



WEB COPY



W.P.No.33189 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 21.03.2023

Orders delivered on 01.06.2023

CORAM :

THE HON'BLE Mrs.Justice **J.NISHA BANU**

W.P.No.33189 of 2014

and

W.M.P.No.2919 of 2016

Dr.P.Ruby Renchith Sheela

..Petitioner

Vs

1. The Registrar,
Tamilnadu Veterinary and Animal
Sciences University,
Madhavaram Milk Colony,
Madhavaram,
Chennai - 600 051.

2. The Director,
Center for Animal Health Studies,
Madhavaram Milk Colony,
Madhavaram,
Chennai - 600 051.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution to issue



W.P.No.33189 of 2014

WEB COPY

a Writ of Certiorarified Mandamus to call for records relating to the impugned order passed by the first respondent in his proceedings Lr.No.19741/FVI-I/2012 dated 16.10.2012 and quash the same and consequently, direct the respondents herein to sanction and pay the pension and all other pensionary benefits to the petitioner in the light of the Judgment of the Division Bench of this Court reported in 2009 WLR page 12 within a time frame as deem fit and proper by this Court.

For Petitioner : Mr.Balan Haridas
for M/s.G.Bala & Daisy
For Respondents : Mr.V.Gangatharan

ORDER

This writ petition has been filed challenging the order passed by the first respondent dated 16.10.2012, rejecting the petitioner's claim to sanction pensionary benefits.

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

i) The petitioner was appointed as Veterinary Assistant Surgeon on



W.P.No.33189 of 2014

WEB COPY

22.09.1984 and promoted as Assistant Professor on 20.06.1994 in the Department of Central University Laboratory, Madhavaram. She had rendered about 20 years of unblemished records of service. The petitioner's service is a pensionable service. The Tamilnadu Pension Rules is applicable to the faculties of the respondent University. After completion of 20 years of service, due to her family circumstances, she tendered resignation to the respondents. The petitioner's resignation was accepted by the first respondent on 29.01.2004 and she was relieved from service on her resignation. Though the petitioner was fully eligible and entitled to get pension as she had completed the requisite minimum service to get pension, the respondents had not taken any steps to disburse pensionary benefits to the petitioner.

ii) On 21.08.2012, the petitioner submitted a representation through proper channel requesting the first respondent to sanction pension and other retirement benefits. In view of the provisions contained in Tamilnadu Pension Rules and as per the Policy announced by the Government of Tamilnadu Budget 2012-13, the minimum requisite service enabling the



W.P.No.33189 of 2014

WEB COPY

Government servant to get pension is 10 years. Hence, the petitioner is eligible and entitled to get pension as she has rendered 20 years of service.

iii) The impugned rejection order has been passed on the ground that she has not resigned the post in order to take up appointment in another department of the Government which is totally contrary to the Judgment of this Court which has been confirmed by the Hon'ble Supreme Court in SLP(Civil) No.22469/2001 dated 10.01.2002. Hence, this writ petition with the aforesaid relief.

3. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents.

4. i) Learned counsel for the petitioner would submit that the order of the authority had been passed in violation of statutory rules and the same is a non-speaking order. The impugned order had been passed without application of mind to the facts and circumstances of the petitioner's case. The competent authority has not exercised the discretion vested on him in



W.P.No.33189 of 2014

WEB COPY

accordance with law.

ii) Learned counsel would further submit that this Court in Government of Tamilnadu vs. S.V.Paul Jeyaraj reported in 2001 (3) MLJ 430 has held that person who resigned the post are entitled to get pension, provided if they had put in minimum pensionable service. The said judgment has been confirmed by the Hon'ble Supreme Court in SLP.(Civil) No.22469/2001 dated 10.01.2002.

iii) Learned counsel would submit that the petitioner, after completion of 20 years of service, due to her family circumstances, tendered her resignation to the respondents. The petitioner's resignation was accepted by the 1st respondent on 29.01.2004 and she was relieved from service on her resignation. Though the petitioner is fully eligible and entitled to get pension, the respondents had not taken any steps to disburse pensionary benefits to the petitioner. In support of his contention, the learned counsel would rely on the decision of the Division Bench of this Court in W.A.(MD).No.1658 of 2018 (K.Kollappapillai vs. The Principal Secretary to Government of Tamilnadu and others).



