IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2024

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.21334 of 2024

S.Sarveswaran ... Petitioner

Vs

1. The Principal Secretary to the Government,
Department of School Education,
Fort St.George, Chennai – 600 009.

2. The Accountant General,
(Accounts & Entitlements),
Tamil Nadu, Chennai.

3. The Chief Educational Officer,
O/o. Chief Educational Officer,
Coimbatore – 1 & Coimbatore District.

4. The Assistant Commissioner of Commercial Taxes,
(Enforcement) Coimbatore,
Coimbatore District.

5. Director,
Office of the Directorate of Pension,
No. 571, Anna Salai, Nandanam,
Chennai – 35. ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order issued by the first respondent vide Government Order in G.O. (ID) 127, School Education [pa.ka.(2)] Department dated 12.06.2024 and quash the same as null and void, illegal and invalid, and consequently, directing the respondents to deduct the General Provident Fund subscription from the petitioner's salary enabling the petitioner to have the continuous Old Pension Scheme including General Provident Fund Account No. CT14759 and to forthwith to allow the petitioner to continue to remain under the Old Pension Scheme.

For Petitioner : Mr. P.Ganesan

For Respondents : Mrs. S.Mythreye Chandru,
Special Government Pleader (for R1 & R3)

Mr. T.Ravi Kumar,
Standing Counsel (for R2)

Mr. Nanmaran,
Special Government Pleader (for R4 & R5)

O R D E R

With the consent of both sides, this Writ Petition has been taken up for disposal at the admission stage itself.

2. This Writ Petition has been filed challenging the order dated 12.06.2024 passed by the first respondent, thereby rejecting the request made by the petitioner to count his past services for all purposes.

3. The petitioner has qualified with M.Sc., (Maths) and B.Ed., While that being so, he was selected for the post of Junior Assistant in the Commercial Taxes Department through the Tamil Nadu Public Service Commission and appointed as Junior Assistant on 09.08.2000. The petitioner is also qualified with Teachers Eligibility Test. Therefore, he participated in the selection process conducted by the Teachers Recruitment Board for the post of Teacher. He was selected and immediately resigned his Junior Assistant post from the Commercial Taxes Department and joined as Junior Graduate Teacher in Government High School, Ramachandrapuram on 21.07.2004. Therefore, the petitioner submitted a representation to take into account his earlier service in the Commercial Taxes Department for his service benefits as well as pensionary benefits.

4. The learned counsel for the petitioner submitted that the petitioner duly resigned from his earlier service in the Commercial Taxes Department on 20.07.2004 and the very next day, on 21.07.2004, he joined as Junior Graduate Teacher in the said Government School. Therefore, there was no break in service, and as per Rule 23 of the Tamil Nadu Pension Rules, 1978 (hereinafter referred to as 'the Rules' for short), his past service cannot be forfeited, and he is entitled to come under the Old Pension Scheme.

5. It is relevant to extract the Rule 23 of the Rules, reads as follows:-

> *“**23. Forfeiture of service on resignation.***
>
> *- (I) 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.”*

6. Thus, it is clear 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.

7. On a perusal of the relieving order of the petitioner, it reveals that the petitioner requested his resignation from the service of Junior Assistant in the Commercial Taxes Department by communication dated 16.07.2004. The petitioner stated that the reason for his resignation was that he did not want to work in the Commercial Taxes Department for personal reasons. It shows that the petitioner did not obtain prior permission to participate in the selection process conducted by the Teachers Recruitment Board for the post of Junior Graduate Teacher. That apart, the petitioner applied for resignation only on 16.07.2004, i.e., after selection to the post of Junior Graduate Teacher.

8. The aforesaid Rule 23 of the Rules clearly states that if an employee resigns without proper permission, he will have to forfeit his past

service. Further, Section 49 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, reads as follows:-

> *"49.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 re-appointment 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 the provisions governing such appointment shall apply and on such re-appointment, he shall not be entitled to count any portion of his previous service for any benefit or concession admissible under this Act:*
>
> *Provided that nothing contained in this section shall affect the operation of the proviso to rule 23 or of rule 25 of the Tamil Nadu Liberalised Pension Rules, 1978:*
>
> *Provided further that a member of a service, who has resigned his appointment and contested in the General Election to Parliament or State Legislature or in the elections to local bodies either as a party candidate or as an independent candidate shall not be eligible for re-appointment to any service."*

9. Therefore, the petitioner is not entitled to count any portion of his previous service for any benefit or concession. As stated supra, the petitioner failed to obtain permission from the Commercial Taxes Department before participating in the selection process for the post of Junior Graduate Teacher conducted by the Teachers Recruitment Board. That apart, the petitioner submitted his resignation letter for personal reasons, stating that he did not want to work in the Commercial Taxes Department. Hence, this Court finds no infirmity or illegality in the order passed by the first respondent, and the Writ Petition is devoid of merits; it is therefore dismissed.

10. In fine, this Writ Petition is dismissed. No costs.

31.07.2024

Index:Yes/No
Neutral Citation/Yes/No
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G.K.ILANTHIRAIYAN, J.

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