

W.P.(MD).No.18322 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.03.2025

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.18322 of 2017

S.Packia Raj

... Petitioner

Vs.

1.The Accountant General (Accounts and Entitlement),
Tamilnadu Office,
No.361, Anna Salai,
Chennai-18.

2.The District Elementary Educational Officer,
Sivaganga, Sivaganga District.

3.The Additional Assistant Elementary Educational Officer,
Devakottai @ Ramnagar,
Sivaganga District.

4.The Correspondent,
St.John's De Britto R.C.Middle School,
Puliyaal, Devakkottai Taluk,
Sivaganga District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorarified Mandamus***, to call for the records from the 4th respondent in his proceeding in A.Thi.Mu.No.6/Aa2/17, dated 14.03.2017, and to quash the same and consequently, to direct the respondents 1 to 3 to grant pension to the petitioner from 31.12.2002 with 18% compound



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interest for the arrears amount.

For Petitioner : Mr.N.Sathish Babu
For R1 : Mr.P.Gunasekaran
For R2 to R3 : Mr.C.Venkatesh Kumar
Special Government Pleader
For R4 : Mr.D.Srinivasa Raghavan

ORDER

The present writ petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order, dated 14.03.2017 and consequently, to direct the respondents to grant pension from 31.12.2002 with 18% compound interest for the arrears amount.

2. The brief facts as stated in the affidavit is that the petitioner was appointed temporarily as Record Clerk on 01.06.1987 at St. Mary's Girls Higher Secondary School in leave vacancy. Thereafter, the petitioner's service was regularized on 01.07.1988 and he was appointed as Record Clerk in the same School. While in service he had completed B.Ed., degree in the year 1991 and was appointed as Secondary Grade Assistant Teacher on 26.11.1992 and posted in St.Joseph R.C.Middle School, then was transferred to the 4th respondent School on 04.11.1998. He resigned from service on 31.12.2002. Thereby, the petitioner

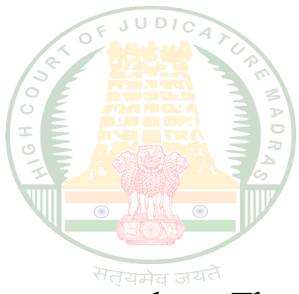


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has put in 15 years 4 months and 24 days of service. At the time of resignation, there was no scheme for pension for those who resigned from service. Thereafter, the petitioner came to understand that several persons were granted pension through orders passed by High Court and Hon'ble Supreme Court wherein it was held that the persons resigned from service may be treated as retired from service. Hence, the petitioner approached the 4th respondent school to submit pension proposals on 11.03.2017. Thereafter, vide impugned proceedings dated 14.03.2017, the application was returned with a direction to submit the appropriate Government Order which grants pension to the petitioner. Hence, the petitioner has filed the present writ petition.

3. The 2nd respondent has filed counter affidavit stating that the service particulars stated by the writ petitioner are incorrect and there are many material facts suppressed by the petitioner. On perusal of the service register, it is evident that the petitioner's appointment was not made in a manner known to law. When the actual staff was on leave, the petitioner was permitted to work as Record Clerk on the basis of exigency circumstances. Undisputedly, the petitioner's service is not a regular service and for each month, the petitioner's service is for limited

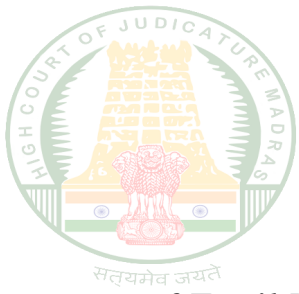


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days. The respective periods were not extended periodically. Further, whether the appointment was made on sanctioned vacancy or not was not proved by the school management or the petitioner. If the petitioner's appointment was made in a manner known to law, it is not necessary to extend her service by passing time bound orders. After completion of exactly 15 years all of a sudden, the petitioner resigned her post on 31.12.2002. Thereafter, she has submitted a representation on 11.03.2017 and the petitioner has not taken any steps for the past 15 years, hence the claim is hit by delay. In short, the petitioner was appointed on 26.11.1992 on consolidated payment. The said appointment was made for a limited period and subsequently, extended from time to time and finally resigned on 31.12.2002. As per Rule 41 of Tamil Nadu State and Subordinate Service Rules, on resignation, the person would forfeit the past service. Further, the proviso is not applicable to the petitioner, since it is not clear whether on resignation, the petitioner had joined some other service or not. Therefore, the 2nd respondent prayed to dismiss the writ petition.

4.The learned Counsel appearing for the petitioner relied on the judgment rendered by the Hon'ble Division Bench of this Court in the case of **Government**

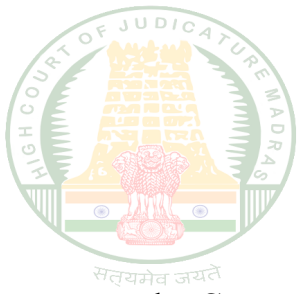


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of Tamil Nadu and another Vs. S.V.Paul Jeyaraj reported in **(2001) 3 MLJ 430**.

The Hon'ble Division Bench of this Court has relied on G.O.Ms.No.37, Department of Education, Science and Technology, dated 05.01.1983.

