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**(2014) 01 MAD CK 0232**

**In the Madras High Court**

**Case No :** W.P. (MD) No. 1764 of 2011 and M.P. (MD) No. 1 of 2011

Dr. D. Gunaseelan

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

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**Date of Decision :** 27-01-2014

**Acts Referred:**

**Citation :** (2014) 3 MLJ 762

**Hon'ble Judges :** S. Vaidyanathan, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## **Judgement**

S. Vaidyanathan, J.—This writ petition has been filed seeking a Writ of Mandamus to direct the respondents 1 to 4 to provide the pension to the petitioner with consequential benefits from 05.12.1988 for the service of Lecturer/Reader in the sixth respondent's College. The case of the petitioner is that he has worked as a Lecturer/Reader in Computer Science in the sixth respondent College between 05.12.1988 to 27.06.2006 for nearly 18 years. Thereafter, from 28.06.2006 to 23.12.2006, the petitioner has worked as a Reader in the fifth respondent University for a period of six months. The petitioner filed this writ petition stating that the petitioner is entitled to get a pension. In Ground No. "b" of the affidavit, the petitioner has taken a stand that the Tamil Nadu Pension Rules, 1978 will not be applicable to the petitioner as the petitioner has taken a prior permission for another appointment under the Government. The contention of the respondent is that the fifth respondent has no control over the sixth respondent College. The fifth respondent University and the sixth respondent College are independent of each other.

2. For the sake of convenience, Rule 23 of the Tamil Nadu Pension Rules, 1978 is extracted below:

Rule 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 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.

3. The petitioner also admitted that the petitioner has resigned from the service on 27.06.2006. The petitioner has already approached this Court by filing a writ petition in W.P. (MD) No. 11744 of 2006 and as against the order passed therein there was a Writ Appeal in W.A. (MD) No. 240 of 2007. In that writ appeal the present petitioner has not made the respondents 1 and 2 as a party. The petitioner has produced only the order copy in the writ appeal. From the writ appeal, it is clear that he was terminated by the Gandhigram Rural University without enquiry. When the termination was set aside, the compensation of Rs. 1,00,000/- (Rupees One Lakh only) was paid and the petitioner has received the payment. From the order, it is clear that the petitioner has not contended about the service rendered under the sixth respondent to be counted for the benefits.

4. The learned Counsel for the petitioner relying upon the judgment dated 30.08.2010 in W.P. (MD) No. 7510 of 2010, contended that this Court has upheld the payment of pensionary benefits to the staff de hors Rule 23 of the Tamil Nadu Pension Rules, 1978, wherein the employee has resigned the job in 1964 and the Pension Rules came into force in 1978. In that context, this Court held that the Rules cannot be retrospective and for the resignation in the year 1964, the pensionary benefits cannot be deprived based on 1978 Rules. That judgment will not be applicable to the facts of the present case.

5. Mr. P. Gunaseelan, learned Counsel appearing for the third respondent contended that in terms of the Tamil Nadu Pension Rules, 1978 supra, the petitioner is not entitled to get any benefits as there is resignation from service. The petitioner disputed the fact and submitted that Rule 23 is not applicable to the forced resignation. In ground (b) the petitioner has submitted that proper permission has been taken up for another appointment. Hence, there cannot be any forced resignation. The sixth respondent's College is an aided College and they are governed by the Pension Rules.

6. The contention of the learned Counsel for the petitioner that he will be entitled to get proportionate pension for the service rendered under the sixth respondent's College, cannot be accepted as there is a clear forfeiture of the pension for the past service if there is resignation. The third respondent relied upon the decision of the Apex Court in Union of India (UOI) and Others Vs. Braj Nandan Singh, and D.R. Premkumari v. Director, Directorate Forensic Science

Department, Chennai-4 and Others in W.P. (MD) No. 618 of 2012 and contended that the petitioner is not entitled the pension when there is a forfeiture of service on resignation.

7. Rule 23 of Tamil Nadu Pension Rules, 1978, is relating to forfeiture of service on resignation. The said Rule 23 is mandatory and no exception can be made. A particular provision cannot be treated as superfluous. Therefore, after acceptance of voluntary resignation by the respondents in terms of Rule 23, the past services stand forfeited. The petitioner did not have the qualifying period of service for getting pension in terms of Rule 23. There is no substance in the contention of the petitioner that Rule 23 is having limited operation and the services rendered under the fifth respondent and the sixth respondent have got to be taken into account for the purpose of pension and that there is forced resignation is based on surmises and hence, the said contention is rejected. In view of the rival submissions, I am of the view that the writ petition is devoid of merit. Accordingly, the writ petition is dismissed. Consequently, the connected Miscellaneous petition is also dismissed. No costs.