

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.03.2017

Coram

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.11558 of 2011

V.Gomathi

.. Petitioner

vs.

1. The State of Tamil Nadu
rep. by its Secretary,
Education Department,
Chennai-600 009.
 2. The Director of School Education,
College Road, Chennai-6.
 3. The Accountant General,
O/o.The Accountant General,
Teynampet, Chennai.
 4. The District Elementary Education Officer,
Nagapattinam.
 5. The Assistant Elementary Educational Officer,
Keezhvelur Range, Nagapattinam District.
 6. The Correspondent,
Aided Primary School,
Chottalvnnam, Pattamangalam,
Keezhvelur Range,
Nagapattinam District.
- ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents 1 and 2 to grant pension and retirement benefits to the petitioner for the service rendered by the petitioner as a secondary grade teacher from 29.08.1966 to 09.02.1981 in the sixth respondent school, on the basis of the representation dated 01.02.2011.

* * *

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.A.Zakir Hussain,
Govt. Advocate for RR 1, 2, 4 & 5
Ms.Hema Muralikrishnan,
Standing Counsel for R3

ORDER

The prayer in the writ petition is for a Writ of Mandamus directing the respondents 1 and 2 to grant pension and retirement benefits to the petitioner for the service rendered by the petitioner as a Secondary Grade Teacher from 29.08.1966 to 09.02.1981 in the sixth respondent School on the basis of the representation dated 01.02.2011 and pass orders.

2. The short facts pertaining to the present writ petition is that the petitioner had worked as a Secondary Grade Teacher in an Aided Primary School in Keezhvelur Range, Nagapattinam District, from 29.08.1966. After serving fourteen years, even though, her appointment was approved by the concerned Department, due to her family circumstances, she was constrained to resign her job on 09.02.1981. Her resignation and also the claim for pension was sent for approval to the fifth respondent on 14.08.1990.

3. The said proposal was returned by the fifth respondent stating that even though the petitioner has service till 04.07.2005, since she has resigned earlier, she would not be entitled or eligible to get pension. The said action on the part of the fifth respondent in returning the proposal of the sixth respondent claiming pension to the petitioner, according to the petitioner, may not be justifiable, in view of the series of Government Orders as well as the relevant pension rules.

4. Explaining the said position as to how the petitioner is entitled to get pension based on the relevant Government Orders, she had given a detailed representation on 01.02.2011 to the first respondent. Though such representation was given by the petitioner, the same has not so far been considered and no orders have been passed. Therefore, the petitioner has approached this Court by way of the present writ petition with the aforesaid prayer.

5. Mr.S.N.Ravichandran, learned counsel appearing for the petitioner, would rely upon two Government Orders, namely, G.O.Ms.No.1015, Education Department, dated 05.06.1981, as well as the G.O.Ms.No.37, Education, Science and Technology Department, dated 05.01.1983.

5.1. According to the learned counsel, the teaching staff of the aided school/non governmental school though had not been covered under any particular pension scheme, however, had been granted pension continuously from the year 1955 onwards by issuance of various executive orders.

5.2. In this regard, learned counsel would heavily rely upon G.O.Ms.No.1015, dated 05.06.1981, wherein, a number of such Government Orders have been mentioned from 1958 to 1978.

5.3. Learned counsel would also submit that subsequently G.O.Ms.No.37, dated 05.01.1983, was also issued clarifying the position, whereby, those who resigned before the crucial date of the Government Order concerned, shall be entitled to get, at least, pro rata pension for the period worked.

5.4. In this regard, learned counsel would submit that as the petitioner resigned her job on 09.02.1981 and the G.O.Ms.No.1015 was issued on 05.06.1981, the petitioner would be entitled to get pro rata pension, even though, she resigned her job, as her resignation was taken place prior to the crucial date, i.e., date of issuance of G.O.Ms.No.1015 on 05.06.1981.

5.5. In this context, learned counsel for the petitioner would also rely upon a Division Bench decision of this Court reported in 2001 Writ L.R. 852, in the matter of Government of Tamil Nadu rep. by the Secretary to Government, Department of Education Vs. S.V.Paul Jeyaraj. Learned counsel appearing for the petitioner has relied upon paragraphs 6 and 7 of the said judgement, which read thus :

"6. There is no doubt that under Rule 12, there is no entitlement of pensionary benefits to a teacher who has actually resigned from the service. However, our attention is invited to the copy of G.O.Ms.No.37, dated 5.1.1983, and more particularly to paragraphs 6 and 7 therein, which are self-explanatory and hence are being quoted by us. They are as follows:

"6. As regards "those who retired before the crucial dates" in the case of Non-teaching staff etc. who were given Pension benefits from 5.6.1981, there are specific general instructions in para 6 of G.O.No. 1015, 5.6.1981 permitting the allowing of pension to "Resigned" persons also; but there are no such general instructions permitting the allowing of pension to "Resigned" teachers (who were given pension benefits from 1.3.68 as per G.O.Ms.No. 1505/24.9.1968). Orders are however being issued in individual cases of such teachers who had "resigned" before the crucial dates. In this context, the Accountant General has asked for a clarification on the following two points:

(i) Whether it is the intention of the Government to allow pension to all the teaching staff of Aided and Local Body Schools and Teaching Staff of Aided College who had "Resigned" from service prior to the respective crucial date/dates of the respective Government Order introducing pensionary benefits?

