



W.P.Nos.24939 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.24939 of 2015

and

M.P.No.1 of 2013

K.V.Vanaja

....Petitioner

vs

1. The Secretary to Government,
School Education Department,
Fort St.George,
Chennai - 600 009.

2. The Director of Elementary Education,
College Road,
Chennai.

...Respondents

Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned letter issued by the 1st respondent in letter No.12431/Ni.Va.2(1)/2013 -1 dated 30.03.2015 and quash the same and consequently direct the respondents to sanction and pay pension and all pensionary benefits with the revised pay and arrears of pension with all consequential benefits.



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For Petitioner : Mr.R.Prem Narayan

For Respondents : Mr.U.M.Ravichandran,
Special Government Pleader

ORDER

This Writ Petition has been filed challenging the order dated 30.03.2015 passed by the 1st respondent, in which, the claim of the petitioner was rejected for grant of pension and consequently, direct the respondents to sanction and pay pension and all pensionary benefits with the revised pay and arrears of pension with all consequential benefits.

2.The brief facts of the case of the petitioner are as follows:

i) The petitioner was initially appointed as Secondary Grade Teacher at JKK Rangammal Aided Elementary School, Komarapalayam, Salem District, on 04.08.1964 in a Government Aided Post. After rendering a total service of 13 years, 3 months and 11 days, the petitioner resigned from her post on 15.11.1977, due to ill-health. The resignation was also accepted by the School Management. However, the request of the petitioner for pension was rejected by the Accountant General of Tamil Nadu, Chennai.

ii) Challenging the above said rejection order, the petitioner filed W.P.No.27159 of 2010 before this Court. This Court, by order dated 26.04.2011, dismissed the writ petition. Aggrieved by the said order, the



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petitioner filed W.A.No.974 of 2011. By order dated 07.03.2013, this Court disposed of the said Appeal, permitting the petitioner to make a representation to the 1st and 2nd respondents and further directed the 1st respondent to consider the representation of the petitioner on merits. By order dated 30.03.2015, the 1st respondent rejected the claim of the petitioner for pension. Aggrieved by the said rejection order, the present writ petition has been filed.

3. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents.

4. i) Learned counsel for the petitioner would submit that the petitioner was appointed as Secondary Grade Teacher on 04.08.1964 and completed total service of 13 years and 3 months and 11 days and resigned her job on 15.11.1977 and the same was accepted by the School Management. However, the request of the petitioner for pension was rejected by the Accountant General of Tamil Nadu, Chennai.

ii) Challenging the above said rejection order, the petitioner filed W.P.No.27159 of 2010 before this Court. This Court, by order dated 26.04.2011, dismissed the writ petition. Aggrieved by the said order, the petitioner filed W.A.No.974 of 2011. By order dated 07.03.2013, this Court



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disposed of the said Appeal permitting the petitioner to make a representation to the 1st and 2nd respondents and further directed the 1st respondent to consider the representation of the petitioner on merits. However, the representation of the petitioner was rejected by the 1st respondent vide order dated 30.03.2015 stating that since the petitioner resigned her job, she is not eligible for sanction of pension under Rule 12(a) of the Tamil Nadu Non-Government Employees Pension Rules.

iii) Learned counsel would further submit that the petitioner resigned her job only due to illness. She was on medical leave from 08.02.1977 to 02.11.1977. The details of such leave was entered in the petitioner's service register as detailed below.

Sl.No.19 - Unearned Medical Leave on Medical Certificate from 08.02.1977 to 09.03.1977 - 30 days.

Sl.No.20. - Earned leave from 22.03.1977 to 17.04.1977 for 27 days.

