



W.P.No.7453 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.7453 of 2016
and
W.M.P.No.6670 of 2016

A.P.Sudha

...Petitioner

-Vs-

1.The Director of Elementary Education,
College Road, Chennai - 600 006.

2.The District Elementary
Educational Officer,
Erode District.

3.The Assistant Elementary
Educational Officer,
Bhavanisagar Panchayat Union,
Bhavanisagar, Erode District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd and 3rd respondents issued in O.M.No.3791/A3/2015 dated 07.08.2015 and in O.M.No.407/A1/2015 dated 30.04.2015 respectively and quash the same and issue a consequential direction to the respondents to



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count the service rendered by the petitioner in the post of Secondary Grade Teacher at St.John De Britto Girls High School, Sathiyamangalam, Erode District for the period from 24.02.1998 to 21.07.2009 for the purpose of fixation of Selection Grade Scale of Pay in the post of Secondary Grade Teacher and issue a consequential direction to the respondents to fix the petitioner's pay at Selection Grade Secondary Grade Teacher at the initial stage of Rs.15230/- + 4300 GP in the scale of pay of Rs.9300-34800 as on 22.07.2009 to the petitioner and to grant arrears of salary including increments.

For Petitioner : Mr.R.Saseetharan

For Respondents : Mr.M.Shahjahan,
Special Government Pleader

ORDER

Heard Mr.R.Saseetharan, learned counsel for the petitioner and Mr.M.Shahjahan, learned Special Government Pleader appearing for the respondents.

2. The petitioner herein had originally joined as Secondary Grade Teacher in St. John De Britto Girls High School, Sathiyamangalam, Erode District on 24.02.1998, which school is an aided minority educational



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institution. On completion of 10 years of service, she was granted Selection Grade Scale of Pay on 24.02.2008. Thereafter, the petitioner was selected to the post of Secondary Grade Teacher in the Government Elementary School, Bhavanisagar on 15.07.2009. Hence, she had submitted her resignation to the aided school on 21.07.2009, which was accepted and she was also relieved from the services on the same day, for the purpose of joining the Government service. The petitioner's subsequent joining in the Government school was also duly recorded in the service register on 22.07.2009. When the petitioner had sought for re-fixation of her pay on Selection Grade Scale of Pay, the same came to be rejected on 30.04.2015 and 07.08.2015, stating that there were no Government Orders entitling the petitioner to seek for protection of including her services in the erstwhile aided school. Challenging these orders, the present writ petition has been filed.

3. The learned counsel for the petitioner placed reliance on two Government Orders in G.O.Ms.No.992, Education Department, dated 22.06.1979, as well as G.O.Ms.No.1296, Department of Science and Technology, dated 19.06.1982, as well as the decisions of the Hon'ble Supreme Court of India and this Court and submitted that in view of the



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proviso to Rule 23(1) of the Tamil Nadu Pension Rules, her resignation shall not entail forfeiture of past services, since she had properly resigned and was relieved from the aided school, for the purpose of joining the Government service.

4. Per contra, the learned Special Government Pleader appearing for the respondents placed reliance on the averments in the counter affidavit and submitted that once a person resigns from the post, he is ceased for any privileges in the new post. Since the petitioner herein has accepted to join in the new Government post, her past services cannot be counted, which is governed by the conditions of service in her appointment order.

5. The issue involved in the present writ petition is squarely covered by various decisions of the Hon'ble Supreme Court, as well as this Court. As pointed out by the learned counsel for the petitioner, the Hon'ble Supreme Court, in the case of *State of Rajasthan and others Vs. O.P.Gupta* passed in *Special Leave Petition (Diary) No.27824 of 2020*, had dealt with a similar provision under Rule 25 of the Rajasthan Civil Services (Pension) Rules, 1996, which is para materia to Rule 23(1) of the Tamil Nadu Pension Rules.



In the said decision, it was held that when any employee resigns from a post with proper permission, for the purpose of taking up another appointment, the Government shall not entail forfeiture of the past services. The relevant portion of the order reads as follows:-

"15. Rule 25 of the Rajasthan Civil Services (Pension) Rules, 1996 hereinafter referred to as "the Rules" reads as follows:

"25. Forfeiture of Service on resignation

(1) Resignation from a service or a post, entails forfeiture of past service.

(2) 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.

(3) Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time admissible 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 him."

.....



"23. There can be no doubt that resignation from service may entail forfeiture of past service. However, sub-rule (2) of Rule 25 of the Rules carves out an exception. The said sub-rule clarifies that a resignation with proper permission to take up another appointment, whether temporary or permanent, under the Government shall not entail forfeiture of past service.

24. At the cost of repetition, it is reiterated that the Respondent was selected through the RPSC. He applied for the post of Assistant Director (Agro-Industries), while he was still in service of the Rajasthan State Agro Industry Corporation, which is also an entity fully controlled by the State of Rajasthan.

