



W.P(MD) No.20519 of 2016

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.12.2024

CORAM

THE HON'BLE MS.JUSTICE R. POORNIMA

W.P(MD) No.20519 of 2016
and
W.M.P(MD)No.16464 of 2017

R.Ranichandraleela

... Petitioner

Vs.

1.The Principal Accountant General (A and E),
Chennai - 600 018.

2.The District Educational Officer,
District Educational Office,
Madurai.



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3.The Joint Director,

Social Welfare and Women Empowerment Department,

Jennis Road,

Saidapet,

Chennai- 600 015.

... Respondents

(R3 impleaded vide Court order, dated 18.08.2023

passed in W.M.P.(MD)No.16706 of 2023)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order bearing Na.Ka.No. 1993/Aa1/2016 dated 07.10.2016 passed by the 2nd respondent and quash the same and consequently directing the respondents 1 and 2 to revise the pension of the petitioner by taking into consideration of her service of 4 years nine months and 1 day served under Social Welfare Department as trainee.

For Petitioner : Mr.K.Samidurai

For Respondents : Mr.P.Gunasekaran – for R1

Mr.V.Omprakash – for R2 & R3

Government Advocate



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ORDER

This Writ Petition is filed by the petitioner with a prayer to issue a Writ of Certiorarified Mandamus, to quash the impugned order bearing Na.Ka.No.1993/Aa1/2016 dated 07.10.2016 passed by the 2nd respondent and consequently directing the respondents 1 and 2 to revise the pension of the petitioner by taking into consideration of her service of four years nine months and one day served under Social Welfare Department as trainee.

2. Brief facts of the petitioner case are as follows :-

The petitioner stated that she was appointed as Community Nutrition Instructress under Social Welfare Department on 07.07.1981 and rendered service for about four years nine months and one day. Thereafter, she resigned the job on 31.05.1986 due to appointment in the school as Secondary Grade Teacher and join duty as Secondary Teacher on 02.06.1986 in the Middle School, Periyakulam. She rendered 26 years of service as Teacher and retired on superannuation in August 2012 as Headmistress.



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3. On 17.9.2014, she had submitted a detailed representation to the respondents 1 and 2 by requesting the respondents to take into account of her service four years, nine months and one day rendered in Social Welfare Department for pensionary benefits alone and revise the pensionary benefits. Having no other option, the writ petitioner has filed the present writ petition.

4. The second respondent in their counter stated that the petitioner preferred a Writ Petition in W.P.(MD) No.5125 of 2016 praying for Writ of Mandamus and this Court pleased to dispose the said petition vide order dated 15.03.2016 with direction to pass appropriate orders on the representation given by the petitioner. Pursuant to the order, the representation of writ petitioner was considered and rejected by the second respondent vide proceeding in Na.Ka.No.1993/Aa1/2016, dated 07.10.2016. Challenging the same now the petitioner come up with the present petition mainly on the ground that there is no break in service.



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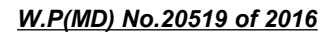
5. The writ petitioner resign the post in order to take up the appointment as Secondary Grade Teacher. As per Rule 23 of the Tamil Nadu Pension Rules, 1978 read as follows:

*“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 which the period is not covered by leave due to the Government servant.”

Therefore, the respondents state that the above Rule shall not entail forfeiture of past service, it has been submitted to take up with proper



6. The respondents further stated that in fact, the writ petitioner got resigned from the post for the purpose of joining in another post, but the said fact was not explicated in the resignation letter. The recommendation made by the District Nutrition Officer and approval proceedings of the Joint Director of Social welfare, Chennai dated 05.03.1990 resignation given by the petitioner herein is resignation simpliciter and there is no indication about the joining of the post of Secondary Grade Teacher and it should be interpreted by applying Rule 23 of the Tamil Nadu Pension Rules, 1978 and that the service benefits of persons resigned from service would be automatically forfeited and the petitioner cannot claim the same in future.

