



Writ Appeal No.1085 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON
03.07.2024

PRONOUNCED ON
16.07.2024

CORAM

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU

Writ Appeal No.1085 of 2022
and C.M.P.No.6727 of 2022

The Additional Assistant Educational Officer,
O/o. The Additional Assistant Educational Officer,
Tiruchengode, Namakkal District. ... Appellant

Vs

1.K.R.Kumarasamy

2.The Accountant General,
(Accounts & Entitlement)
Office of the Accountant General,
361, Anna Salai, Chennai – 600 018.

... Respondents

PRAYER:- Writ Appeal has been filed under Clause 15 of Letter Patent to set aside the order dated 11.04.2018 made in W.P.No.26540 of 2011 and pass such further order.

For Appellant : Mr.J.C.Durai Raj AGP

For Respondents : Mr.Babu Rangasamy for R1
No Appearance for R2



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JUDGMENT

(Judgment of the Court was made by Mr.K.KUMARESH BABU.,J.)

This Intra-Court Appeal had been preferred as against the order of the learned Single Judge wherein the learned Single Judge had set aside the order passed by the appellant in rejecting the claim of the first respondent's pension with the consequential direction for granting of pension from the date of resignation including the arrears of pension and with continuity of pension as admissible and payable.

2. Heard Mr.J.C.Durai Raj, learned Additional Government Pleader appearing on behalf of the appellant and Mr.Babu Rangasamy, learned counsel appearing for the first respondent.

3. Mr.J.C.Durai Raj, learned Additional Government Pleader appearing for the appellant would submit that the first respondent was employed as a Teacher in a primary school in Tiruchengode. He had worked from 04.08.1970 till 24.09.1981 and thereafter, he had not reported



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to duty and therefore, he was deemed to have been resigned from services

w.e.f., 25.09.1981, by proceedings dated 27.11.1986. Thereafter, in the

year 2011, the first respondent had made a representation seeking for grant

of pension and as the same was not considered, he had filed a Writ Petition

before this Court in W.P.No.26540 of 2011. The learned Single Judge

relying upon two Division Bench judgments of this Court had granted the

relief as prayed for by the first respondent by holding that the first

respondent would be entitled for pensionary benefits, as the first

respondent had submitted that he resigned from services on personal

grounds and not for any other extraneous reasons. In that context, he

would rely upon the latest judgment of the Hon'ble Apex Court and

contend that when a person submits his resignation and he relieved from

duty, then he would not be entitled to any pensionary benefits, as he had

forfeited his service and the same cannot be treated as a voluntary

retirement or otherwise. He would also rely upon Rule 23 of the Pension

Rules, which only entitles to count the past service, if such resignation had

been made to take up another appointment either temporary or permanent

with the permission of the authority. In the present case, he would submit



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that the first respondent had not taken any permission to resign for joining any other service. Apart from that, he would submit that since the first respondent had not reported to duty, he had been deemed to have been resigned as early as in the year 1986 and such order had not been challenged by the first respondent and what he had challenged is of an order dated 29.10.2004, wherein his request for pension had been negatived and such order had also been challenged by the first respondent, only after a period of seven years i.e., only in the year 2011. Therefore all these aspects have been over looked by the learned Single Judge and on that ground, he seeks interference of the order passed by the learned Single Judge.

4. Countering his arguments, Mr.Babu Rangasamy, the learned counsel appearing for the first respondent would submit that the first respondent had completed 10 years of qualifying service, which is the minimum service period for grant of pension. Relying upon the Division Bench judgments of this Court, he would submit that the Division Bench of this Court had already held that when an employee resigns either on ill



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health or on personal grounds, such person would be entitled for seeking of pension and the qualifying service that had been rendered by such an employee cannot be forfeited, as pension is not a bounty, that is given to an employee. He would submit that grant of pension is a statutory right, which the first respondent is entitled to and therefore, he would pray this Court to dismiss the Intra-Court Appeal and direct the appellant to grant sanction to the first respondent and also seek interest for the delayed payments.

6. We have considered the rival submissions made by the learned counsels appearing for their respective parties and perused the materials available on record.

7. The first respondent in this appeal had sought for a pension for the services that he had rendered as an Assistant Teacher in a primary school. Even though the claim of the first respondent is that he had voluntarily resigned on personal grounds, from the communication produced by the appellant dated 27.11.1986, it could be seen that the respondent had



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absented himself from 25.09.1981 and thereafter, he had not joined duty

and therefore, he was deemed to have resigned w.e.f. 25.09.1981. The said

communication, dated 27.11.1986, had not been challenged by the first

respondent till date. However, after a period of 16 years, the first

respondent seems to have made an application seeking for pension by

treating him as a resigned employee on personal grounds w.e.f.,

24.09.1981. The same had been rejected by holding that the first

respondent's claim is not admissible for pension as he had resigned from

Government service. Rule 23 of the Pension Rules mandates that on

resignation of an employee from service or post would entail forfeiture of

his past service. A proviso appended to the said Rule, allows such services

to be not forfeited if the said resignation had been submitted to take up

with proper permission for another appointment under the Government.

For better appreciation, the relevant Rule is extracted hereunder:-

“23. Forfeiture of service on resignation:- (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



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permanent, under Government where service qualifies.”

8. In the facts of the present case, even without taking into account the deemed resignation, it is an admitted case of the first respondent that he had resigned from services on personal grounds. When that being so, by application of Rule 23, the past services of the first respondent had to be held to be forfeited dis-entitling him for any pension under the Service Rule. In these aspects, it is also useful to refer to the judgment of the Hon'ble Supreme Court in the case of **Senior Divisional Manager, LIC vs. Shree Lal Meena** reported in **(2019) 4 SCC 479**, wherein the Hon'ble Apex Court in categorical and clear terms had held that the resignation of an employee cannot be treated as Voluntary Retirement, wherein he is entitled for the benefits and that on resignation, an employee forfeits his past services.

9. In view of the aforesaid reasons, we are of the view that the order passed by the learned Single Judge requires interference and accordingly the same is set aside.



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10.In fine, the Writ Appeal is allowed and the order passed by the learned Single Judge dated 11.04.2018 made in W.P.No.26540 of 2011 is set aside. However, there shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

(D.K.K.,J.)

(K.B., J.)

16.07.2024

Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation:Yes/No

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D. KRISHNAKUMAR., J.
and
K.KUMARESH BABU.,J.

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To

The Accountant General,
(Accounts & Entitlement)
Office of the Accountant General,
361, Anna Salai, Chennai – 600 018.

A Pre-delivery Judgment made in
Writ Appeal No.1085 of 2022
and C.M.P.No.6727 of 2022

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