25. The Respondent having retired after working for about 26 years, the Petitioner - State cannot raise the question of proof of prior permission before resignation, more so when the appointment had been made through the RPSC to a Government post. It is to be deemed that there has been disclosure of past service and the application has been made through proper channel by obtaining the requisite approvals.



26. It is to be presumed that prior permission had been taken unless the contrary could be established by the State. May be there was a delay of six years in filing the Writ Petition, however, it is well settled that the laws of limitation do not apply to exercise of jurisdiction under Article 226 of the Constitution of India. Relief under Article 226 of the Constitution of India being discretionary, the Courts might in their discretion refuse to entertain the Writ Petition, where there is gross delay on the part of the Writ Petitioner, particularly, where the relief sought would, if granted, unsettle things, which are already settled."

6. Similar views were also taken by me, in the case of ***K.Rathinavelu Vs. Government of Tamil Nadu, Higher Education Department and others*** passed in ***W.P.No.9538 of 2013, dated 04.03.2022***, by placing reliance on the decisions of the Hon'ble Division Bench, as well as a learned single Judge of this Court, in the following manner:-

"7. Admittedly, the petitioner herein had resigned from the earlier employment on 31.08.1976 and joined the fourth respondent-College on 03.09.1976, which is after 2 days. The fifth respondent



*seems to have drawn a negative inference from the entry in the service records. While comparing the dates of the resignation and the subsequent joining of the Government College, which is after about 2 days, a positive inference requires to be drawn that the resignation from the earlier employment was only for the purpose of joining the fourth respondent-College. This proposition can be forfeited by an order of the Hon'ble Division Bench of this Court in the case of **D.Vijayarangan Vs. 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 class of employees, who resign for



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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 and not 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 p.a., 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 petitioner will also be entitled for 8% interest on the same."



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8. Under similar circumstances, while placing reliance on Rule 23, a learned single Judge of this Court, in the case of **N.Nallakannu Vs. 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 Pubic 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 Tami Nadu Pension Rules in such a way to grant the terminal benefits if a person resigned on the ground of ill health, though 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



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petitioner is entitled to succeed."

9. The aforesaid orders are self explanatory. When there is nothing on record to show that the petitioner had resigned from his services, 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, within 2 days, 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. A co-joint reading of the aforesaid decisions would substantiate that when an employee of an aided school resigns from the post for the purpose of joining another Government service, he would be entitled for all the service benefits that he had carried in the erstwhile school. Consequently, he would also be entitled for revision of the pay scale in the new school by counting the past services.



8. There is yet another aspect in this case. The only reason assigned by the respondents, while denying the petitioner's request for counting her past service, is that there are no Government Orders governing the issue. Such a reasoning seems to be overlooking the two Government Orders, which are pointed out by the learned counsel for the petitioner, which enables counting of the past services in the erstwhile employment.

9. G.O.Ms.No.992, dated 22.06.1979 orders that the services rendered by a Teacher in an aided school, on resignation, should be counted for the required period of 10 years of service, for the purpose of granting selection grade in that post excluding the period of break, if any. Likewise, G.O.Ms.No.1296, dated 19.06.1982 orders that when the Secondary Grade Teachers migrate from an aided school to the Government school, they are allowed the minimum of the time scale of pay of Selection Grade/Secondary Grade post, if they are appointed in a Secondary Grade post.

10. When the aforesaid two Government Orders specifically entitles the Secondary Grade Teacher to seek the benefit of past services, the reasoning adopted by the respondents in their impugned order that there are no



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Government Orders governing the issue, is baseless. On this ground also, the petitioner is entitled to succeed.

11. For all the foregoing reasons, the impugned orders dated 30.04.2015 and 07.08.2015 are quashed. Consequently, there shall be a direction to the respondents to pass appropriate orders, fixing the selection grade scale of pay by counting the service rendered by the petitioner in the post of Secondary Grade Teacher from 24.02.1998 to 21.07.2009 and to fix the petitioner's pay at Selection Grade Secondary Grade Teacher at the initial stage of Rs.15230 + 4300 GP in the scale of pay of Rs.9300-34800 as on 22.07.2009, together with arrears of salary including increments. Such orders shall be passed atleast within a period of four weeks from the date of receipt of a copy of this order..

12. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes
Internet:Yes



Neutral Citation: Yes
Speaking order

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To

- 1.The Director of Elementary Education,
College Road, Chennai - 600 006.
- 2.The District Elementary
Educational Officer,
Erode District.
- 3.The Assistant Elementary
Educational Officer,
Bhavanisagar Panchayat Union,
Bhavanisagar, Erode District.



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M.S.RAMESH,J.

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