



W.P.No.22177 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:01.06.2023

Delivered on: 07.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.22177 of 2017

S.Ilavarasan

... Petitioner

Vs.

1.The Secretary to Government
Tamil Development, Culture & Religious Endowment Dept
Fort Saint George
Chennai-600 009

2.The Commissioner
Hindu Religious & Charitable Endowment Department
Mahatma Gandhi Road
Nungambakkam
Chennai-600 034

3.The Joint Commissioner
Executive Officer
Arulmigu Subramanysamy Temple
Tiruttani

... 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 culminating in the impugned order of the third respondent dated 06.06.2017



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made in No.Rc.1232/2017 A3 and quash the same and consequently direct the respondents 1 and 2 to grant the benefit of G.O.Ms.No.55 Tamil Development Culture and Religious Endowment (RE4-1) Department dated 13.02.2006, taking into account the service rendered by the petitioner from 04.12.1985 to 06.02.2008 in terms of the representation dated 24.04.2017.

For Petitioner : Ms.R.Nandhini
for
Mr.R.Gophinath

For Respondents : Mr.K.Karthikeyan, G.A (HR& CE)
for R1 and 2

Mr.P.Gopalan, for R3

ORDER

The Writ Petition has been filed seeking issuance of a Writ of Certiorarified Mandamus calling for the records in Rc.1232/2017 A3 dated 06.06.2017 on the file of the 3rd respondent and to quash the same and consequently direct respondents 1 and 2 to grant the benefit of G.O.Ms.No.55, Tamil Development Culture and Religious Endowment (RE4-1) Department dated 13.02.2006 taking into account the services rendered by the petitioner from 04.12.1985 to 06.02.2008, in terms of the writ petitioner's



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representation dated 24.04.2017.

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2. The case of the writ petitioner in brief:

The writ petitioner was recruited as a typist in the 3rd respondent temple on 04.12.1985 and he was working as a full time staff till he was promoted as an Assistant on 07.11.1997, subsequent to which also he was working continuously until he was relieved on his resignation from service on 07.02.2008. It is his further case that the petitioner has rendered service in a permanent post for more than 21 years and that his resignation was also accepted and he was relieved from the post with effect from 07.02.2008. The petitioner has also admitted that subsequent to his voluntary resignation he took up employment with the Education Department as a B.T.Assistant in the year 2008 in the Government Higher Secondary School, Nayakanpettai, Kanchipuram District and he continued to serve there until his retirement in May 2015, when he reached the age of superannuation.

3. The 1st respondent in order to grant benefit of pension to temple



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employees promulgated G.O.Ms.No.55 dated 13.02.2006 under which employees rendering 10 years of continuous service and above, till they reach the age of superannuation at 60 years would become entitled to pension, subject to their scale of pay and service which would be determined on the date of their superannuation.

4. According to the writ petitioner the benefits of the said G.O.Ms.No.55 dated 13.02.2006, apply to him and therefore he made several representations to the respondents 2 and 3 to grant departmental pension. However, the 3rd respondent rejected the request stating that the writ petitioner was not entitled to any departmental pension since he had left the services of the temple in 2008 itself. Infact, the 3rd respondent passed an order on 06.06.2017 in No.Rc.1232/2017 A3, which is impugned in the present Writ Petition on the grounds that the same is erroneous and contrary to law and violative of fundamental rights under Article 14 and 19 of the Constitution of India and that the petitioner satisfies the condition prescribed in G.O.Ms.No.55, having rendered 21 years of continuous service.



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5. The 2nd respondent as well as the 3rd respondent filed separate counter affidavits. The contention of the 2nd respondent is that the writ petitioner resigned from his job owing to personal reasons in 2008 and subsequently got employment in the Education Department in the same year from where he retired from service in the year 2015. The petitioner has not disclosed his appointment in Government service while resigning from the temple service and that owing to the fact that the petitioner had 10 years of service in the year 2006 he was duly enrolled under the employee's provident fund scheme and the entire benefits payable to him were also settled in the year 2008 itself. According to the 2nd respondent, G.O.Ms.No.55 dated 13.02.2006 was brought about to provide monthly pension to employees. However, the said monthly pension was subject to the employee paying Rs.100/- towards registration fees and Rs.50/- every year towards renewal of membership besides also paying Rs.1,000/- as a one time premium for the said fund. Further, the petitioner has not registered his name under the departmental pension scheme which is also conditional and that the petitioner having not continued in temple service till his retirement and having failed to



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register his name under the scheme by paying the prescribed premium etc., the petitioner was disentitled. In any event the scheme was introduced in the year 2006 and the petitioner left the services of the temple only in the year 2008 and he cannot plead ignorance of the requirements. Therefore, the petitioner failed to satisfy the mandatory conditions and therefore the writ petition was liable to be dismissed.

