

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 09.02.2015

Coram:-

The Hon'ble Mr. Justice T.Raja

Writ Petition No.28747 of 2004
and
WPMP. No.12 of 2015

P.S.Gunasekaran

... Petitioner

vs.

1. The State of Tamilnadu
rep by Secretary,
Education Department,
Chennai -9.

2. The Director of School Education,
Education Department,
Chennai-6.

3. The Chief Educational Officer,
Virudhu Nagar,
Virudhu Nagar District.

... Respondents.

Writ Petition under Article 226 of the Constitution of India for the
issuance of a writ of certiorarified mandamus

or anyother appropriate writ by calling for the records of the 2nd
Respondent in his
Proceedings Na.Ka.No.132883/02/2001 dated 30.06.2003 and quash the
same and consequently direct the Respondents to regularize the
service of the Petitioner vy granting appropriate fixation of pay and
allowance from from 1.1.1999 as applicable to the post of Junior
Assistant and further grant the petitioner pension, gratuity and all
other terminal benefit on his retirement with effrect from 1.6.2012
and pay the same with arrears and monetary benefit".
(Amended as per order dated 09.02.2015 in WPMP.No.12/2015 in
WP.28747/04)

For Petitioner : Mr.V.Vijay Shankar

For Respondents: Mrs.M.E.Rani Selvam,
Additional Government Pleader.

O R D E R

Though the petitioner herein originally prayed for the issuance of a writ of certiorari to call for the records of the 2nd respondent in his proceedings Na.Ka.No.132883/G2/2001, dated 30.06.2003, quash the same and consequently, direct the respondents to regularise the services of the petitioner with all consequential benefits including treatment of the period of leave, by way of filing the Miscellaneous Petition in WPMP No.12 of 2015, he has sought for amendment of the prayer so as to include the relief of fixation of pay and allowance applicable to him from 01.01.1999 and consequent payment of terminal/pensionary benefits.

2. With reference to the amendment sought for, this Court, having heard both sides and finding no serious objections for allowing the same, is inclined to allow the WPMP No.12 of 2015. Consequently, this Writ Petition is heard and disposed of in terms of the amended prayer viz., seeking issuance of a writ of certiorarified mandamus to call for the records of the 2nd respondent in his proceedings Na.Ka.No.132883/G2/2001, dated 30.06.2003, quash the same and consequently direct the respondents to regularize the service of the petitioner by granting appropriate fixation of pay and allowance from 1.1.1999 as applicable to the post of Junior Assistant and further to grant pension, gratuity and all other terminal benefits to the petitioner on his retirement with effect from 1.6.2012 and pay the same with all arrears and monetary befits.

3. Learned counsel for the petitioner, at the first instance, would briefly outline the factual aspects by submitting as follows:

The petitioner, after his appointment as Medical Attendant through Employment Exchange on 01.09.1975 relating to Medical Aid Scheme, was subsequently given posting as Junior Assistant in the year 1982. After serving so for more than 10 years, he was awarded Selection Grade from 31.03.1997 and his pay was also fixed correctly in the pay scale applicable to the said Cadre of Junior Assistant viz., 4000-100-6000/- on par with the Government Employees. In fact, the services of the petitioner rendered with the Committee/Medical Aid Scheme included offering assistance to the Medical Team during its inspection, maintenance of Records and carrying out any other duty assigned by the Committee from time to time. The functioning of the Committee being regular and continuous and in the said Committee, the petitioner having rendered a very long period of service as Junior Assistant and Typist, by proceedings dated 31.10.1991 itself, the Government/R1 took some initiatives for regularisation; however, later on, such efforts did not proceed favourably. In parallel, the petitioner was also making repeated requests and representations to the authorities for regularisation of his services by adverting to the long period of service rendered by him and of the fact that the

