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W.P.No.16524 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2024

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.16524 of 2012
and M.P.No.1 of 2012

C.David Thambi Dhas

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by Additional Chief Secretary to Government
(Higher Education),
Education Department,
Fort St.George,
Chennai – 09.
- 2.The Directorate Collegiate Education,
D.P.I. Campus,
Chennai – 600 006.
- 3.The Accountant General of Tamil Nadu,
Teynampet,
Chennai – 600 018.
- 4.The Principal and Correspondent,
N.M.Christian College,
Marthandam,
Kanyakumari District.

... Respondents

Writ Petition has been filed under Article 226 of Constitution of India



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to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent pertaining to the passing of the order dated 07.06.2012 in Letter No: 6064/E2/2011-5 and quash the same consequently direct the third respondent to determine the rate of pension contribution for the period 20.10.1981 to 14.10.1984 payable to him by the respondents and further such direction to the first respondent to regularize the period 20.10.1981 to 14.10.1984 as it was done in the case of V.Rajkumar in G.O.Ms.No.1762, Education Department dated 16.12.1989 and thereby revise the pay, increment, pension and pensionary benefits and calculate the arrears and pay the same to the petitioner.

For Petitioner : Mr.G.Justin

For Respondents 1 & 2 : Mr.D.Ravichander,
Special Government Pleader

For Respondent 3 : No appearance

For Respondent 4 : No appearance

ORDER

This writ petition has been filed by the petitioner to call for the records of the first respondent pertaining to the passing of the order dated 07.06.2012 in Letter No: 6064/E2/2011-5 and quash the same consequently direct the third respondent to determine the rate of pension contribution for the period



20.10.1981 to 14.10.1984 payable to him by the respondents and further such direction to the first respondent to regularize the period 20.10.1981 to 14.10.1984 as it was done in the case of V.Rajkumar in G.O.Ms.No.1762, Education Department dated 16.12.1989 and thereby revise the pay, increment, pension and pensionary benefits and calculate the arrears and pay the same to the petitioner.

2. Learned counsel for the petitioner submitted that petitioner was a retired Professor and Head of the Department of Botany in N.M.Christian College, Marthandam, Kanniyakumari District, the fourth respondent, which is an aided institution and getting grant from Government for payment of salary etc., to the staffs. Further, the fourth respondent college is a private management college and minority institution. This being so, the petitioner has appeared for interview to the post of lecturer in Nigeria, which was sponsored by Ministry of External Affairs, Government of India and in the month of April 1981, the petitioner was selected. Hence, he requested the fourth respondent management to relieve him from the aforesaid post and accordingly, the petitioner was relieved on 19.10.1981 and thereafter, he



joined as lecturer at Nigeria on 27.10.1981.

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3. Learned counsel for the petitioner would further submit that the contract period was 3 years and after the expiry of the contract, the petitioner has returned to India and re-joined in his original post as Professor and Head of the Department of Botany on 15.10.1984 at the fourth respondent college. After re-joining, the petitioner was not paid salary for one and half years and thereafter, the salary was paid and he was allowed to retire from service on 31.05.1996. Thereafter, his pension and pensionary benefits were calculated and paid to him and his service period of three years in foreign was not regularized and the same was treated as break in service. Hence, in this regard, the petitioner has submitted a representation before the respondents 3 & 4. While considering the same, the petitioner was directed to submit all the relevant documents and as per the direction, the petitioner has submitted all the documents, which were required by the Government. However, the same was not considered.

4. Learned counsel for the petitioner would further contended that one



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Mr.Rajkumar, Lecturer of Physics from the fourth respondent institution has also joined foreign service on 14.12.1981 and worked there for three years.

After completion of three years, he also re-joined the same institution and in his case, his period of foreign service was regularized and increments were granted to him, thereby there was no break in service. Hence, the petitioner has made representation to the first respondent, enclosing the G.O passed in the case of Mr.Rajkumar and requested for the similar treatment and the same was not considered. Therefore, the petitioner has filed writ petition in W.P.No.7803 of 2011 before this Court and the same was disposed of on 15.06.2011 with a direction to consider the petitioner's request within a period of three months from the date of receipt of a copy of this order.

