



W.P(MD)No.14265 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 19.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.14265 of 2022

Ganesan.N.S

... Petitioner

Vs

- 1.The State of Tamilnadu,
Rep by its Secretary,
School Education Department,
Fort St. George,
Chennai- 09.
 - 2.The Joint Director of School Education,
College Road,
Chennai-06.
 - 3.The District Educational Officer,
Aruppukkottai,
Virudhunagar District.
 - 4.The Director Co-Operative Audit,
Chennai-5.
 - 5.The Assistant Director of Co-Operative Audit,
Virudhunagar.
 - 6.The Secretary,
Saliar Mahajana Higher Secondary School,
Aruppukkottai, Virudhunagar District.
- ...Respondents



W.P(MD)No.14265 of 2022

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court, to issue a Writ of Mandamus, directing the respondents to take the 50% of the part time service rendered by the petitioner ie. from 21.07.1979 to 15.07.1986 in the 6th respondent's School along with the regulars service rendered in the 4th and 5th respondent department from 16.07.1986 to 31.03.2015 for the pension benefits i.e., for the period of 32 years 01 months 28 days based on the judgment passed by the Honble division Bench in W.A. No. 517 of 2020, dated 13.08.2020 and pass such further or other orders as this Honble Court may deem fit and proper in the circumstances of this case

For Petitioner : Mr.M.R.Sreenivasan
For Respondents : Mr.S.C.Herold Singh

ORDER

The petitioner was originally appointed as a Vocational Teacher on 21.07.1979 at Saliar Mahajana Higher Secondary School, Aruppukkottai, Virudhunagar District, which is an aided Institution. He has resigned from the job on 15.07.1986 and joined in Co-operative Department as a Senior Co-operative Inspector on 16.07.1986. The Petitioner has attained the age of superannuation on



W.P(MD)No.14265 of 2022

31.03.2015. Thereafter, he has submitted a representation to include his services rendered in part time employment, in the aided institution from 1979 to 1986 for the purpose of calculating pension, as per Rule 11(4) of the Tamil Nadu Pension Rules, 1978 and approached this Court by way of this writ petition in the year 2022.

2. The learned counsel appearing for the petitioner by referring to Rule 11(4) of the Tamil Nadu Pension Rules, 1978 submits that half of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 01.01.1961 shall be counted for retirement benefits, if they have been brought under regular services. Therefore, the petitioner is entitled for half of services, which he has rendered in the consolidated pay in the aided Institution from the year 1979 to 1986.

3. The learned Special Government pleader appearing for the respondents submits that Rule 11(4) of the Tamil Nadu Pension



W.P(MD)No.14265 of 2022

Rules, 1978 is not applicable to this petitioner that this petitioner has resigned from service, thereby he has forfeited his service as per Rule 23 of the Tamil Nadu Pension Rules, 1978. The learned Special Government Pleader by referring to a decision of the Honourable Division Bench of this Court in WA(MD) No.63 of 2019, dated 20.04.2021 submits that in a similar case as that of this petitioner, requesting to calculate 50% of services rendered in non-provincialised service has been rejected by the Honourable Division Bench of this Court that the petitioner therein has also forfeited his rights as per Rule 23 of the Tamil Nadu Pension Rules, 1978.

4.This Court considered the rival submissions made and also perused the materials placed on record.

5.Rule 11 of the Tamil Nadu Pension Rule,1978 is as follows:-

(4) Commencement of Qualifying Service:-

Half of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium



W.P(MD)No.14265 of 2022

or daily wages basis on or after 1st January 1961 in respect of Government employees absorbed in regular- service before 1st April 2003 shall be counted for retirement benefits along with regular service, subject to the following conditions, namely:-

(i) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be in a job involving whole time employment;

(ii) Service rendered shall be on consolidated pay, honorarium or daily wages basis paid on monthly basis and subsequently absorbed in regular service under the State Government;

(iii) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be followed by absorption in regular service before 1st April 2003 without a break.

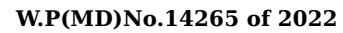
Provided that this sub-rule is applicable to all employees who rendered service under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 and absorbed in regular service before 1st April 2003.



