



W.P.No.32624 of 2016

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.32624 of 2016

K.Raji

... Petitioner

Vs.

- 1.State of Tamil Nadu,
Represented by
The Secretary to Government,
Educational Department,
Secretariat,
Chennai – 600 009.
- 2.The Chief Educational Officer,
Dharmapuri District,
Dharmapuri – 636 701.
- 3.The Headmaster,
Government Higher Secondary School,
Palayampudur,
Dharmapuri District – 636 807.
- 4.The Principal Accountant General,
(Accounts and Establishment),
Tamil Nadu, Anna Salai,
Chennai – 600 018.



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5.The Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai, Chennai – 600 002.

6.The Superintendent of Post Offices,
Dharmapuri Division,
Dharmapuri – 636 701.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the fifth and sixth respondents to send the service particulars of the petitioner to the fourth respondent and thereby direct the fourth respondent to count the service rendered in the sixth respondent Department by the petitioner along with the service rendered as BT Assistant and thereby to revise and re-fix the retirement service benefits of the petitioner including pension and pay the arrears of retirement service benefits and pension to the petitioner.

For Petitioner	: Mr.R.Malaichamy
For Respondents	:
For R1 to R3	: Mrs.C.Meera Arumugam Additional Government Pleader (AGP)
For R4	: Mrs.T.S.Selvarani
For R5 & R6	: Mr.A.Kumaraguru Senior Central Government Panel Counsel (SCGPC)

ORDER

The petitioner has filed the present writ petition seeking issuance of a Writ of Mandamus, to direct the fifth and sixth respondents to send his service particulars to the fourth respondent to enable the fourth respondent to take into account the services rendered by the petitioner in the sixth respondent



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Department along with the services rendered by him as B.T. Assistant and consequently revise and re-fix the retirement service benefits of the petitioner including pension and other retirement service benefits.

2. The petitioner initially joined the fifth respondent as Extra Departmental Branch Postmaster (ED BPM), now called as Gramin Dak Sevak Branch Postmaster (GDS BPM) on 07.05.1983 at Dokkubothanahalli, under the sixth respondent division. Subsequently, he was promoted to the cadre of Postman on 03.07.1991. In the year 2002, the Teachers Recruitment Board (TRB) invited applications for appointment to the cadre of School Assistant (Block Resource Teacher Educated). The petitioner applied for the said post after getting permission from the sixth respondent.

3. As the petitioner was successful in the competitive examination, he requested the sixth respondent to relieve him from the cadre of Postman so as to enable him to join in the State service.

4. The sixth respondent accepted the request of the petitioner and the petitioner was relieved from the cadre of Postman. The petitioner thereafter



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joined State Government service and retired from service on the date of superannuation, on 30.06.2015. However, while calculating pension and other retirement benefits, the respondents did not take into account the services rendered by the petitioner with the Central Government.

5. The petitioner gave representations to the respondents and in turn, the sixth respondent was directed to issue a Certificate or to send the service particulars of the petitioner for further action. Setting out these factors, the petitioner has approached this Court.

6. The second respondent has filed a counter affidavit stating that the petitioner is not entitled to get the retirement service benefits and he is not eligible to count the services rendered by him prior to his resignation, which he seeks, since, he was employed on a contract basis, under Posts and Telegraphs Extra Departmental Agents (Conduct and Service Rules), 1964 and rightly he was called upon to get his service register to enable the respondents to ascertain his service period in the Postal Department. However, the Postal Department cited their rules, had clearly stated that the period of service books and Service Rolls for officials was kept only five years and therefore, the request of the petitioner could not be considered.



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7. Citing this, the second respondent submits that the petitioner does not have any record of having served in the Post and Telegraphs Department and therefore, the writ petition has to fail.

8. The fourth respondent has filed a counter affidavit stating that they had called for details of the services rendered by the petitioner from the Department on 06.01.2017 and on receipt of the same, they would initiate further action to settle the petitioner's service benefits, subject to the conditions stipulated in the Tamil Nadu Pension Rules, 1978.

9. The sixth respondent has filed a counter affidavit along with a typed set of papers stating that the writ petition is liable to be dismissed on the ground of inordinate and unexplained delay and laches.

10. The petitioner has to blame himself the service records not being retained by not informing the fifth and sixth respondents well in advance. Moreover, according to the fifth and sixth respondents, there are two kinds of



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resignations, one being the technical resignation, where the benefit of past service, if admissible, would be given in all other cases and any other category of resignation is a formal resignation.

