

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.06.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Appeal No.666 of 2016
and C.M.P.No.8678 of 2016

1. The State of Tamil Nadu
Secretary to Government
Education Department, Fort St.George, Chennai 9
2. The Director of Elementary School Education
Chennai 6
3. The District Elementary Educational Officer
Nagercoil
4. The Assistant Elementary Educational Officer
Thuckalay

..Appellants/Respondents 1 to 4

Vs.

P.T.Marshall (Died)

1. K.M.Vijayakumar ... R1/Petitioner
2. The Correspondent
St.Joseph Primary School
Manalikai, K.K.District
3. The Accountant General
Accountant General Officer
Teynampet, Chennai 1 ..Respondents 2 & 3/Respondent 5&6

Writ Appeal No.666 of 2016 filed under Clause 15 of Letters Patent against the order dated 02.02.2010 made in W.P.No.2095 of 2006 filed under Article 226 of the constitution of India praying for the relief of issuance of writ of mandamus directing the respondents 1 and 2 to send the family pension proposal of the petitioner on the death of his wife, late Emili Baby retired teacher of the 5th respondent school and consequentially direct the 6th respondent to sanction the pension according to law.

For appellant : Mr.T.N.Rajagopalan,
Special Government Pleader

For respondents: Mr.A.R.Nixon for R1
Mrs.P.Mahalakshmi for R2

JUDGMENT

(Judgment of the Court was delivered by HULUVADI G. RAMESH, J.)

Heard the learned Special Government Pleader appearing for the appellants/State, the learned counsel for the first respondent/petitioner in writ petition and the learned counsel for the second respondent/School Management.

2. The appellants/State challenge the order of the learned Single Judge dated 02.02.2010 passed in W.P.No.2095 of 2006, wherein, the learned Single Judge directed the Director of Elementary School Education, the Correspondent of St.Joseph Primary School, Manalikai, K.K.District and the Accountant General, Chennai to coordinate among themselves and pay the arrears of pension, family pension and arrears of salary to the legal heir, without giving any room for further litigation, within a period of three months from the date of receipt of a copy of the order.

3. It appears that one Emili Baby was appointed as Teacher in St.Joseph Primary School, Manalikai, K.K.District on 6.5.1955. Though she had to retire from service on 31.3.1992, she was mistakenly allowed to retire from service on 31.10.1989, considering the age of retirement as 58. Since the question as to whether the age of retirement was 58 or 60 was raised, the husband of Emili Baby, viz., P.T.Marshall filed a writ petition in W.P.No.4340 of 1990 on the file of this Court, questioning the pre-mature retirement. This Court by order dated 10.6.1997 allowed the writ petition, with direction to the respondents therein to pay all the arrears of salary with 12% interest from 31.10.1989, but the said order was not complied with. Thereafter, the said Emili Baby died due to ill health. Hence, the husband of Emili Baby, viz., P.T.Marshall filed another Writ Petition in W.P.No.2095 of 2008 seeking a direction to sanction family pension etc. He also died during the pendency of the writ petition, without seeing the fruits of the order passed in writ petition No.4340 of 1990. Subsequently, his legal heir, Mr.K.M.Vijayakumar was impleaded as a petitioner to the said writ petition. This Court, while disposing of W.P.No.2095 of 2006, after considering the order passed in the earlier writ petition, directed the authorities concerned to pay arrears of

pension, family pension, arrears of salary to the legal heir of Mrs.Emili Baby.

4. The learned counsel for the appellants submitted that the appellants herein are only pension proposal forwarding authorities; as per the Government Orders, interest shall be given for the belated payment of DCRG, if delay is caused due to administrative reasons of the department and no interest shall be paid, if it is caused by the individual; therefore, in the present case, the 2nd respondent/School management alone is liable to pay any interest to the first respondent and the appellants are not liable to pay any interest. The learned counsel appearing for the appellants/State, however, submitted that in pursuant to the contempt notice issued by this Court in respect of disobedience of the order passed in W.P.No.2095 of 2006, the Educational Authorities have already complied with the order passed in Writ Petition No.2095 of 2006.

5. It is a very pathetic case. The said Emili baby retired from service on 31.10.1989, considering the age of retirement as 58. It was questioned before this court in Writ Petition No.4340 of 1990, wherein, this Court by order dated 10.06.1997, directed the authorities to pay all the arrears of salary with 12% interest from 31.10.1989. The said order was not complied with. Therefore, in 2006, her husband filed Writ Petition No.2095 of 2006 and during the pendency of the said W.P., he also died. Subsequently, his legal heir proceeded with the case and a positive direction to sanction arrears of pension, family pension, etc., was ordered. The said order is challenged by the State by way of this writ appeal.

6. We have considered the entire facts and circumstances of the case and statutory provisions of law. We do not find any merit in the Writ Appeal. Moreover, the appellants herein have also complied with the order passed by the learned single judge in the Writ Petition. Hence, no interference is called for. Accordingly, the Writ Appeal is dismissed. No costs. Consequently, connected CMP is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Accountant General
Accountant General Officer
Teynampet, Chennai 18

2. The Secretary to Government
Education Department
Fort St.George, Chennai 9.

3. The Director of Elementary School Education,
CHennai 6.

4. The District Elementary Educational Officer,
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5. The Assistant Elementary Education Officer,
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