



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2022

CORAM

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

W.P. No. 26923 of 2017

and

W.M.P. Nos. 28698 and 38013 of 2017

P.Manimaran

... Petitioner

-vs-

1. The Commissioner of Most Backward Classes
and Denotified Communities,
Chepauk,
Chennai - 600 005.

2. The District Backward Classes and Minorities Welfare Officer,
Nagapattinam.

... Respondents

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Letter No. C1/2017 dated 24.08.2017 on the file of the First Respondent, quash the same and direct the Respondents to include the Petitioner in the General Provident Fund Scheme quoting his past service of 16 years (i.e. 22.01.1990 to 03.03.2006).

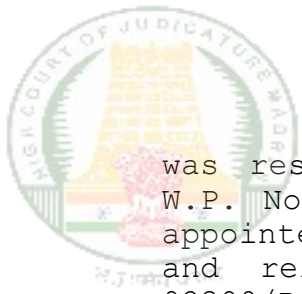
For Petitioner : Mr. V.Elangovan

For Respondents: Mrs. C.Sangamithirai,
Special Government Pleader

O R D E R

Heard Mr. V.Elangovan, Learned Counsel for the Petitioner and Mrs. C.Sangamithirai, Learned Special Government Pleader appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner had worked as Secondary Grade Teacher in Aided Elementary School, Mathirimangalam, Kuttalam Taluk, Nagapattinam District from 22.01.1988 to 04.03.2006 when he resigned from service. His seniority in the employment exchange



was restored in furtherance to the order dated 14.06.2011 in W.P. No. 7742 of 2011 passed by this Court. Thereafter, he was appointed to the post of Secondary Grade Warden on 30.04.2013 and relying on the clarification made in the Letter No. 92399/Pension/2005-1, Finance (Pension) Department dated 13.04.2016 of the Government of Tamil Nadu, he made a representation dated 15.12.2014 to the First Respondent to be allowed in the Old Pension Scheme with his General Provident Fund Account linked to his previous employment, which was rejected by Order No. C1/ /2017 dated 24.08.2017 stating as follows:-

"4. Moreover, according to Section 49 of Tamil Nadu Government Servants (Condition of Service) Act 2017, if a member of service 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 right under the Government. The re-appointment of such person to any service shall be treated in the same way as a first appointment of such service by direct recruitment and he shall not be entitled to count any portion of his previous service for any benefit or concession admissible under this Act.

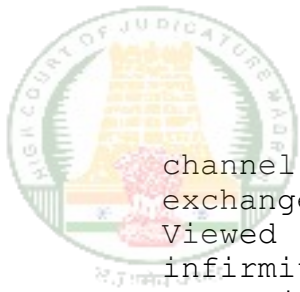
5. Further, resignation from a service or post shall not entitle forfeiture of past service if it has been to take up with the permission. But, in this instant case Thiru. R.Manimaran has been re-appointed as a Secondary Grade Warden after a lapse of 6 years not getting proper permission from the previous employer. As such, he has to forfeit past 16 years of service rendered by him as a Secondary Grade Teacher in Government Aided School and cannot be considered for any benefit."

The said order is challenged in this Writ Petition.

3. Having regard to the contention raised by the Petitioner, it would be necessary to refer to the clarification in the Letter No. 92399/Pension/2005-1, Finance (Pension) Department dated 13.04.2016, which reads as follows:-

"An employee who held a post with pensionable service in the State Government and resigned that post to take another post in the State Government after 01.04.2003, be allowed in the Old Pension Scheme subject to the condition that the employee had applied for the later appointment through proper channel, he shall be continued in the existing GPF also."

It is evident on its plain reading that the benefit of extending the Old Pension Scheme could be made applicable for any later employment only if it has been made through proper channel. It is not the case of the Petitioner that he had applied for the appointment to the post of Secondary Grade Warden through proper



channel inasmuch as he had got his seniority in the employment exchange restored and had been appointed as fresh candidate. Viewed from that perspective, there does not appear to be any infirmity in the impugned order requiring interference by this Court in the exercise of discretionary powers of judicial review of the decision-making process under Article 226 of the Constitution. It is added by way of clarification here that the Petitioner is not precluded from claiming any other benefit that he may be legitimately entitled on account of his previous employment as per law.

In the result, the Writ Petition is dismissed with the aforesaid observations. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

skr

To

1. The Commissioner of Most Backward Classes
and Denotified Communities,
Chepauk,
Chennai - 600 005.

2. The District Backward Classes and Minorities Welfare Officer,
Nagapattinam.

+lcc to Mr.S.Doraisamy, Advocate, S.R.No.15958
+lcc to the Government Pleader, S.R.No.16265

W.P. No. 26923 of 2017

SR-II (CO)
SB (19/04/2022)