
(2014) 07 MAD CK 0044

In the Madras High Court

Case No : Writ Petition No. 28154 of 2011 and M.P. No. 1 of 2011

N. Baskar

APPELLANT

Vs

Director of Elementary Education

RESPONDENT

Date of Decision : 16-07-2014

Acts Referred:

Citation : (2014) 8 MLJ 341

Hon'ble Judges : S. Vaidyanathan, J

Bench : Single Bench

Judgement

S. Vaidyanathan, J.—The petitioner joined the services with the first respondent as Secondary Grade Teacher in the Amir Jamal Government Aided High School, Idayankulam, Tirunelveli District on 20.1.2001. He was called for counselling for post of Secondary Grade Teacher to be held on 4.12.2009 by the Teachers Recruitment Board at Trichy. He was allotted to the Primary School, Mavalavadi, Thellar Union, Thiruvannamalai District by proceedings of the first respondent in Na. Ka. No. 039981 dated nil. 12.2009. It is stated in the said proceedings that proper appointment order will be issued to all the selected candidates on 14.12.2009 by the District Primary Education Officer of the concerned District. Since there was a By-election on 19.12.2009 for the Vandavasi Constituency in Thiruvannamalai District, no appointment order was issued to any of the candidates on 14.12.2009. It was stated that appointment orders will be issued to all candidates only on 22.12.2009. The petitioner, on the basis of the information, the relieving order from his earlier school with effect from 21.12.2009 was received and came to the Office of the second respondent at Thiruvannamalai on 22.12.2009, to collect the appointment order and to join duty on the same day i.e., 22.12.2009. However, no appointment order was issued on 22.12.2009 and on 23.12.2009 to any candidates by the second respondent due to administrative reasons. The school was closed for Half yearly Examination from 24.12.2009 to 3.1.2010. The Additional Assistant Primary Education Officer, Thollar Union issued an order dated 28.12.2009, permitting him to join duty on 4.1.2010 and he joined duty on 4.1.2010. The petitioner was

working in the Aided School and he was contributing for provident fund. He made a representation on 18.1.2010 to the Additional Assistant Primary Education Officer to open and issue the provident fund number and the same was forwarded to the second respondent herein and it was also recommended to condone the 13 days break in service i.e., from the date of relieving from Amir Jamal Government Aided High School to the joining date in the Panchayat Primary School, Thellar. However, it was rejected by an order dated 19.5.2011 of the second respondent, citing the ground that the period of relieving from the Aided School to date of joining in Mavalavadi Primary School on 4.1.2010, is not related to Government Service. As the request of the petitioner was turned down, the petitioner has preferred an appeal before the first respondent on 16.9.2011 and the same is still pending.

2. The learned counsel for the petitioner contended that the petitioner was in continuous service from the Aided School to the Government School and is protected as per the Pension Rules and the Government Orders. He further submitted that his wages for the period was also in question. The learned counsel for the petitioner further contended that there is no fault on the part of the petitioner and it is due to the administrative delay on the part of the second respondent in issuing posting orders to the petitioner, the petitioner could not join duty immediately. He further contended that in terms of Rules 24 and 25 of the Pension Rules, provision is available for condoning the delay of break-in-service. Rules 24 and 25 of the Pension Rules, are extracted as follows:

"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."

3. The Government has filed a counter and they relied upon the Rule 23 of the Tamil Nadu Pension Rules, which is extracted below:

"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."

4. It was further contended that the petitioner has resigned from service by a letter dated 21.12.2009. The respondent submitted that the petitioner has joined as Secondary Grade Teacher only on 4.1.2010 in Mavalavadi Panchayat Union Elementary School and he is eligible for contributory pension scheme introduced by the State Government for its employees who enter into Government Service on or after 1.4.2003. In view of his resignation, he forfeited his past service and hence, he cannot be granted continuity of service and provident fund account number as prayed for by the petitioner.

5. Heard both the parties.

6. From the facts narrated above, it is found that there is no fault on the part of the petitioner who got break-in-service. It is only due to the administrative act on the part of the second respondent, the orders have not been issued as informed to the petitioner by the second respondent. The Government by a letter No. 34911/Finance (PGC) Department/2009-1 dated 30.12.2009, in paragraph 2 of its order, has stated that intervening period as follows:

"2. The Government after careful examination directs that in all cases where an employee working under pensionable service on relief joins a new post on a day after the intervening Government/Public Holidays, need not be considered as a break, since the intervening period shall automatically be condoned as per Rule 25 of Tamil Nadu Pension Rules, 1978."

7. From the above it is very clear that the intervening period shall automatically be condoned as per Rule 25 of the Tamil Nadu Pension Rules 1978. When there is no fault on the part of the petitioner and there is a clear instruction by the Government in Rule 25, which is extracted supra, which supports the case of the petitioner, the Government ought not to have rejected the claim of the petitioner and 13 days delay, not due to the fault of the petitioner, should have been condoned. Further, from the fact that the appeal has not been disposed of, it is very clear that the Government is not interested in taking any decision to decide one way or the other and it has got to be presumed that the Appellate Authority has decided to confirm the original order.

8. Taking note of the submissions on both parties, I feel much force in the contention of the petitioner and the writ petition is liable to be allowed and the

intervening period has got to be treated as continuity of service and not as break-in-service and the petitioner is entitled to all other benefits.

9. The third respondent has submitted that he is only a formal party to the writ petition and if any order passed in favour of the petitioner and if the papers are forwarded by the Government to them, they would process the papers and do the needful in terms of the order passed by this Court. The submission of the learned counsel for the third respondent is recorded. In the result, the writ petition is allowed and the intervening period of the petitioner is to be treated as continuity of service and he is entitled to all other consequential benefits. No costs. Consequently, connected miscellaneous petition is closed.