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W.P. No.34314 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.34314 of 2015 and
W.M.P. No.28135 of 2019

T.V.Narayanan

... Petitioner

Vs

1.The Government of Tamilnadu represented by
the Additional Chief Secretary to Government,
Youth Welfare and Sports Development Department,
Secretariat, Chennai 600 009.

2.The Deputy Director General,
National Cadet Crops Directorate,
(Tamil Nadu, Pondicherry & Andaman Nicobar),
Fort St.George, Chennai 600 009.

3.The Principal Accountant General,
(Accounts & Entitlements), Tamil Nadu,
“Lekha Pariksha Bhavan,
361, Anna Salai, Teynampet,
Chennai 600 018.

... Respondents

PRAYER: Writ Petition 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 of the second respondent issued in



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No.1333/1/SC/Pen/8695 dated 14.12.2012 and quash the same and direct the respondents to sanction pension with effect from 21.11.2009 and other retirement benefits to the petitioner for his 12 years and 09 months qualifying service with due interest for the belated payment of his retirement benefits.

For Petitioner : Mr.P.Manoj Kumar

For Respondents : Mr.Abishek Murthy for R1, R2
Government Advocate

R3 – No appearance

ORDER

The writ petition is filed challenging the impugned order dated 14.12.2012 in No.1333/1/SC/Pen/8695 whereby the petitioner's request for considering his case for grant of pensionary benefit on account of service rendered prior to his resignation was rejected, as not being feasible inasmuch as it was not in compliance with Rule 23 of the Tamil Nadu Pension Rules, 1978 which provides that resignation would result in forfeiture of his service.

2. It is submitted by the learned counsel for the petitioner that he was selected as Junior Assistant and was allotted to NCC Department for appointment as Junior Assistant by the Tamil Nadu Public Service



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Commission vide its letter dated 17.12.1996. The petitioner was accordingly appointed and posted at 4 (TN) Bn NCC, Coimbatore by the second respondent dated 03.02.1997 and he joined duty on 26.02.1997. Consequently, the petitioner completed his probation and also passed required departmental examination. The petitioner was promoted as Assistant on 20.09.2000. The petitioner was then transferred to 2 (TN) Bn, NCC, Coimbatore by the second respondent vide order dated 15.06.2005 and he joined duty on 23.06.2005.

3. Whiles, the petitioner's daughter met with an accident on 09.08.2008 resulting in blood clot in his daughter's head. He was thus compelled to take care of his daughter and it is submitted that the petitioner's health also deteriorated and he suffered from hypertension and Diabetes Mellitus. The petitioner also underwent Appendicitis surgery on 31.08.2009. In the above circumstances, the petitioner submitted his resignation vide letter dated 20.11.2009 wherein he had submitted that in view of the frequent hospitalization of his daughter for medical treatment besides his failing health, he was unable to focus and carry out his duty to his own satisfaction as well as of his superiors. Therefore, he tendered his resignation from the post of Assistant in 2



(TN) Battery NCC Coimbatore with effect from 20.11.2009 (FN). The said resignation was however rejected by the second respondent vide communication dated 30.03.2010 on the premise that the resignation is not in confirmity with Rule 41-A of Tamil Nadu State and Subordinate Services. However, the very same authority had thereafter accepted the petitioner's resignation after finding as under:

“3. His case has been examined with reference to relevant Rules of General Rules in Part II of the Tamil Nadu State and Subordinate Services and is found to be in order. The undersigned accordingly accepts the above application of the Individual as notice as required under the above Rule.

4. It is certified that:-

(a) No disciplinary case is pending or contemplated against the individual.

(b) No prosecution is contemplated or pending in a Court of Law against the individual.

(c) No dues are pending to be recovered by the Government from the above individual.

5. The Director of Vigilance and Anti-Corruption, Chennai 28 vide his letter (b) cited has reported that no inquiry is contemplated or pending against the above named individual.

6. Accordingly, the undersigned hereby orders that the resignation of Mr.T.V.Narayanan, Assistant is deemed to have been accepted with effect from 20 Nov 2009 FN and he is relieved from Government service accordingly.”



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4. The petitioner submitted a representation vide letter dated 19.11.2012 wherein reliance was sought to be placed on the decision of the Madras High Court, Madurai Bench and requested to consider the pensionary benefits of the petitioner. The same was rejected vide proceeding dated 14.12.2012 relied upon Rule 23 of Tamil Nadu Pension Rules, 1978 while stating that as a consequence of his resignation, service rendered by the petitioner prior to resignation stood forfeited. The present writ petition is filed challenging the proceeding dated 14.12.2012.

5. It is submitted by Mr.Abishek Murthy, learned Government Advocate for respondents 1 and 2 that the impugned order does not warrant interference and further he would suggest that the Rule 23 of Tamil Nadu Pension Rules, 1978 provides for forfeiture of service on resignation irrespective of the circumstance which compelled the same.

