation, if given on the grounds of illness or ill-health for which permission is granted by the competent authority. In case, if it is held that the person, who has resigned because of illness or ill-health, as at par with the class of employees, who resign for misconduct or any adverse record, and the class of employees, who resign to join other government organisation are kept in a separate class for grant of pensionary benefits, in such case one may doubt Rule 23 violative of Article 14 vis-a-vis those who resign for illness or ill-health and is accepted by the competent authority. Therefore, we hold that those who resign because of illness or ill-health and not because of any misconduct or adverse record and are allowed to do so by the State are entitled for the same benefit which is allowed to those who resign to join another service under the State. Comparing the employees who are allowed to resign because of illness or ill-health at par with those employees who resign because of misconduct or adverse record will be otherwise violative of Article 14 of the Constitution of India.

8.We, accordingly, hold that the petitioner is entitled to all the benefits to which the employees are otherwise entitled to under the proviso to Rule 23, i.e., those who have been allowed to resign to join some other post under the State. The respondents are, accordingly, directed to pay the petitioner the



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pension and gratuity with 8% interest p.a., within three months from the date of receipt/production of a copy of this order, in accordance with law, taking into consideration the years of service rendered by him with further direction to pay provident fund and other retirement benefits within one month from the date the petitioner submits appropriate application in the format prescribed by the State, failing which the petitioner will also be entitled for 8% interest on the same."

8. Under similar circumstances, while placing reliance on Rule 23, a learned single Judge of this Court, in the case of N.Nallakannu Vs. Secretary to Government, Finance (CA) Department and another passed in W.P.(MD) No.11000 of 2005 dated 25.04.2011, had directed for counting all the past services of a Government employee, who had resigned from the earlier Government service, by applying the proviso to Rule 23, in the following manner:-

"11. The proviso to the afore-said Rule makes it clear that the resignation shall not entail forfeiture of past service, if it has been submitted to take up any appointment with prior permission. Admittedly, the petitioner was recruited through Tamil Nadu Public Service Commission. While he was serving in the Public Works Department, he submitted his resignation letter to the Executive Engineer to take up the employment with the Co-operative Department on 14.09.1971. He joined the Co-operative Department on 15.09.1971. Thus, it should be taken that the petitioner is entitled to the proviso of Rule 23 of the Tamil Nadu Pension Rules. In fact, the Division Bench of this Court has interpreted Rule 23 of the Tamil Nadu Pension Rules in such a way to grant the terminal benefits if a person resigned on the ground of ill health, though such a contingency is not provided in the Rule. Hence, I am of the view that based on the proviso to Rule 23 of the Tamil Nadu Pension Rules, and the decision of the Division Bench, the petitioner is entitled to succeed."

9. The aforesaid orders are self explanatory. When there is nothing on record to show that the petitioner had resigned from his services, owing to some misconducts or any other adverse inference and by



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taking into account that the petitioner had joined the Government service, after resigning from the earlier Government service, within 2 days, this Court is of the view that the resignation of his earlier service was only for the purpose of joining the subsequent Government service and therefore, by applying the proviso to Rule 23, the petitioner would be entitled for all the pensionary benefits."

4.The above said extract is self explanatory. Hence, the reasoning adopted by the 1<sup>st</sup> respondent in the impugned order that the past services of the petitioner would not be required to be calculated for the purpose of sanctioning the pension, is opposed to Rules 23 and 24 as well as the decision of this Court cited supra and therefore, cannot be sustained.

5.In the result, the impugned order, dated 31.01.2013, is quashed. Consequently, there shall be a direction to the respondents herein to calculate the petitioner's pension by taking into account his entire services commencing from 06.02.1973, when he had joined as Secondary Grade Assistant in Government High School, Vagarayampalayam, as well as his subsequent employment in the C.S.I. Boys Higher Secondary School, Coimbatore/Erode and thereby, revise the petitioner's pension, by passing appropriate orders, within a period of eight weeks from the date of receipt of a copy of this order. The respondent shall also consider payment of the arrears of pension in the said order.

6.Accordingly, this writ petition stands allowed. No costs.

Sd/-  
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

mkn

To

1.The Accountant General (A&E)  
Office of the Accountant General (A&E) Tamil Nadu  
Chennai - 18.



2.The Chief Educational Officer,  
Raja Street, Coimbatore.

3.The District Educational Officer,  
Office of the District Educational Office,  
Near old Railway Station,  
Erode Town, Erode District.

+1cc to Mr.V.Raghavachari, Advocate SR.No.24764

+1cc to M/s.Hema Muralikrishnan, Advocate SR.No.24835

+1cc to Government Pleader SR.No.25759

W.P.No.28864 of 2013

PMK(CO)  
GMY(04/05/2022)