

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.25767 of 2011
and M.P.No.1 of 2011

M.N.Karuppayan
... Petitioner

Vs.

- 1.The Secretary
Ministry of School Department,
Government of Tamil Nadu,
Secretariat, Chennai.
- 2.The Director
School Education Department,
DPI Campus, EVK Sampath Maligai,
Egmore, Chennai.
- 3.The Director,
Collegiate & Education,
Chennai.
- 4.The Joint Director,
DPI Campus, EVK Sampath Maligai,
Egmore, Chennai.
- 5.The Secretary,
Department of Higher Education,
Secretariat, St.George Fort,
Chennai 600 009.
- 6.The Secretary,
Department of Finance,
Secretariat, St.George Fort,
Chennai 600 009.
- 7.The Secretary,
Ministry of Human Resources Development,
New Delhi.
- 8.Kendriya Vidyalaya Sangathan,
rep.by its Deputy Commissioner,
18, Shaheed Jeet Singh Marg,
Institutional Area, New Delhi 110 016.
- 9.The Commissioner,
Kendriya Vidyalaya Sangathan,
18 Shaheed Jeet Singh Marg,
Institutional Area, New Delhi 110 016.

- 10.Educational Officer,
Kendriya Vidyalaya Sangathan,
18 Shaheed Jeet Singh Marg
Institutional Area,
New Delhi 110 016.
- 11.Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
IIT Campus, Madras 600 036.
- 12.The Principal,
Kendriya Vidyalaya No.I,
Ordinance Estate, Trichy 16.
- 13.Deputy General Manager,
Department of Education,
Neyveli Lignite Corporation Ltd.,
Neyveli-3,
Cuddalore District.
- 14.The District Educational Officer,
Cuddalore. Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records and quash the circular letter No.9-3/99-2000/KVS/Audit of the 8th respondent dated 17.11.1999 and the second respondent letter No.16807/VE/04-7 dated 17.03.2011 and to direct the respondents to consider the application of the petitioner for grant of pension for the past services rendered in various Government Aided Schools and Colleges on merits.

For Petitioner.. Mr.V.Stalin
For R1 to R6 .. Mr.A.Rajaperumal
Additional Government Pleader
For R7 .. M/s.S.Meena Kumari
Central Government Standing
Counsel
For R13 .. Mr.N.Nithianandan

ORDER

Challenging the order of the 8th and 2nd respondents dated 17.11.1999 and 17.03.2011 respectively and for a consequential direction to the respondents to consider the application of the petitioner for grant of pension for the past services rendered in various Government Aided Schools and Colleges on merits, the petitioner has come forward with this writ petition.

2. The brief facts are as follows:

i) On 13.07.1964, the petitioner joined as an English tutor in the Pachaiyappa's College in Chennai and served till

15.06.1965. Subsequently, he joined the same post in Guindy Engineering College, Chennai and rendered service from 05.08.1965 to 30.11.1965. Thereafter, he served as an English Tutor in the A.M.Jain College, Meenakbakkam, Chennai and rendered service from 22.06.1966 to 31.05.1973. Thereafter, the petitioner joined in Pachayappa's College for Men, Kancheepuram-3 and rendered his service as English Tutor from 02.07.1973 to 31.05.1976 and as an Assistant Professor for English from 08.03.1978 to 17.01.1979. After resigning from Pachaiyappa's College for Men, Kancheepuram -3, he joined as a PG Assistant on 19.01.1979 in Neyveli Lignite Corporation Ltd, Higher Secondary School, Neyveli and served upto 12.02.1985. Subsequently, he was promoted to the post of Assistant Headmaster on 13.02.1985 in the said post till 08.07.1992. In the above said school, totally he served for a period of 13 years.

ii) It is the further case of the petitioner that while he was working in the Neyveli Lignite Corporation Ltd, Higher Secondary School, he applied for the post of Principal under the 8th respondent through proper channel. Based on his application, the 8th respondent called for an interview on 11.12.1990 and selected for the post of Principal. The petitioner joined as Principal in 8th respondent's group of school K.V.Ins., Mondavi, Goa and worked till 31.09.1993. Subsequently, he served as Principal under the 12th respondent from 01.09.1993 till his retirement on 31.12.1996. The petitioner has served in different Government Aided Colleges for a period of 11 ½ years and obtained service certificates and got the pro-rata pension for the College services from the Director of Collegiate Education, Madras.

