



W.P.No.17487 of 2013

For petitioner ... Mr.Karthik
For respondents ... Ms.C.Sangamithirai
Special Government Pleader
for R.R.1 and 2.

ORDER

This writ petition is filed seeking for a direction to the respondents to set aside the Proceeding in Ref.No.22550/N-2/3/2004, dated 8/4/2013 and to grant pension and other retirement benefits admissible for the service rendered for 11 years and 11 months as Staff Nurse.

2. The petitioner was originally appointed on 29/9/1969 as a Staff Nurse at Government Hospital, Kuzhithurai, Kanyakumari, in the time scale of Rs.140-220 with other permissible allowances. At the time of joining, she was having adequate knowledge of Tamil which is an official language.

3. In the year 1976, Rule 12 A was introduced by amending the Tamil Nadu State and Subordinate Service Rules on account of which it has become mandatory for every employee to pass Tamil test to be



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conducted by the Department for securing the appointment and to continue in the appointed post. The said amendment to the Tamil Nadu State and Subordinate Service Rules came into force subsequent to the appointment of the petitioner as Staff Nurse. The petitioner attempted nine times to pass the Tamil test, but could not succeed. The District Medical Officer, directed the petitioner by way of Notice, dated 20/7/1981 to pass Tamil test on or before 28/2/1982, failing which she would be ousted from service.

4. Being disgusted with the attitude of the Management, the petitioner has tendered her resignation from the post of Staff Nurse on 2/11/1981 and requested the second respondent to accept the resignation with effect from 5/11/1981. On 28/6/1987, the Deputy Director of Medical Services accepted her resignation with effect from 5/11/1981, subject to the condition that the period from 5/11/1981 to 29/6/1987 will be treated as non-duty.

5. The amended Rule 12 A of the Tamil Nadu State and Subordinate Service Rules, was challenged before this Court in W.P.No.123 of 1981, and by an order, dated 8/9/1987, the said writ petition was allowed,



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holding that the amended Rule is not applicable to the persons who were appointed prior to the amendment. Since the petitioner was also appointed prior to the amendment, she filed writ petition in W.P.No.10891 of 1988 for a direction to sanction the increments which were due to her from 1973 onwards till her resignation. The said writ petition was transferred to the Tamil Nadu Administrative Tribunal as T.A.No.34 of 1994 and the same was allowed and accordingly, increments for a period of 11 years and 11 months were disbursed in favour of the petitioner.

6. Subsequent to acceptance of her resignation, the petitioner has took up her employment in the State of Kerala as Staff Nurse and rendered service for a period of fourteen years and retired after attaining the age of super annuation and she was also granted pension from the Government of Kerala, for the period of her service in Kerala. The petitioner has filed an application dated 27/4/2004 before the respondent authorities for providing pension to her for the service rendered by her in the State of Tamil Nadu for the period of 11 years and 11 months as a Staff Nurse. As there was no response, the petitioner has filed W.P.No.5909 of 2005 for a direction to consider the representation of the



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petitioner. The said writ petition was disposed of, on 23/2/2005, directing the respondents to consider and dispose of the representation of the petitioner within a period of eight weeks. In response to the above, first respondent has passed an order on 15/4/2005, rejecting the petitioner's representation.

7. Aggrieved by the same, petitioner has filed W.P.No.29853 of 2005 to quash the order dated 10/4/2005 passed by the first respondent in Ref.No.22550/No/3/04, and consequently direct the respondents to grant pension and other retirement benefits admissible to the petitioner for 11 years and 11 months of service rendered by her. By an order, dated 19/1/2012, W.P.No.29853 of 2005 was allowed, setting aside the rejection order of the first respondent dated 10/4/2005 and directed the first respondent therein to consider the request of the petitioner and sanction the pension, as per the Tamil Nadu Pension Rules, if otherwise, she is eligible for pension. The High Court, however rejected the contention of the respondents that once the petitioner has resigned from service, she is not entitled for pension. The said orders have become final, as the respondents have not challenged the said order.



