

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.02.2016

DATED: 20.01.2017

CORAM :

THE HONOURABLE MR.JUSTICE M.S.RAMESH

Writ Petition No.20767 of 2013
and
M.P.No.1 of 2013

S.Periyakkal ... Petitioner
Vs.

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Department of School Education,
Secretariat,
Chennai 6.
- 2.The District Elementary Education Officer,
Namakkal, Namakkal District.
- 3.The Commissioner,
Rasipuram Panchayat Union,
Rasipuram, Namakkal District. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order in Letter No.11844/S2/2011-7, dated 14.05.2013 passed by the first respondent and quash the same and consequently direct the respondents to pay the pensionary benefits to the petitioner by considering her service for the period between 10.09.1955 and 06.07.1972.

For Petitioner : Mr.N.Manokaran
For Respondents 1&2 : Mr.K.Balamurugan,
Government Advocate.
For 3rd Respondent : Mr.R.A.S.Senthilvel

ORDER

The case of the petitioner is that she was appointed as School Assistant Teacher on 10.09.1955. On 06.07.1972, the petitioner had resigned his job owing to her family circumstances. Her resignation was accepted with effect from 06.07.1972 by the third respondent. As such, the petitioner had put in about 17 years of service.

2.From the date of her retirement, there was no provision for payment of pension to Government servant who had completed less than 20 years of qualifying service. Subsequently, the Government enacted the Tamil Nadu Pension Rules 1978 to extend the benefit of pension to those who have completed less than 20 years. When the petitioner had sought for extension of the benefit of payment to her, the third respondent had rejected the same on the ground that since the petitioner had opted for resigning from the post, she is not entitled for pension since resignation from a service entails forfeiture of her service. Aggrieved against the same, the present writ petition has been filed.

3.Mr.N.Manoharan, learned counsel appearing for the petitioner submitted that similarly placed persons who had resigned from their post have also been extended the benefit of pension and therefore, the respondents cannot discriminate the case of the petitioner. Citing the case of a teacher named R.Sundaram Iyer who resigned from his service from 1965, learned counsel for the petitioner submitted that the first respondent had granted pension to him by relaxing Rule 12(a) of the Pension Rules for staff of non Government educational institutions. Likewise, the same benefit had been extended in the case of one Suba Seetharaman who had filed a writ petition in W.P.No.27789 of 2005.

4.Mr.K.Balamurugan, learned Government Advocate for the respondents 1 and 2 submitted that under Rule 23 of the Tamil Nadu Pension Rules, 1978, the past service of a teacher is liable to be forfeited when he or she resigned from service. In view of the specific Rule disentitling the petitioner who had also resigned from the service, learned Government Advocate submitted that the petitioner is not entitled for the benefit of pension.

5.Mr.R.A.S.Senthilvel, learned counsel for the third respondent also reiterated the same proposition.

6.I have given careful consideration to the submissions made by the respective learned counsel.

7.It is not in dispute that in identically placed persons who had also resigned from their services have been extended the benefit of pension. The respondents have not convincingly countered this aspect in their counter affidavit during their submissions.

8.Learned counsel appearing for the petitioner had produced the order in G.O.Ms.No.391, Education Department, dated 07.04.1989, whereby one Thiru.Sundaram Iyer, former teacher who had resigned after rendering 11 years of service was extended

the benefit through this Government Order. To this, the learned Government Advocate for the respondents 1 and 2 would submit that the sanction for pension in the case of Sunaram Iyer was done on humanitarian ground and as a special case by relaxing 12(a) of the pension Rules for staff of non Government educational institutions. In the case of Mr.Suba Seetharaman, this Court taking cognizance of the fact that the said Suba Seetharaman, though had resigned from his service, is entitled for pension in view of the earlier benefit extended under G.O.Ms.No.391, dated 07.04.1989 to R.Sundaram Iyer. As per Rule 12(b) of the non Government Teachers Pension Rules, 1958, the teachers are eligible for pension, if they have rendered a total qualifying service of 10 years or more, the respondents having extended the benefit to the teachers who have resigned cannot deny the same to the petitioner. Hence, the conduct of the respondents in extending the benefit to identically placed persons and denying the benefit to the petitioner is an act of indiscrimination and colourful exercise of power.

9.It is a well settled law that no State shall deny any person equality before law or equal protection of laws as guaranteed under Article 14 of the Constitution of India. The impugned order denying the benefit of pension to the petitioner which was extended to another similarly placed person, is arbitrary and unconstitutional and hence, is liable to be set aside.

10.For the foregoing reasons, the order passed by the first respondent dated 14.05.2013 is quashed. Consequently, the respondents are directed to pay the pensionary benefits to the petitioner by considering her services for the period between 10.09.1955 and 06.07.1972, within a period of eight weeks from the date of receipt of a copy of this order.

11.With the above observation, the writ petition stands allowed. No costs. Consequently, M.P.No.1 of 2013 is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

sms

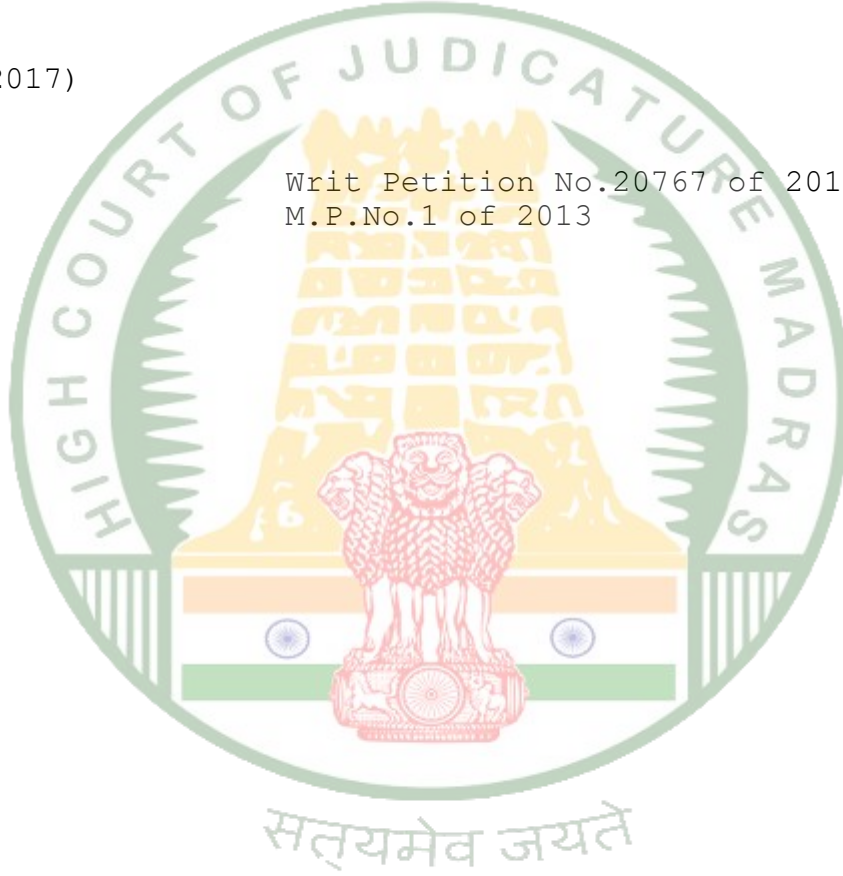
To

1.The Secretary to Government,
State of Tamil Nadu,
Department of School Education,
Secretariat,
Chennai 6.

2.The District Elementary Education Officer,
Namakkal, Namakkal District.

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md(16/02/2017)

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