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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.9538 OF 2013

K.Rathinavelu

...Petitioner

-Vs-

1. Government of Tamil Nadu,
Rep. by Secretary to Government,
Higher Education Department,
Fort St. George, Chennai - 600 009.
2. The Director of Collegiate Education,
College Road,
Chennai - 600 006.
3. The Regional Joint Director
of Collegiate Education,
Madurai Region, Madurai.
4. The Principal,
Arulmigu Palani Andavar
College of Arts & Culture,
Palani, Dindugal District.
5. The Accountant General,
Teynampet, Chennai - 18.

...Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the respondents to count the services rendered for a period from 24.07.1967 to 31.08.1976 in Government Colleges towards the pensionary benefits and then fix the pension and grant the arrears of pension and further direction to the respondent to grant the benefit of the proceedings of the Director of Collegiate Education made in M.M.No.32355/Q4/2001 dated 08.08.2001 in respect of career advancement scheme in relation to Selection Grade and Senior Grade and fix the pay and thereafter grant arrears of pay and arrears of pension.



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For Petitioner : Mr.R.Saseetharan

For R1 to R3 : Mr.M.Bindran,
Additional Government Pleader

For R4 : Mr.Ramesh Venkatachalapathy

For R5 : Mrs.Hema Muralikrishnan

ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.

2. The petitioner herein had joined the services of fourth respondent-College on 03.09.1976. Prior to that, he had rendered services in various Government Colleges between 24.07.1967 and 31.08.1976. On 31.08.1976, he had resigned his post from the earlier employment, which was accepted and he had joined the fourth respondent-College on 03.09.1976. The present claim of the petitioner is that his past services between 24.07.1967 and 31.08.1976, though counted for the purpose of Career Advancement Scheme, requires to be counted for the purpose of pensionary benefits also, in view of Rule 23 and Rule 24 of the Tamil Nadu Pension Rules, 1978 (hereinafter referred to as 'the Rules').

3. The learned counsel for the fifth respondent herein placed reliance on the counter affidavit and submitted that since the petitioner's resignation from the Government service was a resignation simpliciter and does not reveal that he had resigned for the purpose of joining a Government College, he cannot be claiming benefits, as per the proviso under Rule 23.

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 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 -

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(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 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



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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 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 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.

10. In the result, there shall be a direction to the respondents 1 and 2 to pass appropriate orders, counting the services rendered by the petitioner between 24.07.1967 and 31.08.1976 in the earlier Government Colleges, for the purpose of revision of pensionary benefits and fixation of pension and forward the same to the fifth respondent herein, within a period of four (4) weeks from the date of receipt of a copy of this



order. On receipt of such proposal from the respondents 1 and 2, the fifth respondent herein shall forthwith grant the arrears of pension, based on the re-fixed pensionary benefits, within a period of two (2) weeks from the date of receipt of the proposal. The Writ Petition stands allowed, accordingly. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Secretary to Government,
Higher Education Department,
Fort St. George, Chennai - 600 009.
2. The Director of Collegiate Education,
College Road,
Chennai - 600 006.
3. The Regional Joint Director
of Collegiate Education,
Madurai Region, Madurai.
4. The Principal,
Arulmigu Palani Andavar
College of Arts & Culture,
Palani, Dindugal District.
5. The Accountant General,
Teynampet, Chennai - 18.

+1cc to Mr.R.Saseetharan, Advocate, S.R.No.14540
+1cc to Mr.M.Sriram, Advocate, S.R.No.14562
+1cc to Mrs.Hema Muralikrishnan, Advocate, S.R.No.14818
+1cc to the Government Pleader, S.R.No.15540

W.P.No.9538 of 2013

KV (CO)
PM/16/03/2022