

(2014) 11 MAD CK 0469**Madras High Court****Case No:** Writ Petition No. 6851 of 2007 (O.A. No. 5481 of 2002)

N. Raghunathan

APPELLANT

Vs

The District Collector

RESPONDENT

Date of Decision: Nov. 20, 2014**Acts Referred:**

- Constitution of India, 1950 - Article 14, 16, 21

Hon'ble Judges: D. Hari Paranthaman, J**Bench:** Single Bench

Judgement

@JUDGMENTTAG-ORDER

D. Hari Paranthaman, J.

The petitioner filed O.A.No. 5481 of 2002. On abolition of the Tribunal, the matter stood transferred to this Court and re-numbered as W.P.No. 6851 of 2007.

2. The petitioner served as an Untrained teacher from 28.08.1961 to 30.04.1962 in the Panchayat Union School at Nangavalli, Salem District. He was ousted from service on 30.04.1962. Thereafter, he was appointed as Tractor Driver in the office of the Panchayat Union, Nangavalli. He joined duty on 19.03.1968. Subsequently, he was appointed as a Jeep Driver on 08.10.1984. He retired from service on 31.07.1997.

3. The grievance of the petitioner is that even though he retired from service on 31.07.1997, his DCRG was settled only on 23.12.1998 and he has specifically pleaded in Ground "f" of the affidavit filed in support of the writ petition. Hence, he sought for a direction to the respondents to pay interest as per the Rules for the belated payment of DCRG. The petitioner has also sought for a direction to take into account the services rendered by him as Untrained teacher from 28.08.1961 to 30.04.1962 for calculation of terminal benefits.

4. The respondents 1 and 2 have not filed any reply affidavit.

5. The third respondent has filed a reply affidavit. As far as the delay in payment of DCRG is concerned, in paragraph 9 of the reply affidavit, it is stated as follows:-

"9. Though the applicant had retired on 31.07.97 the application/documents sanctioning pensionary benefits were signed on 25.6.98 by the Departmental authorities and in letter dated 3.7.98 forwarded to this office for authorisation. The pensionary benefits finalized but could not be authorised as the Sub-Treasury, wherein the applicant desires payment of pension has not been mentioned in the application. This Respondent office, therefore, called for the name of the Sub Treasury, in letter dated 5.8.98. After receipt of the reply on 25.9.98, DCRG, Pension and CVP were authorised on 16.11.98 by this Respondent office. It may be seen that there is no delay on the part of this Respondent office and the allegation of the applicant as against the Accountant General is baseless."

6. A reading of the aforesaid passage from the reply affidavit of the third respondent would make it clear that the delay was pursuant to the sanctioning of pensionary benefits by the department belatedly in June 1998 and the same was forwarded to the third respondent only in July 1998.

7. In such circumstances, I am of the view that respondents 1 and 2 are responsible for payment of interest for DCRG as the delay was only on their part.

8. The learned counsel for the petitioner would submit that the period of service rendered by the petitioner from 28.08.1961 to 30.04.1962 as Untrained Teacher should be taken into account for the purpose of pensionary benefits. In support of his contention, the learned counsel relied on Rules 21,23,24 and 25 of the Tamil Nadu Pension Rules, 1978.

9. While so, in the counter affidavit filed by the third respondent, it is stated that the service rendered by the petitioner as Untrained Teacher cannot be counted in view of Rule 25 of the Tamil Nadu Pension Rules. The petitioner as well as the third respondent has relied on Rule 25 of the Tamil Nadu Pension Rules.

10. It is necessary to refer to Rules 21, 23, 24 and 25 of the Tamil Nadu Pension Rules:-

"21. Forfeiture of service on dismissal or removal.- Dismissal or removal of a Government servant from a service or post entails forfeiture of his past service.

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 at 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 to which the period is not covered by leave due to the Government servant.

24. Effect on interruption in service.- (1) The interruptions in service shall not entail forfeiture of past service except when a person was removed and re- employed. The actual interruptions in service shall not, however, count for pension.

(2) The services rendered in temporary or permanent department or in substantive office shall also count for pension even if any interruptions exist.

25. Condonation of interruption in service. (1) In the absence of a specific indication to the contrary in the Service Book, an interruption between two spells of Civil Service rendered by a Government servant shall be treated as automatically condoned and the pre- interruption service treated as qualifying service.

(2) Nothing in sub-rule (1) shall apply to interruption caused by resignation, (or) removal from service or for participation in strike.

(3)The period of interruption referred to sub-rule (1) shall not count as qualifying service."

11. Rules 24 and 25 of the Tamil Nadu Pension Rules would make it clear that if interruption caused due to resignation, removal or participation in 6 strike alone be excluded for counting the service for the purpose of terminal benefits. In other case of interruption, it is automatically condoned as per the amendment made to Rule 25 in the year 1994.

12. Admittedly, the petitioner was ousted from service and the reason for ousting is not stated. But certainly he was not removed from service. Removal is one of the punishment under Rule 8 of the Tamil Nadu Civil Services (D & A) Rules. However, in the case of such removal, the same is not a disqualification for re-employment. That is why Rule 24 of the Pension Rules states if a person is removed from service, he has to forfeit the service rendered prior to removal. But in the case of persons, who have been terminated from service for want of vacancy or for any such reason and given employment thereafter, the service rendered prior to their ousting from service shall also be counted as per Rules 24 and 25 of the Pension Rules.

13. It is well settled that if there is a doubt, the benevolent provision shall be interpreted in favour of the pensioner. In fact, I have no doubt that only three categories are excluded from counting the past service and the petitioner does not come within any one of those three categories. Those three categories are resignation, removal and participation in strike. As stated above, he neither resigned, removed nor participated in the strike. Hence, the service rendered by him from 28.08.1961 to 30.04.1962 shall be counted for pension. Having utilized the services of a person, the State cannot deny the benefit for the same, particularly,

when Rules provide for.

14. If Rules 24 and 25 of the Tamil Nadu Pension Rules are seen in the light of Articles 14, 16 and 21 of the Constitution of India, I am of the view that only in case of resignation, removal and participation in strike, forfeiture of past service could happen. In all other cases, past service could not be denied to the Government servant.

15. At this juncture, the learned counsel for the third respondent would submit that the period between 01.05.1962 to 19.03.1968 cannot be counted as eligible service. I am not able to appreciate the contention raised by the learned counsel for the third respondent since it is not the case of the petitioner. The only plea of the petitioner is that the service rendered by him for the period from 28.08.1961 to 30.04.1962 shall be counted in view of Rules 24 and 25 of the Tamil Nadu Pension Rules.

16. For all the foregoing reasons, the writ petition stands allowed and the following directions are issued:-

- i) Respondents 1 and 2 shall pay interest as per Rules for the belated payment of DCRG within a period of eight weeks from the date of receipt of a copy of this order.
- ii) Respondents 1 and 2 are directed to send a revised proposal by counting the service rendered by the petitioner from 28.08.1961 to 30.04.1962 for the purpose of terminal benefits to the third respondent.
- iii) On receipt of the proposal, the third respondent is directed to authorise the same within a period of four weeks thereafter.

No costs.