



WEB COPY

W.P.No.



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.3482 of 2021

and

W.M.P.No.3990 of 2021

P.Chitra

... Petitioner

Vs.

1. The Secretary to Government,
Municipal Administration & Water Supply (ME1) Department,
Fort St. George, Chennai – 9.

2. The Commissioner,
Rasipuram Municipality,
Salem District.

3. The Director of Municipal Administration,
Chepauk, Chennai – 5.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in connection with the impugned order passed by him in Letter No. 27938/ ME 1/ 2012-15 dated 08.01.2021 and communicated by the 2nd respondent in Memo Na.Ka.No.5227/ 2013/ C1 dated 23.01.2021 and quash the same and direct the respondents to count the service rendered by the petitioner in Rasipuram Municipality from 14.08.1991 to 10.09.1998 for the purpose of pensionary benefits by condoning the break in service of One day ie. 11.08.1998.

For Petitioner

: Mr.Venkataramani,

Senior Counsel for M/s.Alagu Goutham

For R1 & R3

: Mr.M.S.Prem Kumar,



W.P.No.



For R2

Government Advocate

: Mr.L.P.Maurya

ORDER

The petitioner herein was initially appointed as 'Junior Assistant' in the 2nd respondent Municipality on 14.08.1991 and continued as such till 10.08.1998. In the meanwhile, the petitioner got selected as 'Physical Education Teacher' in a Government School governed by the Tamil Nadu Educational Sub-ordinate Services and accordingly, an appointment order in Reference No.2424/B2/98 dated 06.08.1998 was issued by the Chief Educational Officer, Namakkal. In view of the same, the petitioner submitted the resignation letter before the 2nd respondent on 10.08.1998 and thereafter, the petitioner joined the post of 'Physical Education Teacher' on 12.08.1998. It is thereafter the resignation submitted by the petitioner on 10.08.1998 was accepted by the 2nd respondent through proceedings bearing ந.க.எண்.சு1/6100/98 dated 29.01.1999 with effect from 10.08.1998. Accordingly, the petitioner continued in the post of 'Physical Education Teacher' for more than 12 years and thereafter submitted a representation dated 03.12.2012 before the Additional Chief Secretary to Government, Municipal Administration and Water Supply Department stating that, for want of proper knowledge about the Rules and the legal position, the petitioner submitted her resignation to the post of 'Junior Assistant' in Municipal Department instead of seeking permission from the 2nd respondent to join the post of 'Physical Education Teacher' and therefore, made a request for counting of the service rendered by the petitioner from



14.08.1991 to 10.08.1998 in the 2nd respondent Municipality by condoning one day of break-in service on 11.08.1998 for the purpose of calculation of qualifying service for pension.

2. Complaining the inaction on the part of the Respondent No.1, the petitioner approached this Court by filing W.P.No.29081 of 2013 and the said Writ Petition was disposed of by this Court by an order dated 30.07.2020, directing the respondents therein to consider the said representation. It is pursuant to the said order, the claim of the petitioner made through representation dated 03.12.2012 was considered by the Respondent No.1 and was rejected through the impugned order dated 08.01.2021 and the same was communicated through proceedings dated 23.01.2021. It is aggrieved by the said proceedings dated 08.01.2013 and 23.01.2021 issued by the Respondent Nos.1 and 2 respectively, the petitioner approached this Court by filing the present Writ Petition.

3. There is no dispute on factual aspects that the petitioner who served for about 7 years in the Respondent No.2/ Municipality, admittedly submitted resignation on 10.08.1998 citing various reasons pertaining to her family difficulties, but the petitioner has not disclosed about her appointment as 'Physical Education Teacher' through proceedings dated 06.08.1988 issued by the Chief Educational Officer, Namakkal.



Further, without reference to the acceptance or otherwise of the said resignation submitted on 10.08.1998, the petitioner joined in the post of 'Physical Education Teacher' on 12.08.1998 and continued therein till the year 2012 and for the first time, she made a claim for counting of her past services as 'Junior Assistant' in the Respondent No.2/ Municipality for the purpose of calculating the qualifying service in the post of 'Physical Education Teacher' in Tamil Nadu Educational Sub-Ordinate Services.

