

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2017

CORAM

THE HONOURABLE MR. JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.A.NO.2210 OF 2010

G.Chinnappar (Since deceased)

1.C.Babu

2.C.Angel Mary

3.Anlet Viji

(Cause title accepted vide order
of Court dated 20.10.2010 made in
M.P.No.1 of 2010 in W.A.SR.No.
80132 of 2010)

... Appellants 1 to 3 Legal heirs of
Applicant in (O.A.1616/2001)

VS.

1.The Secretary to Government
Secondary Education Department
Government of Tamil Nadu
Fort St. George,
Chennai - 600 009.

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

3.The Chief Educational Officer
Nagercoil,
Kanyakumari District.

4.The District Educational Officer
Thuckaley,
Kanyakumari District.

5.The District Educational Officer
Kuzhithurai at Marthandam
Kanyakumari District.

... Respondents/Respondents
in OA No.1616/2001

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 22.06.2010 passed in W.P.No.2775 of 2007.

Writ Petition filed under Article 226 of the Constitution of India praying to call for the records connected to O.Mu.No.86418/I.2/99 dated 26.10.1999 on the file of the Director of School Education Chennai 6 and to quash the same and to issue appropriate direction directing the respondents to sanction and release pension and other benefits to the petitioner in W.P.No.2775 of 2007.

For Appellants : Mr.P.Chandrasekaran

For Respondents : Mr.K.V.Dhanapalan
Special Government Pleader

J U D G M E N T

(JUDGMENT OF THE COURT WAS MADE BY M.GOVINDARAJ, J.)

Challenging the order dated 22.06.2010 passed by this Court in W.P.No.2775 of 2007, the appellants have come up before this Court.

2. The case of the writ petitioner is that he was originally appointed as a Malayalam Pandit at the Government High School, Marthandam and Government S.L.B. School at Nagercoil. While he was working as Malayalam Pandit at Government Boys High School, Marthandam, he was implicated in a criminal case in the year 1952. He was placed under suspension on 01.01.1953. Since he was implicated in a murder case, his suspension was not revoked. The Criminal Court by its judgment dated 22.03.1956 acquitted him from the charges. Since he became a mental patient, he could not follow up for revocation of suspension and take steps to rejoin duty. From 1956, till he attained the age of superannuation on 28.10.1979, the writ petitioner had not taken any steps. In the meanwhile, the School which was within the jurisdiction of Travancore Cochin was severed and attached to Kanyakumari District with effect from 01.11.1956, by virtue of State re-organisation. He had put in 11 years of service till the date of his suspension and hence, was eligible for pension as per G.O.Ms.No.1917 Education Department, dated 28.10.1965.

3. The writ petitioner made representation and it was rejected stating that he served for two years and ten months only and hence, he was not entitled to pensionary benefits. The

rejection order was passed on 26.10.1999 with factually incorrect statements. By that time, he was 80 years of age and therefore, filed an Original Application No.1616 of 2001 before the Tamil Nadu Administrative Tribunal, Chennai Bench, Chennai, seeking to set aside the rejection order dated 26.10.1999. On abolition of the Tribunal, the same was transferred to this Court and renumbered as W.P.No.2775 of 2007. This Court, after hearing the case elaborately, dismissed the writ petition on 22.06.2010. Against the order of dismissal, the present writ appeal is preferred.

4. The ground of challenge includes that the order passed by this Court is non-est in law, as it was passed against a dead person. The failure to implead the present appellants 1 to 3, resulted in miscarriage of justice. The wife of the writ petitioner (LATE) G.Chinnappar is entitled to receive family pension, till her death and thereafter, his children to receive the benefits accrued by way of family pension. Therefore, the appellants claimed that their deceased father was entitled to pension and it should have been granted in their favour.

5. We have heard the submissions made by the learned counsel appearing for the appellants and the learned Special Government Pleader appearing for the respondents.

6. Admittedly, the father of the appellants Late G.Chinnappar had joined service in Kanyakumari District, prior to State re-organisation. It is evident from the above facts that he was an employee in the Madras Malabar State. While so, he was implicated in a murder case and was placed under suspension with effect from 01.01.1953. He was acquitted from the charges by judgment dated 22.03.1956. The writ petitioner, ought to have worked out his remedies, at the relevant point of time, that is after his acquittal on 22.03.1956. But the factual averments made by the writ petitioner reveals that he had become a mental patient and therefore, he could not pursue his grievances before the appropriate forum. There is no explanation as to what happened thereafter.

7. In the meanwhile, due to State re-organisation, States of Tamil Nadu and Kerala were separated and Kanyakumari District had become an integral part of the State of Tamil Nadu. Even at that stage, the writ petitioner had not taken any steps to rejoin duty or to redress his grievances. On the other hand, after attaining the age of superannuation on 28.10.1979, he belatedly claimed that he was entitled to the pensionary benefits, as if he had put in 11 years of service.

8. The documents produced by the writ petitioner before the Tribunal shows that he had made his first representation on 16.09.1999 at the age of 78 years, for which, the second respondent has sent a reply in his proceedings O.M.No.86418/I-2/99 dated 26.10.1999. The reply reveals that Late G.Chinnappar was removed from service. He had served in Government High School, Marthandam from 17.09.1947 to 12.04.1949 for a period of one year seven months and twenty-six days. Thereafter, for seven months between 1950 and 1951 and three months in the year 1952, totalling to two years ten months and two days. In view of G.O.Ms.No.1917, Education Department, dated 28.10.1965 and as per rule 27(1) of Pension Rules, the Government servants who had put in ten years of service alone are entitled to pension. Therefore, the second respondent rejected the request of the writ petitioner as he had put in service only for two years ten months and two days. Thereafter, the writ petitioner has made representations on 17.02.2000, 28.04.2000 and 29.09.2000 respectively to the first respondent seeking sanction of retirement benefits including pension.

9. From the above facts, it is very clear that the writ petitioner has not preferred any appeal, after he received the rejection letter dated 26.10.1999. Before the State re-organisation with effect from 01.11.1956, the writ petitioner had not taken any steps. Even as on the date of attaining the age of superannuation i.e., on 28.10.1979 also, the writ petitioner had not taken any steps to redress his grievances. Actually, the cause of action to rejoin services had arisen on 22.03.1956. However, as per his own statement, the writ petitioner Late G.Chinnappar was not in a good mental state and hence, he did not take any steps to rejoin service. Therefore, it is very clear that the writ petitioner was ineligible to rejoin duty. The writ petitioner has also projected his case that he was placed under suspension, but it is not clear as to whether he was removed from service or placed under suspension. The impugned order states that he was removed from service. Literally, from the year 1956 till 2001, the writ petitioner had not taken any steps and therefore, the learned Single Judge had rightly observed that it is a futile exercise, more so, after the death of the employee namely G.Chinnappar on 28.05.2001. The delay in raising the issue by itself vitiates the claim of the appellants. The learned Single Judge has rightly rejected the request that it was not agitated in time and the writ petitioner has approached this Court only after 21 years of the accrued cause of action and the right to receive pension had lapsed by the time. The learned Single Judge has rightly decided the issue and the order dated 22.06.2010 passed by this Court in W.P.No.2775 of 2007 does not require any interference.

10. In fine, the writ appeal is dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

TK

To

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+1cc to Mr.C.Johnson, Advocate Sr.11661

W.A.NO.2210 OF 2010

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