



WEB COPY



W.A.No.2448 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2024

CORAM :

**THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ**

W.A.No.2448 of 2022

M.R.Isabella

... Appellant

Vs.

- 1.The State,
Represented by the Secretary,
School Education Department,
Fort St. George,
Chennai - 600 009.
- 2.The Accountant General (A&E),
Teynampet,
Chennai - 600 018.
- 3.The Director of School Education,
DPI College Road,
Nungambakkam,
Chennai - 600 006.
- 4.The Director of Pension,
D.M.S.Compound,
Teynampet,
Chennai - 600 008.
- 5.The District Educational Officer,
Chennai Central,
Chennai - 600 015.

... Respondents



W.A.No.2448 of 2022

Writ Appeal filed under Clause 15 of the Letters Patent, against the order passed by the learned Judge dated 23.08.2022 passed in W.P.No.28362 of 2015.

For Appellant : Mr.S.Rajasekar

For Respondents : Mr.Silambanan
Additional Advocate General
Assisted by Mrs.S.Anitha
Special Government Pleader
for R1, R3 to R5

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

This writ appeal is directed against the order of dismissal dated 23.08.2022 passed by the learned Judge in W.P.No.28362 of 2015.

2.According to the appellant, she joined in the Government Service as B.T. Assistant (Zoology) in the year 1989 and was posted at St. Ebba's Girls Hr. Sec. School, Mylapore, Chennai; she continued in service till 20.07.2007; and thus, rendered service for a period of 17 years, 2 months, and 13 days. Due to ill-health, she submitted her resignation, which was duly accepted by the department on 14.08.2007. It is further stated that all the eligible benefits including increment, were received, but pensionary benefits have remained unpaid. In this regard, she made representations to the respondents, which were not considered. Hence, the appellant filed W.P.No.29296 of 2014, which was



W.A.No.2448 of 2022

disposed of, by the learned Judge, *vide* order dated 06.01.2015 directing the respondents to consider the representation of the appellant for grant of pension.

Pursuant to the said order, the third respondent rejected the representation of the appellant by order dated 17.08.2015. Aggrieved by the same, the appellant filed W.P.No.28362 of 2015 to quash the said order and direct the fourth respondent to sanction pension and other retiral benefits to the appellant with interest at 18% in the light of the Division Bench decision dated 17.11.2008 in WP No. 13048 of 2006.

3.By order dated 23.08.2022 which is impugned herein, the learned Judge dismissed the writ petition, on the premise that the appellant did not meet the eligibility criteria as per Rule 23(1) of the Tamil Nadu Pension Rules, since she is resigned her service. The relevant portion of the said order is profitably extracted below:

"4. It is an admitted fact that the petitioner is a resigned employee and her resignation was accepted by the competent authority and she was relieved from service on 20.07.2007. She had received the eligible benefits during the relevant point of time and this Writ Petition has been filed after a lapse of 8 years from the date acceptance of her resignation.

5. In order to restore the lapsed claim, the petitioner filed the earlier Writ Petition and obtained an order of direction to consider her representation. The earlier Writ Petition itself was filed in the year 2014. There was a delay of 7 years in pursuing the remedy after the acceptance of resignation by the competent authority.

6. The practice of restoring the lapsed cause of action by sending a representation and filing a Writ Petition for a direction to consider the representation cannot be encouraged by the High Court and the



W.A.No.2448 of 2022

WEB COPY

grievances are to be redressed within a reasonable period of time. The petitioner resigned her post which was accepted by the authorities in the year 2007. Thus, if any grievance exists, she should have approached the authorities within a reasonable period of time. Contrarily, she waited for about 7 years and thereafter submitted a representation and filed a Writ Petition with an idea to restore the lapsed claim and pursuant to the order passed by this Court, the Director of School Education passed the impugned order dated 17.08.2015, which is under challenge in the present Writ Petition.

7. Beyond the lapses, even on merits, the petitioner is not eligible for pensionary benefits, as per Rule 23 of the Tamil Nadu Pension Rules, 1978, since she is a resigned employee. Thus, there is no infirmity in respect of the reasons stated in the order impugned.

8. Accordingly, the Writ Petition is devoid of merits and the same stands dismissed. No costs. Consequently, connected miscellaneous petition is closed."

Assailing the aforesaid order of the learned Judge, the appellant / writ petitioner has come up with this writ appeal.

4.The learned counsel for the appellant would contend that the denial of pension to the appellant, who resigned in 2007 due to ill- health after completing the service of 17 years 2 months and 13 days, is violative of fundamental rights as guaranteed under Article 300A and Article 21 of the Constitution of India. It is further submitted that the forfeiture provision in Rule 23 of the Tamil Nadu Pension Rules, 1978, should not be applied, in the case of resignation on medical grounds. In support of the same, the learned counsel relied upon the judgment of a Division Bench of this court in ***D. Vijayarangan vs Secretary, Sales Tax Appellate Tribunal (Addl. Bench) [2008 (6) CTC 700]***, wherein it was held



W.A.No.2448 of 2022

that the proviso to Rule 23 should be extended to the employees resigning due to ill- health, treating them similarly to those eligible for pension under Proviso (2) to Rule 23(1) of the Tamil Nadu Pension Rules, 1978. However, the learned Judge erred in dismissing the writ petition filed by the appellant. Stating so, the learned counsel prayed for setting aside the order passed by the learned Judge and allowing this appeal.