4. Sri.Venkataramani, learned Senior Counsel appearing for the petitioner contended that in terms of Proviso to Rule 23 of the Tamil Nadu Pension Rules, 1978, the past services rendered by a Government Servant shall not entail forfeiture on resignation, in case if the Government Servant with proper permission accept another appointment under the Government. As the said proviso is a beneficial provision, the benefit for which the petitioner is otherwise entitled in terms of the said proviso cannot be denied on the ground that the petitioner failed to obtain permission as required under the said proviso. He also further contended that in terms of G.O (Ms) No.2391, Public (Services-A) Department dated 14.12.1965, the Government Servants need not resign from their previous post in the event of they accepting appointment in some other Department of the Government and their leave from the previous post will continue to exist till their services are confirmed in the new establishment.



5. The resignation submitted by the petitioner on 10.08.1998 was accepted by the Respondent No.2 on 29.01.1999 with effect from 10.08.1988. Admittedly, the reasons given in the resignation letter are pertaining to her family matters as narrated by the petitioner in the resignation letter dated 06.08.1988. There is no whisper about the petitioner being appointed as 'Physical Education Teacher' through proceedings bearing ந.க.எண்.2434/பி2/98 dated 06.08.1988. Though the petitioner joined the post of 'Physical Education Teacher' as early as on 12.08.1988, the petitioner has not raised any claim for counting of her past services rendered in the post of 'Junior Assistant' till the month of March, 2012 i.e., after a lapse of 14 years of acceptance of her resignation, the petitioner made such a claim for the first time on the ground of ignorance of the Rule position. On acceptance of resignation to the post of 'Junior Assistant', the petitioner must have been paid all the amounts such as Provident Fund etc., that were due and payable to the petitioner. But for the reasons best known, no such details or factual aspects are disclosed in the affidavit filed in support of the Writ Petition.

6. Once the resignation simpliciter was submitted for whatever reasons, by operation of Rule 23 of the Tamil Nadu Pension Rules, 1978, the entire service rendered by such a Government Servant shall stand forfeited. If the petitioner is



claiming benefit as contemplated under Proviso to Rule 23 of the Rules, 1978, the petitioner has to satisfy the requirement of the said proviso. Unless the petitioner satisfies the requirement of the said proviso, she cannot be said to be entitled for the benefit of the said provisions. The benefit that is sought to be conferred upon the Government Servant in the event of their resignation to one post and undertaking appointment in another post is to be claimed, the same can be claimed strictly in accordance with the said proviso to Rule 23. The benefit of counting past service is a concession that is sought to be extended to the Government Servants and hence, in order to claim such concession, the petitioner has to strictly comply with the requirement of the said proviso.

7. Admittedly, the petitioner has not sought permission, as required under Proviso to Rule 23. The reliance placed by the learned counsel for the petitioner on G.O (Ms) No.2391, Public (Service-A) Department dated 14.02.1965 also cannot come to rescue of the petitioner as the same only enables a Government Servant to undertake new appointment without submitting any resignation. But in the instant case, admittedly the petitioner has submitted resignation to the post of 'Junior Assistant' and then undertaken appointment as 'Physical Education Teacher'. As there is no other Rule that would enable the petitioner to claim for counting of the past service for calculating the qualifying services for pension in the post of 'Physical Education Teacher', which is



W.P.No.



a subsequent employment, this Court has no option except to conclude that the petitioner is not entitled for such relief. The impugned order dated 08.01.2021 was also issued on the ground that in terms of Rule 23 of the Tamil Nadu Pension Rules, the claim of the petitioner cannot be considered.

8. In the light of the above, this Court does not find any error or illegality in the impugned order dated 08.01.2021 and the consequential order dated 23.01.2021. Accordingly, the Writ Petition is dismissed. No costs. Connected Miscellaneous Petitions, if any shall stand closed.

05.07.2024

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

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MUMMINENI SUDHEER KUMAR, J.

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