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8. The first respondent has not passed any orders, as directed by this Court in W.P.No.29853 of 2005 on which the petitioner initiated Contempt Petition No.16 of 2013. Pending Contempt Petition, first respondent has issued a Proceeding dated 8/4/2013 rejecting the request of the petitioner to sanction pension. Accordingly, Contempt Petition was closed, giving liberty to the petitioner to challenge the Proceeding in accordance with law. The instant writ petition is therefore, filed rejecting the grant of pension to the petitioner.

9. The Director of Medical and Rural Health Services, Chennai/first respondent has filed a counter, stating that the petitioner is not entitled for pension, as per Rule 23 of the Tamil Nadu Pension Rules, 1978, which speaks that a person who resigns in order to avoid disciplinary proceedings is not entitled for pension.

10. Heard Mr.Karthik, learned counsel for the petitioner and Ms.C.Sangamithirai, learned Special Government Pleader for the respondents. Perused the materials available on record.



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11. The petitioner has worked with the first and second respondents for a period of 11 years and 11 months. Normally the period of 11 years and 11 months is a qualified service for grant of pension. However, her application for pension was rejected on following grounds (i). pension will not be granted as she herself has resigned from service. (ii). Pension cannot be granted as she submitted her resignation in order to avoid Disciplinary Proceeding and (iii). the petitioner has worked for more than 10 years as Staff Nurse in Kerala and has been drawing pension from the Government of Kerala and (iv). the petitioner has joined as Staff Nurse in the Government of Kerala even before her resignation was accepted.

12. The contention of the learned Special Government Pleader appearing for the respondents is that the petitioner is not entitled for pension since she has accepted the post of Staff Nurse in Kerala prior to her resignation, cannot be accepted. Admittedly, the petitioner has submitted the resignation, on 5/11/1981 and she has accepted the post of Staff Nurse in the State of Kerala subsequent to 5/11/1981 only and not prior to that. Though the petitioner has accepted her resignation on



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28/6/1987, the respondent Government has accepted the resignation with effect from 5/11/1981. According to the respondents, since her resignation was accepted on 28/6/1987, she is not entitled for pension.

13. After the petitioner has submitted the resignation on 5/11/1981, the respondents have taken an inordinate delay of more than six years in accepting her resignation. If at all the respondents are not interested to accept her resignation, the respondents could have rejected the resignation so that the petitioner would have decided either to continue the service or could have taken some other step. Instead the respondents have kept for more than six years without any valid reason to take a decision to accept the resignation. Once the petitioner has not been working in the respondent Department with effect from 6/11/1981, she is free to work anywhere in order to continue her livelihood. The respondents 1 and 2 cannot prevent her from joining any other service without paying any remuneration. Further, the respondents 1 and 2 have accepted the resignation of the petitioner with effect from 5/11/1981. Once the resignation of the petitioner was accepted from 5/11/1981, the petitioner is free to join any service subsequent to 5/11/1981. Therefore, on this count, the petitioner's pension cannot be rejected.



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14. One of the grounds raised by the respondents is that since the petitioner has tendered the resignation, she is not entitled for pension. This issue has already been settled by this Court, in W.P.No.29853 of 2005 a direction was given to respondent to consider grant of pension and rejected the contention of the respondent that petitioner is not entitled for pension as she has resigned from service.

15. The other ground raised by the respondents to deny the pension is that as per Rule 23 of the Tamil Nadu Pension Rules, the petitioner has submitted her resignation in order to avoid disciplinary proceeding likely to be initiated against her, thereby, she is not entitled for pension. A bare perusal of the records produced before this Court would disclose that the District Medical Officer has issued a notice to the petitioner asking her to complete the Tamil test on or before 28/2/1982, otherwise, she will be ousted from service.

