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W.A.No.867 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.A.No.867 of 2025

and

C.M.P.No.7306 of 2025

1.Government of Tamil Nadu,
Rep. by Secretary to Government,
Higher Education Department,
Fort St. George, Chennai - 600 009.

2.The Director of Collegiate Education,
College Road,
Chennai - 600 006.

3.The Regional Joint Director of Collegiate Education,
Madurai Region,
Madurai.

... Appellants

Vs.

1.K.Rathinavelu

2.The Principal,
Arulmigu Palani Andavar College of Arts & Culture,
Palani, Dindugal District.

3.The Accountant General,
Teynampet, Chennai - 18.

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order dated 04.03.2022 in W.P.No.9538 of 2013.



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For Appellant : Mr.D.Ravichander,
Special Government Pleader

For Respondents : Mr.R.Saseetharan for R1

Mr.J.Sree Vidhya,
Standing Counsel for R3

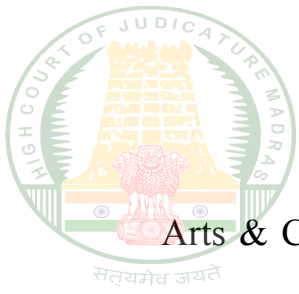
R2 - No appearance

J U D G M E N T

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

Challenge is to the order of the learned Single Judge made in W.P.No.9538 of 2013 issuing a writ of Mandamus directing the appellants to count the services rendered by the petitioner from 24.07.1967 to 31.08.1976 in various Government Colleges for the purpose of calculation of his pension.

2. The 1st respondent had joined as Assistant Professor in English in Government service after being selected by the Tamil Nadu Public Service Commission on 24.07.1967. He served in various Government Colleges from 24.07.1967 to 31.08.1976. While he was serving as Assistant Professor in English in the Presidency College, Chennai he submitted his resignation in order to join as Professor in English in Arulmigu Palani Andavar College of



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Arts & Culture, Palani, an aided Institution. His resignation was accepted by the Directorate of Collegiate Education on 27.08.1976 and he was relieved from duty by the Principal of Presidency College, Chennai on 31.08.1976. He joined the post of Lecturer in English in Arulmigu Palani Andavar College of Arts & Culture, Palani on 03.09.1976.

3. When the 1st respondent made a representation seeking calculation of the service in various Government Colleges while computing his pension, the said representation was rejected relying upon Rule 23 of the Tamil Nadu Pension Rules, which provides for forfeiture of service on resignation. This prompted the 1st respondent to approach this Court.

4. The learned Single Judge relying upon Rule 24 held that the resignation which is for the purpose of joining another pensionable post will be deemed to be a technical resignation and it will not result in forfeiture of pension under Rule 23. On the claim that the resignation was not for the purpose of joining in another post, but it was a resignation simplicitor, the learned Single Judge went by the circumstances since the actual records relating to resignation were not placed before him. Taking into account the assertion in the affidavit of the 1st respondent filed in support of the Writ

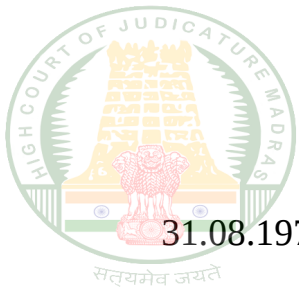


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Petition to the effect that he had resigned only to join in the other Institution and in the absence of specific denial of the averment in the counter affidavit as well as the course of events, particularly the fact that the respondent has joined the other College within 2 days of he being relieved from the Presidency College, Chennai, the learned Single Judge came to the conclusion that the resignation was not a resignation simplicitor, it was for joining in another Institution. On the said finding the learned Single Judge granted a Mandamus as prayed for. Aggrieved the State is on appeal.

5. We have heard Mr.D.Ravichander, learned Special Government Pleader appearing for the appellants and Mr.R.Saseetharan, learned counsel appearing for the 1st respondent and Mrs.J.Sree Vidhya, Standing Counsel for the 3rd respondent.

6. Mr.D.Ravichander, learned Special Government Pleader would vehemently contend that the entries in the service register maintained by the Presidency College in the usual course does not reflect that the resignation was for the purpose of joining another Institution. He would also rely upon the relieving order issued by the Principal of the Presidency College on



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31.08.1976, which also does not show that the resignation was for the purpose of joining in another College.

