

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No.7013 of 2013

S.Vinyagam Joseph

.. Petitioner

Vs

1. The Government of Tamil Nadu  
rep. by Secretary to Government  
School Education Department  
Secretariat, Chennai - 600 009.

2. The Director of School Education  
College Road, Nungambakkam  
Chennai - 600 006.

3. The Chief Educational Officer  
Vellore, Vellore District.

4. The District Educational Officer  
Thirupattur, Vellore District.

5. The Correspondent  
Hindu Higher Secondary School  
Vaniambadi  
Vellore District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records of the fourth respondent relating to Pro.Na.Ka.No.5479/B3/2011, dated 15.10.2012, quash the same and to issue consequential direction to the respondents to sanction pension and other retirement benefits to the petitioner taking in account his service as B.T. Assistant Science Teacher from 1.6.1962 to 1.10.1973 with effect from 1.10.1973.

For Petitioner : Mr.V.Thirupathi

For Respondents : Mrs.K.Bhuvaneswari  
Government Advocate  
for respondents 1 to 4

Mr.Sivanandam  
for 5<sup>th</sup> respondent

#### ORDER

The petitioner has filed this writ petition seeking issuance of a writ of certiorarified mandamus to call for the records of the fourth respondent relating to Pro.Na.Ka.No.5479/B3/2011, dated 15.10.2012, quash the same and to issue consequential direction to the respondents to sanction pension and other retirement benefits to the petitioner taking in account his service as B.T. Assistant Science Teacher from 1.6.1962 to 1.10.1973 with effect from 1.10.1973.

2. The facts in a nutshell are as under: The petitioner was appointed as B.T. Assistant Science Teacher in the fifth respondent school on 1.6.1962 and continued in service till 1.10.1973, without any remarks. Thereafter, due to personal problems, he resigned on his own volition and the same was duly accepted by the fourth respondent and accordingly, the petitioner was relieved from service and it was also incorporated in his service record.

3. Inasmuch as the petitioner has rendered unblemished service for 11 years as B.T. Assistant and he was not given pensionary benefits, he made a representation to the respondents for considering grant of pension and other retirement benefits. The petitioner claimed that similarly situated persons have been granted pensionary benefits pursuant to the directions of the Tamil Nadu Administrative Tribunal and Division Bench of this Court.

4. As the representations sent by the petitioner did not evoke any response, the petitioner filed a writ petition and based on the direction of this Court, the fourth respondent vide order dated 15.10.2012, which is impugned in this writ petition, rejected the request of the petitioner.

5. In this backdrop, the present writ petition is filed for the relief stated supra.

6. The learned counsel appearing for the petitioner contended that as per G.O.Ms.No.37, Education, Science and Technology Department, dated 5.1.1983, pension has to be sanctioned even in cases where incumbents had resigned, since they could not have foreseen the introduction of pension scheme

at the time they resigned and such benefits should be extended to the petitioner.

7. It is further contended that similarly placed teachers, who had resigned their jobs, were granted pension and retirement benefits by granting necessary relaxation and non extension of such benefit to the petitioner is discriminatory and violative of Article 14 of the Constitution of India.

8. Per contra, the learned Government Advocate appearing on behalf of respondents 1 to 4 submitted that the petitioner who resigned in 1973 approached this Court in the year 2011, after lapse of 37 years, and therefore the writ petition is hit by laches.

9. I heard Mr.V.Thirupathi, learned counsel for the petitioner, Mrs.K.Bhuvaneswari, learned Government Advocate for the respondents 1 to 4, and Mr.Sivanandam, learned counsel for the 5<sup>th</sup> respondent and perused the documents available on record.

10. The fact that the petitioner worked as B.T. Assistant Science Teacher in the fifth respondent school from 1.6.1962 to 1.10.1973 is not in dispute. The fact that the petitioner resigned on his own accord is also not in dispute.

11. The only ground urged by the respondent authorities is delay in approaching the Court. Not a word has been stated in the counter or across the bar on the merits of the claim of the petitioner. All that has been contended is qua the delay in approaching the Court. With regard to the delay, it is to be noted that the petitioner approached this Court earlier by filing W.P.No.9863 of 2011, wherein this Court by order dated 12.9.2011 directed respondent authorities to consider the representation of the petitioner on merits and in accordance with law. Thereafter, the fourth respondent, who passed the impugned order, rejected the representation of the petitioner solely on the ground of delay and not assigned any reason whatsoever on merits of the plea of the petitioner.

