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W.P. (MD) No.12810 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.12810 of 2019

and

W.M.P. (MD) Nos.9541, 9542 & 9543 of 2019

S.S.S.Prahalathan

... Petitioner

vs.

- 1.The Secretary
Rural Development and
Panchayat Raj Department
Government of Tamil Nadu
Secretariat, Fort St.George
Chennai
- 2.The Secretary
Finance Department
Government of Tamil Nadu
Secretariat, Fort St.George
Chennai
- 3.The Secretary
Municipal Administration and
Water Supply Department
Government of Tamil Nadu
Secretariat, Fort St.George
Chennai
- 4.Accountant General
Accountant General's Office (A&E)
Tamil Nadu Office
361, Anna Salai
Teynampet
Chennai
- 5.The Director
Directorate of Rural Development and
Panchayat Raj
Panagal Maligai
Saithapet
Chennai-15



6.Managing Director
Tamil Nadu Water Supply and
Drainage Board
No.31, Kamarajar Salai
Chepauk
Chennai

7.The District Collector
Dindigul District
Dindigul

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the records on the file of the 5th respondent vide proceedings Na.Ka.No.26152/2014/EE-2, dated 12.07.2016 and consequent proceedings of the 7th respondent vide Na.Ka.No.019/2019/RD6, dated 10.05.2019 and quash the same as illegal as devoid of merits and consequently direct the respondents to compute the past service rendered by the petitioner in the 6th respondent / TWAD Board for pensionary and other monetary benefits and allow the petitioner to continue in the Old Pension Scheme (CPS) and issue general provident fund number.

For Petitioner : Mr.Raja Karthikeyan

For Respondents : Mr.A.K.Masnikkam

Special Government Pleader for R1 to R3, R5 & R7

Mr.P.Gunasekaran for R4

Mr.R.Satish for R6

O R D E R

The order of rejection, dated 12.07.2016, passed by the fifth respondent and the consequential order dated 10.05.2019, passed by the seventh respondent, rejecting the claim of the petitioner for reckoning the period of services rendered by him as Junior Drafting Officer in Tamil Nadu Water Supply and Drainage Board (for brevity "TWAD Board") are under challenge in this writ petition.

2. The petitioner is working as Assistant Executive Engineer in Rural Development and Panchayat Raj Department. He joined in the Department on 24.11.2007 as Assistant Engineer through Tamil Nadu Public Service Commission and his services were regularized and at present, he is working as Assistant Executive Engineer.

3. The petitioner states that he served as Junior Drafting Officer in TWAD Board from 05.05.1993 to 23.11.2007. The petitioner, while working as Junior Drafting Officer in TWAD Board,



appeared in the selection process for recruitment to the post of Assistant Engineer conducted by the Tamil Nadu Public Service Commission. It is specifically stated that the petitioner obtained permission from TWAD Board to participate in the selection process. The petitioner was subsequently selected and appointed as Assistant Engineer in the Rural Development and Panchayat Raj Department and thereafter, he resigned the post of Junior Drafting Officer and got relieved himself from TWAD Board and joined in the Rural Development and Panchayat Raj Department as Assistant Engineer.

4. The grievance of the petitioner is that the services rendered by him as Junior Drafting Officer in TWAD Board from 05.05.1993 to 23.11.2007 has not been taken into consideration by the respondents for reckoning the qualifying service period for grant of pensionary benefits. The petitioner submitted an application for the said grievance and it was rejected by the fifth respondent stating that he resigned the post of Junior Drafting Officer in TWAD Board and further, the account for provident fund was separately maintained by TWAD Board and Rural Development and Panchayat Raj Department and therefore, the request of the petitioner cannot be considered.

5. It is relevant to refer Tamil Nadu Pension Rules, 1978 (for brevity "the Rules") in this regard. Rule 23 of the Rules stipulates forfeiture on service on resignation. Sub-Rule (1) to Rule 23 states 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.

6. As far as TWAD Board is concerned, the petitioner obtained proper permission from the Competent Authority and such permission was accorded vide proceedings dated 05.01.2007. After selection, the petitioner resigned his post in TWAD Board and joined in the Rural Development and Panchayat Raj Department. When permission has been properly granted by TWAD Board and pursuant to the said permission, the petitioner resigned his post in TWAD Board and thereafter, joined in the Rural Development and Panchayat Raj Department, proviso to Rule 23(1) of the Rules would be applicable. The proviso to Rule 23(1) of the Rules in clear terms stipulates that 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.

