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W.P. No. 12304 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

CORAM

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

W.P. No. 12304 of 2013

M.Gopalakrishnan

... Petitioner

-VS-

1. The Agricultural Production Commissioner and
Secretary to Government,
Government of Tamil Nadu,
Agriculture (A.U.) Department,
Secretariat, Chennai – 600 009.

2. The Registrar,
Tamil Nadu Agricultural University,
Pappanaicken Pudur,
Coimbatore,
Tamil Nadu – 641 003.

...

Respondents

[R2 impleaded vide order dated
05.08.2016 in M.P.No.1 of 2014]

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records in Letter No. 25570/AU/2011-13 dated 19.11.2012 issued by the Respondent and quash the same and to direct the Respondent to reconsider and pass appropriate orders by exercising the powers under Rule 82 of the Tamil Nadu Pension Rules to grant relaxation of Rule 23 of Tamil Nadu Pension Rules, 1978 and to grant pensionary benefits to the Petitioner within a time



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For Petitioner : Mr. M.Ravi
For R1 : Mr. P.Sathish,
Additional Government Pleader
For R2 : Mr. Vijay Mehanath

ORDER

Heard Mr. M.Ravi, Learned Counsel for the Petitioner, Mr. P.Sathish, Learned Additional Government Pleader appearing for the First Respondent and Mr. Vijay Mehanath, Learned Counsel for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. It is the case of the Petitioner that he was temporarily working as Lower Division Clerk in the office of the Veterinary Disease Investigation, Ranipet during the period from 06.03.1958 to 31.07.1958, and he was subsequently accommodated in a leave vacancy in the same Department between 15.12.1958 and 29.12.1958. The Petitioner was thereafter recruited through the Public Service Commission and regularly appointed as Lower Division Clerk with effect from 10.04.1959 and his services were regularized in the Animal Husbandry Department with effect from 11.04.1959. The Petitioner was subsequently promoted as Superintendent. The Petitioner submitted a letter of



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resignation on 02.08.1979, which was accepted on 04.08.1979. At the time of resignation, the Petitioner fell short of 47 days to complete the qualifying service of 20 years for eligibility to receive pension, since he had proceeded on leave on loss of pay during 1968. The Petitioner submitted a series of representations, requesting that he may be sanctioned pension by relaxing the relevant rule and treating his resignation as voluntary retirement. The representation made by the Petitioner to the Tamil Nadu Agricultural University was rejected by stating that there is no provision in the Rules to consider his request. The earlier Writ Petition in W.P. No. 13121 of 2011 filed by the Petitioner to direct the First Respondent to consider his representation for relaxation of Rule 12(a) of the Tamil Nadu Pension Rules, 1978 (hereinafter referred to as 'the Rules' for short), and sanction pensionary and terminal benefits was disposed by order dated 27.09.2011 referring to the distinction between 'resignation' and 'voluntary retirement' for the purpose of grant of pension as highlighted by the Hon'ble Supreme Court of India in the decision in ***J.K. Cotton Spinning & Weaving Mills Company Limited -vs- State of U.P.*** (AIR 1990 SC 1808) and followed in certain other decisions of this Court, as extracted below:-

10. No material has been placed before this Court to establish that the judgment referred to above are not applicable to the



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facts of the case. Therefore, the Petitioner is entitled to the relief sought for.

11. In the result, the Writ Petition is disposed of, by directing the Respondent to consider the case of the Petitioner for grant of pension by taking note of the decision, referred supra, and in the light of the various Government Orders referred to above, granting pension to similarly placed persons and necessary orders may be passed in this regard within a period of three months from the date of receipt of a copy of this order. No costs.

The First Respondent by Proceedings in Letter No. 25570/AU/2011-13 dated 19.11.2012 rejected the claim made by the Petitioner, which is challenged in this Writ Petition.

3. The First Respondent has filed Counter-Affidavit dated 20.01.2014 reiterating the rejection of the claim for pension made by the Petitioner and has further stated as follows:-



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4. In this connection, it is submitted that the Petitioner herein was appointed in the Madras Veterinary College, Chennai which was under the control of the Tamil Nadu Agricultural University at that time. The Tamil Nadu Agricultural University is an autonomous body having a separate Act, Statutes and Rules to govern the conditions of service to their employees and the salary and other allowance shall be paid from the funds of the University and not from the consolidated funds of the State. As such, the Government has no role to pass any orders on the request of their employees or to enter into the administration of the employees working under the control of the Tamil Nadu Agricultural University. The Petitioner tendered his resignation to the authority competent to decide and the same has been agreed to.

