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W.P.No.25195 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.25195 of 2010

A.Abdul Jabbar

...Petitioner

Vs

1. The Tamil Nadu Electricity Board,
rep.by its Chairman,
144, Anna Salai, Chennai-600 002.
2. The Chief Engineer/Personnel,
144, Anna Salai, Chennai-2.
3. Tamil Nadu Electricity Board
Rep. by its Principal Secretary/Chairman,
No.144, Anna Salai, Chennai-2.
4. The Superintending Engineer/Admn-1,
Central office, No.10, Power Road,
Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Villupuram 605 602.
5. The Government of Tamil Nadu
rep.by its Secretary to Government,
School Education Department,
Secretariat, Chennai-9.
6. The Government of Tamil Nadu,
Rep.by its Secretary to Government,
Home (Courts)Department,
Secretariat, Chennai-9.

...Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent in connection with the impugned proceedings issued by him in Letter No.046553/1116/G.28/G.281/2010 dated 05.06.2010 and to quash the same and direct the respondents to count the petitioner's service in Judicial Department from 10.02.1997 to 03.06.1997 and Tamil Nadu Electricity Board from 04.06.1997 to 09.10.2007 along with his services in the Tamil Nadu Education Department as qualifying services for grant of all Pension and other Pensionary benefits to the Petitioner.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.P.Subramaniam
Standing Counsel TNEB for R1 to R4
: Mr.S.Ravichandran, AGP for R5 & R6

ORDER

This Writ petition has been filed to call for the records of the second respondent in connection with the impugned proceedings issued by him in Letter No.046553/1116/G.28/G.281/2010, dated 05.06.2010, and to quash the same and direct the respondents to count the petitioner's service in Judicial Department from 10.02.1997 to 03.06.1997 and Tamil Nadu Electricity Board from 04.06.1997 to 09.10.2007 along with his services in the Tamil Nadu Education Department, as qualifying services, for grant of Pension and other Pensionary benefits to the Petitioner.



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2. Petitioner passed B.Sc Degree examination in the year 1990 and B.Ed Degree examination in the year 1994. He passed typewriting Senior Grade examination. He was temporarily appointed as Typist in Judicial Magistrate Court on 10.02.97 through employment exchange. Then he was appointed as Typist in Tamil Nadu Electricity Board in and by a Memo No.148/Admin.1/1/F Typist/97 dated 27.05.1997 of the Superintending Engineer, Tamil Nadu Electricity Board, Villupuram. On his appointment in Tamil Nadu Electricity Board, he was relieved from the Judicial Department on 03.06.1997 afternoon. Thereafter, he joined duty as Typist in the forenoon of 04.06.1997 in the office of the Superintendent Engineer, Villupuram Electricity Distribution Circle, Villupuram, as Typist. His probation in the post of Typist was declared and then he was promoted as Assistant (Accounts) on 03.11.1998. He rendered sincere unblemished service for ten years from 03.11.1998 to 09.10.2007 in TNEB. While serving as Assistant (Accounts) in Tamil Nadu Electricity Board, he was selected by the Teachers Recruitment Board as Graduate Teacher in the recruitment held for the period from 2006-2007, under the quota reserved for Ex-service men's wards. He was appointed as graduate teacher at Government High Secondary School,



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Arakandanallur, Villupuram District. He was asked to obtain a relieving order from his previous employer. When he submitted a representation dated 01.10.2007, to the Superintendent Engineer, Villupuram District with a request to relieve him for joining him as Graduate Teacher in the School Education Department, he was instructed by the Superintendent Engineer to resign his job in the Tamil Nadu Electricity Board by giving a letter mentioning the reasons for resignation in and by proceeding in inKu.Aa.No.28735/850/Nibi.1/Vu.1/Ko.Vulka/2007 dated 05.10.2007. In view of the urgency of the situation, he submitted his resignation letter dated 08.10.2007 and that was accepted by a Memo No.029062(857) N1.p.1/V.1/Kotta Uthavi (Ka)/2007 – 1 dated 08.10.2007. He was relieved from service of the Tamil Nadu Electricity Board on 09.10.2007. He was deprived of his continuous service from 04.06.1997 to 09.10.2007 in Tamil Nadu Electricity Board and from 12.02.1997 to 03.06.97 in the Judicial department. He is entitled to count the services rendered in Tamil Nadu Electricity Board from 04.06.1997 to 09.10.2007 as qualifying service for pension. Since his representations dated 07.11.2007, 20.05.2008 and 20.09.2008 have not evoked any response, he submitted a detailed representation dated 15.12.2008 and there was no



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response for the same. Therefore, he filed a writ petition in W.P.No.8060 of 2009. This Court by an order dated 28.04.2009 directed the respondents to consider the petitioner's representation dated 07.11.2007 and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of that order. Since no order was passed, the petitioner had filed a contempt petition in W.P.No.8060 of 2009. The second respondent issued a letter on 05.06.2010 referring to the Government letter dated 13.04.2006 and rejected the petitioner's representation. In the said circumstances, this writ petition is filed.