work rendered by him under the services of the Committee was the work actually rendered for the Government. While so, during 2001, the petitioner had to apply Medical Leave owing to some health problems. But unfortunately, even after a lapse of two years, the respondents did not regularize the leave period in spite of availing of such leave by furnishing Medical Certificates. The unfair action on the part of the authorities prompted the petitioner to file W.P. No.8249 of 2003 for a direction to pass orders on his representation relating to regularization of his Medical Leave and grant of pay thereon. On 30.06.2003, orders were passed in the Writ petition directing the 2nd respondent to dispose of the representation of the petitioner. Consequent to the said direction, the 2nd respondent issued the impugned order declining to regularize the period covered by Medical Leave, by stating that Leave Rules and the benefits applicable to the regular Government Servants cannot be extended to the petitioner whose service does not fall within the ambit of 'Government Service'. In the above circumstances, he was constrained to file the present Writ Petition with the original prayer as aforementioned. In the meantime, after reaching the age of superannuation on 31.05.2012, though he was permitted to retire, terminal benefits were not released citing pendency of this writ petition relating to regularisation of his service. Therefore, the prayer required to be amended suitably for moulding the relief.

In the above factual scenario, learned counsel for the petitioner would submit that the petitioner having rendered 29 years of service in the same manner as that of a Government Servant, he was unfairly denied regularisation and ultimately, he was deprived of the terminal benefits; thereby, great prejudice and irreparable damage has been resulted. According to him, after coming into effect of 5th Pay Commission Recommendations and implementation of the same later on, though entries were made in the service book of the petitioner fixing his pay at the correct stage, from 01.01.1999 onwards, his increments and allowances were completely stopped until he reached the age of superannuation. Hence, he pleads before this Court to quash the impugned order and for issuance of suitable direction for regularisation of his services by granting appropriate fixation of pay and allowance from 01.01.1999 as applicable to the post of Junior Assistant and further, to grant pension, gratuity and all other terminal benefits on his retirement with effect from 01.06.2012 and to pay the same with arrears and all monetary benefits.

4. Per contra, learned Additional Government Pleader would submit that the appointment itself of the petitioner with the Committee was on purely temporary basis and his job was never governed by any Service Rules framed by the Government so as to attribute any trait of Government Service. That is why, by the impugned order, his plea for regularisation of the Leave Period under Medical Grounds could not be entertained on par with regular Government Employees. In fact, the expenditure to disburse salary to

the petitioner and others involved in the services of the Committee and also to meet the functioning of the Committee is met out from the funds collected at the rate of Re.1 from the students in all schools for the Medical Inspection conducted during each academic year. Further, it is only because of some administrative reasons, the post of Medical Officer could not be filled up for certain period, during which time, the post of Typist in Chief Educational Office became vacant and the petitioner worked as Typist in that office during the said vacancy period. Based on that, he cannot claim all the concessions available to regular government servants. Therefore, the impugned rejection order under challenge is perfectly in order and it does not suffer from any infirmity or irregularity. It also goes without saying that once the position is clear that the petitioner is not a government servant and his service is not covered or governed by the Government Servants' Service Rules, neither the original prayer nor the amended one for grant of pensionary benefits deserves consideration at all by this Court.

5. I have carefully considered the rival submissions advanced on either side and also the entire records placed before this Court, in particular the Service Register of the petitioner.

