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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2022

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.41096 of 2016 and
W.M.P.No.35082 of 2016

T.K.Thanigaivel

... Petitioner

Vs.

1.The Managing Director,
Metropolitan Transport Corporation,
Pallavan House,
Anna Salai, Chennai-2.

2.The General Manager,
Metropolitan Transport Corporation,
Pallavan House,
Anna Salai, Chennai-2.

3.The Deputy Manager (Pensions),
Metropolitan Transport Corporation,
Pallavan House,
Anna Salai, Chennai-2.

... Respondents

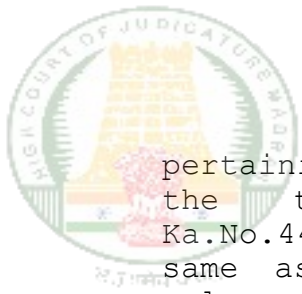
PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the entire records pertaining to the order passed by the Deputy Manager (Pensions), the third respondent herein vide his proceedings Ka.No.44111/ku06/Pension/MTC/2015 dated 10.12.2015 and quash the same as illegal, arbitrary, unreasonable being violative of rules and principles of natural justice and thereby, direct the respondents herein to sanction pension and other terminal benefits taking into account his 27 years and 11 months of service within a time frame as stipulated by this Court.

For petitioner : Mr.A.R.Suresh

For Respondents : Mr.S.R.Subhashini for
Mr.K.Moorthy

ORDER

This writ petition has been filed to issue a Writ of Certiorarified Mandamus, to call for the entire records



pertaining to the order passed by the Deputy Manager (Pensions), the third respondent herein vide his proceedings Ka.No.44111/ku06/Pension/MTC/2015 dated 10.12.2015 and quash the same as illegal, arbitrary, unreasonable being violative of rules and principles of natural justice and thereby, direct the respondents herein to sanction pension and other terminal benefits taking into account his 27 years and 11 months of service within a time frame as stipulated by this Court.

2. The case of the petitioner is as follows:

(i) The petitioner joined in the respondent Corporation initially as Company Apprentice Trainee on 20.01.1986. His services were regularized and brought under regular time scale of pay on 01.05.1987 as Junior Engineer under the then Thiruvalluvar Transport Corporation. Subsequently, the petitioner was promoted as Assistant Engineer on 05.03.1993. The petitioner thereafter came to be transferred to Metropolitan Transport Corporation with all service benefits and seniority etc., on 01.10.1994. The petitioner was further promoted as Senior Assistant Engineer in 1999.

(ii) The petitioner having worked till 04.12.2013, tendered resignation vide his letter dated 20.11.2013, wherein, he opted to resign from service from 20.12.2013. The petitioner by then had put in 27 years 11 months of unblemished service in the Corporation. The provocation for resignation by the petitioner after rendering more than 27 years of service, was due to his ill-health and ill-health of his wife and mother. According to him that he was constrained to resign from service to take care of them. However, before the expiry of one month notice by the petitioner in the resignation letter, the authority concerned prematurely accepted the resignation with effect from 04.12.2013, itself with immediate effect.

(iii) After being relieved from service, the petitioner realized that he could have taken voluntary retirement instead of resignation, as he had been deprived of his pensionary and other benefits on the ground that once he opted for resignation, he had forfeited the entire 27 years and 11 months of service. On realising of the mistake, the petitioner started submitting periodical representations in 2014 and 2015, requesting the Corporation to reconsider and recall the acceptance of resignation and reinstate him in service. The petitioner, in his representation, alternatively also pleaded for sanction of at least pensionary benefits such as Provident Fund, Gratuity and other terminal benefits. However, in response to his representation, finally, the impugned order was passed on 10.12.2015, rejecting the request of the petitioner, cryptically stating that once his resignation has been accepted and relieved, the consequence of the same was forfeiture of past



services. Challenging the same, the petitioner is before this Court.

3. Mr.A.R.Suresh, learned counsel appearing for the petitioner would submit that the immediate provocation for tendering resignation by the petitioner was entirely on the basis of his ill-health as well as his family members viz., wife and mother. But, unfortunately, the same was hurriedly accepted on the same day before the expiry of one month period. Later on, after realising his impulsive action, the petitioner submitted number of representations, the same had not been considered, despite the fact that the petitioner had rendered more than 27 long years of service and he was entitled to be paid all pensionary benefits by treating his case as one of voluntary retirement in terms of the pension rules applicable to the Corporation. The rejection of the petitioner's claim is only on the ground that the petitioner being a resigned employee, has forfeited his service in terms of the rule position.