7. In the present case, the petitioner obtained proper permission from the Executive Engineer of TWAD Board vide proceedings dated 05.01.2007. Once permission is granted, the

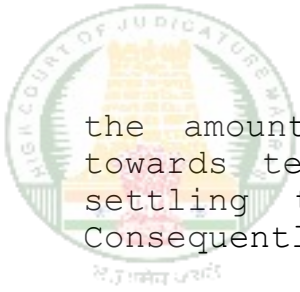


resignation become its consequential and cannot be considered as an independent resignation so as to invoke the forfeiture clause. The subjective satisfaction of the Authority concerned in this regard is relevant for the purpose of conferring a right to the employee. Once a resignation is independent, without reference to any such permission granted by the Competent Authority, then such resignation amounts to forfeiture of services under Rule 23 of the Rules. However, if the Competent Authority has granted permission under the Rules and pursuant to the permission, the employee joined in the new post by resigning his post, such resignation is to be construed as continuation of permission, which is complied with for the purpose of relieving from the particular post and such resignation will not disentitle an employee from getting the benefit of counting the period of services under the proviso to Rule 23(1) of the Rules. In the absence of any such distinction, the very purpose of obtaining and granting permission will be defeated. TWAD Board was very much aware of the fact that the petitioner obtained permission and participated in the process of selection. Therefore, the resignation of the petitioner cannot be considered as an independent resignation and it is to be considered as consequential to the permission granted by TWAD Board, which would not attract forfeiture of services under Rule 23, but falls under proviso to Rule 23(1) of the Rules.

8. The learned counsel for the petitioner further brought to the notice of this Court that in similar circumstances, the Government has granted the benefit of reckoning the period of past service as qualifying service period in favour of one Mr.Vetriveeran under G.O.(Ms) No.144, Rural Development and Panchayat Raj (E3) Department, dated 10.12.2021.

9. This Court is of the considered opinion that once the petitioner established that he secured appointment through Tamil Nadu Public Service Commission and joined in Rural Development and Panchayat Raj Department and he participated in the process of selection only after obtaining proper permission from TWAD Board and consequently, resigned the post in continuation of permission granted, then there is no reason to deny the benefit of reckoning the period of past service rendered by him in TWAD Board as qualifying service period.

10. Accordingly, the writ petition is allowed and the order, dated 12.07.2016, passed by the fifth respondent and the consequential order dated 10.05.2019, passed by the seventh respondent, are quashed. The respondents are directed to reckon the period of service rendered by the petitioner as Junior Drafting Officer in TWAD Board from 05.05.1993 to 23.11.2007 as qualifying service period for the purpose of calculation of pensionary benefits and pass appropriate orders to that effect. It is made clear that



the amount already received by the petitioner from TWAD Board towards terminal benefits or otherwise is to be adjusted, while settling the eligible amount to the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (Records)

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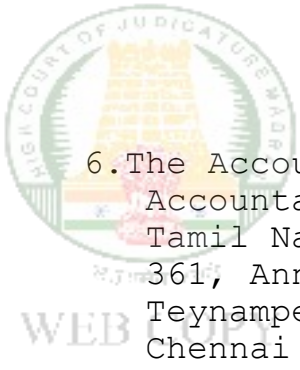
/ /2022

Sub Assistant Registrar(CS)

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To:

- 1.The Secretary,
Rural Development and
Panchayat Raj Department,
Government of Tamil Nadu,
Secretariat, Fort St.George,
Chennai.
- 2.The Secretary,
Finance Department,
Government of Tamil Nadu,
Secretariat, Fort St.George,
Chennai.
- 3.The Secretary,
Municipal Administration and
Water Supply Department,
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- 4.The Director,
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- 5.The District Collector,
Dindigul District, Dindigul.



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6.The Accountant General
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Tamil Nadu Water Supply and
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No.31, Kamarajar Salai
Chepauk
Chennai

+1 CC to M/s.RAJA.KRTHIKEYAN, Advocate (SR-18918[F] dated 18/04/2022)

+1 CC to M/s.SPL.GP. (SR-19004[F] dated 18/04/2022)

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SS/06.05.2022 : 6P/10C