7. Further, the petitioner has not made any claim during her service. She attended superannuation on 31.08.2012 and she got her retirement benefit. Subsequently, she made her claim only on 17.09.2014.



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The claim to be rejected and the ground of delay and laches as held by the Apex Court in judgments reported in 2015 (1) SCC 347 (State of U.P. Vs. V.Arvind Kumar Srivastava), 2020 SCC online SC 101 (The Chairman/Managing Director, Uttarpradesh Power Corporation Ltd., and Others vs. Ram Gopal), 2009 (2) SCC 479 (SS Balu vs. State of Kerala), Apex court held that delay defeats equity, which is squarely applicable to this case. The writ petition is devoid of merit and deserves to be dismissed.

8. The third respondent in the counter stated that the petitioner was initially recruited as Community Nutrition Instructress in the Department of Social Welfare, vide orders of the Director of Social Welfare, Chennai, Pro.Roc.No.67686/B1/81, dated 29.06.1981 and deputed for in-service training at the Gandhigram Rural Institute between 06.07.1981 and 05.08.1981 and thereafter posted as Community Nutrition Instructress at Thiruparankundram Block, vide orders of the Director of Social Welfare, Chennai, Pro.Roc.No.67686/B1/81, dated 18.08.1981. The petitioner availed medical leave without salary for a



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period of 93 days between 01.05.1982 and 01.08.1982. She was transferred to Periyakulam Block as Community Nutrition Instructress and joined duty on 10.08.1982 forenoon. On being transferred to Pudukkottai District vide orders of the District Social Welfare, Chennai dated 24.04.1986, she was relieved by the Child Development Project Officer on 30.04.1986, but the petitioner did not joined duty at Pudukkottai instead she stayed away and submitted resignation with effect from 01.06.1986, which was accepted respectively by the Joint Director of Social Welfare, Chennai vide K.Dis.No.99474/A5/89 dated 05.03.1990.

9. The third respondent further stated that there is no indication in the office records as to whether the petitioner herein has sought for prior permission from the competent authority to apply for the post of Secondary Grade Assistant in a Government aided Minority Institution, namely CSI Middle School, Palani, Dindigul District under Madurai Ramanathapuram CSI Diocese. From the office records, it is evident that she did not obtain any prior permission to attend the



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recruitment and got permission to resign from service. The copy of service register enclosed by the petitioner in typed set of paper at page 1 to 7, evidence that on being transferred to Arimalam Block in Pudukkottai District from Perakkum in Madurai District, she was relieved from the post of Community Nutrition Instructress on the afternoon of 30.04.1986, but she did not join post at Arimalam Block and after lapse of two months, she went away by submitting her resignation on 01.06.1986. The copy of representation seeking for including the period of service as Community Nutrition Instructress is also enclosed. She clearly stated in her resignation that due to her family circumstances, she resigned the job. The belated request of the petitioner after a lapse of 26 years is not in conformity with the provision of Rule 23 of Tamil Nadu Pension Rules, 1978, the present petition filed by the petitioner is liable to be dismissed.

10. Both side argued as set out in the averment contained in the affidavit and counter.



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11. The learned counsel for the petitioner stated that the petitioner resigned the post only to join in another service and without any delay, she joined the new post on the next day and submitted the following judgments :

- 1) W.P.No.9538 of 2013 (K.Rathinavelu Vs. Government of Tamil Nadu and others)
- 2) W.P.No.28864 of 2013 (A.Chandran Vs. The Accountant General (A & E) and others)
- 3) Special Leave Petition (Civil) No.Diary No.27824 of 2020 (State of Rajasthan and Others Vs. O.P.Gupta)

12. In W.P.No.9538 of 2013, this Court has held in paragraph Nos.6, 7 and 9 are as follows :

“6. The learned counsel for the fifth respondent places reliance on the entry in the service register dated 31.08.1976 and submitted that since the entry does not reveal that the resignation was for the purpose of joining another Government service, the benefit under Rule 23 will not be applicable to the petitioner. Such an inference drawn from the entry in the service register



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seems unacceptable. For this purpose, it would be appropriate to refer to certain dates of the petitioner's resignation and the subsequent Government employment.

