



W.P.(MD)No.2427 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.(MD)No.2427 of 2020
and
W.M.P.(MD)No.2076 of 2020**

V.Thamizharasu,
Headmaster (Retired),
Government Higher Secondary School,
Inungur,
Kulithalai Taluka,
Karur District.

... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by its Principal Secretary,
School Education Department,
Fort St.George,
Chennai - 600 009.
2. The Director of School Education,
Nungambakkam,
Chennai - 600 006.
3. The District Educational Officer,
Office of the District Educational Office,
Kulithalai,
Karur - 639 104.



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4. The Block Educational Officer,
Office of the Block Educational Office,
Kulithalai,
Karur District.

5. The Superintendent of Post Offices,
Karur Postal Division,
Karur - 639 001.

6. The Principal Accountant General (A&E),
Office of the Principal Accountant General (A&E),
Tamil Nadu,
No.361, Anna Salai,
Chennai - 600 018.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the third respondent vide m/jp/K/vz;/4058-M4-2019 dated 18.10.2019 and quash the same as illegal and consequently, to direct the respondents to revise the petitioner's pension by including the past service rendered by him in the fifth respondent Postal Department for the period between 28.03.1983 and 25.02.1997 within a period that may be stipulated by this Court.

For Petitioner : Mr.Imran
for M/s.Ajmal Associates

For Respondents : Mr.S.Shaji Bino
Spl. Govt. Pleader for R1 to R4
Mr.S.Jeyasingh
Special Government Pleader for R5
Ms.S.Mahalakshmi
Standing Counsel for R6



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ORDER

This Writ Petition has been filed to call for the records of the impugned order passed by the third respondent vide proceedings in m/jp/K/vz;/4058-M4-2019. dated 18.10.2019, quash the same and consequently, direct the respondents to revise the petitioner's pension by including the past service rendered by him in the fifth respondent Postal Department for the period between 28.03.1983 and 25.02.1997.

2. The case of the petitioner is that the petitioner has qualified with M.A.(History), M.A.(English), M.Sc.(Psychology) and he was initially appointed as Sorting Assistant on 28.03.1983 at the Railway Mail Service, Coimbatore Division, Erode. Subsequently, he was transferred to Karur Postal Division in the cadre of Postal Assistant at the Karur Head Post Office under the Central Government Employment and served as such till his resignation on 26.02.1997. In the meantime, the qualifications have been enrolled in the District Employment Exchange, Karur. Thereafter, the petitioner got an appointment of B.T.Assistant at



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Government High School, Cherambadi, Nilgiris District, vide appointment order, dated 10.02.1997. In order to get new appointment, he submitted the resignation letter on 24.02.1997 and the same was approved by the fifth respondent, vide proceedings dated 26.02.1997. Thereafter, he joined in the School Education Department on the very next day, i.e., on 27.02.1997. In the School Education Department, he got various promotions upto the level of Higher Secondary School Headmaster and retired as such on 31.07.2017. He was also given re-employment upto 31.05.2018. After the superannuation, the petitioner sent the pension proposal through proper channel to the third respondent and the same was forwarded to the Accountant General, Tamil Nadu, Chennai. However, while calculating his period of service for pension purposes, the office of the Accountant General declined to take into account the petitioner's Central Government Service under the Postal Department and they have calculated only the period of service rendered in the School Education Department alone, without assigning any valid reason. Hence, the petitioner sent a representation requesting the respondents to calculate his service rendered in the Postal Department



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along with the State Service and a revised proposal, dated 08.08.2019 was sent counting the Central Government Service. However, the third respondent, vide proceedings, dated 18.10.2019 rejected his claim on the ground that there is no such provision to count the Central Government Service along with the State Government Service for calculation of pension. Challenging the same, the present Writ Petition.

3. The learned counsel appearing for the petitioner would submit that as per Proviso to Rule 23 of the Tamil Nadu Pension Rules, 1978 *"the 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"*. In the present case, the earlier service rendered in the Postal Department was resigned by the Petitioner after obtaining proper permission. That itself is sufficient to calculate the past service rendered in the Postal Department for the purpose of pension for calculating the service along with the service rendered in the School Education Department and accordingly, he prayed for appropriate orders.



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4. The learned Special Government Pleader appearing for the respondents would submit that the issue that arises in the present Writ Petition, is no longer *res integra* and the same was decided by the Hon'ble Apex Court in the case of ***Palure Bhaskar Rao and others Vs. P.Ramaseshaiah and others*** reported in ***(2017) 5 SCC 783***, which was followed by the Hon'ble Division Bench of this Court in W.A.(MD)No. 627 of 2022, dated 15.07.2022. He further submitted that once the petitioner resigned from service and got new appointment by way of recruitment in different Department, he cannot be entitled to calculate the past service rendered in the Postal Department, unless both the Department agreed without any reason. Accordingly, he prayed for dismissal of the Writ Petition.

5. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

6. The short issue that arises in the present Writ Petition is whether the petitioner is entitled for calculation of the past service rendered in the



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Postal Department upon his resignation and newly entered into service in the School Education Department. However, the very same issue came up for consideration before before this Court in W.A.(MD)No.627 of 2022, wherein, the Hon'ble Division Bench of this Court held that *'the past service rendered in the Aided School as Secondary Grade Teacher will not be entitled to calculate in the Government Service subsequent to his resignation'*. The relevant portion of the judgment in W.A.(MD)No.627 of 2022 is extracted hereunder:

“25. The Hon'ble Supreme Court in a judgment reported in (2017) 5 SCC Page 783 (Palure Bhaskar Rao and others -Vs- P.Ramaseshaiah and others)in Paragraph Nos.14 and 15 has held as follows:

“14.Transfer and recruitment by transfer are entirely two different concepts. No doubt transfer can be from one category to another category or within the class if the rule permits interchangeability of the categories within a class. Any other transfer both intra-category and inter-category are in fact, under law is a selection and appointment by way of a transfer from one category to another or from one class



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to another class or from one service to another. If it is a transfer simpliciter it conveys a different meaning and if it is a recruitment by transfer, as we have clarified above conveys a different concept altogether. The latter is a mode of selection/recruitment to a service.

15. Transfer in relation to service simply means a change of a place of employment within an organization. Such transfer being to a similar post in the same cadre and therefore, obviously such a transfer does not result in the termination of his lien in the parent cadre but recruitment by transfer is a different service concept altogether. It is a method of recruitment to a service, in the instant case to a different category in the same service initially and thereafter, to a different service altogether. Once an employee undergoes a transfer by way of a recruitment to a different cadre or to a different service, the employee loses his lien in the parent cadre/service. In that process, there is an induction to a new cadre and sometimes with a different type of duty. Such induction has distinct consequence on the career of the employee different from what would have



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Emphasis added

been the normal course had he continued in the parent service. Thus the recruitment by transfer terminates the lien of an employee in the parent cadre/service whereas transfer simpliciter to a similar post in the same cadre results only in change of place of employment and therefore, there is no termination of lien (see.V.Jagannadha Rao Vs.State of A.P and B.Thirumal V.Ananda Sivakumar)”

26.We are not in agreement with the judgment of the Division Bench in W.A.No.3868 of 2019 dated 16.10.2020 for the following reasons:

*(i).The judgment of the Hon'ble Supreme Court reported in **in (2017) 5 SCC Page 783 (Palure Bhaskar Rao and others -Vs P.Ramaseshaiah and others)** as referred supra has not been taken into consideration.*

(ii).Rule 2(b)(ii) of Special Rules for Tamil Nadu Higher Secondary Educational Service relating to 50% reservation for direct recruitment has not been brought to the notice of the Division Bench.



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(iii).Rule-8 relating to fixation of two different periods of probation for the candidates selected through direct recruitment and transfer of service has not been brought to the notice of the Division Bench.

*27.In view of the above said circumstances, we respectfully follow the judgement of the Hon'ble Supreme Court reported in **in (2017) 5 SCC Page 783 (Palure Bhaskar Rao and others -Vs- P.Ramaseshaiah and others).***

*28. The petitioner has referred to the dismissal of SLP (Civil).No.5633 of 2021 dated 12.04.2021 which challenged the Division Bench judgment in W.A.No.3868 of 2019. A perusal of the order of Hon'ble Supreme Court reflects that the Special Leave Petition has been dismissed without assigning any reasons. The Hon'ble Supreme Court in a judgment reported in **(2019) 4 SCC Page 376 (Khoday Distilleries Limited (Now known as Khoday India Limited) and others -Vs- Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal (Under Liquidation) Represented by the Liquidator)***



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in Paragraoh No.26.2 has held as follows:

“26.2. We reiterate the conclusions relevant for these cases as under (Kunhayammed case, SCC P.384).

“(iv).An order refusing special leave to appeal may be a non-speaking order of a speaking one. In either case, it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v). If the order refusing leave to appeal is a speaking order i.e.gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the



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Court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the Court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi). Once leave to appeal has been granted and appellate jurisdiction of the Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii). On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of the High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Order 47 Rule 1 CPC”



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7. The aforesaid decision is squarely applicable to the case on hand. Hence, applying the ratio laid down by the Hon'ble Division Bench, following the decision of the Hon'ble Apex Court, the prayer sought for by the petitioner cannot be granted.

8. Accordingly, this Writ Petition is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No

Speaking Order : Yes / No

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