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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2023

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.3240 of 2017

V.Sathiyamurthi

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep by its Principal Secretary to Government,
School Education Department,
Secretariat, Fort St. George,
Chennai – 600 009.
- 2.The Director of School Education,
DPI Campus, College Road,
Chennai – 600 006.
- 3.The Joint Director of School Education (Personal),
Directorate of School Education,
DPI Campus, College Road,
Chennai – 600 006.
- 4.The Chief Educational Officer,
Villupuram District,
Villupuram.
- 5.The Accountant General (A&E),
Tamil Nadu,
No.361, Anna Salai,
Chennai – 600 006.

... Respondents



W.P.No.3240 of

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of 2nd respondent in Na.Ka.89956/R1/E3/2015 dated 04.03.2016 and to quash the same and consequently direct the respondents to sanction and disburse the pensionary benefits including regular pension to the petitioner based on the pension proposals forwarded by the Headmaster Government High School, Pudukuppam, Villupuram District dated 30.07.2009 by treating the petitioner as compulsorily retired from service on 02.06.1972.

For Petitioner	: Mr.J.Jayamalan For Mr.S.Nedunchezhiyan
For R1 to R4	: Mr.L.S.M.Hasan Fizal Additional Government Pleader
For R5	: Notice Served (No Appearance)

ORDER

The order of rejection, rejecting the claim of the petitioner for pensionary benefits by treating him as a compulsorily retired person from service as on 02.06.1972 is under challenge in the present writ petition.

2. The petitioner states that he was initially appointed as Secondary Grade Teacher in Poootheri Government Aided School, Villupuram District on



04.06.1957. Thereafter, the petitioner was appointed at Singanoor Government School on 13.06.1962. While he was working in Singanoor Government School, he was appointed as Tamil Pandit Grade-II in Periyathatchur Government High School on 23.07.1964. Again the petitioner was transferred to Periyakuppam Government High School on promotion as Tamil Pandit Grade-I on 10.08.1965. Finally, through transfer, the petitioner ended up in Government High School, Pudukuppam, Villupuram District.

3. The grievance of the petitioner is that while he was working in Pudukuppam Government High School upto 02.06.1972, he submitted a leave application to avail leave from 03.06.1972 onwards, due to family circumstances. However, the petitioner could not continue the service due to his family reasons. In this regard, the petitioner made a representation on 14.12.2007 to the respondents seeking for pensionary benefits with sanctioning of regular pension by referring to the fact that he worked continuously from 04.06.1957 to 02.06.1972 for a period of 14 years, 11 months and 23 days. However, on 04.03.2016, the 2nd respondent / Director of School Education has rejected the claim of the petitioner on the ground that without any intimation the petitioner had stayed away from the duty. Therefore, the petitioner is constrained to move the present writ petition.



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4. The learned Additional Government Pleader appearing on behalf of the respondents 1 to 4 objected the said contentions made by the petitioner and submitted that the petitioner has resigned the job while working as Tamil Pandit Grade-I in the Government High School, Periyakuppam. As per Rule 23 of the Tamil Nadu Pension Rules, 1978, resignation from service will entail forfeiture of the past service. However, if the resignation is submitted with proper permission to take up another appointment under Government, past service shall count as qualifying service for pension. In the present case, there is no evidence to prove that the resignation was submitted with proper permission. Therefore, the service rendered after resignation is not enough for the minimum period of 10 years required for the sanction of pension.

5. The learned Additional Government Pleader appearing on behalf of the respondents 1 to 4 further submitted that the petitioner had already filed a writ petition in W.P.No.36570 of 2015, seeking for the same relief for sanction of pension. This Court directed the 2nd respondent to pass orders on the proposal forwarded by the 4th respondent and on representation submitted by the petitioner dated 14.12.2007 on merits and in accordance with law. Therefore, the 2nd respondent had considered and passed the following orders



dated 04.03.2016, which is challenged in the present writ petition.

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6. It is further contended that the petitioner stayed away from duty without any intimation from 03.06.1972 and is in violation of the Tamil Nadu Government Servants Conduct Rules and the petitioner submitted a representation on 14.12.2007 after a lapse of 35 years claiming compulsory retirement. In light of the rules, the petitioner had not rendered 25 years of qualifying service, therefore, his request cannot be considered. Hence, the writ petition is liable to be dismissed even on the ground of laches.

7. Regarding delay and laches, the Hon'ble Supreme Court of India has settled the principles as follows:

(a) In the case of ***Chairman / Managing Director, Uttar Pradesh Power Corporation Limited and Others Vs. Ramgopal*** reported in ***[(2020) SCC Online SC 101]***, the Three Judges Bench of the Hon'ble Supreme Court of India held as follows:

“Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays



WEB COPY

W.P.No.3240 of



and inordinate laches would always be relevant in writ actions, and writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence-sitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which writ remedies can be enforced.”

(b) In the case of ***P.S. Sadasivaswamy Vs. State of Tamil Nadu***, reported in ***[(1975) 1 SCC 152]***, held as follows:

“2. ... One cannot sleep over the matter and come to the Court questioning that relaxation. In effect he wants to unscramble a scrambled egg. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons



who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters.....”

8. In view of the fact that the respondents have considered the case of the writ petitioner and found that the petitioner is not eligible to claim pensionary benefits as per Rule 39 (1) of the Tamil Nadu Pension Rules, 1978 and further on the fact that the petitioner has approached this Court after a lapse of several years and also submitted the representation after a lapse of about 35 years, this Court is not inclined to consider the relief as such sought for in the present writ petition.

9. Accordingly, this Writ Petition stands dismissed. No costs.

22.11.2023

Jeni
Index : Yes / No
Neutral Citation : Yes / No
Speaking order : Non-speaking order



To

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V.BHAVANI SUBBAROYAN, J.

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