11. Since the petitioner did not inform the fifth and sixth respondents about his resignation only in order to take a purpose to the State Government, the records were not retained by them. Today, it is too late for the petitioner to seek for issuance of a Mandamus, to direct them to produce the service records.

12. Heard the learned counsel for the petitioner, the learned Additional Government Pleader for the first to third respondents, the learned counsel for the fourth respondent and the learned Senior Central Government Panel Counsel for the fifth and sixth respondents.

13. It is not in dispute that the Pension Rules were amended in and by G.O.Ms.No.38, Finance (Pension) Department dated 13.01.1995. The said amendment has been given retrospective effect with effect from 22.07.1982. The effect of the amendment is that persons, who were holding temporary post under the Central Government and who subsequently applied for a post in State



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Government, through proper channel or with prior permission of administrative authority concerned, would be entitled for the said temporary services and their services to be counted for grant of pension, when the concerned persons eventually retires.

14. Here admittedly, the petitioner retired only in the year 2015. Therefore, with regard to delay and laches, the same cannot be put against the petitioner, because, the very issue arose only at the time of his retirement and the question whether the services in the Central Government can be counted or not were raised by the Central Government at that point only.

15. However, at the same time, the fifth and sixth respondents cannot be found fault with for not being able to produce the service records of the petitioner. They have followed their internal rules and there has been no violation or irregularity and therefore, at this length of time, it is not possible to issue a direction that too, by way of issuance of a writ of mandamus to direct the fifth and sixth respondents to produce the service records of the petitioner.

16. However, it is relevant to note a stand taken by the fifth and sixth respondents in the counter affidavit. Paragraph No.5 of the counter affidavit is



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extracted hereunder:-

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"5. I submit that the petitioner Shri.K.Raji applied for Block Resource Teacher during the year, 2002 and the petitioner was issued with "no objection certificate" on 24.03.2003, as per his request dated 17.03.2003. Subsequently the petitioner had applied for resignation on 27.03.2003 and his resignation was accepted vide 6th respondent Memo No.B2/UF8/99 dated 28.03.2003. The petitioner's request dated 17.03.2003 requesting for NOC, NOC issued on 24.03.2003, his request dated 27.03.2003 requesting for resignation and resignation Memo dated 28.03.2003 are not available as the preservation period for the correspondences relating to personal files is three years after the month in which the official concerned ceased to belong to the Department as per Rule 25(1)(a) of Postal Manual Vol.VI Part I."

17. Thus, it is seen from the above that the services rendered by the petitioner with the Central Government, is not at all in a dispute. In fact, the counter of the sixth respondent clearly gives the detail of the petitioner's appointment and also the date on which, a No Objection Certificate was given permitting him to resign. However, what all stated is that the files are not available with the respondents as they do not maintain the records beyond a period of five years unless and until, it is necessary or required.

18. The petitioner having retired in 2015 is entitled to all statutory benefits. The services rendered by the petitioner with the Central Government are also to be counted while arriving at the pension amount, arrears and other



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service benefits payable to the petitioner. In the instant case, it is not in dispute that the petitioner was employed with the Central Government and in view of the amended Pension Rules as already discussed supra, the petitioner is entitled to have the services rendered with the Central Government also counted, even if it was on a temporary basis.

19. The factum of employment by the petitioner with the Central Government is clearly admitted all round and there is no doubt in this regard.

20. Considering the entire gamut of circumstances and treating this as a special case without being relied on as a precedent in future, the respondents shall dispense with the production of service register of the petitioner from the fifth and sixth respondents and shall proceed to re-fix the pension and other retirement service benefits of the petitioner, in accordance with the rules and law.

21. The respondents shall revise and re-fix the retirement service benefits to the petitioner by counting the services rendered by him in the sixth respondent Department. This exercise shall be carried out by the respondents, within a period of eight weeks from the date of receipt of a copy of this order.



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Index : Yes / No
Internet : Yes / No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes / No

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To

- 1.The Secretary,
Government of Tamil Nadu,
Educational Department,
Secretariat,
Chennai – 600 009.
- 2.The Chief Educational Officer,
Dharmapuri District,
Dharmapuri – 636 701.
- 3.The Headmaster,



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- 5.The Chief Postmaster General,
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P.B.BALAJI, J.

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