(ii) and if so, whether they are eligible to draw pension from 1.3.1968 with

reference to Government Order Ms.No. 1505, Edn., dated 24.9.1968 read with Government Memo.No. 21344/E.6/68-5, Edn., dated 18.11.1968.

7. The Government now clarify point (i) above in the affirmative - i.e., the staff in question may be sanctioned pension by the respective authorities competent to sanction pension (without the need for any specific orders of any higher authority or of Government condoning the "resignation" in each individual case)."

7. It is therefore clear that a teacher who has resigned even after the crucial dates can be sanctioned pension by the respective authorities competent to sanction pension even without any specific orders from the higher authorities or of the Government condoning the resignation in each individual case. This would clinch the issue in favour of the respondent teacher and we find that the learned single Judge has also relied on the aforementioned Government Order, G.O.Ms.No. 37. This is apart from the fact that even the language of the Government Order dated 5.6.1981 and more particularly of paragraph 6(ii) cannot be interpreted so as to oust the teachers who have resigned after the introduction of the Pension Scheme. The provision has to be interpreted as giving a concessions even to the persons who have resigned earlier to the institution of the said Pension Scheme. We need not go into that aspect because G.O.Ms.No. 37 is more than clear. Therefore, we confirm the judgment of the learned single Judge. We are told that there is a stay in the matter. We direct the Government to finalise the pension of the respondent teacher within three months from today."

5.6. Learned counsel appearing for the petitioner would also rely upon yet another judgement of a Division Bench of this Court dated 10.10.2011, delivered in W.A.No.1626 of 2011, in the matter of The Accountant General Vs. R.Nandakumar and another, where also, the Division Bench has taken a view, in view of the earlier decision of the Division Bench in J.Paul Jayaraj case (cited supra), that the request of the retired/resigned employee can be considered and in this context, the Division Bench of this Court, in the judgement dated 10.10.2011, passed the following judgement :

"3. For better appreciation, the operative portion of the impugned order is reproduced herein below :-

"6. In the light of the above submission and decision of the Division Bench cited above, this writ petition is disposed of, giving liberty to the petitioner to make a representation before the Secretary to Government, Higher Education Department, Government of Tamil Nadu, within a period of two weeks from the date of receipt of a copy of this order and the said authority is directed to consider such representation of the petitioner, in the light of the Division Bench judgement in the Government of Tamil Nadu V. S.V.Paul Jeyaraj, (2001 (3) MLJ 430) and in the light of the orders made in SLP (Civil) no.22469 of 2001, dated 10.01.2002 and in the review petition No.54 of 2002, which was implemented as per G.O. dated 07.08.2002, and pass orders, within a period of three months from the date of receipt of a copy of the representation of the petitioner. It is well accepted principle of law that equality shall be maintained even in discretionary matters by the Government in compliance with Article 14 of the Constitution of India. It is made clear that if the petitioner is granted relaxation of the said Rule, the second respondent shall sanction pension to the petitioner within a period of four weeks from the date of the said order to be passed by the Government."

4. After hearing the learned counsel appearing for the parties, we are of the view that the appellant shall consider the representation that may be filed by the first respondent in the light of the ratio decided by the Supreme Court in the Special Leave Petition, the Division Bench of this Court and also considering the Government Orders issued from time to time. Needless to say that the first respondent-writ petitioner shall file a representation before the authority, as directed by the learned Single Judge, and the authority will take a decision in accordance with law."

5.7. By relying upon these judgements as well as the Government Orders referred to above, learned counsel for the petitioner would contend that since the petitioner also, before resignation, has put in fourteen years of service, and accordingly, pension has to be sanctioned to her.

6. Per contra, Ms.Hema Muralikrishnan, learned counsel appearing for the third respondent, relied upon the judgement of the Hon'ble Apex Court in C.Jacob V. Director of Geology

and Mining and Another, reported in 2008 (10) SCC 115. According to the learned counsel appearing for the third respondent, rule 43(2) of the Tamil Nadu Pension Rules vis-a-vis, Rule 49(2)(b) of CCS (Pension) Rules, had been considered and in fact, interpreted to say that ten year of service is not an eligibility criteria based on which pension has to be sanctioned.