5.On the other hand, the learned Additional Advocate General appearing for the respondents would argue that the appellant, who served for 17 years, 2 months, and 13 days, resigned her job in the year 2007, and her resignation was duly accepted by the department on 14.08.2007. Citing Rule 23(1) of the Tamil Nadu Pension Rules, 1978, the learned Additional Advocate General asserts that the appellant is ineligible for pensionary benefits as she resigned her service. Taking note of the same, the learned Judge has rightly rejected the claim of the appellant seeking pension. While so, it was held that the practice of restoring lapsed claims through delayed representations and subsequent writ petitions is deemed unjustifiable. Thus, according to the learned Additional Advocate General, the order impugned in this appeal, does not warrant any interference by this court.



W.A.No.2448 of 2022

6. Heard the learned counsel on either side and perused the materials placed on record.

7. It is seen that the appellant resigned from Government service on 20.07.2007 after rendering service of 17 years, 2 months and 13 days. Her resignation was duly accepted by the competent authority on 14.08.2007. In the year 2014, she requested the respondent authorities seeking pensionary benefits, which was rejected by the third respondent *vide* order dated 17.08.2015, on the ground that the appellant resigned her service and hence, she is not eligible for pension. The said rejection was also affirmed by the learned Judge, by the order impugned in this appeal.

8. It is the specific contention of the learned counsel for the appellant that the findings of the learned Judge that the appellant is not eligible for pensionary benefits as per Rule 23 of the Tamil Nadu Pension Rules, 1978, since she is a resigned employee, cannot be sustained in view of the fact that her resignation was on medical ground and forfeiture of service on resignation would not apply to her case, in the light of the decision of the Division Bench of this court in ***D. Vijayarangan v. Secretary, Sales Tax Appellate Tribunal [2008 (6) CTC 700]***, wherein, it was held that those who resign because of illness or ill-health and not because of any misconduct or adverse record and are allowed to



W.A.No.2448 of 2022

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, otherwise, violative of Article 14 of the constitution of India.

9.The aforesaid contention of the learned counsel for the appellant has been seriously refuted on the side of the respondent authorities, by stating that the appellant voluntarily resigned her service and hence, she is not eligible for pensionary benefits.

10.It is an admitted fact that the appellant voluntarily tendered resignation in the year 2007, after having rendered more than 17 years of service and the same was also accepted by the department, on 14.08.2007, which was not challenged by the appellant before any court of law and hence, the same attained finality. After a lapse of 7 years i.e., in the year 2014, the appellant made representations to the respondent authorities seeking pensionary benefits, which were rejected by the third respondent, by order dated 17.08.2015, which was impugned in the instant writ petition. As rightly observed by the learned Judge, the practice of restoring lapsed claims through delayed representations and writ petitions, cannot be encouraged, especially, when the resignation was voluntarily tendered several years ago. It is also important to mention here that as per Fundamental Rules 56(c)(3), to seek voluntary retirement, the appellant should



W.A.No.2448 of 2022

have completed 20 years of qualifying service, whereas she rendered service for a period of 17 years, 2 months and 13 days. That apart, the appellant has not substantiated her claim of resignation on medical grounds, by producing concrete materials. Therefore, this court finds no reason to interfere with the order passed by the learned Judge in dismissing the claim of the appellant.

11. Furthermore, the decision in ***D.Vijayarangan's case (supra)*** relied upon by the learned counsel for the appellant, with due respect, cannot be countenanced by this court, in view of the fact that Rule 23 of the Tamil Nadu Pension Rules relating to forfeiture of service on resignation except in certain cases, is silent with regard to resignation, if given on the ground of illness or ill-health. By interpreting the said provision, the petitioner therein was granted the relief of pensionary benefits. It is a well settled principle of law that '*the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent*' [Refer: ***Shiv Shakti Co-operative Housing Society v Swaraj Developers (2003) 3 SCR 762***]. In ***Jinia Keotin v. K.S.Manjhi [(2002) SUPPS SCR 689]***, it was held by the Hon'ble Supreme Court that *the court cannot legislate under the garb of interpretation*. Hence, the decision in ***D.Vijayarangan's case (supra)*** will not help the case of the appellant.



W.A.No.2448 of 2022

12.In such perspective of the matter, the writ appeal fails and is accordingly, dismissed. No costs.

[R.M.D,J.] [M.S.Q, J.]
13.03.2024

r n s

Index: Yes / No.
Speaking order/ Non-speaking order
Neutral Citation: Yes / No.

To

- 1.The Secretary,
Government of Tamil Nadu,
School Education Department,
Fort St. George,
Chennai - 600 009.
- 2.The Accountant General (A&E),
Teynampet,
Chennai - 600 018.
- 3.The Director of School Education,
DPI College Road,
Nungambakkam,
Chennai - 600 006.
- 4.The Director of Pension,
D.M.S.Compound,
Teynampet,
Chennai - 600 008.
- 5.The District Educational Officer,
Chennai Central,
Chennai - 600 015.



WEB COPY



W.A.No.2448 of 2022

R. MAHADEVAN, J.
and
MOHAMMED SHAFFIQ, J.

r n s

W.A.No.2448 of 2022

13.03.2024