5. It is respectfully submitted that in the instant case, the Government is not at all a party to the issue. However, the Petitioner herein, instead of impleading the Tamil Nadu Agricultural University as the contesting Respondent, has impleaded the Government as the only Respondent in the Writ



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Petitions filed by him, even though the Government have no role to pass any orders connected with the service matters of the employees of the Tamil Nadu Agricultural University, which is the supreme body of the said University, is the competent authority to decide such issues.

6. It is respectfully submitted that Tamil Nadu Agricultural University alone is the competent authority to decide the issue in question after examining various decisions cited in the orders of this Hon'ble Court passed in W.P. No. 13121 of 2011 and as stated supra, the Respondent herein is not at all competent to pass any orders in the issue in question.

4. This Court by order dated 05.01.2016 in M.P. No. 1 of 2016 impleaded the Second Respondent, viz., the Registrar, Tamil Nadu Agricultural University, Coimbatore.



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5. At this juncture, it would be necessary to refer to Rules 23 and 82 of the Rules, which are extracted below:-

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, 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.

82. Power to relax:- Where any Department of the Government is satisfied that the operation of any of these rules causes undue



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hardship in any particular case, the Department may by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner.

Provided that no such order shall be made except with the concurrence of the Finance Department.

6. It is beyond any pale of doubt that on account of the resignation of the Petitioner from service, he would not be entitled to receive pension as per Rule 23 of the Rules, but Rule 82 of the Rules enables the concerned Department of the Government to relax any of those Rules, if it is satisfied that its operation causes hardship in a particular case. Though this Court in the earlier order dated 27.09.2011 in W.P. No. 13121 of 2011 had required the First Respondent to examine the case of the Petitioner for relaxation, there is nothing to infer from the impugned order that neither the question of hardship faced by the Petitioner by the operation of Rule 23 of the Rules had been raised by him in his representation nor the First Respondent has adverted to that relevant aspect of the matter while rejecting his claim for pension.



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7. While construing a provision similar to Rule 82 of the Rules contained in Rule 88 of the Central Civil Services (Pension) Rules, 1972, the Hon'ble Supreme Court of India in *Union of India -vs- Gandiba Behera* (Order dated 08.11.2019 in Civil Appeal No. 8497 of 2019) has observed as follows:-

25. We are also of the opinion that the authorities ought to consider their cases for exercising the power to relax the mandatory requirement of qualifying service under the 1972 Rules if they find the conditions contained in Rule 88 stand fulfilled in any of these cases. We do not accept the stand of the appellants that just because that exercise would be prolonged, recourse to Rule 88 ought not to be taken. The said Rules is not number specific, and if undue hardship is caused to a large number of employees, all of their cases ought to be considered.

...

8. That apart, it is not clear as to how the First Respondent has shifted the burden on the Second Respondent to determine the claim of the Petitioner for pension.



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9. In view of the foregoing discussion, this Court without expressing any view on the merits of the controversy, passes the following order:-

- (i) the Petitioner may make necessary representation along with supporting documents to the concerned authority under Rule 82 of the Rules for relaxing the Rule 23 of the Rules relevant rules so as to entitle him for grant of pension;
- (ii) if such representation is made, the concerned authority shall immediately consider the claim made by the Petitioner for relaxation of the relevant rules for grant of pension taking into account any 'undue hardship' that may be suffered by him in terms of Rule 82 of the Rules;
- (iii) if it is found that the Petitioner has not produced any details or supporting documents satisfying the eligibility criteria for the benefits claimed, the deficiencies in that regard shall be informed in writing to him requiring the same to be furnished within a time frame of not less than 15 working days;
- (iv) in the event of the concerned authority not being satisfied with the compliance of the requirements even thereafter, an enquiry shall be conducted affording full opportunity of personal hearing to the Petitioner to explain his position in that regard and the concerned authority shall pass reasoned orders dealing with each of the contentions raised on



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merits and in accordance with law and communicate the decision taken to

the Petitioner under written acknowledgment; and

- (v) if the Petitioner is found entitled to the relaxation of the relevant rules for grant of pension as claimed, it shall be ensured that the eligible amount of arrears of pension (after permissible deductions) is paid within three months from the date of passing of that order, apart from monthly pension for future months on the due dates.

It is needless to add here that the concerned authority, while examining the matter afresh, shall not be inhibited or influenced by the impugned order passed by the First Respondent.

In the result, the Writ Petition is disposed on the aforesaid terms. No costs.

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Index: Yes/No

Note: Issue order copy by 05.06.2024.



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To

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1. The Agricultural Production Commissioner and
Secretary to Government,
Government of Tamil Nadu,
Agriculture (A.U.) Department,
Secretariat, Chennai – 600 009.
2. The Registrar,
Tamil Nadu Agricultural University,
Pappanaicken Pudur,
Coimbatore,
Tamil Nadu – 641 003.

Copy to

M.Gopalakrishnan,
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Chennai – 600080.



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P.D. AUDIKESAVALU, J.

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