

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.4.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.No.11070 of 2013

S. Arockiamary

.. Petitioner

Vs

1. The State of Tamilnadu,
represented by its
Principal Secretary to Government,
School Education Department,
Secretariat,
Chennai 600 009.
2. The Director of Elementary Education,
College Road,
Chennai 600 006.
3. The District Elementary Educational Officer,
Pudukkottai,
Pudukkottai District.
4. The Assistant Elementary Educational
Officer, Pudukkottai 622 001.
5. The Secretary,
Diocesan Education Committee,
T.M.S.S.S.,
P.B.No.77, Trichy Road,
Thanjavur 613 001.
6. The Correspondent,
R.C.Middle School,
Marthandapuram,
Pudukkottai 622 001.
7. The Accountant general (A&E),
Tamilnadu, Anna Salai,
Chennai 600 018.

.. Respondents.

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records connected in Government Letter No.37355/P2/2007-12, School Education Department, dated 11.9.2012 passed by the 1st respondent and quash the same and direct the respondents to sanction pensionary benefits to the petitioner by treating the period from 4.10.1996 to 31.10.2002 as non duty period as given to Dr.V.S.P.Manickam and Thiru C. Abdul Latif.

For Petitioner : Mr.G. Elanchezhiyan

For Respondents : Mrs.M.E.Raniselvam,
Addl. Govt. Pleader for R1 to R4.
M/s. Hema Muralikrishnan for R7
No appearance for R5 and R6.

ORDER

By consent, the Writ Petition is taken up for final hearing.

2. Heard Mr.G.Elanchezhiyan, learned counsel appearing for the petitioner and Mrs.M.E. Rani Selvam, learned Addl. Govt. Pleader appearing for respondents 1 to 4 and Mrs. Hema Muralikrishnan, learned counsel appearing for the respondents 5 and 6.

3. The petitioner was appointed as a Secondary grade Teacher in St.Joseph's Higher Secondary School, Mannargudi on 9.6.1970. Subsequently, her service was regularized by the management and the same was ratified by District Educational officer, Pudukkottai. During his service period, she was appointed as a Headmistress on 5.6.1976 with the the 6th respondent which is an aided school. On 3.10.1996, she was transferred and relieved by the 6th respondent to do social work and the order of relief has been entered in her Service Register by the 6threspondent and countersigned by the 4th respondent. The petitioner has to retire from service on completion of 58 yearsof service on 31.10.2002 as per pension rules. After attaining the superannuation age of 58 years, when she applied for pensionary benefits, the same was rejected by the 7th respondent by his letter No.Pen.24/I/A15-119/03-04/68,69 dated 17.6.2003 on the ground that the petitioner hasnot attained the superannuation age as on 3.10.1996 as the petitioner was transferred to some other work by the 6th respondent Management and not returned to teaching profession and hence she was not at all eligible to get pension benefit as on 3.10.1996. On receipt of the same, the petitioner made a representation to the1st respondent to relax the pension rules in order to get pensionary benefit and the same was forwarded by the Director of School Education, Chennai by his letter dated 6.7.2009 to the 1st respondent . But the 1st respondent , by their

impugned order dated 11.9.2012, has rejected to relax the rules of the Non Government School Teachers pension rules and therefore the petitioner is not eligible to get pensionary benefits. Challenging the order impugned dated 11.9.2012, the present writ petition is filed.

4. Learned counsel for the petitioner submitted that the fact that the petitioner was working as a teacher in a sanctioned post in an aided School from 9.6.1970 to 3.10.1996 is not in dispute. Thus for the services rendered for 26 years, the petitioner is entitled for the consequential retirement benefits. Further he would submit that the said G.O.1917 Education, dated 28.10.1965 relied upon by the respondents does not apply to the case of the petitioner.

5. Learned Additional Government Pleader appearing for the respondents 1 to 4 has filed a detailed counter affidavit and submitted that admittedly the petitioner was not working as a Teacher on the date of attaining superannuation and therefore, the order impugned is rightly passed.

6. Learned counsel appearing for the respondent No.7 has also put forth her contention in support of the impugned order and prayed for dismissal of this Writ Petition.

7. It is not in dispute that the petitioner has served in the said capacity for 26 years from 9.6.1970 to 3.10.1996, as seen from paragraph 4 of the counter affidavit filed by the respondents. However, the petitioner was allotted with some other work thereafter by the respondents 5 and 6 and now the entitlement of the petitioner for pension and retirement benefits were denied placing reliance on the G.O.1917 Education dated 28.10.1965 on the sole ground that the petitioner ought to have been worked as a teacher on the date of attaining superannuation.

