



W.P.No. 30209 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2024

CORAM :

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

W.P.No. 30209 of 2015

N. Krishnamoorthi

... Petitioner

Vs.

1. The Government of Tamil Nadu
Rep. by Secretary to Government,
School Education Department,
Secretariat, Chennai – 600 009.
2. The Director of Elementary Education,
Chennai – 600 006.
3. The District Elementary Educational Officer,
Dharmapuri.
4. The Assistant Elementary Educational Officer,
Nallampalli, Dharmapuri District.
5. The Principal Accountant-General (A & E)
Tamil Nadu, Chennai – 600 018.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records relating to the Impugned order passed by the third respondent herein in his Na.Ka.No.



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2701/A.4/2014 dated 03.12.2014, quash the same and consequently direct the respondents to sanction pension to the petitioner with effect from 01.03.1982 and disburse the same within a time framed by this Court.

For petitioner : Mr.R.Thamaraiselvan

For respondents : Mr.Vadivelu Deena Dayalan
Additional Government Pleader
(for R1 to R4)

Ms.Hema Muralikrishnan
Standing Counsel (for R5)

ORDER

This writ petition is filed seeking Certiorarified Mandamus to quash the proceeding in Na.Ka.No. 2701/A.4/2014 dated 03.12.2014 and direct the respondents to sanction pension to the petitioner with effect from 01.03.1982.

2. The facts and brief as per the affidavit enclosed in the writ petition is as follows:-

2.1 The petitioner was appointed as Assistant on 03.11.1970 in Panchayat Union Elementary School at Chickagoundanahalli, Nallampalli Panchayat Union. On 01.03.1982, the petitioner submitted letter of resignation after rendered 11 years 3months and 26 days of service.

2.2 The Government has issued orders in G.O.Ms.No.37, dated



05.11.1983 sanctioning pension to the resigned incumbents and also with certain conditions. According to Para 5(ii) of the provisions of the said G.O. “the pension can be granted even in cases where the incumbents had 'resigned' since they could not have foreseen the institution of Pension scheme at the time they “resigned”.

2.3 The petitioner therefore filed an application in the prescribed performa format to the fourth respondent. The fourth respondent has forwarded the same to the fifth respondent but it was returned. The petitioner has re-submitted the representation to the fourth respondent by quoting G.O.Ms.No. 37 dated 05.01.1983. In spite of making repeated representations, there was no response. The petitioner has filed W.P.No. 24395 of 2014 and the same was allowed, directing the respondents to consider the representation of the petitioner. The third respondent has rejected the representation of the petitioner by way of impugned order in Na.Ka.No. 2701/A-4/2014 dated 03.12.2014. Aggrieved by the same, the petitioner has filed this writ petition.

3. The first to fourth respondents has filed counter affidavit stating that



the petitioner has went on leave on Loss of Pay for five years from 06.06.1979 onwards and he served as teacher in all 8 years 7 months 3 days only. After expiry of the said leave period, he has not joined and his leave period is not yet regularized and the period of leave cannot be counted for qualifying service to consider the pension. It is also further stated that this petitioner has stated to have resigned, he is not entitled for the pension.

4. Heard both sides and perused the records.

5. It is the case of the petitioner that he worked for qualifying service by working for a period of 11 years 3 months and 26 days thereby he has been for claiming the pension, whereas according to the respondents, the petitioner has worked only for a period of 8 years 7 months 3 days, thereby not entitled for pension. The petitioner has calculated the 5 years period with effect from 06.06.1979 to 06.06.1984 as his period of his service. According to the petitioner, he has applied 5 years leave from 06.06.1979 to 06.06.1984 and same has to be considered for calculating the period of service for the purpose of pension. However, the learned Additional Government Pleader appearing



for the first to fourth respondents has submitted the said period has not been regularized and his leave has not been granted. According to the respondents as per rule 18 of the Tamilnadu Pension Rules 1978 “ the extraordinary leave granted on medical certificate can be counted for qualifying service. However, the other extraordinary leave without medical certificate cannot be counted for qualifying service. In the case on hand, the petitioner has applied for 5 years leave quoting 'unavoidable family circumstance'. The leave applied by the petitioner for a period of five years is not on medical grounds. Admittedly, no medical certificate is filed, thereby, the 5 years commencing from 06.06.1979 to 06.06.1984 cannot be add to the service of 8 years 7 months and 3 days worked by the petitioner and hence, the petitioner has no qualifying service for consideration of pension. There is no record filed by the petitioner (i.e) leave from 06.06.1979 to 06.06.1984 has been considered and granted by the department. Even if said leave is granted, it shall only be extraordinary leave and shall not be on medical grounds in order to consider the said period for qualifying service. In view of the above, petitioner has no qualifying service to claim the pension.

6. According to the petitioner, he has resigned from service with effect



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from 01.03.1982. Normally, the person who have resigned from service will not be getting the pension. However, the Government has issued G.O.Ms.No. 37 dated 05.01.1983 creating provisions for grant of pension for those who resign prior to crucial that is on 05.06.1981 when pension scheme has been started. According to the said G.O., if a person who resigns from service prior to 05.06.1981 are also eligible for the pension, as the employee who resigned prior to 1981 could not have imagined that the pension scheme would be introduced on 05.06.1981. However, no such concessions was given to the persons who have submitted the resignations subsequent to that on 05.06.1981. In the case on hand, the petitioner has submitted resignation on 01.03.1982 by which time, the pension scheme has already been introduced.

7. The petitioner has quoted the Judgment of this Court in ***W.P. No. 24795 of 2014*** and also in ***W.A.No. 606 of 2001*** dated ***27.07.2001*** which is reported ***in (2001)3 M.L.J. 430*** in support of his contention.

