

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 29.11.2016

CORAM

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH

AND

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.A. NO. 1452 OF 2014

and

MP.No.1/2014

1. The Secretary to Government
School Education Department
Fort St. George, Chennai - 9.
 2. The Director of Elementary Education
DPI Complex, College Road
Chennai - 6.
 3. The District Elementary
Educational Officer
Thiruvellore District.
- ... Appellants

- Vs -

1. S.Swaminathan
 2. The Accountant General
Accounts & Entitlements
Teynampet, Chennai - 18.
- .. Respondents

Writ Appeal filed against the order dated 17.7.2012 passed by the learned single Judge in W.P. No.17509 of 2012. Petition filed u/a 226 of the constitution of India for the issuance of writ of certiorarified Mandamus to call for the records relating to the impugned order passed by the 4th respondent in his proceedings No. Pen 24/II/urg 512/3 dated 27.5.2008 and the consequential order No. Pen.24/5/12400338/09-10/ADK/622 dated 21.7.09 and quash the same and direct the respondents to sanction and disburse pension by rounding off the service of 9 years 7 months and 9 days as 10 years of qualifying service for the purpose of pension and consequentially release all the retirement benefits (such as Gratuity Provident funds etc. with 12% interest as per rules)

For Appellants : Mr. K.Venkataramani, AAG
assisted by Mr. R.Prathapkumar, AGP
For Respondents: Mr. K.H.Ravikumar for R-1
Mr. V.Vijayakumar for R-2

JUDGMENT

(DELIVERED BY HULUVADI G.RAMESH, J.)

This writ appeal is directed against the order passed by the learned single Judge whereunder the learned single Judge, based on Rule 43 (3) of the Tamil Nadu Pension Rules as also the order of the Division Bench of this Court in W.P. No.22833 of 2010 dated 10.11.2010, had directed the respondents/appellants herein to process the pension proposal of the petitioner by mentioning 10 years as the qualifying service from the date of retirement of the petitioner for the payment of pension.

2. The facts, as narrated in the writ petition is not in dispute. The main ground on which the impugned order is sought to be assailed is that the petitioner/1st respondent herein, not having completed 10 years of qualifying service as mandated under Rule 43 (2) of the Tamil Nadu Pension Rules, is not entitled for pension and, therefore, the order passed by the learned single Judge is liable to be set aside.

3. Per contra, learned counsel appearing for the 1st respondent placed reliance on the order of the Division Bench of this Court in W.P. No.22833 of 2010 dated 10.11.2010, on which reliance was placed by the learned single Judge to grant the relief. Therefore, it is submitted no interference is called for with the well considered order passed by the learned single Judge.

4. Heard the learned Addl. Advocate General appearing for the appellants and the learned counsel appearing for the respondents and perused the materials placed in the typed set of documents.

5. It is not in dispute that Rule 43 (3) of the Tamil Nadu Pension Rules provides that while calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half year and reckoned as qualifying service. Similar is the provision under Section 49 (3) of the Central Civil Services (Pension) Rules. While considering the said provision, a Division Bench of this Court, in W.P. No.45465 of 2002, by order dated 4.10.2007, in similar circumstances, granted relief of counting the broken period of service beyond 9 years to count as 10 years of service for the

purpose of pensionary benefits. Appeal against the said order before the Supreme Court was also dismissed. The said decision has been followed by this Court in W.P. No.22833 of 2010 as also in many other matters. Such being the position of law, similar order having been passed by the learned single Judge, in view of the order passed by the Division Bench in W.P. No.45465 of 2002, as confirmed by the Supreme Court in S.L.P. No.13829 of 2008, this Court is of the considered view that no interference is called for with the order of the learned single Judge.