3.The learned counsel for the petitioner submitted that the petitioner worked as a Typist in the Judicial Department from 10.02.1997 to 03.06.1997, joined as Typist in TNEB on 04.06.1987, promoted as Assistant and served in TNEB till 09.10.2007. He submitted his resignation on 08.10.2007 and that was immediately accepted on the same date. After getting relieved, on his resignation, he joined as BT Assistant in Education Department on 10.10.2007. Rule 41 of the Tamil Nadu State Subordinate Service Rules says that a member of a service shall if he resigns his appointment, forfeit not only the service rendered



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by him in the particular post held by him at the time of resignation but all his previous service under the Government. The first proviso says that nothing contained in this rule shall affect the operation of the proviso to Rule 23 or of Rule 25 of the Tamil Nadu Liberalised Pension Rules, 1978. As per the proviso to Rule 23 of the Tamil Nadu Liberalised Pension Rules, resignation shall not entail forfeiture of past service, if it has been submitted to take up with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

4.It is his further submission that the petitioner had resigned his post only on the instructions of the officials of the Tamil Nadu Electricity Board for the purpose of joining his new assignment in the Tamil Nadu Education Department. Therefore, resignation from the Tamil Nadu Electricity Board will not entail the forfeiture of his service rendered in Tamil Nadu Electricity Board and in the Judicial Department. In support of his submissions, he pressed into service the order of this Court in ***(i)N.Nallakannu Vs. Secretary to Government and another in W.P.No (MD)No.11000 of 2005, dated 25.04.2011 (ii) R.Durairaj Vs. The***



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Secretary to the Government and four others, in W.P.(MD) No.21959 of 2015, dated 18.12.2015.

5.In response to this submission, the learned counsel for the respondents submitted that once a member of a service resigns his appointment, his past services is forfeited and he cannot seek the past services for any purposes, especially, for the pensionary benefits. The Government has issued a clarification letter dated 13.04.2006, wherein, it is stated that “an employee who held a post with pensionable service in the State Government and resigned that post to take another post in the State Government after 01.04.2003, be allowed in the old pension scheme subject to the condition that the employee had applied for the later appointment through proper channel. He shall be continued in the existing GPF also”. In continuation of his submissions, the learned counsel for the respondents submitted that the petitioner had not obtained proper permission for his recruitment by the Teacher Recruitment Board, therefore, his appointment is not proper and through proper channel. In the said circumstances, he submitted that the petitioner is not entitled for claiming continuation of his past services for the purpose of calculating



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the total years of service and for pensionary benefits.

6.I have considered the rival submissions and perused the records.

7.From the materials produced, submissions of the learned counsel appearing for the parties, it is not in dispute that the petitioner was appointed as Typist in the Judicial Department and worked as Typist in the Judicial Department from 10.02.1997 and then he was appointed as Typist in Tamil Nadu Electricity Board, promoted as Assistant and served in Tamil Nadu Electricity Board from 04.06.1997 to 08.10.2007. On 08.10.2007, he submitted his resignation for taking up his employment under the Tamil Nadu Education Department. His resignation was accepted on the same date and he was relieved. Then he joined the services of the Tamil Nadu Education Department as BT Assistant on 10.10.2007. There is absolutely no second opinion about these details between the parties. The issue here is, whether on the resignation of the petitioner from Tamil Nadu Electricity Board, he can claim his services in Tamil Nadu Electricity Board and Judicial Department for computing his total length of service.



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8.It is seen from the material produced, especially, the petition averments and representation dated 01.10.2007 submitted by the petitioner to the Superintending Engineer, Villupuram that he was appointed as a BT Assistant through employment exchange under the quota meant for Ex-service men's children. Therefore, he requested that he may be relieved from the post in Tamil Nadu Electricity Board to facilitate his joining in Education Department as BT Assistant. In response to this representation, the Superintending Engineer, Villupuram, in his proceedings dated 05.10.2007 informed him that his request for relieving him from the post held under the Tamil Nadu Electricity Board cannot be considered and that he should only resign his post, giving the reasons for resigning. Left with no option, petitioner submitted his resignation dated 08.10.2007. That resignation was accepted on the same date, vide proceedings of the Superintending Engineer, Villupuram, dated 08.10.2007. Thereafter, he was discharged from the duty on 09.10.2007 afternoon. Then he joined the service in Tamil Nadu Education Department as BT Assistant.

