



W.P.(MD)No.2424 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.08.2022

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.(MD)No.2424 of 2015

K.Balasubramanian

... Petitioner

Vs.

1. The Vice Chancellor,
Madurai Kamaraj University,
Palkalai Nagar,
Madurai - 625 021.

2. The Registrar,
Madurai Kamaraj University,
Palkalai Nagar,
Madurai - 625 021.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for records of the second respondent in Ref.Estt.IV/2/2013, dated 11.11.2013 based on the resolutions of the Syndicate dated 30.11.2012 and 30.04.2013 and quash the same and further direct the respondents to disburse all the retirement



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benefits and emoluments accrued on the service of the petitioner together with interest @ 12% per annum from the date of retirement till the date of realization along with all pensionary benefits as provided under the law.

For Petitioner : Mr.S.Chandrasekaran
For Respondents : No appearance for R1
Mr.M.Muthu Geethayan for R2

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the order passed by the second respondent in Ref.Estt.IV/2/2013, dated 11.11.2013 based on the resolutions of the Syndicate dated 30.11.2012 and 30.04.2013 and consequently, direct the respondents to disburse all the retirement benefits and emoluments accrued on the service of the petitioner together with interest @ 12% per annum from the date of retirement till the date of realization along with all pensionary benefits as provided under the law.

2. The learned counsel for the petitioner submitted that the petitioner was appointed as Clerk temporarily as per the order of the second



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respondent dated 06.08.1976. While he was serving as a Clerk, he submitted his resignation letter on 14.06.1978 due to sudden ill health. Accordingly, he was relieved from the respondent University on 17.06.1978. Subsequently, after recovery from his illness, he submitted a request letter dated 08.08.1978, requesting for cancellation of his resignation and to reinstate him in the original post. By considering his request, on 21.09.1978, the Syndicate of the respondent University, which is the 'Supreme Administrative Body' accepted his request with a condition to treat his period of absence from 16.06.1978 till the date of rejoining in the University as 'leave on loss of pay' vide order dated 29.09.1978. Accordingly, the petitioner joined duty on 03.10.1978 and he was given promotions. At the time of retirement on attaining the age of superannuation on 30.04.2011, he was working as Senior Deputy Registrar. He further submitted that from the date of retirement, he has been receiving only 75% of pension amount. Therefore, he filed W.P.(MD)No.8190 of 2012 before this Court and this Court, by order dated 01.08.2012, directed the second respondent to consider the petitioner's representation, dated 10.01.2012 with regard to pension proposal and sanctioning of terminal benefits, on priority



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basis, within a period of two weeks from the date of receipt of a copy of that order. Since no order was passed, the petitioner filed Cont.P.(MD)No.50 of 2013 before this Court. During the hearing of the Contempt Petition, he came to understand that the petitioner's pension proposal was returned by the Deputy Director of Local Fund Audit stating that the service has to be calculated only from the date of rejoining, i.e., on 03.10.1978. Therefore, this petition.

3. In response, the learned counsel for the second respondent submitted that when a proposal for pension was submitted to the sanctioning authority, it was returned by the Deputy Director of Local Fund Audit stating that only after getting clarification from the Director from the Local Fund Audit, Chennai, the Certificate regarding grant of pension would be granted. Then, vide letter in Na.Ka.No.88/A1/2012, dated 11.05.2012, the Deputy Director of Local Fund Audit intimated the Registrar of Madurai Kamaraj University that the period from 03.10.1978, i.e., the date of petitioner's rejoining in the University would alone be considered for calculating the pension and the pension proposal was



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returned with a direction to resubmit the pension proposal calculating the qualifying service from 03.10.1978. Again, it was reiterated vide proceedings in Na.Ka.No.360/A1/2018 dated 04.07.2018, as per Rule 23 of the Tamil Nadu Pension Rules, 1978, that the resignation from a service or post entails forfeiture of past service. Therefore, it was reiterated that the pension proposal should be sent taking into consideration this aspect. Then, the Madurai Kamaraj University passed a resolution on 30.11.2012 resolving that "the terminal benefits of Thiru.K.Balasubramanian, Senior Deputy Registrar, who retired on 30.04.2011 on superannuation be calculated from the date of rejoining, i.e., 03.10.1978 based on the audit remarks dated 28.04.2011 and 11.05.2012 together with the office note thereon be approved". Then, through the resolution dated 30.04.2013, it was resolved that "the release of the terminal benefits calculated from the date of rejoining, i.e., 03.10.1978 based on the audit remarks dated 28.01.2011 and 11.05.2012 in respect of Thiru.K.Balasubramanian, Senior Deputy Registrar, retired on 30.04.2011 on superannuation together with the office note thereon be approved and the resolution of the syndicate at its meeting held on 30.11.2021 Item No.6 prevails on the same subject matter". This



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resolution was communicated to the petitioner. Now, the petitioner is getting pension as per the revised pension proposal taking into consideration the petitioner's service only from the date of rejoining on 03.10.1978. Then, he submitted that the petitioner's claim for grant of pension taking into consideration the date of joining in the service from 06.08.1976, cannot be considered. In this regard, he pressed into service the judgment of the Hon'ble Supreme Court of India in the case of ***State of Punjab and others vs. Gurbaran Singh*** in ***Civil Appeal No.2411 of 2019*** and the order of this Court in the case of ***Dr.T.V.Venkataraman vs Secretary to Government and others*** in ***W.P.No.11969 of 2009***.