Sl.No.22 - Unearned Medical leave on medical Certificate granted from 21.06.1977 to 20.07.1977 - 30 days

Sl.No.23. - Continuation of Unearned leave on medical certificate granted from 21.07.1977 to



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19.08.1977 - 30 days

*Sl.No.24. - Unearned leave on medical certificate
granted from 04.10.1977 to 02.11.1977 - 302 days.*

iv) The petitioner come under the aided schools and the pension scheme was introduced on 01.04.1972 in G.O.Ms.No.627 dated 11.05.1972. In fact, the pension was allowed from 05.06.1981 and accordingly, the petitioner is entitled for pension.

5. i) Per contra, learned Special Government Pleader appearing for the respondents would submit that the concession granted in G.O.Ms.No.37 Education, Science and Technology Department dated 5.1.1983, cannot be made applicable in the case of the petitioner. Consequent to the introduction of Tamil Nadu Pension Rules and Tamil Nadu State and Subordinate Service Rules, the services rendered by the petitioner has been forfeited since the petitioner has resigned job. The petitioner has not applied for resignation on medical invalidation and the petitioner has never subjected to medical examination by the Medical Board so as to justify that she is not at all capable to continue in government job. Hence, the 1st respondent has rightly rejected the request of the petitioner and thus, he would pray to dismiss the writ petition.



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6. This Court considered the submissions made on either side and perused the materials available on record.

7. The objection raised by the respondents for not providing pensionary benefits to the petitioner is that Rule 23 of the Tamil Nadu Pension Rules which entails forfeiture of past service on resignation from service, if the person who resigned, has not taken another appointment with proper permission after such resignation. In this case, the petitioner admittedly did not take another appointment after resignation. On the other hand, the resignation itself was due to her health issues. The said fact is evident from the entry made in the petitioner's service records that she had taken medical leave from 08.02.1977 to 02.11.1977. Thus, it is clear that the petitioner has resigned her job only due to medical ground.

8. It is not in dispute that the said resignation was accepted and she was also relieved from service. It is true that the very same petitioner approached this Court and filed a writ petition before this Court in W.P.No.27159 of 2010 challenging the rejection order issued by the Accountant General of Tamil Nadu. By order dated 26.04.2011, this Court dismissed the said writ petition. Aggrieved by the said order, the petitioner filed W.A.No.974 of 2011 and by order dated 07.03.2013, this Court



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disposed of the appeal by permitting the petitioner to make a representation to the 1st and 2nd respondents and directed the 1st respondent to consider the representation of the petitioner on merits and in accordance with law. Finally, the 1st respondent passed the impugned rejection letter dated 30.03.2015. Therefore, the only question to be considered in this case is as to whether Rule 23 of the Tamil Nadu Pension Rule, refused to be relaxed in the case of the petitioner, will stare at her and deny the benefit of pension on the reason that she has not taken another appointment with proper permission after her resignation.

9. This Court is of the considered view that the decision made in W.P(MD)Nos.461 and 106 of 2013 dated 02.03.2015 confirmed by the Division Bench as well as the Apex Court on the same issue will come to the rescue of the petitioner herein, since an identical Rule as that of Rule 23 of the Tamil Nadu Pension Rule was considered therein, namely, Rule 16(a) of the Tamil Nadu State Transport Corporation Pension Fund Rules and the Writ Court, has allowed the writ petition therein and directed the respondents to consider the claim of the petitioners therein seeking for pension and pass appropriate orders. The relevant finding and observation at paragraphs 10 of the order made in the above writ petition is extracted



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hereunder:

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"10. Even though the present case involves the Tamil Nadu State Transport Corporation Pension Fund Rules more particularly with regard to Rule 16(a) of the same, the ratio laid down in the above decisions in respect of the resigned employees is equally applicable to the respondent corporation as well. Further, the perusal of the above said Rule would indicate that resignation from service is not a total disqualification for availing pensionary benefits in all cases and on the other hand, proviso to Rule 16(a) contemplates that a resignation shall not entail forfeiture of past services, if it has been submitted to take up with proper permission another appointment, under Government Department / State Public Sector Undertaking/Board. In such cases, the pensionary benefits shall be transferred to the new employer's pension fund. Therefore, it is evident that even though the employee has tendered resignation and if such employees is to take up another appointment under another Department of the Government or State Public Sector undertaking or Board, he is not losing his past services nor there is any forfeiture of such services. Therefore, the intention to grant pensionary benefits is evident, even to such of those persons who take up