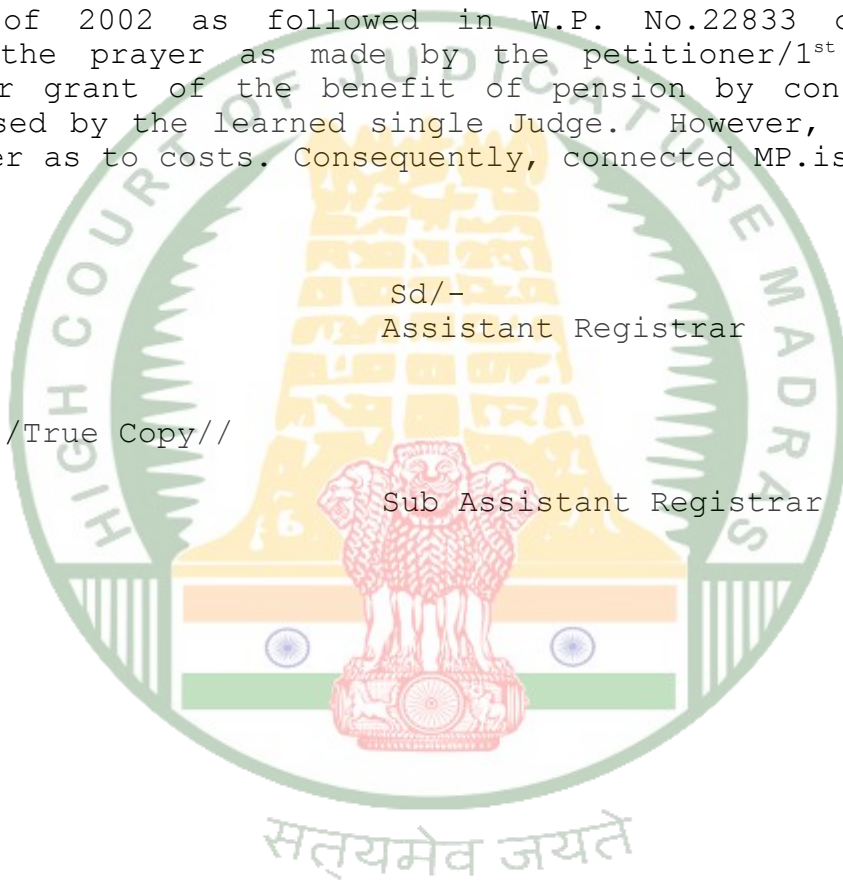
6. Accordingly, this writ appeal is disposed of in terms of the order passed by the Division Bench of this Court in W.P. No.45465 of 2002 as followed in W.P. No.22833 of 2010 by allowing the prayer as made by the petitioner/1st respondent herein for grant of the benefit of pension by confirming the order passed by the learned single Judge. However, there shall be no order as to costs. Consequently, connected MP.is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar



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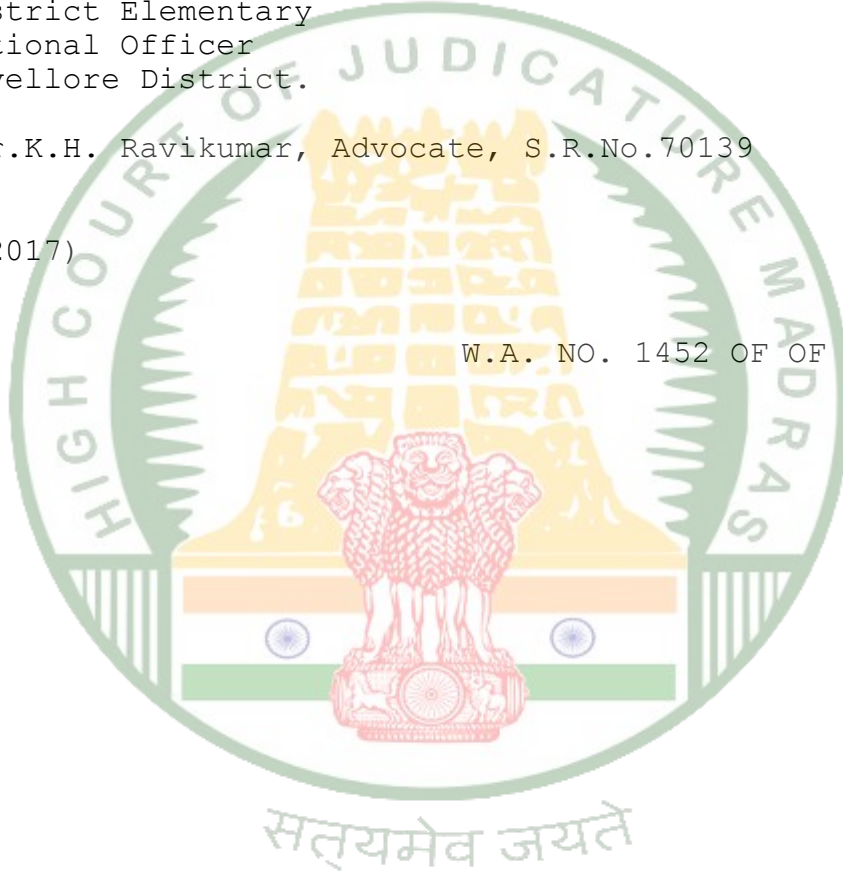
To

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Thiruvellore District.

+lcc to Mr.K.H. Ravikumar, Advocate, S.R.No.70139

sk(CO)
md(18/01/2017)

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