



W.P.(MD)No.334 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **26.07.2022**

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

**W.P(MD)No.334 of 2019
and
W.M.P(MD).No.270 of 2019**

P.Ayyasamy

.. Petitioner

Vs.

1.The General Manager,
Chennai Metropolitan Water Supply and Sewerage Board,
No.1, Pumping Station Road,
Chintadripet, Chennai -2,

2.The Joint Registrar of Co-operative Societies,
Sivagangai, Sivagangai District.

3.The Deputy Registrar of Co-operative Societies,
Public Distribution System,
Sivagangai, Sivagangai District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the third respondent in his proceedings in Na.Ka.No.2645/2008/படுதா(2), dated 30.07.2018 and quash the same as illegal and consequently, to direct the second respondent to forward the revised pension proposal by calculating the service rendered by the petitioner as Junior Assistant from 11.08.1982 to 31.07.1986 at Chennai Metropolitan Water Supply and



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Sewerage Board in the light of the proceedings issued by the first respondent in his proceedings dated 10.06.2008 and 06.11.2017 within the period that may be stipulated by this Court.

For Petitioner : Mr.C.Venkateshkumar
for M/s.Ajmal Associates

For Respondents : No appearance (For R1)
Mr.P.Thilak Kumar
Government Pleader (for R2 & R3)

ORDER

This writ petition has been filed to quash the impugned order passed by the third respondent in his proceedings in ந.க. 2645/2008/படுதா(2), dated 30.07.2018 and consequently, to direct the second respondent to forward the revised pension proposal by calculating the service rendered by the petitioner as Junior Assistant from 11.08.1982 to 31.07.1986 at Chennai Metropolitan Water Supply and Sewerage Board in the light of the proceedings, dated 10.06.2008 and 06.11.2017, within the period that may be stipulated by this Court.

2. The petitioner herein had originally joined as Junior Assistant in the Chennai Metropolitan Water Supply and Sewerage Board on 11.08.1982. He had resigned from the said post on 31.07.1986, which resignation was accepted by the first respondent herein in the



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proceedings, dated 05.08.1986. Subsequently, he was appointed as Junior Inspector of Co-operative Societies under the second respondent herein on 04.08.1986. When the petitioner herein had reached the age of superannuation i.e., on 30.06.2008 while serving under the second respondent herein, his pensionable Service was calculated from 04.08.1986, which date he had joined in the second respondent society, to 30.06.2008, which is the date of his superannuation. When the petitioner herein had sought for inclusion of the service rendered by him under the first respondent Board herein between 11.08.1982 and 31.07.1986, the same came to be rejected through the impugned order stating that since the petitioner had not produced 'No Service Break' certificate from the respondent board, such service under the first respondent cannot be taken into account for the purpose of calculating the pensionary service.

3. The issue as to whether the past service of Government employees can be forfeited for the purpose of calculating the pensionable service, has come up for consideration before this Court on various occasions and in one such issue in the case of ***K.Rathnavelu Vs., The Government of Tamil Nadu, Higher Education Department and others*** passed in **W.P.No.9538 of 2013, dated 04.03.2022**, it was



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held that the resignation from the past service, when construed to be for the purpose of joining the subsequent service, then such past service should also be taken into account for the purpose of calculating the pensionable service. The relevant portion of the order is as follows:

“

3. The learned counsel for the fifth respondent herein placed reliance on the counter affidavit and submitted that since the petitioner's resignation from the Government service was a resignation simpliciter and does not reveal that he had resigned for the purpose of joining a Government College, he cannot be claiming benefits, as per the proviso under Rule 23.

4. Rule 23 and Rule 24 of the Tamil Nadu Pension Rules reads as follows:-

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



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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.

24. Effect on interruption in service -

(1) The interruptions in service shall not entail forfeiture of past service except when a person was removed and re-employed. The actual interruptions in service shall not, however, count for pension.

(2) The services rendered in temporary or permanent department or in substantive office shall also count for pension even if any interruptions exist."



