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W.P.No.33258 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2024

CORAM:

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

W.P.No.33258 of 2012

and

M.P.No.1 of 2012

V.N.Gayathri

... Petitioner

Vs.

1.The Accountant General,
Anna Salai,
Chennai-18.

2.The State of Tamil Nadu,
Rep.by its Joint Secretary,
Energy (P3) Department,
Secretariat, Chennai-9.

3.The Chief Electrical Inspector,
Inspector of Electricity Department,
Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai-32.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 2nd respondent in his proceedings in Lr.No.6385/P3/2012-2 dated 08.10.2012 and quash the same as illegal and consequently to direct the 1st respondent to sanction pension and other retirement benefits within the period that may be stipulated by this Court.



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For Petitioner : Mr.I.Calvin Jones
for M/s.Ajmal Associates
For 1st Respondent : Mrs.Hema Muralikrishnan

For Respondents 2 and 3 : Mr.S.Rajesh
Government Advocate

ORDER

Letter No.6385/P3/2012-2 dated 08.10.2012 issued by the second respondent is under challenge. A direction is also sought for to sanction pension and to disburse other retirement benefits within a period that may be stipulated by this Court.

2. The petitioner was initially appointed as Typist through Tamil Nadu Police Service Commission at the Office of the Chief Inspector of Electricity Department on 24.10.1994. Subsequently she was promoted to the post of Assistant on 29.02.1998. Due to her family circumstances, she submitted her resignation letter to the second respondent and it was accepted by him by proceedings dated 30.01.2008. She sent various representations to the respondent for payment of pension and by the impugned proceedings dated 08.10.2012, the second respondent rejected her claim on the ground that as per Rule 23 of the Tamil Nadu Pension Rules, resignation from service or post entails forfeiture of past service. She had served for 13 years 10



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months and 8 days as qualified service and therefore, as per pension Rules, she is entitled for pension after completion of 10 years which is qualified service. As the order is unjust and unsustainable in the eye of law, this writ petition is filed.

3. Heard Mr.I.Calvin Jones, learned counsel appearing for the petitioner, Mrs.Hema Muralikrishnan, learned Standing Counsel appearing for first respondent and Mr.S.Rajesh, learned Government Advocate for the second and third respondents.

4. Mr.I.Calvin Jones, learned counsel appearing for the petitioner would contend that the petitioner having served for about 12 years in the Government service and due to her family circumstances, she submitted her resignation letter. As she had completed 10 years service, she is entitled for pension.

5. Mrs.Hema Muralikrishnan, learned Standing Counsel appearing for the first respondent would submit that the petitioner has resigned her post on personal grounds and therefore she is not entitled to pension and other benefits. Even voluntary retirement from service cannot be equated with that



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of resignation. If the Government servant has completed 20 years of qualifying service or should have attained 50 years of age, then the pensionary benefits are payable. She would further contend that only in cases of retirements such as superannuation retirement, voluntary retirement, compulsory retirement, pension is payable and not for resignation which is based on individual's volition and the employer has no role in it. To buttress her arguments, the Judgment of the Hon'ble Supreme Court in C.Jacob vs. Director of Geology and Mining and Another, (2008) 10 SCC 115 is referred to.

6 Mr.S.Rajesh, learned Government Advocate appearing for the second and third respondents submitted that as the petitioner has resigned the service as per Rule 23 of the Tamil Nadu Pension Rules, 1978 is extracted hereunder:-

“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”.

Hence she is not eligible to claim for pension.



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7. The petitioner was initially appointed as typist, thereafter promoted as Assistant in the Electricity Department on 24.10.1994 to 31.08.2006. She submitted her resignation letter due to her family circumstances, and the same was accepted by the second respondent by his proceedings dated 31.08.2006. As the request for sanction of pension was denied by the Government, she has filed this writ petition for quashing the said order for grant of pension.

8. She has resigned her post on 31.08.2006. Admittedly, she has served for 13 years and 10 months in the Department of Electricity.

9. ***In C.Jacob vs. Director of Geology and Mining and Another, (2008) 10 SCC 115***, it has been held that a Government servant, whose case does not fall under any of the classes of pensions enumerated in Chapter V is not entitled to pension. If a government servant is not able to make out entitlement to any class of pension specified in Chapter V of the Pension Rules, there is no question of having recourse to the Rules in the Chapter dealing with regulation of amount of pension (Chapter VI of the TNP Rules or Chapter VII of the CCSP Rules) for determining the quantum of pension.