7. Admittedly, the petitioner herein had resigned from the earlier employment on 31.08.1976 and joined the fourth respondent-College on 03.09.1976, which is after 2 days. The fifth respondent seems to have drawn a negative inference from the entry in the service records. While comparing the dates of the resignation and the subsequent joining of the Government College, which is after about 2 days, a positive inference requires to be drawn that the resignation from the earlier employment was only for the purpose of joining the fourth respondent-College. This proposition can be forfeited by an order of the Hon'ble Division Bench of this Court in the case of D.Vijayarangan Vs. The Secretary, Sales Tax Appellate Tribunal and another reported in 2009 Writ L.R. 12, whereby, the Division Bench had expanded the scope of Rule 23 to include even resignations based on the ground of illness. The relevant portion of the order reads as follows:-

“7.In such a situation, a question arise whether the service of an employee can be



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forfeited if person asks for resignation on the ground of ill-health, which is allowed by the State.

Under Rule 23, a person is entitled for all benefits if he is allowed to resign for appointment in some other post under the Government. The rule is silent with regard to resignation, if given on the grounds of illness or ill-health for which permission is granted by the competent authority. In case, if it is held that the person, who has resigned because of illness or ill-health, as at par with the class of employees, who resign for misconduct or any adverse record, and the class of employees, who resign to join other government organisation are kept in a separate class for grant of pensionary benefits, in such case one may doubt Rule 23 violative of Article 14 vis-a-vis those who resign for illness or ill-health and is accepted by the competent authority. Therefore, we hold that those who resign because of illness or ill-health and not because of any misconduct or adverse record and are allowed to do so by the State are entitled for the same benefit which is allowed to



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those who resign to join another service under the State. Comparing the employees who are allowed to resign because of illness or ill-health at par with those employees who resign because of misconduct or adverse record will be otherwise violative of Article 14 of the Constitution of India.

8.We, accordingly, hold that the petitioner is entitled to all the benefits to which the employees are otherwise entitled to under the proviso to Rule 23, i.e., those who have been allowed to resign to join some other post under the State. The respondents are, accordingly, directed to pay the petitioner the pension and gratuity with 8% interest p.a., within three months from the date of receipt/production of a copy of this order, in accordance with law, taking into consideration the years of service rendered by him with further direction to pay provident fund and other retirement benefits within one month from the date the petitioner submits appropriate application in the format prescribed by the State, failing which the petitioner will also be entitled for 8% interest



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on the same.”

8. Under similar circumstances, while placing reliance on Rule 23, a learned single Judge of this Court, in the case of N.Nallakannu Vs. Secretary to Government, Finance (CA) Department and another passed in W.P.(MD) No.11000 of 2005 dated 25.04.2011, had directed for counting all the past services of a Government employee, who had resigned from the earlier Government service, by applying the proviso to Rule 23, in the following manner:-

“11. The proviso to the afore-said Rule makes it clear that the resignation shall not entail forfeiture of past service, if it has been submitted to take up any appointment with prior permission. Admittedly, the petitioner was recruited through Tamil Nadu Public Service Commission. While he was serving in the Public Works Department, he submitted his resignation letter to the Executive Engineer to take up the employment with the Co-operative Department on 14.09.1971. He joined the Co-operative Department on 15.09.1971. Thus, it should be taken that the petitioner is entitled to the proviso of Rule 23 of the Tamil Nadu



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Pension Rules. In fact, the Division Bench of this Court has interpreted Rule 23 of the Tamil Nadu Pension Rules in such a way to grant the terminal benefits if a person resigned on the ground of ill health, though such a contingency is not provided in the Rule. Hence, I am of the view that based on the proviso to Rule 23 of the Tamil Nadu Pension Rules, and the decision of the Division Bench, the petitioner is entitled to succeed.”