16. In the resignation letter submitted by the petitioner, there is no mention that in order to avoid disciplinary proceeding, she has been submitting the resignation. Once the resignation has been accepted



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unconditionally, now the respondents cannot contend that the resignation has been submitted in order to avoid disciplinary proceeding. As already observed, respondents 1 and 2 are at liberty to accept the resignation. Further, the respondents 1 and 2 who have not initiated any disciplinary proceedings against the petitioner prior to her resignation cannot now contend that she is not entitled for pension. If at all not passing of Tamil amounts to mis conduct, disciplinary proceedings should have been initiated against her.

17. Further, according to respondents, the very basis for submitting the resignation by the petitioner is that the respondents 1 and 2 have insisted the petitioner to pass Tamil test, as per amended Rule 12 A of the Tamil Nadu State and Subordinate Service Rules. The petitioner has been contending that amended Rule 12 A is not applicable to the petitioner, and she was appointed as staff nurse much prior to the said amendment. The High Court in W.P.No.123 of 1981 has ruled that amended Rule 12 A of the Tamil Nadu State and Subordinate Service Rules are not applicable to the employees who were employed prior to the amendment and therefore, passing Tamil test is not required for those who have joined earlier. When passing of Tamil test is not mandatory,



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respondents 1 and 2 cannot initiate disciplinary proceedings thereby it cannot be attributed that Rule 23 of the Pension Rule applies. Even if any disciplinary proceedings are initiated and consequently if any action was taken against the petitioner, those proceedings would have been vitiated on account of orders passed by this Court in W.P.No.123 of 1981.

18. The other aspect to be considered is the petitioner has put in qualifying service in the State of Kerala as Staff Nurse and drawing pension. The petitioner has also put up qualifying service in the State of Tamil Nadu, and is eligible to draw the pension. The question therefore, arises whether the petitioner who has been drawing pension in one State is entitled to draw the pension in other State.

19. It is submitted by the learned Additional Government Pleader that since petitioner has been drawing pension in the State of Kerala, she is not entitled for pension in the State of Tamil Nadu. This contention is not acceptable. The petitioner is prohibited from drawing two pensions in this State of Tamil Nadu. The petitioner has served the State of Kerala and that she has been drawing pension for the qualified service she has rendered in the State of Kerala, and thereby, same cannot be an



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impediment in granting pension to the petitioner in respect of the services which she is rendered in the State of Tamil Nadu.

20. So far as granting of pension in the State of Tamil Nadu is concerned, Pension Rules pertaining to Tamil Nadu have to be considered, whereas, while granting pension in the State of Kerala, Pension Rules pertaining to State of Kerala have to be considered. The Tamil Nadu Pension Rules do not prevent drawing of pension in some other State, in case, if a person renders qualifying service in that particular State.

21. The learned counsel appearing for the petitioner has cited the following Division Bench judgments of this Court on similar lines and they are as follows:-

(i). In ***THE GOVERNMENT OF TAMIL NADU AND ORS Vs. TAMIL NADU GOVERNMENT TRANSPORT, RETIRED EMPLOYEES WELFARE ASSOCIATION AND ORS (W.A.Nos.111 to 113 of 2007)***, wherein this Court has held that



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“14. There is a difference of pension as is paid by the State Government and the pension as is by the Transport Corporation. So far as the State Government is concerned, its expenditure towards pension is made from the consolidated fund of the State Government, but so far as the Transport Corporation is concerned, pension is not paid from the consolidated fund of the State or from the State Government or any other local authority, but is paid from the funds generated by the Corporation. A separate budgetary provision is made by the State Government every year to meet the expenditure towards payment of pension to the State Government pensioners. On the other hand, no such budgetary provision is made by State Government for payment of pension to the employees of the transport Corporation, which is generated from



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the earning of the employees' contribution of contributory provident fund under the Pension Fund Trust formed for the purpose of the transport corporation. There is a difference between the two types pension, one paid by the State Government to its employees, which is not contributory in nature, but so far as the Corporation is concerned, it is dependant upon contribution of the employee. While the State is bound to pay the pension to the Government employees, it has no liability nor required to give any guarantee to the Corporation to pay pension to employees of the Corporation.