iii) According to the petitioner, he gave a representation to the 9th respondent on 18.03.1998 for condoning the delay in exercising the option for counting of past service. The 9th respondent has stated that the delay could be condoned only by the Ministry of H.R.D., New Delhi and forwarded the same to the 7th respondent for further action. Again, on 08.09.1998, the petitioner sent a letter to the 7th respondent and the Hon'ble Minister, HRD to condone the delay and count his past services rendered in various schools and Colleges for pensionary benefits. In spite of his repeated representations and reminders, the 7th respondent did not consider the same. He further submitted that even before joining in the 8th respondent, he enquired whether past services rendered in various Tamilnadu Schools and Colleges would be accounted for pensionary benefits. After his retirement, when he approached the 9th respondent, in turn the 9th respondent stated that the services rendered in Government Aided privately managed Schools and Colleges will not be taken up for counting of past services under the 8th respondent for pensionary benefits.

iv) On 02.03.2000, the 8th respondent-Deputy Commissioner (Finance) had stated that after joining in the 8th respondent on 13.07.1992, the petitioner had exercised the option for counting of his past services for pensionary benefits and the same has to be exercised within one year of joining of KVS. It was also stated that Agurchand Manmull Jain College, Meenambakkam, where he had worked from 22.06.1966 to 31.05.1973 and NLC Schools, Neyveli, Neyveli Lignite Corporation Limited, where he had worked from 19.01.1979 to 08.07.1992 are the private institutions aided by the State Government, which are not qualified for counting of past service in 8th respondent for the pensionary benefits. The petitioner had obtained service certificates and he became eligible for pro-rata pension from the third respondent for the services rendered in various Colleges. After receipt of the same, 9th respondent rejected his application. He appealed to the 8th respondent that some of his predecessor's services rendered in Government aided Private Schools were counted for pensionary benefits by the 8th respondent. For the said plea, 9th respondent stated that they had committed a mistake by counting the past services rendered in Government Aided Private Schools. The petitioner was not much aware of the Rules at the time of joining in KVS Mondavi, Goa. Not only that the Official Memorandum from the Ministry of Pension and grievances dated 9th April 1999 stating that "under the provisions of above orders, employees who were absorbed prior to 31.03.1987 were required to exercise option for counting of past service within one year of absorption or within one year of the issue of orders as the case may be", but the petitioner joined the same on 13.07.1992 and retired from service on 31.12.1996. Hence, this Rule will not be applicable to the petitioner.

v) It is the further case of the petitioner that the 8th respondent has stated that the petitioner's service under the 8th respondent school was less than 10 years, the petitioner was eligible for service gratuity and not for pensionary benefits. Though, he sent several representations to the 8th respondent, he refused to count the petitioner's past services and grant pension. Hence, the petitioner had decided to get his pension atleast for the services rendered by him in Colleges and Schools in the State of Tamil Nadu for the period of 24 years and 8 months.

vi) On 28.02.2002, the 3rd respondent sent a letter No.O.M.No.64131/G4/2001 to the 14th respondent confirming that the service rendered in the Government Aided Colleges are pensionable by which the petitioner was eligible to get pension for the service rendered in Pachaiyappa's College, Chennai, and Kancheepuram, A.M.Jain College, Chennai. On 11.11.2002, the Secretary of Neyveli Lignite Corporation Limited sent a letter dated 11/11/2001 to the 14th respondent to forward the enclosed

pension proposal of the petitioner to the Accountant General, Chennai. On 11.03.2003, the Principal Accountant General (Accounts & Entitlements) Tamilnadu, Chennai has sent a letter to the 14th respondent stating that the forwarded pension proposals of the petitioner was well after the crucial date with reference to G.O.1015 dated 05.06.1981, therefore, the past services cannot be counted as resignation after the crucial date entails forfeiture of past service. On 13.02.2004, the petitioner sent a letter to the 1st respondent to grant pension for atleast 24 years and 8 months where he served in the Schools and Colleges of Tamil nadu. The 14th respondent had written a letter to the Secretary, NLC, to send the pension proposal papers, thereafter, the petitioner sent a letter dated 04.07.2005, to send the details to the 14th respondent for grant of pension. The 2nd respondent had rejected the petitioner's pension proposal by its letter No.16807/VE/04-7 dated 17.03.2011 stating that only after 9 years from issuance of G.O.37/Education Department dated 05.01.1983, the petitioner resigned his service and applied for pensionary benefits. Thereafter, the petitioner approached to the respondents, by way of application for grant of pension for his 29 years of service rendered in various Government Aided Colleges and Schools.