9. However, the recent judgment of this Court circulated by the learned Standing Counsel appearing for the fifth respondent in W.A.No. 2590 of 2018



disposed of on 27.06.2019 runs follows:-

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12. *Learned counsel for the first respondent, has placed reliance on number of judgments, viz.,*

*(i) In **Government of Tamil Nadu rep. by the Secretary, Department of Education, Chennai vs. S.V.Paul Jeyaraj**, reported in 2001-Writ L.R.852: A perusal of the facts of the case would show that the writ petitioner had resigned on 01.04.1955, i.e., much before 05.06.1981. This Court allowed the writ petition, on the ground that provision has to be interpreted as giving concessions even to the persons who have resigned earlier to the institution of the said Pension Scheme. The facts of the case is entirely different. Said judgment is not applicable to the facts of the case on hand. The facts of the reported case, therefore cannot become an authority or the proposition that, if a teacher had resigned even after 05.06.1981, he would still be entitled to the pensionary benefits.*

*(ii) The **District Elementary Education Officer, Madurai vs. S.Ayyavoo**, in W.A.(MD)No.311 of 2015: In this case also the respondent in the appeal resigned on 21.10.1964, i.e., before 05.06.1981 and therefore this case also cannot be an authority or the proposition that the persons who have resigned after 1981, would be entitled to get pensionary benefits.*



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(iii) ***Alice R.T.Solomon (deceased) and others vs. The Commissioner and Secretary, Chennai and others*** reported in **CDJ 2010 MHC 362**: In this case also the teacher concerned resigned on 18.06.1973 i.e., before the crucial dates. This case also cannot be taken as an authority or the proposition that a person who had resigned before 05.06.1981, would also be entitled to pensionary benefits.

(iv) In **Tmt.A.Ammuni vs. State of Tamil Nadu** in **W.P.No.8793 of 1999**: In this case also the teacher resigned in the year 1971 i.e., before 05.06.1981.

(v) In **R.Nandakumar vs. The Commissioner and Director of Technical Education, Government of Tamil Nadu, Chennai** in **W.P.No.21919 of 2010**: The petitioner in this case resigned on 13.09.1975, which is prior to 05.06.1981 and it cannot be taken as an authority or the proposition, when the person has resigned before 05.06.1981.

(vi) In **D.Padmini vs. The Registrar General, High Court, Madras** in **W.P.No.44724 of 2002**, dated 29.01.2008: In this case though the petitioner resigned on 25.04.1988; the question dealt with was regarding forfeiture of pension under Rule 23 of the Tamil Nadu Pension Rules.

This case did not deal with the effect of G.O.Ms.No.37,



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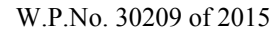
Education Science and Technology Department, dated 05.01.1983 and therefore it is not applicable to the facts of the present case.

*(vii) In **Government of Tamilnadu, rep. by its Principal Secretary, School Education Department, Chennai vs. V.Gopalasamy**, in **W.A.(MD)No.831 of 2015**, dated 23.07.2015: In this appeal once again the teacher resigned on 04.12.1974, i.e., before 05.06.1981 and therefore it is not applicable to the case on hand.*

*(viii) In **Tmt.M.K.Sivakami vs. The Hon'ble Principal District Judge, City Civil Court, Chennai** in **W.P.No.30277 of 2016**, dated 04.04.2017: In this case again even though the petitioner resigned on 01.09.2014, the arguments were on the applicability of Rule 23 of the Tamil Nadu Pension Rules, 1978 and not on G.O.Ms.No.37, Education Science and Technology Department, dated 05.01.1983.*

*(ix) In **K.R.Kumarasamy vs. The Accountant General, (Accounts and Entitlement), Chennai**, in **W.P.No.26540 of 2011**, dated 11.04.2018: This case also deals with the effect of Rule 23 of the Tamil Nadu Pension Rules, 1978, forfeiture of services on resignation.*

13. A cursory look at the above said judgments would show that none of the judgments would apply to the



14. *The writ petitioner/first respondent herein, who resigned on 07.07.1984 that is much after 05.06.1981 and who knew about G.O.Ms.No.1015, Education Department, dated 05.06.1981 and G.O.Ms.No.37, Education Science and Technology Department, dated 05.01.1983, is not entitled to pension. It should be deemed that he resigned on 07.07.1984, knowing fully well all the consequences of resignation. The judgments relied on by the respondent cannot be made applicable, because of the specific provision in the Government orders extracted supra.”*



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10. Above all, the petitioner has joined a service on 03.11.1970 and submitted resignation on 01.03.1982. Accordingly to him, he has left the State for Andhra Pradesh and returned back in the year 1993. The petitioner has filed representation for the first time on 02.06.1995 that means, the petitioner has filed application for pension 13 years thereafter. Similarly, he has approached this Court in the year 2015, after 33 years of service. Considering from any angle, the approach of the petitioner seeking the pension is highly belated one. It is settled legal position but in service jurisprudence, the delay and latches will affect adversely on the petitioner. In the case on hand is also, there is delay and latches on the part of the petitioner. Therefore, the petitioner is not entitled for the relief sought for.

11. In view of the above discussion, the petitioner has failed to make out the case for a direction to the respondents to grant pension to him as sought for. Accordingly, this Writ Petition stands dismissed and No costs.

07.03.2024



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To:

1. The Secretary to Government
Government of Tamilnadu
School Education Department,
Secretariat, Chennai – 600 009.
2. The Director of Elementary Education,
Chennai – 600 006.
3. The District Elementary Educational Officer,
Dharmapuri.
4. The Assistant Elementary Educational Officer,
Nallampalli, Dharmapuri District.
5. The Principal Accountant-General (A & E)
Tamil Nadu, Chennai – 600 018.



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DR. D.NAGARJUN,J.

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