9. The aforesaid orders are self explanatory. When there is nothing on record to show that the petitioner had resigned from his services, owing to some misconducts or any other adverse inference and by taking into account that the petitioner had joined the Government service, after resigning from the earlier Government service, within 2 days, this Court is of the view that the resignation of his earlier service was only for the purpose of joining the subsequent Government service and therefore, by applying the proviso to Rule 23, the petitioner would be entitled for all the pensionary benefits.”



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13. The learned counsel for the petitioner argued that the petitioner resigned from the post of Community Nutrition Instructress only in order to join the new post and hence, she is entitled to for all the pensionary benefits for the period including four years service for the period from 07.07.1981 to 31.05.1986.

14. The Rule 23 of the Tamil Nadu Pension Rules, 1978 read as follows:

*“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



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the extent which the period is not covered by leave due to die Government servant.”

15. The Rule 41 of Tamil Nadu State and Subordinate Service Rules reads as follows :

“41. Consequences of resignation – A member of 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 Proviso of Rule 23 of the Tamil Nadu Pension Rules clearly states 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.

16. There is no dispute that the petitioner was working as Community Nutrition Instructress in the Department of Social Welfare Community Nutrition Instructress from 29.06.1981 to 30.04.1986. The



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petitioner was originally joined duty in Chennai, Department of Social Welfare and deputed to Gandhigram Rural Institute between 06.07.1981 to 05.08.1981. Thereafter, posted as Community Nutrition Instructress at Thiruparankundram Block on 18.08.1981. She was transferred to Periyakulam Block as Community Nutrition Instructress on 10.08.1982 forenoon and to Pudukkottai District by proceedings dated 24.04.1986 and relieved on 30.04.1986, but she did not join the duty for two months in Pudukkottai District and submitted her resignation with effect from 01.06.1986. She had submitted her resignation after two months after the transfer order. Vide proceedings No.99474/A5/89 dated 05.03.1990, her resignation was accepted retrospectively from 01.06.1986.

17. Rule 23 of Tamil Nadu Pension Rules there is condition prescribed that a resignation from Government service enable forfeiture of entire past service, except with proper permission for appointment in another Department, the petitioner has neither obtained proper permission nor indicate that she is going to join to a new post, therefore, her application for considering the past service was rejected.



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18. To support his contention the learned Government Advocate relied upon the following judgments :

- 1) State of Punjab and Others Vs. Gurbaran Singh
(2019(4) SCC 805)
- 2) Union of India and Others Vs. Braj Nandan Singh
(2005 (8) Supreme Court Cases 325)
- 3) A.I.Agnel Ilangovan Vs. Government of Tamil Nadu
and Others (2016 (3) MLJ 839)
- 4) W.P(MD) No.618 of 2021 Judgment rendered by the
Madras High Court.

19. In Union of India and Others Vs. Braj Nandan Singh
(2005 (8) Supreme Court Cases 325) the Hon'ble Supreme Court has held
as follows :

*“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)



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Resignation from a service or 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 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.



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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 of 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 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. Said Rule deals with amount of pension and not with entitlement.



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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.”

20. I therefore hold that proviso to Rule 23 of Tamil Nadu Pension Rules, 1978 shows that there shall not be forfeiture of past service, if proper permission obtained for another appointment whether temporary or permanent, under the Government where service qualifies.

21. Further the judgment submitted by the learned Government Advocate referred above also supported the above Rule and hold that once 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) very clear and the provision is unambiguous. That being so, it has to be held that for the purpose of deciding question of entitlement to pension, the respondents did not have the qualifying period of service. The benefit of the provision cannot be granted to case



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of resignation due to personal reason. Therefore, the petitioner is not entitled to claim to include her past service. Her application was properly rejected by the authorities in the impugned order dated 17.10.2016. There is no merit in the writ petition and hence, the writ petition is liable to be dismissed.

22. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes / No
NCC : Yes / No
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To
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R.POORNIMA, J.

RM

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