

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2015

(Reserved on 30.03.2015)

CORAM:

THE HONOURABLE MR. JUSTICE V.DHANAPALAN
and
THE HONOURABLE MR. JUSTICE T.RAJA

Writ Appeal No.1885 of 2011

Reynold Jayasekaran . . . Appellant
vs.

1. Director of School Education,
(Elementary Schools),
College Road, Chennai - 600 006.

2. The Correspondent,
TELC Middle School,
Manabur Chavady,
Thanjavur - 613 001.

3. The Assistant Education Officer,
Thanjavur 613 001.

4. The District Elementary Education Officer,
Thanjavur - 613 001.

. . Respondents

Writ Appeal is filed under Clause 15 of Letters Patent against the order dated 21.06.2011, made in W.P.No.12816 of 2006.

Presented under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the 2nd Respondent to pay the petitioner's salary and also other benefits payable to the petitioners from 01-10-2005, upto end of Educational Academic Year i.e., 31-05-2006.

For Appellant : Mr.K.S.Narayanan
For R1, R3 & R4 : Mr.R.Rajeswaran, Spl.G.P.
For R2 : Mr.Manisundara Gopal

JUDGMENT

T.RAJA, J.

The present writ appeal is directed against the order dated 21.06.2011 passed by the learned Single Judge in W.P.No.12816 of 2006 dismissing the prayer of the petitioner / appellant herein.

2. Learned counsel appearing for the appellant submitted that the appellant, after rendering 35 years of unblemished service, retired from service on 30.09.2005 on reaching the age of superannuation. However, before his superannuation, though he made a representation to the second respondent on 30.09.2005 requesting to allow him to continue in service till 31.05.2006, the said official did not respond to the same, therefore, he made another representation dated 07.11.2005 on the basis of G.O.Ms.No.281, Education Department, dated 13.02.1981, read with G.O.Ms.No.452, Education Department, dated 24.02.1970. But, the second respondent did not respond to both the representations. Hence, he had filed Writ Petition No.1807 of 2006, seeking for a direction to the second respondent to allow him to continue in service till 31.05.2006, by paying salary and other attendant benefits from the date of superannuation till 31.05.2006. This Court, by order dated 28.02.2006, had directed the second respondent to consider the representation of the appellant and pass appropriate orders. However, the second respondent did not take any action. Therefore, it is contended that, as the second respondent is a school aided by the Government, it is duty-bound to follow the rules and regulations of the Government, more particularly, G.O.Ms.No.281, dated 13.02.1981, read with G.O.Ms.No.452, Education Department, dated 24.02.1970, which says that a teacher, who attains the age of superannuation in the middle of the academic year, should be continued on re-employment terms till the date of closure of the school for summer vacation, subject to the conditions, namely, (i) that their work and conduct are satisfactory; (ii) that they are physically found fit for further service and (iii) that no disciplinary proceedings pending against them.

3. By citing the above said G.O., it is further contended that the case of the appellant fits in with the aforesaid conditions, therefore, the abovesaid G.O. squarely applies for acceptance of his plea for re-employment till the summer vacation. However, contrary to the above said G.O. as well as to the order passed by this Court in the earlier writ petition, the appellant was not permitted to work in the said school till the end of the academic year, hence, the writ petition giving rise to the present appeal was filed seeking for a direction to the second respondent to pay the salary and also other benefits payable to the appellant from 01.10.2005 to 31.05.2006. But, the learned Single Judge, he pleaded, wrongly dismissed the writ petition, by holding that the appellant has no vested right to demand

re-employment after attaining the age of superannuation on 30.09.2005.

4. It is further submitted that when the School failed to establish that the appellant's services and conduct were unsatisfactory, the appellant would be entitled for re-employment as a matter of right and he would be compensated with pay and other usual benefits for the period between 01.10.2005 and 31.05.2006. It is also submitted that the second respondent School, being a Minority Institution and an Aided School, should not have ignored or refused the compliance of G.O.Ms.No.452, dated 24.02.1970, issued by the Government, which is applicable to all the aided schools in the matter of re-employment of teachers, who retire in the middle of the academic year, till the date of the closure of the School for summer vacation. With these submissions, he sought for setting aside the impugned order passed by the learned Single Judge.

5. Heard the learned counsel appearing for the respondents.

6. The appellant herein, while serving as Secondary Grade Teacher in the second respondent School, just one month before the date of superannuation on 30.09.2005, made a representation dated 30.08.2005, requesting the second respondent to allow him to continue in service till the end of the academic year in terms of G.O.Ms.No.452, dated 24.02.1970. But, his written request dated 30.08.2005, followed by the Reminder dated 07.11.2005, having failed to evoke any response, he had filed Writ Petition No.1807 of 2006, seeking for issuance of a writ of mandamus to direct the second respondent to allow him to continue in service till 31.05.2006, by paying salary and other attendant benefits from the date of superannuation till 31.05.2006. However, the learned Single Judge, by order dated 21.06.2011, while considering the said request, directed the second respondent School to consider his representation, if any received, and pass orders. Thus, the question needs to be answered in the second round of litigation is as to whether the appellant is entitled to get the relief as sought for in the present writ petition, that was denied in his earlier writ petition No.1807 of 2006. Admittedly, in the present case, the impugned order passed by the learned Single Judge shows that he was not entitled to get re-employment to continue in service as a matter of indefeasible right.