8. As recorded earlier, there is no dispute of facts. The petitioner has worked as a teacher for 26 years in an aided school from 9.6.1970 to 3.10.1996. This record cannot be erased by placing wrong reliance based on G.O.1917 Education dated 28.10.1965. The said order was passed on a different context.

9. The petitioner is claiming pensionary benefits only after attaining the age of Superannuation. She did not claim any benefits for the period for which she had worked other than a teacher.

10. A perusal of the said G.O.1917 Education dated 28.10.1965 would show that it is not mandatory that the teacher

should work on the last date of superannuation. The petitioner cannot be put on fault for the mistake committed by the management. Even in the said G.O., it has been stated that the teachers who are discharged due to compulsory retirement as a measure of punishment would also be entitled for payment of pension. If such is the case, a person who worked for 26 years as a teacher cannot be denied pensionary benefits on a hyper technical view that she did not worked in the said capacity on the date of superannuation. Further it is to be noted that the service rendered by the petitioner cannot be erased to decline her entitlement for payment of pensionary benefits. Hence, for the above said reasons, this Court is inclined to set aside the impugned order passed by the 1st respondent.

11. Accordingly, the order impugned is hereby set aside and consequently, the 1st respondent is directed to pay the retirement benefits to the petitioner by ordering service benefits for the period from 9.6.1970 to 3.10.1996 within a period of eight weeks from the date of receipt of a copy of this order.

12. In fine, the Writ Petition is allowed on the above terms. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

msr

To

1. The Principal Secretary to Government,
The State of Tamilnadu,
School Education Department,
Secretariat,
Chennai 600 009.

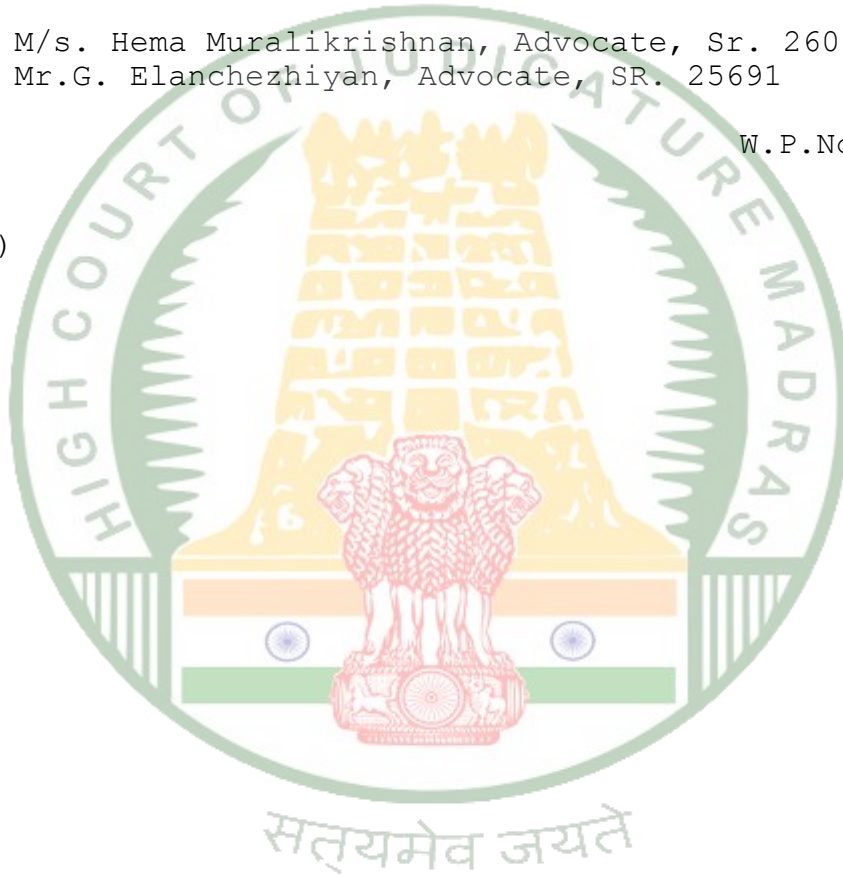
2. The Director of Elementary Education,
College Road,
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3. The District Elementary Educational Officer,
Pudukkottai,
Pudukkottai District.
4. The Assistant Elementary Educational
Officer, Pudukkottai 622 001.
5. The Accountant general (A&E),
Tamilnadu, Anna Salai,
Chennai 600 018.

1 cc to M/s. Hema Muralikrishnan, Advocate, Sr. 26008
1 cc to Mr.G. Elanchezhiyan, Advocate, SR. 25691

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PUR (CO)
kk 31/5



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