



W.P.No.20182 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2023

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.20182 of 2018

A.Ramasamy

.. Petitioner

/versus/

1.The District Collector,
Villupuram District at
Villupuram.

2.The Accountant General (A and E)
Office of the Accountant General,
No.361, Anna Salai,
Teynampet, Chennai 600 018.

.. Respondents

Prayer : Writ Petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for records relating to the first respondent's order made in proceedings Ref.No.N1/1064/15, dated 21.01.2016, to quash the same and to consequently direct the respondents to revise and refix the pension and pensionary benefits by including the qualifying services rendered between 19.05.1981 and 15.04.1984.



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For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.K.H.Ravikumar,
Government Advocate for R1
Mr.V.Vijayashankar for R2

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ORDER

The petitioner was initially appointed in the Revenue Department as a Part-time Section Writer on 19.05.1981 and he was posted on regular basis as Surveyor-cum-Draftsman on 01.12.1982. Thereafter, when he was selected to the post of Village Administrative Officer, he had given one month Notice for resignation to the Assistant Director of Survey and Land Records, Cuddalore. His request for resignation for the purpose of joining the post of Village Administrative Officer was accepted on the after noon of 15.04.1984 through the proceedings dated 07/04/1984. Accordingly, the petitioner had also joined as Village Administrative Officer on 08.07.1984. He continued in the said post and ultimately, retired from service on 30.04.2013. When the petitioner sought for inclusion of his service period between 01.12.1982 and 15.04.1984, the same came to be rejected by the first respondent herein stating that the above service cannot be included in his Net Qualifying Service, since he has resigned



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the job and such entry is also found in the Service Register of the individual. Challenging the order of the first respondent in Ref.No.N1/1064/15 dated 21.01.2016, this present Writ Petition has been filed.

2. 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 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 failing 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



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forfeiture of past service except when a person was removed and reemployed. 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.

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.

3. The learned counsel appearing for the second respondent places reliance on the entry in the service register 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.

4. Admittedly, the petitioner herein had resigned from the earlier employment on 15.04.1984 and joined the post as Village Administrative



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Officer on 08.07.1984. The first respondent seems to have drawn a negative inference from the entry in the service records. While considering the proceedings of the Assistant Director of Survey and Land Records, Cuddalore, dated 07.04.1984, the positive inference requires to be drawn that the resignation from the post of Surveyor-cum-Draftsman was only for the post of joining Village Administrative Officer. This proposition can be fortified by an order of the Hon'ble Division Bench of this Court in the case of *D.Vijayarangan v. 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 granted by the competent authority. In case, if it is held that the person, who has resigned because of illness or ill-health, as at par with the



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class of employees, who resigns 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 health and no 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 State. The respondents are, accordingly, directed to pay the petitioner the pension and gratuity with 8% interest pa., 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



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petitioner will also be entitled for 8% interest on the same.”

5.Under similar circumstances, while placing reliance on Rule 23, a learned Single Judge of this Court, in the case of *Nallakannu v. 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:-

“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 Public 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



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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.”

6. The aforesaid orders are self explanatory. When there is nothing on record to show that the petitioner had resigned from his service, 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, 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.

7. For all the forgoing reasons, the impugned order made in proceedings Ref.No.N1/1064/15, dated 21.01.2016 on the file of the first respondent is hereby quashed. Consequently, there shall be a direction to the first respondent herein to forthwith pass an order, making necessary entries in the service register of the petitioner by inclusion of the period of his service between 01.12.1982 and 07.07.1984 as regular Surveyor-cum-



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Draftsman and include such service as pensionable service and accordingly, he shall forward a proposal to the second respondent herein for the purpose of awarding pensionary benefits for the said period and also, the second respondent, in turn, shall consider such proposal, revise and re-fix the petitioner's pension and pensionary benefits by including net qualifying service between 01.12.1982 and 07.07.1984 and disburse the arrears of the pensionary benefits, within a period of four weeks, from the date of receipt of a copy of this order.

8. Accordingly, this Writ Petition stands allowed. No costs.

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Speaking/Non-speaking
Index:Yes

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M.S.RAMESH,J.

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