4. The learned counsel would submit that Rule 23 of Tamil Nadu Pension Rules, provide for forfeiture of service in case of resignation, but however, makes an exception that if resignation is for taking up some other employment in Government Service/Public Sector Undertaking etc., there won't be any forfeiture of service. As far as the Corporation is concerned, an identical rule is available and the rejection was on the basis of the said rule. The rule however is silent with regard to resignation, if given on the grounds of illness or ill health. In this regard, the Courts have interpreted the rule liberally and favourably holding that in case of resignation due to ill-health or on medical grounds, such resignation is to be treated to be voluntary retirement and forfeiture of past service would not arise in such cases.

5. The learned counsel in regard to the above legal position would refer to the following decisions:

(i) The decision of the Hon'ble Supreme Court reported in (1997) 2 SCC 28, in the case of Union of India and Others Vs. Lt.Col.P.S.Bhargava. This Court's attention has been drawn to paragraph No.19 of the decision, which is extracted hereunder:

"19. Regulation 16 does not cover a case of voluntary resignation. Regulation 16(b) does refer to a case where an officer who has to his credit the minimum period of qualifying service being called upon to resign whose pension can be reduced. Had the Regulation intended to take away the right of a person to the terminal benefits on his voluntary resigning, then a specific provision similar to Regulation 16(b) would have been incorporated in the Regulations but this has not been done. Once an officer has to his



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credit the minimum period of qualifying service, he earns a right to get pension and as the Regulations stand, that right can be taken away only if an order is passed under Regulation 3 or 16. The cases of voluntary resignations of officers, who have to their credit the minimum period of qualifying service are not covered by these two Regulations and, therefore, such officers, who voluntary resign, cannot be automatically deprived of the terminal benefits."

(ii) The decision of this Court reported in (2001) WLR 852, in the case of The Government of Tamil Nadu Vs. S.V.Paul Jeyaraj. This was a case where a discrimination was noticed by the Division Bench of this Court on the basis of prescription of a cut-off date for grant of pensionary benefits in cases of resignation of service, the bench held such prescription was not valid in law.

(iii) (2009) 3 MLJ 1005, in the case of D.Vijayarangan Vs. Secretary, Sales Tax Appellate Tribunal. The Division Bench of this Court in similar circumstances allowed the claim of the Government employee for pension as could be seen from the ruling of the Court from paragraph Nos.4 to 8, which are extracted hereunder:

"4. We have heard the learned counsel for the parties and noticed their rival submissions.

5. Rule 23 of the Tamil Nadu Pension Rules relates to forfeiture of service on resignation except in certain cases, as quoted hereunder :-

"23. Forfeiture of service on resignation.

- (1) Resignation from 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 or 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."

6. In the present case, we find that the petitioner



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proceeded on leave because of mental illness and submitted resignation letter on 2nd Aug., 1988. It is also not in dispute that the 1st respondent, by letters dated 9th Dec., 1988 and 4th May, 1989, instructed the petitioner to settle all the dues payable to the Government, and on payment of such dues, it was informed that the resignation of the petitioner was to be accepted, which was actually accepted after receipt of such dues by the State Government. Thus, it will be evident that the petitioner was allowed to resign for which permission was accorded by the State on condition of payment of its dues.

It is not the case of the respondent that the petitioner wanted to resign to join service in some other organisation and there was any proceeding for misconduct initiated against him. In fact, there was no allegation made by any of the respondents against the petitioner.

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



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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.''

6. A learned Judge of this Court in similar circumstances has also held as such in a decision reported in (2011) 1 MLJ 1246 in W.P. (MD)No.2367 of 2008, in the case of K.R.Mothilal Vs. Registrar, Madurai Kamaraj University, Madurai. The learned Judge held in that case that the resignation of the employee ought to be treated as voluntary retirement.

7. The learned counsel would therefore submit that the above ruling of the Hon'ble Supreme Court as well as this Court, would have direct application to the present case. According to him, it is not the case of the respondent Corporation that the resignation by the petitioner was for different purpose other than medical reasons or to escape from any disciplinary action to be taken against him. He would therefore submit that the rejection of the petitioner's claim is liable to be interfered with and a direction may be issued to the Corporation to convert the resignation of the petitioner into one of voluntary retirement with consequential benefits.

8. On behalf of the respondent Corporation, Ms.S.R.Subhashini for Mr.K.Moorthy, learned counsel, appeared. The learned counsel would submit that once the resignation was accepted and the employee was relieved from service, he was not entitled to any pensionary benefits as his past services stood forfeited in terms of the rule position. According to the learned counsel, as per Rule 16(e) of the Tamil Nadu State Transport Corporation Employees Pension Fund, there shall be forfeiture of service on resignation, the only exception is, if resignation was tendered by an employee taking up with proper permission, another appointment in Government Department or State Public Sector Undertaking or Board. The petitioner's case did not fall within the exception as provided in the rule, therefore, he is not entitled to seek for conversion of the



resignation into one of voluntary retirement.

9. This Court considered the submissions of the learned counsel for the petitioner as well as the learned counsel for the respondent Corporation.