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10. The learned counsel for the petitioner relied on Rule 43 (2) of the Tamil Nadu Pension Rules, 1978 and would argue that as the petitioner has served for 13 years and 10 months, she is entitled for pension. For a proper understanding, Rule 43(2) is extracted hereunder:-

“In the case of a Government servant, retiring in accordance with the provisions of these rules after completing qualifying service of not less than 10 years, the amount of pension shall be the appropriate amount as set out below namely:-(B) [Pension/Rule 43(2) Table '(B) Pension' substituted - G.O.Ms.No.596, Finance (Pension) department, dated 25-11-1997 with effect from 1-1-1979.]

Completed six monthly periods of Qualifying service Scale of Pension

(1)	(2)
20	15.00 / 80ths average emoluments:
21	15.50 / 80ths average emoluments:
22	16.00 / 80ths average emoluments:
23	16.50 / 80ths average emoluments:
24	17.00 / 80ths average emoluments:
25	17.50 / 80ths average emoluments:
26	18.00 / 80ths average emoluments:
27	18.50 / 80ths average emoluments:
28	19.00 / 80ths average emoluments:
29	19.50 / 80ths average emoluments:
30	20.00 / 80ths average emoluments:
31	20.50 / 80ths average emoluments:
32	21.00 / 80ths average emoluments:
33	21.50 / 80ths average emoluments:
34	22.00 / 80ths average emoluments:
35	22.50 / 80ths average emoluments:
36	23.00 / 80ths average emoluments:
37	23.50 / 80ths average emoluments:



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60 and above

24.00 / 80ths average emoluments:

24.50 / 80ths average emoluments:

25.00 / 80ths average emoluments:

25.50 / 80ths average emoluments:

26.00 / 80ths average emoluments:

26.50 / 80ths average emoluments.

27.00 / 80ths average emoluments.

27.50 / 80ths average emoluments.

28.00 / 80ths average emoluments.

28.50 / 80ths average emoluments.

29.00 / 80ths average emoluments.

29.50 / 80ths average emoluments.

30.00 / 80ths average emoluments.

30.30 / 80ths average emoluments.

30.60 / 80ths average emoluments.

30.90 / 80ths average emoluments.

31.20 / 80ths average emoluments.

31.50 / 80ths average emoluments.

31.80 / 80ths average emoluments.

32.10 / 80ths average emoluments.

32.40 / 80ths average emoluments.

32.70 / 80ths average emoluments.

33.00 / 80ths average emoluments.]

11. Similar question arose before the Hon'ble Supreme Court in Jacob's case and the provisions of Tamil Nadu Pension Rules, 1978 were gone into in detail by the Apex Court.

12. The writ petitioner having relied on Rule 43(2) of the Tamil Nadu Pension Rules, 1978, would contend that on completion of more than 10



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years of service, she is entitled to pension. In fact, the said rule relates to quantum. It enumerates how the pension of retired Government Servant has to be calculated if he is entitled to pension.

13. Rule-32 of Pension Rule deals with superannuation pension. Rule-33 enumerates about retiring pension. Rule-34 explains pension on absorption in or under a Corporation, Company or Body owned / controlled by the State / Central Government.

14. Rule-36 deals with invalid pension (Medical Grounds). Rule-38 speaks about compensation pension payable on discharge owing to abolition of the post. Compulsory retirement pension is dealt with in Rule-39. Rule-40 deals with Compassionate Allowance to Government Servant who forfeit their pension for being dismissed or removed.

15. In order to qualify to receive pension, the Government Servant has to fit in any of the rules as mentioned supra. In this line, the Hon'ble Supreme Court has observed that if the Government Servant is not able to make out entitlement to any clause of pension specified in Chapter-5 of the pension rules, there is no question of having recourse to the rules in the chapter



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dealing with regulation of amount of pension for determining the quantum of pension. Rule 43(2) of the Tamil Nadu Pension Rules, comes into play only when the Government Servant is entitled to any of the clauses of pension enlisted as mentioned supra. The petitioner submitted her resignation letter and it was accepted by the respondent by a proceedings dated 30.01.2008.

16. The petitioner's case does not fall within the specified categories of the pension mentioned supra and the rule position is that provision relating to the retiring pension makes it clear that a minimum of 20 years qualifying service is required for retiring pension.

17. Therefore, based on the aforestated discussions and submissions, in view of the observations of the Hon'ble Supreme Court in **C.Jacob vs. Director of Geology and Mining and Another** reported in **(2008) 10 SCC 115**, this writ petition is liable to be dismissed and thereby dismissed. There is no order as to costs. Consequently connected miscellaneous petition stands closed.

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Index : Yes / No
Neutral Citation Case : Yes / No
Speaking Order / Non-Speaking Order
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R.KALAIMATHI, J.,

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