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another appointment as stated supra. Consequently, it would mean that resignation from service is not a disqualification in toto. If that be the position, this Court is unable to understand as to how a person who is permitted to enjoy the past services if he takes up another appointment after resignation, is not entitled to get pension in case, if he is not taking another appointment subsequent to such resignation. Certainly, it amounts to discrimination. Therefore, in view of the above decisions of the Hon'ble Division Bench of this Court as well as the Hon'ble Supreme Court, the denial of pension to the petitioner on the ground that they are resigned employee cannot be sustained. But at the same time, not at all the persons who tendered resignation are entitled to pension, unless the period of service so rendered by them comes within the pensionable service period as contemplated under the Rules."

10. While passing the said order, the Writ Court has taken note of the order passed by the Division Bench reported in 2008(3) MLJ 341, which has specifically dealt with the very same Rule 23 of the Tamil Nadu Pension Rules. The above said order made in W.P(MD)No.461 and 106 of 2013 was confirmed by the Division Bench in W.A(MD)Nos.855 and 856 of



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2017 dated 04.07.2017, wherein a specific observation is made at paragraph 10 of the order to the effect that the Division Bench was entirely agreeing with the reasons set out in paragraph 10 of the order made by the Writ Court. The observation of the Division Bench is extracted hereunder:

"10.It is relevant to point out that the learned single Judge was very much conscious that the case of the writ petitioners is to be adjudicated only with reference to Tamil Nadu State Corporation Pension Fund Trust Rules. This is evident from what is set out in para.10 of the order made in the writ petitions. We entirely agree with the reasoning set out therein. This is a case of resignation on health ground. The appellant corporation also chose to accept the resignation submitted by the writ petitioners."

11. The said order of the Division Bench was further put to challenge before the Apex Court by way of Special Leave Petition No.4256 of 2018 and the Apex Court dismissed the SLP by observing that it is not inclined to interfere with the impugned judgment. It is stated now before this Court that after the disposal of the said SLP, a review was sought to be filed with delay before the Division Bench and the said application for condonation of



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delay was also dismissed. Therefore, it is evident that the view expressed by this Court in W.P(MD)Nos.461 and 106 of 2013, more particularly, that the authorities cannot make discrimination between a person who take employment after resignation and a person who does not take employment after resignation, while considering the claim for pension, has become final and thus, binding on the respondents herein as well.

12. At this juncture, it is relevant to point out that even though the first respondent has chosen to reject the request for relaxation of Rule 23, in view of the order passed in W.P(MD)Nos.461 and 106 of 2013 dated 02.03.2015 confirmed upto the Supreme Court, it makes no difference whether the Rule is relaxed or not for considering the claim of the petitioner like person who resign and not taken further employment. In other words, in view of the observations made in W.P(MD)No.461 and 106 of 2013 which have become final and binding on all parties, it is to be noted that the authorities while applying Rule 23, cannot discriminate the persons who resigned and not taken fresh employment on account of some reasons including health issues. Therefore, this Court finds that the petitioner is entitled to succeed in this writ petition.

13. Accordingly, the Writ Petition is allowed and the impugned



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order dated 30.03.2015 passed by the first respondent, is hereby set aside.

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Consequently, the respondents are directed to consider the claim of the petitioner for pension and other benefits in pursuant to her resignation and pass appropriate orders on the same in the light of the order passed in this writ petition. Such exercise shall be done by the respondents within a period of eight 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
Speaking/Non-speaking order
vsi

To

1. The Secretary to Government,
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Fort St.George,
Chennai - 600 009.
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College Road,
Chennai.



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J.NISHA BANU,J.

Vsi

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