W.P(MD)No.14265 of 2022

Provided further that wherever there was break in service before their absorption in regular service before 1st April 2003, the same shall be specifically condoned by the orders of the Head of Departments, in which the employees were regularly absorbed and such period of break, shall not count for the purpose of pensionary benefits 1

6.Rule 11(4) of the Tamil Nadu Pension Rules, 1978 specifies that for the employees, who rendered service under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 and absorbed in regular service before 1st April 2003, half of the service rendered by them can be included for the purpose of pensionary benefits. The said Rule cannot be applicable for those, who have resigned their services and joined in another job. As rightly pointed out by the learned Special Government Pleader the petitioner would fall under the category of forfeiting his rights as per Rule 23 of the Tamil Nadu Pension Rules, 1978. Having resigned his job from the



" 7.The short question, which falls for consideration in this appeal is whether the first respondent / writ petitioner is entitled to claim that the services rendered by him in the Postal Department from 30.11.1983 to 30.06.1997 should be included for calculating his total length of service, after he retired from service on superannuation as a Secondary Grade Teacher / BT Assistant on 31.05.2014.

8. Before we examine this question, we are of the view that the writ petition itself could not have been entertained as it is barred by inordinate delay and laches. The first respondent / writ petitioner being fully conscious of the consequences, resigned his service in the Postal Department and joined the appellant – Department as a



Secondary Grade Teacher in the year 1997 precisely on 01.07.1997. The first respondent / writ petitioner did nothing thereafter nor prior to joining the appellant – Department as a Secondary Grade Teacher. The first respondent / writ petitioner did not raise any such claim while in service as a Secondary Grade Teacher and for the first time, he raised such a plea by a representation given during 2015 i.e. after he retired from service on superannuation on 31.05.2014. Therefore, on this ground alone, the writ petition was liable to be dismissed. However, the learned Single Bench having dealt with the case on merits, we are constrained to examine the correctness of the impugned order.

9.The undisputed fact is that the first respondent / writ petitioner had resigned from the Postal Department and his resignation was accepted with effect from 30.06.1997. The order accepting the resignation clearly indicates that the first respondent / writ petitioner is not entitled for any terminal benefits. Therefore, it is clear that all benefits, which will accrue to an employee on attaining the age of superannuation, will stand forfeited, if he / she resigns from the service. Therefore, the question of



distinguishing the order of resignation as a resignation simpliciter or otherwise would not arise in the facts and circumstances of the present case.

10. The first respondent / writ petitioner cannot bring his case under Rule 26(9), which deals with what is commonly known in service jurisprudence as “technical resignation”. This resignation is acceptable in cases where the Government servants apply for post in the same or other departments through proper channel and on selection, they are asked to resign the previous post for administrative reasons, the benefit of past service may, if otherwise admissible under rules, be given for purposes of fixation of pay in the new post treating the resignation as a “technical formality”. Though the first respondent / writ petitioner would contend that he had obtained prior permission from the Postal Department for applying for being selected in the appellant – Department, the Postal Department has not treated the resignation as a “technical formality”, but, treated it as a normal resignation making it clear that the first respondent / writ petitioner is not entitled for any benefits. Therefore, the premise under which the first respondent / writ petitioner proceeded was wholly unsustainable. The case of the first respondent / writ



W.P(MD)No.14265 of 2022

petitioner would clearly fall within the ambit of Rule 23(i) of Tamil Nadu Pension Rules, 1978 which states that resignation from a service or post entails forfeiture of past service. Therefore, the order and direction issued by the Writ Court, impugned before us, calls for interference.

7.Following the judgment of the Honourable Division Bench of this Court in WA(MD) No.63 of 2019, dated 20.04.2021 as cited supra and in view of the relevant provisions under the Tamil Nadu Pension Rules, 1978, this Court is of the view that the petitioner is not entitled for the relief sought for in this writ petition.

8.Accordingly, this writ petition is dismissed. No costs.

19.11.2024

NCC:Yes/No
Index:Yes
vrn



W.P(MD)No.14265 of 2022

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B.PUGALENDHI, J.

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