3. The learned counsel for the petitioner relied upon the Judgment of the Hon'ble Supreme Court in Appeal (Civil) 1251 of 2008 , K.V.Sangathan & Anr. vs. Raghunandan Bhargava & Ors., and the petitioner's counsel states that the petitioner would be satisfied if the respondents are directed to consider the representation submitted by the petitioner and pass an order on the same in the light of the above Judgment, by setting set aside the impugned order passed by the second respondent dated 17.03.2011.

4. The learned Special Government Pleader appearing for the respondents 1 to 6 would submit that the petitioner may be directed to submit a fresh representation and the same would be considered by the respondents on merits.

5. The learned Central Government Standing Counsel appearing for the 7th respondent would submit that the petitioner has served as Tutor and Assistant Professor for about 11 ½ years in different Government Aided Colleges during the period 13.07.1964 to 17.01.1979. He has rendered service in NLC Higher Secondary School, Neyveli for about 13 ½ years during 19.01.1979 to 08.07.1992. Lastly, he worked as a Principal in Kendriya Vidyalaya (Central School), for about 4 ½ years from 13.07.1992 to 31.12.1996. He worked in a pensionable service for 29 years, 1 month and 23 days. While, he was serving as Assistant Headmaster in NLC Higher Secondary school, he applied through proper channel for the post of Principal in KVS and got selected the same. M/s.S.Meena Kumari, learned Central Government

Standing Counsel produced a letter dated 17.11.1999 wherein it is stated that privately managed aided schools are not considered as Central or State Autonomous Bodies and therefore, the service rendered in these schools cannot be treated on par with service rendered in Central or State/Govt. Autonomous Bodies. Hence, the question of counting of service rendered in privately managed aided schools does not arise.

6. I heard Mr.V.Stalin, learned counsel for the petitioner; Mr.A.Rajaperumal, learned Additional Government Pleader appearing for the respondents 1 to 6; M/s.S.Meena Kumari, learned Central Government Standing Counsel appearing for the 7th respondent and Mr.N.Nithianandan, learned counsel appearing for the 13th respondent and perused the materials available on record.

7. Considering the nature of the prayer sought for by the petitioner, this Court directs the petitioner to make a fresh representation seeking pension for the past services rendered in various Government Aided Schools and Colleges, within a period of two weeks from the date of receipt of a copy of this order, by mentioning the Judgment passed by the Hon'ble Supreme Court in Appeal (Civil) 1251 of 2008, K.V.Sangathan & Anr. vs. Raghunandan Bhargava & Ors., and on receipt of such representation, the second respondent is directed to pass appropriate orders on merits and in accordance with law, after giving opportunity of personal hearing to the petitioner.

8. In the light of the discussion and above :

- i) the writ petition is allowed;
- ii) the impugned order passed by the 8th respondent letter No.9-3/99-2000/KVS/Audit dated 17.11.1999 and 2nd respondent letter No.16807/VE/04-7 dated 17.03.2011 are hereby quashed.
- iii) The petitioner is directed to make a fresh representation to the 2nd respondent, within a period of two weeks from the date of receipt of a copy of this order.
- iv) On receipt of the same, the 2nd respondent is directed to pass appropriate orders on merits and in accordance with law, after giving opportunity of personal hearing to the petitioner;

v) The said exercise shall be completed within a period of four weeks thereafter. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

kkd

To

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- 3.The Director,
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- 4.The Joint Director,
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- 5.The Secretary,
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- 14.The District Educational Officer,
Cuddalore.

+1 cc to M/s.Row and Reddy Advocate sr 66048
+1 cc to M/s.S.Meenakumari Advocate sr 65815
+1 cc to M/s.A.Nithanandam Advocate sr 65470
+1 cc to the Government Pleader sr 66632

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