9.There are two things to be noticed (i) He did not participate in



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any selection process for his appointment as BT Assistant, but he was appointed on the recommendation of the employment exchange under the quota meant for Ex-servicemen's children. (ii) Certainly, the post of BT Assistant is a better post than the post of Assistant held by him under the Tamil Nadu Electricity Board. He sought permission from the Superintending Engineer to relieve him for the purpose of joining as BT Assistant under the Education Department, but that was refused with an instruction to give a resignation letter. He submitted the resignation letter only for the purpose of joining the post of BT Assistant. It is relevant to quote the rule position here. Rule 41 of the Tamil Nadu State Subordinate Service Rules reads as follows:

41. Consequences of resignation - *A member of a service shall if he resigns his appointment, forfeit not only the service rendered by him in the particular post held by him at the time of resignation but all his previous service under the Government.*

The reappointment of such person to any service shall be treated in the same way as a first appointment to such service by direct recruitment and all rules governing such appointment shall apply; and on such



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reappointment he shall not be entitled to count any portion of his previous service for any benefit or concession admissible under any rule or order;

Provided that nothing contained in this rule shall effect the operation of proviso to rule 23 or rule 25 of the Tamil Nadu Liberalised Pension Rules, 1978."

As rightly pointed by the learned counsel for the petitioner that Rule 41 is contrary by the proviso, especially, the 1st proviso.

10.Rule 23 of Tamil Nadu Pension Rules reads as follows:

"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 permanent, under the Government where service qualifies. (2) Interruption in service in a case falling under the proviso to sub-rule (1), due to the two appointments being at different stations, not exceeding the joining time permissible under the



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rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to the Government servant."

11.A reading of Rule 41 of Tamil Nadu State Subordinate Service Rules and Rule 23 of Tamil Nadu Pension Rules clearly shows that when a person resigns with proper permission and takes up another appointment whether temporary or permanent under the Government, the resignation shall not entail forfeiture of past services. This position is best explained in the judgment submitted by the learned counsel for the petitioner. It is pertinent to extract the relevant portions of the judgment in ***(i)N.Nallakannu Vs. Secretary to Government and another in W.P.No (MD)No.11000 of 2005, dated 25.04.2011*** for better understanding of these rules.

9. The learned Special Government Pleader relies on Rule 41 of the Tamil Nadu State and Subordinate Service Rules, which is extracted hereunder:-
"Consequences of resignation - A member of a service shall if he resigns his appointment, forfeit not only the service rendered by him in the particular post held by



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him at the time of resignation but all his previous service under the Government.

The reappointment of such person to any service shall be treated in the same way as a first appointment to such service by direct recruitment and all rules governing such appointment shall apply; and on such reappointment he shall not be entitled to count any portion of his previous service for any benefit or concession admissible under any rule or order;

Provided that nothing contained in this rule shall effect the operation of proviso to rule 23 or rule 25 of the Tamil Nadu Liberalised Pension Rules, 1978."

10. The afore-said Rule makes it clear that the Rule 41 could not be invoked, if proviso to Rule 23 of the Tamil Nadu Pension Rules, 1978 is applicable. Rule 23 of the Tamil Nadu Pension 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 permanent, under the Government where



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service qualifies. (2) Interruption in service in a case falling under the proviso to sub-rule (1), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to the Government servant."

11. The proviso to the afore-said Rule makes it clear that the resignation shall not entail forfeiture of past service, if it has been submitted to take up any appointment with prior permission. Admittedly, the petitioner was recruited through Tamil Nadu Public Service Commission. While he was serving in the Public Works Department, he submitted his resignation letter to the Executive Engineer to take up the employment with the Co-operative Department on 14.09.1971. He joined the Co-operative Department on 15.09.1971. Thus, it should be taken that the petitioner is entitled to the proviso of Rule 23 of the Tamil Nadu Pension Rules. In fact, the Division Bench of this Court has interpreted Rule 23 of the Tamil Nadu Pension Rules in such a way to grant the



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terminal benefits if a person resigned on the ground of ill health, though such a contingency is not provided in the Rule. Hence, I am of the view that based on the proviso to Rule 23 of the Tamil Nadu Pension Rules, and the decision of the Division Bench, the petitioner is entitled to succeed. Accordingly, the impugned order is quashed and the respondents are directed to refix the retiral and pensionary benefits of the petitioner by taking into account 50% of past service of the petitioner during the period between 29.01.1964 and 28.02.1970 and full service between 02.03.1970 and 14.09.1971 as per Rules and Government Order. The writ petition is allowed to the extent indicated above. No costs.

12.This judgment squarely applies to the facts and circumstances of this case. Thus, from the understanding of the Rule 41 of Tamil Nadu State Subordinate Service Rules, Rule 23 of Tamil Nadu Pension Rules and the aforementioned judgment, this Court is of the view that the petitioner resigned his post only for the purpose of taking up the post of BT Assistant only after informing his employer submitting his resignation at the instance of his employer. In the said circumstances, the petitioner is entitled for considering his past services in Judicial Department and



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Tamil Nadu Electricity Board, to compute his length of service for the purpose of computing his qualifying service and for the grant of pension and pensionary benefits as per rules. The respondents are directed to pass appropriate order in this regard within a period of three months from the date of receipt of a copy of this order.

13. Accordingly, this Writ Petition stands allowed. No costs.

Consequently, connected miscellaneous petition, if any, is also closed.

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04.01.2024

Internet: Yes

Index: Yes/No

Speaking/Non speaking order

NCC: Yes/No

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G.CHANDRASEKHARAN, J.

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