4. I have considered the rival submissions made by the learned counsel appearing for the parties and perused the materials placed before this Court.

5. During the course of hearing, there was a question arose as to whether the petitioner resigned from his service from the second respondent University due to his illness or due to joining in banking service. In the



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affidavit filed by the petitioner, it is claimed that the petitioner resigned from his service due to his illness and after recovery, he was reinstated on the basis of his request. However, the University, passed a resolution dated 22.09.1978 that the petitioner resigned from his service for joining banking service. Then he did not want to continue in the banking service and expressed his willingness to join the University. The proposal was considered by the second respondent University and it was resolved that 'Thiru.K.Balasubramanian (formerly Clerk, Institute of Correspondence Course and Continuing Education) be reinstated in service of the University cancelling the resignation and treating the period of absence as leave on loss of pay as a special case, he being a scheduled caste'. Thus, it is clear that the petitioner resigned his service to join the Bank. As per the resolution, the petitioner joined duty on 03.10.1978 and continued his service till his retirement on attaining the age of superannuation on 30.04.2011. In the meantime, he got promotions to the post of Assistant, Senior Superintendent, Assistant Deputy Registrar and then, as Senior Deputy Registrar. He was working as Senior Deputy Registrar at the time of his retirement.



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6. The issue here is that when the pension proposal was sent, the Local Fund Audit raised an objection that the petitioner's service from 03.10.1978 would alone be considered for calculating the period of service and for fixing the terminal benefits and pension. The period of his service from 06.08.1976 till the date of his resignation on 17.06.1978 and then from 18.06.1978 to 02.10.1978 could not be considered for the reason that he resigned from the post he held with the University. The short point that arises for consideration of this Court, is as to whether the period from 06.08.1976 to 02.10.1978 can be considered for computing the period of service and for calculating the pension and terminal benefits.

7. It is relevant to refer hereunder Rule 23 of Tamil Nadu Pension Rules:

"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 submitted to take up with proper permission, another appointment,



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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."

8. As per this Rule, resignation from a service or post entails forfeiture of past service. The only exemption is that if a proper permission is taken for another appointment, whether temporary or permanent, under the Government where service qualifies. Government is defined as the Government of Tamil Nadu under Rule 3H of the Tamil Nadu Pension Rules. The petitioner in this case did not take permission under the Government of Tamil Nadu nor did he take up an appointment with Tamil Nadu Government. Therefore, it makes it clear that the petitioner's past service in the post of Clerk held under the second respondent University



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could not be taken into consideration. This position is explained in the case of ***State of Punjab and others vs. Gurbaran Singh*** in ***Civil Appeal No.2411 of 2019*** and the relevant paragraph is extracted hereunder:

"9. It was thus clearly laid down that in case of resignation from service or a post, unless the matter was covered under Sub-Rule 2 of Rule 26 CCS Rules, it would entail forfeiture of past service. Since the past service would stand forfeited, the same would be excluded from the period of qualifying service, and as such for deciding the question of entitlement to pension, the employee would not have the qualifying period of service."

9. The learned counsel for the second respondent also brought to the notice of this Court that the petitioner was again taken into service on the condition that his period of absence would be considered as leave on loss of pay. The leave on loss of pay would not be countenanced for qualifying service. It is relevant to extract hereunder Rule 18 of the Tamil Nadu Pension Rules:

"18. Counting of periods spent on leave:-

All leave during service for which leave salary is



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payable and extraordinary leave granted on medical certificate shall count as qualifying service:

Provided that in the case of extraordinary leave other than extraordinary leave granted on medical certificate the appointing authority may, at the time of granting such leave, allow the period of that leave to count as qualifying service if such leave is granted to a Government servant.

(i) due to his inability to join or rejoin duty on account of Civil Commotion; or

(ii) for prosecuting higher scientific and technical studies; or

(iii) for taking up employment abroad, if necessary pension contributions are paid by the Government servant to the Accountant General, Tamil Nadu from time to time with appropriate interest for belated payments, if any."

10. This Rule makes it clear that the leave which is payable with salary shall alone be countenanced as qualifying service other than extraordinary leave granted on medical certificate. Here, in the case on hand, the petitioner's absence was considered as leave on loss of pay. That



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means, he is not entitled for salary. Therefore, petitioner's absence shall not be countenanced for qualifying service. This position was considered by this Court in the case of ***Dr.T.V.Venkataraman vs. Secretary to Government and others*** in ***W.P.No.11969 of 2009*** and the relevant paragraph is extracted hereunder:

"12. The period for 03.05.1993 to 24.06.1994 which has been treated as extraordinary leave without pay and allowances cannot be counted towards qualifying service for the purpose of computation of pension as because it does not come within the four corners of the proviso to Rule 18. This petition is dismissed."

11. Considering the above decisions and position of law, this Court is of the considered view that the petitioner is not entitled to treat his entire service from 06.08.1976 till the date of his rejoining on 03.10.1978 for calculating pension and other terminal benefits. Therefore, there is no merit in the claim of the petitioner and this Writ Petition is liable to be dismissed.



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12. Accordingly, this Writ Petition is dismissed. If any terminal benefits entitled to the petitioner as per his entitlement are withheld, the respondents are directed to pay the unpaid terminal benefits with interest at 6% per annum from the date of its due till the date of payment within a period of four weeks from the date of receipt of a copy of this order. No costs.

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Index : Yes / No

Speaking Order : Yes / No

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To

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2. The Registrar,
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