10. The simple issue that arise for consideration before this Court is whether the resignation of the petitioner could be treated as voluntary retirement in the facts and circumstances of the case or not?

11. From the contents of the resignation letter and the subsequent numerous representations submitted by the petitioner, it could be gathered that the provocation for resignation by the petitioner was due to medical reasons. Further, it was not the case of the Transport Corporation that the resignation was tendered by the petitioner with any oblique motive to escape from any disciplinary action to be initiated against him for any act of misconduct.

12. The learned counsel for the petitioner has relied upon a few decisions and the relevant observations which have been extracted supra. In particular, the learned Division Bench in the case reported in (2009) 3MLJ 1005, has held that in case of resignation by the Government servant due to medical reasons, there cannot be any forfeiture of service, as in the case of taking up another employment in the Government service or Public Sector Undertaking/Board. The decision has interpreted the pension rule which has same expression as Rule 16(e), applicable to the Corporation. For the sake of understanding, Rule 16(e) is extracted hereunder:

"16(e) Forfeiture of Service on Resignation:

Resignation from service or post entails forfeiture of past services.

Provided that a resignation shall not entail forfeiture of past service, if it has been submitted to take up with proper permission, another appointment, under Government Department/State Public Sector Undertaking/Board. In such case, the pensionary benefits shall be transferred to the new employer's pension fund/EP scheme 1995, as the case may be and such benefits shall not be directly paid to the individual."

13. The same expressions are used in Rule 23 of the Tamil Nadu Pension Rules and in interpretation of that, the Courts have held that such resignation ought not to entail forfeiture of past service. Even the Hon'ble Supreme Court has interpreted similar provision holding that if cause for resignation was ill-health, then the same would not entail forfeiture of past



service.

14. In this case, apart from the above settled legal position, one other legal infirmity could be noticed. The resignation letter of the petitioner was accepted even before the expiry of one month period. The resignation letter was dated 20.11.2013 and the petitioner had worked last on 04.12.2013 and was relieved on the same day, well before the one month period which was to expire on 20.12.2013. The authority concerned hurriedly accepted the resignation and relieved the petitioner from service. In such circumstances, the very acceptance of resignation of the petitioner itself may not be valid in the eye of law. Nonetheless, without going into the said aspect as to whether the acceptance was valid or not, this Court can safely and definitely come to the conclusion on the basis of the rulings of the Hon'ble Supreme Court and this Court that the resignation of the petitioner in the facts and circumstances ought to be treated as voluntary retirement and the claim of the petitioner herein falls squarely within the legal framework of the Court decisions.

15. This Court further finds that except stating that the petitioner has resigned, and hence not entitled to pensionary benefits, no other reason had been stated by the Corporation in the impugned order. Further, even on the ground of equity, the petitioner is entitled for conversion of his resignation into one of voluntary retirement, as 27 long years of service put in by him, unfortunately stood forfeited as a consequence of impulsive decision of the petitioner and the hurried acceptance of the resignation by the Corporation.

16. It is needless to mention that there are occasions where the employees come under severe mental stress for various reasons. Driven by the force of circumstances, employees tender resignation unconsciously, without realising its adverse implications to follow. Such acts actuated by desperation without realising its ramifications, ought to be appreciated by the employers with empathy and commiseration. In such situation, the onus is on the Corporation to redeem the situation created by the employee concerned, as consequences of their impulsive decision. After all in the normal circumstances, the petitioner could have submitted an application for voluntary retirement and could have gone on voluntary retirement, without having to lose his past service. In such event, he could have got all his retirement benefits as a result of his hard labour serving the Corporation for 27 long years.

17. For all the above stated reasons, this Court is of the considered view that fairness, equity and good conscience demand that the petitioner be granted the relief as prayed for



by him.

18. Accordingly, this writ petition stands allowed. The impugned order passed by the third respondent herein vide his proceedings Ka.No.44111/ ku06 / Pension/ MTC/2015 dated 10.12.2015, is hereby set aside. The respondents are consequently directed to treat the resignation of the petitioner as one of voluntary retirement with effect from the date he was relieved from service under the relevant provisions of the Pension Rules, applicable to the Corporation.

19. The respondents, on such conversion of the resignation into one of voluntary retirement, are directed to pass orders, granting all pensionary benefits with arrears. The respondents are directed to pass appropriate orders in this regard within a period of four weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1.The Managing Director,
Metropolitan Transport Corporation,
Pallavan House,
Anna Salai, Chennai-2.

2.The General Manager,
Metropolitan Transport Corporation,
Pallavan House,
Anna Salai, Chennai-2.

3.The Deputy Manager (Pensions),
Metropolitan Transport Corporation,
Pallavan House,
Anna Salai, Chennai-2.

+1cc to Mr.A.R.Suresh, Advocate, S.R.No.26704

W.P.No.41096 of 2016 and
W.M.P.No.35082 of 2016

GPL(CO)
SB(02/05/2022)