W.P.No.33189 of 2014

WEB COPY

5. i) Per contra, the learned counsel appearing for the respondents would submit that the relief sought for by the petitioner is not maintainable as the same is devoid of merits. The writ petition is abuse of process of law and the same is liable to be dismissed in-limine on the ground that it would not be open to the petitioner to seek for sanction of pension, when her services were forfeited on account of her resignation.

ii) Learned counsel would further submit that the petitioner after serving in the respondent University for 14 years had resigned her service due to her family circumstances. Her resignation was accepted and she was relieved from service. As per the Tamil Nadu Pension Rules 23(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. In the present case, as the petitioner had resigned from service on the ground of her family circumstances, her service stands forfeited as per the existing Pension Rules. Accordingly, her representation was disposed of by the



W.P.No.33189 of 2014

WEB COPY

respondent University.

iii) In support of the above contentions, learned counsel for the respondents relied on the decision of the Hon'ble Apex Court made in Civil Appeal No.9076 of 2019 @ SLP(C)No.6553 of 2018. Learned counsel would further state that the issue cannot be dealt with on a charity principle. The petitioner, by resigning her post had forfeited her past services and therefore, could not claim pensionary benefits. Hence, he would pray to dismiss the writ petition.

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

7. It is not in dispute that the petitioner, after serving in the respondent University from 22.09.1984 till 29.01.2004 as Veterinary Assistant Surgeon and Assistant Professor, had resigned her post due to family circumstances. Her resignation was accepted by the 1st respondent and she was relieved from service on 29.01.2004.



W.P.No.33189 of 2014

WEB COPY

8. The only grievance of the petitioner is that even though she resigned the post, she is entitled to get pension and all other pensionary benefits as she had put in about 20 years of service and also as per the judgment reported in 2009 Writ L.R. 12.

9. The 1st respondent has rejected the claim of the petitioner stating that as per Tamil Nadu Pension Rule 23, if an employee resigns her job, she will not be entitled for the Pensionary benefits unless the resignation is made to take up appointment in another department of the Government.

10. In the judgment cited by the learned counsel for the petitioner reported in 2009 Writ L.R. 12 (D.Vijayarangan v. Secretary, sales Tax Appellate Tribunal & 2 others), the petitioner therein resigned the job on medical ground. The petitioner therein, due to mental illness was on medical leave for more than one year. Since the leave exceeded more than one year, he was served with notice and he resigned the job and it is evident



W.P.No.33189 of 2014

WEB COPY

that the petitioner was allowed to resign, for which, permission was accorded by the State on condition of payment of its dues. Even in the Division Bench judgment of this Court, relied on by the petitioner made in W.A.(MD).No.1658 of 2018 (K.Kollappapillai vs. The Principal Secretary to Government of Tamilnadu and others), the petitioner therein resigned the job on medical grounds and further after a long time, the pension proposal was also sent by the Department. But in the present case, the petitioner has resigned the job due to her family circumstances.

11. As per Rule 23 of the Tamil Nadu Pension Rules, the petitioner's service stands forfeited on resignation. Needless to say, resignation has the effect of termination of an employee. Voluntary retirement, though has the effect of termination of an employee, yet it has different consequences. The decision to resign is materially distinct from a decision to seek voluntary retirement. In the case of resignation, it can be tendered at any time but in the case of voluntary retirement, it can only be sought for after rendering the prescribed period of qualifying service. Resignation and voluntary retirement cannot be used interchangeably and the Court cannot substitute



W.P.No.33189 of 2014

WEB COPY

one for the other merely because the employee has completed the requisite number of years to qualify for voluntary retirement.

12. In the present case, the past service of the petitioner stands forfeited upon her resignation. Therefore, she is not entitled to pensionary benefits. The judgment cited by the petitioner is not applicable to the present facts of the case. The petitioner resigned her job and her resignation was accepted on 29.01.2004, however, the petitioner has filed this writ petition only in December, 2014, with a delay of more than 10 years. Therefore, the writ petition is liable to be dismissed as there is no merits and also on the ground of laches.

13. In the result, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

01.06.2023

Index :Yes/No
Speaking/Non-speaking order
vsi



WEB COPY



W.P.No.33189 of 2014

To

1. The Registrar,
Tamilnadu Veterinary and Animal
Sciences University,
Madhavaram Milk Colony,
Madhavaram,
Chennai - 600 051.
2. The Director,
Center for Animal Health Studies,
Madhavaram Milk Colony,
Madhavaram,
Chennai - 600 051.



WEB COPY



W.P.No.33189 of 2014

J.NISHA BANU, J.

vsi

Pre-delivery order in
W.P.No.33189 of 2014

01.06.2023