7. On the earlier occasion, the petitioner had filed Writ Petition No.1807 of 2006. For better appreciation, the prayer of the said writ petition is extracted hereunder:

"Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the second respondent to continue the petitioner in service till 31.05.2006 by re-employment, paying him salary and other attendant benefits from the date of superannuation till

31.05.2006."

A mere reading of the above said prayer shows that the petitioner sought for a direction to the second respondent / the Correspondent, T.E.L.C. Middle School, Thajavur, to continue him in service till 31.05.2006 by way of re-employment with payment of salary and other attendant benefits. However, this Court, while disposing of the said writ petition vide orders dated 28.02.2006, had directed the second respondent to consider his request for re-employment by passing orders on his representation.

8. In spite of the order passed by this Court in W.P.No.1807 of 2006 on 28.02.2006, directing the Correspondent, T.E.L.C. Middle School, Menabu Chavadi, Thanjavur, to consider the representation of the appellant if any received and pass orders with regard to the request of the appellant to continue in service following the Government Order existed at the relevant point of time, strangely, the second respondent has not even cared to consider the simple and clear direction given by this Court. Resultantly, the appellant has been left without any remedy except to approach this Court despite the fact that he has got a positive order to consider his representation with regard to his continuation in employment. In other words, though this Court, by order dated, 28.02.2006, has given a clear direction to consider the representation of the appellant, till-date, the second respondent, for the best reasons known to him, even after long lapse of time, ignored the same. Therefore, we are unable to appreciate the arbitrary action on the part of the second respondent.

9. The second respondent School, being a Minority Institution and an Aided School, we feel, should not have ignored or refused the compliance of G.O.Ms.No.452, dated 24.02.1970, issued by the Government, which is applicable to all the aided schools in the matter of re-employment of teachers, who retire in the middle of the academic year, till the date of the closure of the School for summer vacation.

10. In a matter where a teacher reached the age of superannuation in the middle of the academic year, this Court in umpteen number of judgments, has settled the issue. In T.Glorymathi vs. State of Tamil Nadu, Chennai and others, reported in 2009 (6) MLJ 1021, this Court has held that the service of a teacher cannot be ended in the middle of the academic year, but the same is to be extended till the end of the academic year, in order to maintain and improve the educational standards of the students.

11. In identical circumstances, this Court, in the case of G.Menaka v. Chief Educational Officer, Chennai, and Others, in W.P.No.14014 of 2009, has held that since the re-employment period had already come to an end and the petitioner was denied serving the

institution, it is for the respondent school to pay the wages for the period from 01.07.2009 to 31.05.2010.

12. The object of providing extension of service to teachers till the completion of the academic session is to cope up with the curriculum, as the students should not suffer in the middle of the academic session, for want of a teacher. The change in the teaching skill and the efficiency of the teacher may affect the fruitful result as a whole. In addition, there will also be much inconvenience for the educational institutions and the management, who are in charge of affairs of the education. Therefore, the teachers, who are retiring in the middle of the academic year, would normally be asked to continue till 31st May i.e., till the end of the academic year. The said object was sought to be achieved by the Government vide G.O.Ms.No.452, Education Department, dated 24.02.1970.

13. That being the factual and legal position, the learned single Judge, in our considered opinion, ought to have accepted the prayer of the appellant. In the absence of the same, this Writ Appeal deserves to be allowed. As the request of the appellant has not been considered in spite of the direction, we are left with no other choice but to allow the Writ Appeal, by setting aside the order of the learned single Judge. Accordingly, we set aside the order of the learned single Judge impugned in this Writ Appeal and direct the second respondent to pay the salary and other benefits payable to the appellant from 01.10.2005 up to the end of the academic year i.e., 31.05.2006. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

14. Writ Appeal is allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rkm
To

1. Director of School Education,
(Elementary Schools),
College Road, Chennai - 600 006.

2.The Correspondent,
TELC Middle School,
Manabur Chavady,
Thanjavur - 613 001.

3.The Assistant Education Officer,
Thanjavur 613 001.

4.The District Elementary Education Officer,
Thanjavur - 613 001.

1 cc to Government Pleader, Sr.No24749

1 cc to Mr.Manisundara Gopal ,Advocate, SR.No.24524

1 cc to Mr. N.Baskaran, Advocate, SR.No.24182

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tej (co)
pmk.22.5.2015



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