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W.P.No.17534 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2024

C O R A M

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.17534 of 2023

M. Periyasamy

... Petitioner

Vs.

1. The Government of Tamilnadu
Rep. by its Secretary to Government,
Department of Health and Family Welfare,
Fort St.George, Chennai - 600 009.
2. The District of Medical Services,
59, Anna Salai,
DMS Compound,
Teynampet, Chennai - 600 006.
3. The Joint Director of Health Services,
Government Head Quarters Hospital,
Erode - 638 001.
4. The Deputy Director of Health Services,
Thindal, Erode - 638 012.

... Respondents

PRAYER: The Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating



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to the impugned order dated 19.03.2020 made in Na.Ka.No.2714/A3/2019 passed by the fourth respondent, quash the same and consequently, direct the respondents to count petitioner's past services rendered between 23.02.1987 and 15.10.2010 in Erode District Consumers Cooperative Wholesales Stores Ltd., AA446, Erode, for the purpose of pensionary benefits as per Rule 23 of the Tamil Nadu Pension Rules, 1978.

For Petitioner : Mr.N.Manoharan

For Respondents : Mr.E.Vijay Anand
Additional Government Pleader

ORDER

The present Writ Petition has been filed challenging the order passed by the fourth respondent dated 19.03.2020 thereby rejected the request made by the petitioner seeking his past services to be taken into account for the purpose of pensionary benefits.

2. The learned counsel for the petitioner submitted that the petitioner had completed D.Pharm Course and through, the District Employment Exchange, Erode, he was appointed to the post of Assistant Pharmacist in Chinthamani Cooperative Supermarket by the Deputy Registrar of Cooperative Wholesales Stores Ltd., on 17.02.1987. The entire selection



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process was conducted under the Tamil Nadu Cooperative Societies Rules.

Thereafter, the petitioner was promoted to the post of Pharmacist and further, promoted to the post of Manager on 01.02.2010 in Chinthamani Cooperative Supermarket, Erode District. After completion of 23 years of service in Chinthamani Cooperative Supermarket, the petitioner's name was once again sponsored by the District Employment Exchange for the post of Pharmacist in the Department of Medical Education. Accordingly, the petitioner had resigned the post of Manager in Chinthamani Cooperative Supermarket, Erode, on 15.10.2010 and joined in the post of Pharmacist in the Department of Medical Education on 18.10.2010. Now the petitioner is working in the Government Hospital, Kavindapadi, from 07.03.2023. In this circumstance, the petitioner made a request to take into account his past service for his pensionary benefits. However, it was rejected on the ground that the services rendered by the petitioner was not under the Government.

3. The learned counsel for the petitioner further submitted that Rules 23 and 24 of the Tamil Nadu Pension Rules, 1978, enable a person to get all benefits if he is allowed to resign for appointment in some other post under the Government. Therefore, the past service of the petitioner has to be taken into account for the purpose of pensionary benefits.



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4. To support his contention, the learned counsel relied on the judgment of this Court in ***W.P.No.9538 of 2013, dated 04.03.2022*** and this Court held that the proviso to Rule 23 makes it clear that a resignation shall not entail forfeiture of past service, if it has been submitted to take up any appointment with prior permission. He also relied on the judgment of this Court in the case of ***A.Anthonisamy Vs. the Principal Accountant General (A&E) and Another*** reported in ***2021 SCC OnLine Mad 16382***, in which, this Court held that a person, who had put in prior service in a non-pensionable establishment, would be entitled to have half of that service counted for his pensionary benefits.

5. Mr.E.Vijay Anand, learned Additional Government Pleader appearing for the respondents submitted that the services of the Cooperative Society employee is governed by the Cooperative Societies Act, whereas, the Government Servants services are governed by the Service Rules. In the Service Rules, there is no provision to count the past service rendered in Consumers Cooperative Societies.



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6. Rules 23 and 24 of the Tamil Nadu Pension Rules, 1978, are

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 service qualifies.

(2) Interruption in service in a case falling under the proviso to sub-rule (1) due to the two appointments being a 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.

24. Effect on interruption in service:- (1) The interruption in service shall not entail forfeiture of past service except when a person was removed and re-employed. The actual interruption in service shall not, however, count for pension.

(2) The services rendered in temporary or permanent department or in substantive office shall also count for pension even if any interruptions exist.

7. Thus, it is clear that the previous service mentioned in the above Rules is service rendered by other Government Department. The service rendered in Consumers Cooperative Wholesales will not come under the



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purview of Rules 23 and 24 of the Tamil Nadu Pension Rules, 1978. It does not include the service rendered in Consumers Cooperative Wholesales. That apart, initially, the petitioner registered his qualification in the District Employment Exchange, Erode. It sponsored the name of the petitioner to the Deputy Registrar of Cooperative Societies to fill up the vacancies to the post of Pharmacist in Chinthamani Cooperative Supermarket, Erode. Thereafter, once again, the very same District Employment Exchange has sponsored the petitioner's name to the post of Pharmacist in the Department of Medical Education.

8. It is common to all that once the name of the candidate sponsored got employment, automatically the name of the said candidate will get deleted from the Employment Exchange in order to give employment to others, who are in queue. In this case, the name of the petitioner was sponsored as requested by the Deputy Registrar of Cooperative Societies for appointment to the post of Assistant Pharmacist in Chinthamani Cooperative Supermarket Wholesales Stores. The very same District Employment Exchange, Erode, sponsored the petitioner's name for the post of Pharmacist in the Department of Medical Education. Therefore, the past service of the petitioner cannot be taken into account for his pensionary benefits.



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9. This Court does not find any infirmity or illegality in the order passed by the fourth respondent. Thus, the relief sought for in this Writ Petition is devoid of merits and the same is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

26.07.2024

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To

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2. The District of Medical Services,
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G.K.ILANTHIRAIYAN, J.

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