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5. *As per the proviso to the aforesaid rules, the resignation of a Government servant requires to be done with proper permission, for the purpose of another appointment.*

6. *The learned counsel for the fifth respondent places reliance on the entry in the service register dated 31.08.1976 and submitted that since the entry does not reveal that the resignation was for the purpose of joining another Government service, the benefit under Rule 23 will not be applicable to the petitioner. Such an inference drawn from the entry in the service register seems unacceptable. For this purpose, it would be appropriate to refer to certain dates of the petitioner's resignation and the subsequent Government employment.*

7. *Admittedly, the petitioner herein had resigned from the earlier employment on 31.08.1976 and joined the fourth respondent-College on 03.09.1976, which is after 2 days. The fifth respondent seems to have drawn a negative inference from the entry in the service records. While comparing the dates of the resignation and the subsequent*



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*joining of the Government College, which is after about 2 days, a positive inference requires to be drawn that the resignation from the earlier employment was only for the purpose of joining the fourth respondent-College. This proposition can be fortified by an order of the Hon'ble Division Bench of this Court in the case of **D.Vijayarangan Vs. The Secretary, Sales Tax Appellate Tribunal and another** reported in **2009 Writ L.R. 12**, whereby, the Division Bench had expanded the scope of Rule 23 to include even resignations based on the ground of illness. The relevant portion of the order reads as follows:-*

"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 ganted by the competent authority. In case, if it is held that the person, who has resigned because



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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 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



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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."

8. Under similar circumstances, while placing reliance on Rule 23, a learned single Judge of this Court, in the case of N.Nallakannu Vs. Secretary to Government, Finance (CA) Department and another passed in W.P.(MD) No.11000 of 2005 dated 25.04.2011, had directed for counting all the past services of a Government employee, who had resigned from the earlier Government service, by applying the proviso to Rule 23, in the following manner:-



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"11. The proviso to the afore-said Rule makes it clear that the resignation shall not entail forfeiture of past service, if it has been submitted to take up any appointment with prior permission. Admittedly, the petitioner was recruited through Tamil Nadu Public Service Commission. While he was serving in the Pubic Works Department, he submitted his resignation letter to the Executive Engineer to take up the employment with the Co-operative Department on 14.09.1971. He joined the Co-operative Department on 15.09.1971. Thus, it should be taken that the petitioner is entitled to the proviso of Rule 23 of the Tamil Nadu Pension Rules. In fact, the Division Bench of this Court has interpreted Rule 23 of the Tamil Nadu Pension Rules in such a way to grant the terminal benefits if a person resigned on the ground of ill health, though such a contingency is not provided in the Rule. Hence, I am of the view that based on the proviso to Rule 23 of the Tamil Nadu Pension Rules, and the decision of the Division Bench, the petitioner is entitled to succeed."



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9. *The aforesaid orders are self explanatory. When*

there is nothing on record to show that the petitioner had resigned from his services, owing to some misconducts or any other adverse inference and by taking into account that the petitioner had joined the Government service, after resigning from the earlier Government service, within 2 days, this Court is of the view that the resignation of his earlier service was only for the purpose of joining the subsequent Government service and therefore, by applying the proviso to Rule 23, the petitioner would be entitled for all the pensionary benefits.

.....”

4. In the instant case, the petitioner herein had joined as Junior Assistant in the first respondent Board on 11.08.1982 and had resigned from service on 31.07.1986 for the purpose of joining the second respondent society on 04.08.1986, which was 3 days after his resignation. By applying the proposition laid down in the aforesaid decision, it can be said that his resignation from the first respondent Board was for the purpose of joining the second respondent society and therefore, the petitioner would be entitled for counting of his past service calculated for the purpose of determining his pension.



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5. In the result, the impugned order passed by the third respondent in his proceedings in ந.க.2645/2008/புதொ(2), dated 30.07.2018 is quashed. The Writ Petition is allowed. Accordingly, there shall be a direction to the second respondent herein to forward the revised pension proposal by calculating the service rendered by the petitioner as Junior Assistant under the first respondent Board between 11.08.1982 to 31.07.1986, as pensionable service and thereby, refix his pension. Such order shall be passed at least within a period of six(6) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes / No
Rmk



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To

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M.S.RAMESH,J.

Rmk

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