6. From the records, it is seen that the petitioner was appointed as Medical Attendant on 01.09.1975 under the Medical Aid Scheme after sponsorship by the Employment Exchange. He successfully underwent the selection process and it is no doubt true that his services were only under the Committee formed at the District-Level to conduct Medical Inspection in schools. Further, not only the post of Attendant but also other posts like Physician, Driver, Cleaner, etc. are all sanctioned posts and their respective salaries were paid out from the funds collected from the students. Subsequently, the services of the petitioner were utilised like that of a Government Employee by posting him as Junior Assistant/Typist. Even though the learned Government Pleader would submit that the employees of the Committee were not governed by any Service Rules, learned counsel for the petitioner states that the employees are governed by the rules and regulations framed by the Committee subject to prior approval by the 1st respondent/Government. At any rate, in the case on hand, there are so many mitigating and negative factors against the case and claim of the respondents. Firstly, in terms of the work culture and Concessions/Treatment allowed/extended by the respondents, the petitioner was given to presume that he was rendering services similar to that of a Government Servant and that, in course of time, he would be given automatic regularisation of the services rendered by him. Secondly, not only Service Book was opened in respect of the petitioner but also Selection Grade was awarded to him after completion of 10 years period in the cadre of Junior Assistant. This type of benefit is normally not available to any employee working on contract or casual or temporary basis. Thirdly, pay revisions from time to time in terms of Pay Commission Recommendations were also

applied to him. It is seen that the 5th Pay Commission Recommendation was given effect to in the petitioner's case as it is evident from the entries made in the Service Book, fixing his pay at the correct stage. But, unfortunately, he was paid only at the old rates despite entry in the Service Register fixing the pay in terms of the 5th pay commission recommendations. In the light of the above positive factors which would naturally strengthen the expectation of the petitioner in respect of his claim for regularisation and treating him on par with the regular government employees as also the 29 years of the long and lengthy period of service put in by him, if at all the 1st respondent or the other authorities were not in favour of regularisation, they would have duly intimated him of their position even at the initial periods of service particularly meeting the specific claim of the petitioner that the service rendered by him under the employment of the Committee was whether reckoned to be the one under 'government service' or otherwise, with adequate reasoning there-for. In other words, once the authorities started treating him as a regular government employee by extracting work on that basis for a period running to 29 long years, they cannot be permitted to say at this remote point of time that it was only a casual service. Even though the impugned order proceeds as if the proposal to regularise the services of the petitioner was rejected way back in 1989, no proof in respect thereof is made available before this Court particularly when the petitioner's side vehemently deny passing of any such rejection order at that point of time. At any rate, inasmuch as the respondents have allowed the petitioner to complete his 29 years of unblemished service by treating him, in a way, as a regular Government Servant with the opening of Service Book, Extraction of work as in the case of a regular government employee, Grant of Selection Grade, Revision of Pay Scales in terms of Pay commission Recommendations from time to time in particular relating to 5th Pay Commission by making entries for revision of pay, and even now, when the respondents are not in a position to produce any material on record to show as to why the petitioner had not been made permanent despite such a long period of service of nearly three decades, in my considered opinion, the abrupt failure on the part of the authorities to justify the non-regularisation in regard to a person like the petitioner herein would, at best, be construed only as 'constructive acceptance' of the petitioner's status as 'government servant'. It follows that he should be deemed to have become permanent and that, after extracting work from the petitioner for 29 years, denial of pensionary benefits to which he is eligible would amount to illegality and a clear unfair approach.

7. In the light of the above discussion, this Court finds absolute justification to grant the prayer sought for. Consequently, the Writ Petition is allowed as prayed for by quashing the impugned order of the second respondent and directing the respondents to pay the entire pensionary/terminal benefits based on proper calculation after fixation of pay and allowance from 01.01.1999 as applicable to

the post of Junior Assistant in reference to the entries made in the Service Register. It is made clear that the entire process of calculation and disbursal of benefits shall have to be completed within a period of two months from the date of receipt or production of a copy of this Order. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

JI.

To

1. The Secretary, Education Department, Chennai -9.
2. The Director of School Education,
Education Department, Chennai-6.
3. The Chief Educational Officer,
Virudhu Nagar, Virudhu Nagar District.

+ 1 cc to M/s. V.Vijayshankar, Advocate SR.7224

+ 1 cc Government Pleader Sr.7315

SAI (CO)
EU 03.06.2015

WP No.28747/04 and
WPMP No.12 of 2015.

सत्यमेव जयते

WEB COPY