4.1. The above direction was not complied with by the respondents. Hence, the petitioner has filed a Contempt Petition in Cont.P.No.647 of 2012. After filing of the contempt petition, the first respondent has passed the order dated 07.06.2012, rejecting the claim on the ground that as per G.O.Ms.No.1762, Education Department, dated 16.12.1989, the contribution for pension was not paid by the petitioner for the period from 20.10.1981 to



14.10.1984.

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5. Learned counsel for the petitioner would further submit that on careful reading of the G.O.Ms.No.1762, Education Department, dated 16.12.1989, Mr.V.Rajkumar was granted permission only after his return from foreign service on the following conditions:

i. Either the Foreign Employer or the individual should pay the pension contribution in respect of the employee for the period of his service the rate of pension contribution will be determined by the Accountant General, Tamil Nadu, Madras-18. No leave salary contribution should be recovered, leave salary for the period of leave availed shall be borne by the foreign employee and no leave shall be credited to his leave account during the period of foreign service.

ii. That he will not be paid from Governments funds while on foreign service.

iii. That he is permitted to draw the pay and allowances that in allowed by the foreign employer. However, he should not claim the same grade pay and other allowances on rejoining duty on reversion back to his old station.



The period of foreign service shall count for increment in the Parent Department if he would have acted in such post in the parent department but for the deputation.

iv. That the period of his service with the foreign employer will be regularized only after the leave salary and pension contribution for the said period remitted to Government in full.

From the above conditions, it is made clear that the rate of pension contribution will have to be determined by the third respondent. In the case of petitioner, it was not determined because, the first respondent had not passed similar order as in the case of V.Rajkumar in G.O.Ms.No.1762, Education Department, dated 16.12.1989. Hence, the petitioner has come forward with the present writ petition.

6. Learned Special Government Pleader appearing for the respondents 1 & 2 has drew the attention of this Court to clause (v) and (vi) of G.O.Ms.No.1762, Education Department, Dated 16.12.1989. For better appreciation, the said clause is extracted hereunder:

“(v) Either the Foreign Employer or the individual should pay the pension contribution in respect of the employee



for the period of his service the rate of pension contribution will be determined by the Accountant General, Tamil Nadu, Madras-18. No leave salary contribution should be recovered, leave salary for the period of leave availed shall be borne by the foreign employee and no leave shall be credited to his leave account during the period of foreign service.

(vi) That he will not be paid from Governments funds while on foreign service.”

7. Learned Special Government Pleader appearing for the respondents 1 & 2 further submitted that the G.O.Ms.No.1762, Education Department, dated 16.12.1989, issued by the first respondent has clearly stated that the petitioner was on foreign service from 20.01.1981 to 14.10.1984 for a period of three years in Nigeria and he was not contributed to the pension. Hence, his request for calculating the pension for three years cannot be done, since he has violated the clause (v) of the aforesaid Government Order dated 16.12.1989.

8. Learned Special Government Pleader appearing for the respondents 1 & 2 would further submit that the petitioner has not filed the copy of the Government Order, which was issued to him.



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9. Heard the learned counsel on either side and perused the materials available on record.

10. In the case on hand, it is an admitted fact that the petitioner has gone for foreign service from 20.01.1981 to 14.10.1984 for a period of three years and worked at Nigeria and after returning, he re-joined the post of Head of the Department of Botany in the fourth respondent college. It is crystal clear and evident that as per the clause (v) of the G.O.Ms.No.1762, Education Department, dated 16.12.1989, pension contribution has to be paid either by the petitioner or the person who has availed foreign service. In the case on hand, the petitioner has not paid the pension contribution. Hence, the clause (v) of the above said Government Order has been violated by the petitioner. Hence, his request to calculate the aforesaid period of three years for pensionary benefits is liable to be rejected by the first respondent.

11. In view of the above factual matrix, this Court is of the considered



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view that the order passed by the first respondent vide Letter No.6064/E2/2011-5 dated 07.06.2012 does not warrant any interference by this Court and the same is hereby confirmed.

12. In the result, this writ petition stands dismissed. No costs.
Consequently, connected miscellaneous petition is also closed.

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

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