7. No doubt, these two documents may throw some light on the actual object of resignation, but, the crucial documents that would firmly answer the question as to whether the 1st respondent has resigned for joining in another College or the resignation was in fact a resignation simplicitor are the resignation letter submitted by the 1st respondent and the proceedings of the Joint Director of Education dated 27.08.1976, in and by which, the resignation was accepted. Unfortunately it is stated that both the documents are not available. In the absence of those documents, we will have to go by the preponderance of probabilities. When we consider the preponderance of probabilities, we find that the learned Single Judge has taken note of the conduct as well as the averments in the affidavit and the counter affidavit. In the affidavit filed in support of the writ petition in paragraph No.3 the respondent has very clearly stated as follows:-

"I resigned from the post of Assistant Professor from Government service, from Presidency College, Madras with a view to joining Arulmigu Palani Andavar College of Arts & Culture, Palani, an aided educational institution, working under the control of Hindu Religious and Charitable Department (Sic) which came under the control of Government of Tamil Nadu. My



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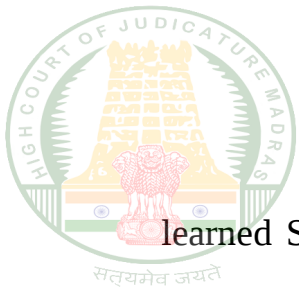
resignation was accepted in proceedings R.C.No.105316/B2/76 dated 27.08.1976 of the Joint Director of Collegiate Education, Madras and I was relieved from the service on 31.08.1976."

8. It is not in dispute that the 1st respondent joined the Arulmigu Palani Andavar College of Arts & Culture, Palani on 03.09.1976. The response to this averment in the affidavit is found in paragraph No.2 of the counter affidavit filed in the Writ Petition and it reads as follows:-

"He was resigned the post of Assistant Professor from the Government Service and joined the aided institution of Arulmigu Palaniandavar Arts and Culture College, Palani. His resignation was accepted in proceedings RC.Nos.105316/B2/16 dated 27.08.1976 of the 3rd respondent and he was relived from the service on 31.08.1976."

9. We find that there is no specific denial of the claim of the 1st respondent that he resigned only to join in Arulmigu Palani Andavar College of Arts & Culture, Palani. In fact, there is a tacit admission of the claim of the 1st respondent in the counter affidavit, when it says that he resigned as Assistant Professor from the Government service and joined the aided Institution.

10. In the light of the circumstances and the pleadings of the parties, the



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learned Single Judge had gone by the preponderance of probabilities and has come to a particular conclusion. Unless there is some material that is placed before us to reach a conclusion that the observation of the learned Single Judge may not be correct, we do not think we should interfere with the order of the learned Single Judge. More over, pension by itself is a welfare measure and when it comes to interpretation of the pension Rules, the Court should always lean in favour of the employee. That is what been done by the learned Single Judge and we do not see any reason to interfere with the said conclusion.

11. Therefore, the Writ Appeal fails and it is accordingly, **dismissed**. The appellants will calculate the pension calculating the service of 9 years and odd rendered by the 1st respondent in the Government colleges and forward the proposal to the 3rd respondent and the 3rd respondent will also clear it without raising any other objections. The entire process shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order.

(R.S.M.,J.) (G.A.M.,J.)
26.03.2025

dsa

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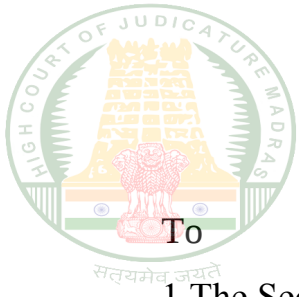


Speaking order

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To

1. The Secretary to Government,
Government of Tamil Nadu,
Higher Education Department,
Fort St. George, Chennai - 600 009.
2. The Director of Collegiate Education,
College Road,
Chennai - 600 006.
3. The Regional Joint Director of Collegiate Education,
Madurai Region,
Madurai.
4. The Principal,
Arulmigu Palani Andavar College of Arts & Culture,
Palani, Dindugal District.
5. The Accountant General,
Teynampet, Chennai - 18.



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and
G.ARUL MURUGAN, J.

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