6.1. According to the learned counsel, as per the said judgement of the Apex Court, those, who have not completed twenty years of minimum service, would not be entitled to claim pension. In this regard, learned counsel relied upon paragraph 17 of the said judgement of the Hon'ble Apex Court, which reads thus :

"17. The petitioner contends that if the minimum service for entitlement to retiring pension was 20 years and not 10 years, Rule 43(2) would not have stated "qualifying service of not less than 10 years". He contended that as Rule 43(2) of the TNP Rules (Rule 49(2)(b) of CCSP Rules) refers to "not less than 10 years service", any government servant who has put in service of 10 years or more is entitled to retiring pension. The said contention is misconceived. As stated earlier, the said rule does not relate to 'entitlement' of pension nor does it prescribe the conditions for eligibility, but only provides how the amount of pension should be calculated in cases where the retiring Government servant is entitled to pension under the chapter V of the pension rules. The said Rule regulates the 'amount' of pension not only in case of retiring pension, but in case of all classes of pension. Under Chapter V, in certain situations, a Government servant may be eligible for pension even where the service is less than ten years. Rules 32, 36, and 38 of TNP Rules (Rules 35, 38 and 39 of CCSP Rules) do not prescribe any minimum service for being entitled to pension, where the cessation of service is on account of superannuation, or on account of bodily or mental infirmity or on account of abolition of his post. When Rule 43(2) of TNP Rules (Rule 49(2)(2) of CCSP Rules) refers to payment of pension to a person who has a qualifying service of not less than 10 years, it does not mean that the minimum period of service prescribed for retirement pension is reduced to 10 years or that government servants who are dismissed/removed/compulsorily retired by way of punishment, or those who voluntarily retire before reaching the age of superannuation with less than 20 years of qualifying service, become entitled to pension. Rule 43(2) of TNP Rules (Rule 49(2)(b) of CCSP Rules), as noticed earlier, comes into play only when the Government servant is entitled to any of

the classes of pension enumerated under Chapter V of the Pension Rules. Therefore, when Rule 43(2) of TNP Rules (or Rule 49(2)(b) of CCSP Rule) dealing with the quantum of pension refers to a government servant re-tiring in accordance with the said rules after completing qualifying service of not less than 10 years, it does not mean that pension is payable to persons who have not completed the required minimum number of years (20 years) of service or to persons who have forfeited their service on dismissal/removal from service. Therefore, the appellant is not entitled to pension."

6.2. In view of the said judgment of the Apex Court, according to the learned counsel for the third respondent, in a number of cases, such a plea raised by the employees had been rejected by this Court.

7. This Court considered the rival submissions made by both sides.

8. In so far as the claim made by the petitioner, that whether she would be entitled to get, at least, pro rata pension for the service rendered as a teacher of an aided school, the issue can be decided by the authorities concerned, namely, the first respondent, in the teeth of the rule position as well as the judgements rendered by this Court as well as the Hon'ble Apex Court.

9. On having gone through the said Government Orders, the judgements of this Court as well as the Hon'ble Apex Court, this Court is of the considered view that it depends upon the merits of each of the case, which impacts the claim of getting pro rata pension, even without completing the minimum qualifying service within the meaning of the relevant provision. Under Section 43(2) of the Tamil Nadu Pension Rules, such claim shall be considered by the authorities concerned, only on the basis of the law laid down by this Court as well as the Apex Court and also taking into account, the relevant Government Orders.

10. Here, in the case on hand, though, the petitioner has claimed that she would be entitled to get pro rata pension for the service rendered for nearly about 14 years, in view of the Government Orders referred to above as well as the judgements of the Division Benches cited supra, the said claim has to be looked into and decided only by the respondents, especially, the first respondent.

11. Therefore, in these circumstances, this Court is of the considered view that the request made by the petitioner through her representation dated 01.02.2011 has to be considered by the first respondent and an order to that effect has to be passed.

12. In the result, the following directions are issue :

(1) The first respondent is directed to consider the representation of the petitioner dated 01.02.2011, for grant of pro rata pension the service rendered by the petitioner before her resignation, that is, between 29.06.1966 and 09.02.1981, as a teaching staff of an aided school, in the light of the Government Orders, especially, G.O.Ms.No.1015, Education Department, dated 05.06.1981 and G.O.Ms.No.37, Education, Science and Technology Department, dated 05.01.1983, and also in the light of the judgement of the Division Bench of this Court in The Government of Tamil Nadu Vs. S.V.Paul Jeyaraj, 2001 Writ L.R. 852 and also the judgement of the Apex Court in C.Jacob V. Director of Geology and Mining and Another, reported in 2008 (10) SCC 115.

(2) The aforesaid exercise shall be completed by the first respondent and the final order shall be passed thereon, after considering the merits of the issue, as directed above, within a period of twelve weeks from the date of receipt of a copy of this order.

13. With these directions, the writ petition is disposed of. However, there shall be no order as to costs.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1. The Secretary,
Tamilnadu Education Department,
Chennai-600 009.
2. The Director of School Education,
College Road, Chennai-6.
3. The Accountant General,
O/o.The Accountant General,Teynampet, Chennai.
4. The District Elementary Education Officer,
Nagapattinam.
5. The Assistant Elementary Educational Officer,
Keezhvelur Range, Nagapattinam District.

+1 cc to Mrs.Hema Muralikrishnan,advocate,sr.18638

+1 cc to Mr.S.N.Ravichandran,advocate,sr.18487

+1 cc to Govt.Pleader,sr.18709.

sr(co)

krd 20/4

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