6. Heard both sides. Perused the material on record.

7. Before I proceed to deal with the entitlements of the petitioner to his pension, it may be relevant to complete the narration of the fact that



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thereafter the petitioner had vide letter dated 28.02.2013 requested for reinstatement in service as Assistant along with revival of all past services, while also stating that he had recovered from his ailment and he would be able to discharge his duty and further indicating that the decision to resign was out of compulsion of the circumstances that prevailed. The above request was rejected vide proceeding dated 02.05.2013 by the first respondent wherein reliance was placed on the basis of Rule 41 A (b) of the Tamil Nadu State and Subordinate Services which provides that the Government Servant may withdraw his resignation before its acceptance and that any withdrawal after acceptance of resignation would not be considered by the appointment authority. Thus, the request for reinstatement as Assistant along with reviving past services stood rejected.

8. It is now submitted by the learned counsel for the petitioner that his prayer is limited to grant pensionary benefits. In this regard, reliance was sought to be placed on the judgment of the Division Bench of this Court in W.P.No.13048 of 2006 dated 17.11.2008 wherein while considering the question whether the person who resigns due to ill-health could be denied benefit on the basis of Rule 23 of the Tamil Nadu



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Pension Rules, 1978, it was held that he ought to be extended benefit inasmuch as failure, to do so, would possibly result in treating the person who resigns due to ill-health on par with one who resigns in view of misconduct such construction would render Rule 23 of Tamil Nadu Pension Rules, 1978, vulnerable to challenge as offending Article 14 of the Constitution of India. It was held that the employee who resigns due to ill-health ought to be treated on par with employees covered by the “proviso to Rule 23 of Tamil Nadu Pension Rules, 1978” i.e., those who have been allowed to resign and joined in some other post under State. In this regard, it may be relevant to refer to the following portion of the judgment of the Division Bench stated supra reads as under:

“7. In such a situation, a question arise whether the service of an employee can be forfeited if person asks for resignation on the ground of ill-health, which is allowed by the State. Under Rule 23, a person is entitled for all benefits if he is allowed to resign for appointment in some other post under the Government. The rule is silent with regard to resignation, if given on the grounds of illness or ill-health for which permission is granted by the competent authority. In case, if it is held that the person, who has resigned because of illness or ill-health, as at par with the class of employees, who resign for misconduct or any adverse record, and the class of employees, who resign to join other government organisation are kept in a



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separate class for grant of pensionary benefits, in such case one may doubt Rule 23 violative of Article 14 vis-a-vis those who resign for illness or ill-health and is accepted by the competent authority. Therefore, we hold that those who resign because of illness or ill-health and not because of any misconduct or adverse record and are allowed to do so by the State are entitled for the same benefit which is allowed to those who resign to join another service under the State. Comparing the employees who are allowed to resign because of illness or ill-health at par with those employees who resign because of misconduct or adverse record will be otherwise violative of Article 14 of the Constitution of India.

8. We, accordingly, hold that the petitioner is entitled to all the benefits to which the employees are otherwise entitled to under the proviso to Rule 23, i.e., those who have been allowed to resign to join some other post under the State. The respondents are, accordingly, directed to pay the petitioner the pension and gratuity with 8% interest p.a., within three months from the date of receipt/production of a copy of this order, in accordance with law, taking into consideration the years of service rendered by him with further direction to pay provident fund and other retirement benefits within one month from the date the petitioner submits appropriate application in the format prescribed by the State, failing which the petitioner will also be entitled for 8% interest on the same. The writ petition stands disposed of with the aforesaid observations, but there shall be no order as to costs."



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WEB COPY 8.1. Following the above decision of the judgment of the Division Bench of this Court in W.P.No.13048 of 2006 dated 17.11.2008, the impugned order is set-aside. The petitioner is permitted to make a representation within a period of eight (8) weeks from the date of receipt of a copy of this order. If any such representation is made, the same shall be considered in accordance with law, keeping in mind the decision of the Division Bench of this Court in W.P.No.13048 of 2006 within a period of eight (8) weeks from the date of receipt of the representation.

9. With the above direction, the writ petition stands disposed of.
No costs. Consequently, connected miscellaneous petition is closed.

24.07.2024

Speaking (or) Non Speaking Order
Index : Yes/ No
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To



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MOHAMMED SHAFFIQ, J.

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- 1.The Government of Tamilnadu represented by
the Additional Chief Secretary to Government,
Youth Welfare and Sports Development Department,
Secretariat, Chennai 600 009.
- 2.The Deputy Director General,
National Cadet Crops Directorate,
(Tamil Nadu, Pondicherry & Andaman Nicobar),
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