



W.P.(MD) No.1530 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.03.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.1530 of 2021
and
W.M.P.(MD) No.1310 of 2021

M.J.Akbar Ali

... Petitioner

Vs.

- 1.Secretary to Government,
School Education Department,
State of Tamil Nadu,
Fort St. George, Chennai-9.
- 2.The Accountant General (A & E),
Chennai-18.
- 3.The District Educational Officer,
Virudhunagar.
- 4.The District Educational Officer,
Sivakasi.
- 5.The Secretary,
Muslim Higher Secondary School,
Sivakasi,
Virudhunagar District.

... Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus calling for the records relating to the orders passed by the 2nd respondent in his proceedings in Letter No.O.Mu. 3148/2017/E2/dated 06.03.2017 and the order passed by the 3rd respondent in A.Thi.Mu.No.4644/A3/15, dated 03.12.2015 and the consequential order passed in Na.Ka.No.1427/A4/2017, dated 20.04.2017 and quash the same and consequently direct the respondents to extend the pension benefits for the period worked as Record Clerk in 5th respondent school from 01.06.1979 and 30.11.1990 within stipulated time to be framed by this Court.

For Petitioner	:	Mr.T.A.Ebenezer
For RR1 & 3 to 5	:	Mr.V.Om Prakash Government Advocate
For R2	:	Mr.S.Mahalakshmi Standing Counsel

ORDER

The petitioner herein was initially appointed as Record Clerk in the 5th respondent-School on 01.06.1979 and continued as such till 30.11.1990 in an aided post and drawn the aided salary. Thereafter, he resigned from service and then again he was appointed as B.T.Assistant in Higher Secondary School, Melapalayam on 01.06.2009 and thereafter, retired on



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attaining the age of superannuation on 30.05.2016. Claiming that he worked for more than 10 years in the 5th respondent-School and is eligible for drawing pension under the Old Pension Scheme, he made a claim for payment of pension and the said claim was rejected by the 2nd respondent by issuing letter in O.Mu.No.3148/2017/E2/dated 06.03.2017. Aggrieved by the said letter and the consequential orders, the petitioner approached this Court by filing the present writ petition to quash the said proceedings and seeking a consequential relief directing the respondents to extend the pension benefits for the period he worked as Record Clerk in the 5th respondent-School from 01.06.1979 to 30.11.1990.

2. Respondent No.4 filed a counter affidavit stating that in terms of Rule 41 of the Tamil Nadu State and Subordinate Service Rules, a person who resigned from the post, shall 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 appointment of such person to any service shall be treated in the same way as a first appointment to such service by direct recruitment. Thus, it is contended that the entire service



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rendered by the petitioner in the 5th respondent-School stood forfeited on the resignation submitted by the petitioner and therefore, the petitioner is not entitled for award of pension as claimed by him.

3. Further, it is also contended that in terms of Rule 23 of the Tamil Nadu Pension Rules, 1978 on resignation of a Government service, the same would entail forfeiture of the past service. However, under the proviso to sub-rule (1) of Rule 23 of the Tamil Nadu Pension Rules, certain exceptions are provided where the Government servants took up the other employment with the proper permission of the Government. The case on hand is not the case which would fall under the said proviso.

4. It is also further brought to the notice of this Court that under similar circumstances, the Hon'ble Apex Court has considered similar case wherein Rule 26 of CCS (Pension) Rules, 1972 fell for consideration which is in *pari materia* with Rule 23 of the Tamil Nadu Pension Rules and the Hon'ble Apex Court held that the person who resigned from the post would forfeit the entire past service and therefore, not entitled for pensionary



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benefits, in the case of ***Union of India and others vs. Braj Nandan Singh***

reported in ***(2005) 8 SCC 325***, and the Hon'ble Apex Court held as under:

“5. In order to appreciate rival submissions Rule 26 which is the pivotal provision needs to be quoted. The same reads as under:

*“26. Forfeiture of service on resignation.
—(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.*

(2) 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.”

Rule 26 as the heading itself shows relates to forfeiture of service on resignation. In clear terms it provides that resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service. The language is couched in mandatory terms. However, sub-rule (2) is in the nature of an exception. It provides that resignation shall not entail forfeiture of past service if it has been



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submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies. Admittedly this is not the case in the present appeal. Rule 5 on which great emphasis was laid down by the learned counsel for the respondent deals with regulation of claims to pension or family pension. Qualifying service is dealt with in Chapter III. The conditions subject to which service qualifies are provided in Rule 14. Chapter V deals with classes of pensions and conditions governing their grant. The effect of Rule 26 sub-rules (1) and (2) cannot be lost sight of while deciding the question of entitlement to pension. The High Court was not justified in its conclusion that the rule was being torn out of context. After the past service is forfeited the same has to be excluded from the period of qualifying service. The language of Rule 26 sub-rules (1) and (2) is very clear and unambiguous. It is trite law that all the provisions of a statute have to be read together and no particular provision should be treated as superfluous. That being the position after the acceptance of resignation, in terms of Rule 26 sub-rule (1) the past service stands forfeited. That being so, it has to be held that for the purpose of deciding



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question of entitlement to pension the respondent did not have the qualifying period of service. There is no substance in the plea of the learned counsel for the respondent that Rule 26 sub-rules (1) and (2) has limited operation and does not wipe out entitlement to pension as quantified in Rule 49. The said rule deals with amount of pension and not with entitlement.

6. It is well-settled principle in 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.”

5. In the light of the above, the claim of the petitioner was considered and rightly rejected by Respondent No.2 and this Court does not find any error or illegality in the impugned order passed by the respondents warranting interference by this Court.

6. However, it is further contended by the learned counsel for the petitioner that the petitioner has rendered more than 10 years of service and therefore, he is entitled for payment of gratuity for the service rendered by



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him. He also placed reliance on Section 4 of the Payment of Gratuity Act, 1972 to show that persons who resigned from service also are entitled for payment of gratuity. In terms of clause (m) of sub-rule (1) of Rule 3 of the Tamil Nadu Pension Rules, “pension” is defined which includes gratuity. If once the petitioner is held to be not entitled for pension in terms of the Tamil Nadu Pension Rules, whether the petitioner is entitled for gratuity or not is a matter that needs to be examined. As the claim of the petitioner is only for payment of gratuity in terms of the provisions contained in Payment of Gratuity Act, 1972, this Court is not inclined to go into that aspect and it is open for the petitioner to pursue his claim for payment of gratuity by approaching the appropriate authority.

7. Subject to the above observations, this Writ Petition is dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

22.03.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes
ABR



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