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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2022

CORAM

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P.NO.11929 OF 2018

T.M.Lakshmi

... Petitioner

-vs-

1. The Director of School Education,
Chennai - 600 009.
2. The District collector,
Erode.
3. The Commissioner,
Panchayat Union,
Erode.
4. The Elementary Education Officer,
Elementary Education Office,
Erode - 2.
5. The Principal,
Karumandi Sellipalayam Panchayat Union School,
Perundurai Taluk,
Erode District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the Respondents to grant pension to the Petitioner as per the Petitioner's representation dated 23.02.2018 within the time limit fixed by this Court.

For Petitioner : Mr.A.Panneerselvam

For Respondents : Mr.S.Balamurugan,
Government Advocate (for R1 to R4)

No appearance (for R5)



O R D E R

Heard Mr. A.Panneerselvam, Learned Counsel for the Petitioner and Mr. S.Balamurugan, Learned Government Advocate appearing for the First to Fourth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who had worked as Secondary Grade Teacher in the school of the Fifth Respondent, had resigned from service on 04.10.1977 and in terms of Rule 41 of the Tamil Nadu State and Subordinate Service Rules, the resignation for a service or post entails forfeiture of past service. Long thereafter, on 14.12.2009, the Petitioner had made a representation to the concerned authorities seeking pension, but it was rejected in the Order in O. Mu. No. 1636/Aa2/ 2010 dated 29.04.2010 by the Fourth Respondent. The Petitioner claims to have made further representation on 27.03.2018 to the Third Respondent claiming pension, but as it did not evoke any response, this Writ Petition has been filed in that regard.

3. The Third and Fourth Respondents have filed separate Counter-Affidavits dated 04.10.2018 and 14.08.2018 reiterating that inasmuch as resignation entails forfeiture of past service, the Petitioner cannot make any claim for pension. In this context, reference has to be made to Rule 23 of the Tamil Nadu Pension Rules, 1978, which is extracted below:-

"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."



It is also borne out of the record that the Petitioner had resigned from service on 04.10.1977, but had not chosen to make any claim for pension till the year 2010 and despite the rejection of such claim for pension by the Fourth Respondent by order dated 29.04.2010, the same had not been impeached in the manner recognized by law. This would obviously mean that the Petitioner cannot resurrect the stale claim by making fresh representation which had already been rejected as pointed out by the Hon'ble Supreme Court of India in C.Jacob -vs- Director of Geology and Mining reported in [(2008) 10 SCC 115]. Viewed from that perspective, it is not possible to grant the relief as sought by the Petitioner in this Writ Petition.

4. At the same time, it would be relevant to point out here that Rule 82 of the Tamil Nadu Pension Rules, 1978, provides as follows:-

"82. Power to relax:- Where any Department of the Government is satisfied that the operation of any of these rules causes under hardship in any particular case, the Department may by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner.

Provided that no such order shall be made except with the concurrence of the Finance Department."

While construing a similar provision contained in Rule 88 of the Central Civil Services (Pension) Rules, 1972, the Hon'ble Supreme Court of India in Union of India -vs- Gandiba Behera (Order dated 08.11.2019 in Civil Appeal No.8497 of 2019) has observed as follows:-

"25. We are also of the opinion that the authorities ought to consider their cases for exercising the power to relax the mandatory requirement of qualifying service under the 1972 Rules if they find the conditions contained in Rule 88 stand fulfilled in any of these cases. We do not accept the stand of the appellants that just because that exercise would be prolonged, recourse to Rule 88 ought not to be taken. The said Rules is not number specific, and if undue hardship is caused to a large number of employees, all of their cases ought to be considered. ..."



In the affidavit filed in support of the Writ Petition, it has been stated by the Petitioner that she has resigned from service on 04.10.1977 due to health problems and was subsequently taking treatment at various hospitals in Erode District. It is claimed that the children of the Petitioner are living separately after their respective marriages, and her husband and one of her sons have died on 17.01.2009 and 18.08.2009 respectively, and she is living a deserted life in her old age without any income for her medical needs and sustenance. Such pathetic situation, if established, would deserve due consideration for relaxation of rules for grant of pension, especially when the qualifying period for a person to be eligible for pension is 10 years under Rule 43 of the Tamil Nadu Pension Rules, 1978, and despite the Petitioner having served for more than 15 years, it has been forfeited consequent upon her resignation owing to her health condition.

5. In such circumstances, the following order is passed:-

(i) the Petitioner may make necessary representation along with supporting documents to the concerned authority under Rule 82 of the Tamil Nadu Pension Rules, 1978, for relaxing the relevant rules so as to entitle her for grant of pension;

(ii) if such representation is made, the concerned authority shall immediately consider the claim made by the Petitioner for relaxation of the relevant rules for grant of pension taking into account any undue hardship that may be suffered by her in terms of Rule 82 of the Rules;

(iii) if it is found that the Petitioner has not produced any details or supporting documents satisfying the eligibility criteria for the benefits claimed, the deficiencies in that regard shall be informed in writing to her requiring the same to be furnished within a time frame of not less than 15 working days;

(iv) in the event of the concerned authority not being satisfied with the compliance of the requirements even thereafter, an enquiry shall be conducted affording full opportunity of personal hearing to the Petitioner to explain her position in that regard and the concerned authority shall pass reasoned orders dealing with each of the contentions raised on merits and in accordance with law and communicate the decision taken to the Petitioner under written acknowledgment; and



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(v) if the Petitioner is found entitled to the relaxation of the relevant rules for grant of pension as claimed, it shall be ensured that the eligible amount of arrears of pension (after permissible deductions) is paid within three months from the date of passing of that order, apart from monthly pension for future months on the due dates.

In the result, the Writ Petition is disposed on the aforesaid terms. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

skr

To

1. The Director of School Education,
Chennai - 600 009.
2. The District collector,
Erode.
3. The Commissioner,
Panchayat Union, Erode.
4. The Elementary Education Officer,
Elementary Education Office,
Erode - 2.
5. The Principal,
Karumandi Sellipalayam Panchayat Union School,
Perundurai Taluk,
Erode District.

Copy to

T.M.Lakshmi,
W/o. Late Srinivasan,
D. No. 38, Kanthasami Veethi,
2nd Street, Erode,
Erode District.

+1cc to M/s.A.Panneer Selvam, Advocate, S.R.No.27007

+1cc to the Government Pleader, High Court, Madras, S.R.No.26740

W.P.No.11929 of 2018

CA(CO)
RLP(17/05/2022)