12. The Government introduced Teachers Pension Scheme. Since the Pension Scheme was not applicable to those teachers who have resigned prior to the introduction of the said Scheme, the Government passed various orders to protect the interest of employees. We are now concerned with the Government Order in G.O.Ms.No.37, Education Department, dated 5.1.1983, clarifying the earlier order in G.O.Ms.No.1015, dated 5.6.1981.

13. The Government Order in G.O.Ms.No.1015, dated 5.6.1981 contains a clause in paragraph 6(ii) to the effect that pension can be sanctioned even in cases where the incumbents had resigned since they could not have foreseen the introduction of

Pension Scheme at the time they resigned.

14. The Government Order in G.O.Ms.No.37, Education Department, dated 5.1.1983, was the subject matter of a Writ Appeal before the Division Bench in The Government of Tamil Nadu and another vs. S.V.Paul Jayaraj, reported in 2001 (3) MLJ 430. The Division Bench considered the Government order in G.O.Ms.No.37, Education Department, dated 5.1.1983 and held that a teacher, who has resigned even after the crucial date, 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. The Division Bench was of the view that liberal interpretation should be taken in the matter, in view of the language of the Government Order. The relevant observation reads thus:

"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."

15. Clause (4) of the Government Order in G.O.Ms.No.37, Education Department, dated 5.1.1983 contains the following statement:

"4. Even in cases of "resignation" after the crucial dates, the Government have in a number of hard cases of particulars individuals relaxed the stipulations and allowed retirement benefits to "resigned" teachers also."

16. The order impugned in this writ petition does not contain any indication that the fourth respondent has considered the case of petitioner, in the light of the Government Order in G.O.Ms.No.37, Education Department, dated 5.1.1983, and more particularly, in the light of Clause (4), which provides that in case of hard cases, lenient view should be taken.

17. That apart, under identical circumstances, this Court (Myself), in C.Swamidoss v. The Joint Director, Collegiate Education and others, reported in 2018 5 MLJ 753, held as under:

"14. Inasmuch as the Hon'ble Division Bench held that a teacher, who has resigned even after the crucial date, 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 and as the Government itself had extended similar benefits to non-teaching staff, there is no reason why the crucial date should not be extended in the case of non-teaching staff.

15. As stated supra, in paragraph 4 of G.O.Ms.No.37, it has been stated that: "Even in cases of 'resignation' after the crucial dates, the Government have in a number of hard cases of particulars individuals relaxed the stipulation and allowed retirement benefits to 'resigned' teachers also". This Court is at a loss to understand as to why the petitioner should be discriminated in this regard.

16. Pension can be sanctioned even in cases where the incumbents had resigned since they could not have foreseen the institution of Pension Scheme at the time they resigned.

17. The order impugned in this writ petition does not contain any indication that the respondent authorities have considered the case of the petitioner in the light of the Government Order in G.O.Ms.No.37, Education Department, dated 05.01.1983 and more particularly, in the light of Clause 4, which provides that in case of hard cases, lenient view should be taken. Moreover, the decision of the Hon'ble Division Bench of this Court will also have a bearing on the relief sought for by the petitioner. Therefore, I am of the view that the issue requires fresh consideration by the Government.

18. This Court finds no reason to take a different stand than the one taken in the decisions, referred supra.

19. In the result, the following order is passed:

(i) The writ petition is allowed and the impugned order dated 15.10.2012 passed by the fourth respondent is set aside;

(ii) The respondents are directed to grant pension and other retirement benefits to the petitioner taking in account his service as B.T. Assistant Science Teacher from 01.06.1962 to 01.10.1973 with effect from 01.10.1973;

(iii) The respondents authorities shall complete the said exercise within a period of six weeks from the date of receipt of a copy of this order;

(iv) No costs.

-s/d-

Deputy Registrar

True Copy

Sub-Assistant Registrar

To:

1. The Secretary to Government  
Government of Tamil Nadu  
School Education Department  
Secretariat, Chennai - 600 009.
2. The Director of School Education  
College Road, Nungambakkam  
Chennai - 600 006.
3. The Chief Educational Officer  
Vellore, Vellore District.
4. The District Educational Officer  
Thirupattur, Vellore District.

+1 CC to Mr.V.Thirupathi, Advocate sr 57151.

+1 Cc to Mr.Sivanandam, Advocate sr 55860.

+1 CC to Govt. Pleader sr 56439.

W.P.No.7013 of 2013

SP(24/01/2019)