Thus, it will be evident that the employees, who may earn pension from the State Government, if allowed pension by the Corporation for the service rendered by them in the Corporation, it will not amount to earning two pension in same service or post at



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the same time or by way of same continuous service and thereby, not covered under Rule 7 of the Tamil Nadu Pension Rules.”

(ii). In ***DEPUTY SECRETARY TO THE GOVERNMENT OF TAMIL NADU AND OTHERS Vs. CHANDRAMANI AND OTHERS*** (2015) 3 LLJ 172, wherein this Court has held that

“12. Rule 20 is not subject to any condition and there fore, when employees rendered requisite number of service, their family is entitled to family pension as per Rule 20 (2) of the Tamil Nadu State Transport Corporation Employees’ Pension Fund Rules. As rightly submitted by the learned counsel appearing for the first respondent, in the judgment rendered in W.A. No. 220 of 2007, the Hon'ble Division Bench did not consider the Tamil Nadu State Transport Corporation Employees’ Pension Fund Rules. The Hon'ble



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Division Bench considered only the scope of Rule 49 (13-A) and (13-B) of the Tamil Nadu Pension Rules. Therefore, the same can not be considered as precedent binding upon this Court. As stated supra, the law has been dealt elaborately in the judgment reported in *Government of Tamil Nadu v. Tamil Nadu Government Transport Retired Employees Welfare Association* (supra) and the principle regarding the eligibility to get two pensions has been clearly laid down in the said judgment and the in the judgment reported in *P. Arumugam v. Registrar, Tamil University, Thanjavur* supra also right to get two pensions from two authorities was recognised and held that the service rendered in the State Government is quite distinct and different from the service rendered in the Tamil University and therefore, a person who is getting pension from the State Government



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is also entitled to get pension from the Tamil University if he satisfies the requirements as per the provisions of the Tamil University Act and Rules. Further, as rightly held by the learned single Judge that admittedly, the husbands of the writ petitioners were receiving pension from the military as well as from the State Transport Corporation on the retirement from the State Transport Corporation and only after their death, when the widows of the retired employees claimed family pension, that was denied. If the interpretation of the appellants were to be accepted, the husbands of the writ petitioners were not entitled to get pension from the appellant as they were receiving pension from the military. However, they were given pension by the State Transport Corporation. Further, there is no question of contribution by the employees in the State Transport



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Corporation to become eligible to claim family pension as per the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules. As held by the Hon'ble Division Bench in the judgment reported in *Government of Tamil Nadu v. Tamil Nadu Government Transport Retired Employees Welfare Association* (supra), the writ petitioners are governed by the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules and Rule 20 deals with Family Pension to the employees and if they satisfy the requirements as stated therein, they are entitled to claim pension and the receipt of military pension and the receipt of pension under the Tamil Nadu State Transport Employees' Pension Fund Rules are two different pensions paid for the different services rendered by the persons in two different organisations and that cannot be



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denied by invoking the provisions of the Tamil Nadu Pension Rules, 1978 wherein no similar provision is found in the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules which is governing the writ petitioners and the appellants in the matter of pension. Hence, we do not find any merit in these Writ Appeals.”

22. Considering the discussion made above, this writ petition is allowed and the Proceeding dated 8/4/2013 has been quashed and the respondents are directed to grant pension to the petitioner as admissible for rendering 11 years and 11 months of service, if she is otherwise eligible.

No costs.

10/1/2024

mvs.

Index: Yes/No



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Neutral Citation: Yes/No

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1. The Director of Medical and
Rural Health Services
Chennai 600 006.
2. The Medical Officer
Government Hospital
Kuzhuthurai
Kanyakumari District.



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Dr.D.NAGARJUN,J

mvs.

Pre-delivery order made in
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10/1/2024