6. The 3rd respondent in his counter affidavit has also stated that the petitioner voluntarily resigned on February 2008 and that the writ petitioner joined as a B.T.Assistant in a Government School where he was drawing salary from the Government until his retirement on reaching the age of superannuation at the age of 58 years. The 3rd respondent also reiterated the contentions taken by the 2nd respondent with regard to non -fulfillment of the prescribed conditions under G.O.Ms.No.55 and stated that the writ petitioner having not continued in the temple service till his retirement and having not registered for the departmental pension scheme is not entitled to the pension and prayed for dismissal of the Writ Petition.



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7. Heard Ms.R.Nandhini for Mr,R.Gophinath, learned counsel for the petitioner and Mr. K.Karthikeyan, learned Government Advocate (HR& CE), for the respondents 1 and 2 and Mr.P.Gopalan, learned counsel for the 3rd respondent.

8. Learned counsel for the writ petitioner, besides narrating the facts as having set out herein above, also brought to the notice of this Court a judgment of the Hon'ble Supreme Court in Civil Appeal No.14739 of 2015 dated 15.03.2019 and according to the counsel for the writ petitioner, the ratio laid down by the Hon'ble Supreme Court would squarely apply to the facts of the present case and consequently the Writ Petitioner was entitled to relief as prayed for in the Writ Petition.

9. Learned counsel for the respondents reiterated the various contentions put forth in their respective counter affidavits and prayed for dismissal of the Writ Petition as one not being maintainable in law or on facts.



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10. This Court has carefully perused the judgment of the Hon'ble Supreme Court in ***Senior Divisional Manager, Life Insurance Corporation of India Ltd & Ors Vs. Shree Lal Meena*** in Civil Appeal No.14739 of 2015 dated 15.03.2019. The Hon'ble Supreme Court in the facts of the said case drew a distinction between voluntary retirement and resignation. The question before the Hon'ble Supreme Court was whether employees who had resigned can avail of benefits under pension regulations introduced post resignation of the concerned employees. Answering the same, the Apex Court held that employees who had resigned ought to be construed as voluntary retired and that they are entitled to pensionary benefits and in that context the Apex Court discussed the differentiation between the concepts of voluntary retirement and resignation. Unfortunately the facts of the said case would not come to the rescue of the writ petitioner in the present case. The writ petitioner relies on G.O.Ms.No.55 dated 13.02.2006. The said G.O. is not challenged by the writ petitioner. On the contrary the writ petitioner wants the benefits of the said G.O to be extended to him. That being the position, to avail of the benefits of G.O.Ms.No.55 dated 13.02.2006, the petitioner has to



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necessarily conform to its requirements or rather the conditions stipulated in the said G.O. Admittedly, the petitioner never chose to register himself by paying the required registration fee, leave alone annual renewal fee for the same. The petitioner has also not paid the one time contribution of Rs.1000/- to the fund. Having not satisfied or fulfilled the required conditions under the said G.O.Ms.No.55, it is not open to the writ petitioner to approach this Court to issue a fiat, by way of a Writ of Mandamus, directing the respondents to pay the writ petitioner, the pensionary benefits. Further, the very object of the G.O having been brought by the Government was to replace the then existing contributory provident fund scheme and bring temple employees under the Employees Provident Fund Scheme. G.O.Ms.No.55 dated 13.02.2006 aimed to provide monthly pension to employees who were having less than 10 years of service. The petitioner chose to resign from the services of the temple on his own and it is an admitted fact that he has taken up new appointment in Government service, from where he also retired on attaining the age of superannuation. Therefore, the very object of the said G.O being only to provide for pension only to employees who continued in temple service till



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their retirement by way of superannuation. Even otherwise, the petitioner ought to have complied with the requirements of the said G.O. Therefore on no account, the writ petitioner can be said to be entitled to the pensionary benefits as prayed for and there are no merits in the Writ Petition. Consequently, Writ Petition fails and is accordingly dismissed. There shall be no order as to costs.

07.06.2023.

Internet:Yes
Index:Yes/No
Speaking order
Neutral Citation:Yes/No
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Pre-delivery order in
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