5. However, the learned Counsel appearing for the 1st respondent submitted that the said Clause 4 in the said G.O., was subsequently deleted for which he relied on the judgment passed by another Hon'ble Division Bench of this Court in the case of the **State of Tamil Nadu and Another Vs. C.Kumar and Another** in W.A.No.2590 of 2018, dated 27.06.2019. In the said judgment, the Court has referred to the Government Letter No.Ms.1490, Education, dated 26.12.1985. In the said letter, it is stated that the crucial date is 05.06.1981 and those persons who have resigned after the crucial date will not be entitled to any pensionary benefits. In the present case, the petitioner has resigned from service on 31.12.2002 and the same is after the crucial date, therefore the petitioner is not entitled to pension. Therefore, the judgment rendered by the Hon'ble Division Bench of this Court in the case of **Government of Tamil Nadu and another Vs. S.V.Paul Jeyaraj** reported in **(2001) 3 MLJ 430** is not applicable. But the judgment passed by another Hon'ble Division Bench of this Court in the case of

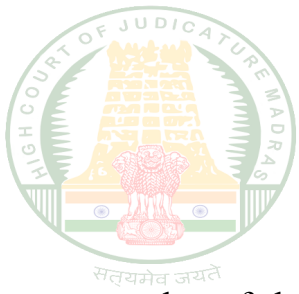


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the ***State of Tamil Nadu and Another Vs. C.Kumar and Another*** in W.A.No.2590 of 2018, dated 27.06.2019, is applicable.

6. Further, the petitioner had resigned from service in the year 2002 but has submitted the representation in the year 2017 and has filed the writ petition in the year 2017. It is clear that the claim of the petitioner is hit by delay and laches and on this ground also the petitioner's claim cannot be considered. In a similar circumstances, the Hon'ble Division Bench of this Court has negated the claim of the employee and has dismissed the writ appeal filed by the employee in W.A.(MD)No.1002 of 2024 in the case of ***A.Koil Pillai Vs. The District Educational Officer***, dated 14.06.2024. In another case, the Hon'ble Division Bench of this Court has allowed the writ appeal filed by the Principal Accountant General in W.A.(MD)No.1364 of 2018, dated 14.10.2024. In the case of E.P.Jeyaraman Vs. The Commissioner, Panchayat Union and Others in W.A.No.2183 of 2018, dated 14.03.2022, the same was elaborately discussed and the plea of employee was rejected. In W.A.(MD)No. 197 of 2017, dated 28.02.2024, the Hon'ble Division Bench of this Court has rejected the plea of the employee. In another judgment rendered in writ appeal in W.A.(MD)No.454 of 2016, dated 24.03.2016, also the

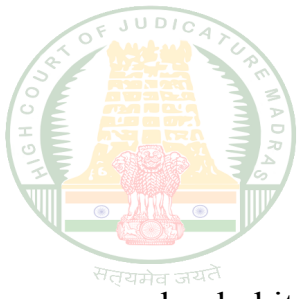


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plea of the employee was rejected. This Court has also rejected the plea of the employee in W.P.(MD)No.1373 of 2016, vide order, dated 21.09.2022.

7. In short, the issue is whether the non-teaching staff working in aided institutions is entitled to pensionary benefits, if the staff has retired from service after 01.03.1968. It is seen for the first time the pension was introduced to non-teaching staffs in aided in G.O.Ms.No.727 dated 11.05.1972 with effect from 01.04.1972. As per G.O.Ms.No.37, Department of Education, Science and Technology, dated 05.01.1983, any non-teaching staff who had resigned before 05.06.1981 are eligible for pension and not after the said date. Since the service records were not maintained properly prior to 05.06.1972 a benefit of doubt was given to the employee. After the said period, the service records were maintained and based on the said service records only the pensionary benefits were granted. Even though the respondent submitted that the petitioner has not submitted the service records, the petitioner submitted that she is ready and willing to submit the service records now. But the said opportunity cannot be granted now.

8. Further, the petitioner has resigned from service in the year 2002 and the writ petition was filed in the year 2017. Therefore, the claim of the petitioner is



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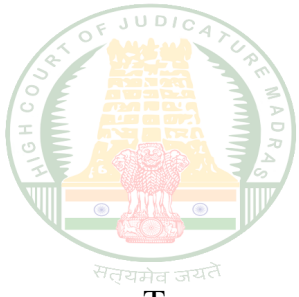
clearly hit by the principles of delay and laches.

9. Secondly, the petitioner has resigned from service and on resignation, the petitioner has to forfeit the past service. The petitioner is not coming within the ambit of proviso where it states if the resignation is based on prior permission in order to join a new service, then forfeiture will not come into effect. In the present case, the petitioner has resigned from service and the petitioner has not joined any other new service. Therefore, the question of obtaining prior permission to join another service will not arise. Consequently, the proviso will not be applicable to the petitioner. Therefore, the petitioner cannot claim pensionary benefits on resignation. Therefore, the claim of the petitioner is rejected. Hence, the writ petition is dismissed confirming the impugned order. No costs.

10.03.2025

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

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To
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Sivaganga, Sivaganga District.
- 2.The Additional Assistant Elementary Educational Officer,
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