

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2017

CORAM:

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

W.P.No.16648 of 2012
and
M.P.Nos.1 and 2 of 2012

K.Malini

..Petitioner

vs.

1. The District Educational Officer,
Thirupathur - 635 601.

2. The Secretary School Committee,
Hindu Higher Secondary School,
Ambur - 635 802,
Vellore District.

3. The Headmaster,
Hindu Higher Secondary School,
Ambur - 635 802,
Vellore District.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents to extend the service of the petitioner as B.T.Assistant in the 2nd and 3rd respondent Institution till the end of the academic year namely 31.05.2013 with all service and monetary benefits.

For Petitioner :Mr.M.Muthappan

For Respondents:Mrs.M.E.Rani Selvam (for R1)
Additional Government Pleader
Mr.V.R.Rajasekaran (for R2 and R3)

ORDER

The writ petition is filed by the petitioner seeking issuance of a writ of Mandamus directing the respondents to extend the service of the petitioner as B.T.Assistant in the 2nd and 3rd respondent Institution till the end of the academic year, namely till 31.05.2013, with all service and monetary benefits.

2.The facts in a nutshell are as under:

Pursuant to the orders passed by the Chief Educational

Officer, Salem, the petitioner was appointed as B.T. Assistant in the second respondent school on 18.06.2004 on a consolidated pay. Thereafter, the petitioner was brought into regular time scale of pay and her probation was also declared.

3.The petitioner was to attain the age of superannuation on 09.06.2012, that is in the middle of an academic year, and, therefore, by virtue of G.O.Ms.No.1643, Education Department, dated 27.08.1988, it is claimed that she is entitled to continue in the same school on re-employment till the end of the academic year, namely till 31.05.2013. In this regard, the petitioner submitted a letter on 07.05.2012 to the 2nd respondent along with a medical certificate seeking extension of service till 31.05.2013. However, it is alleged that the said representation did not evoke any response. Hence, the petitioner has filed this writ petition for the relief stated supra.

4.At this juncture, it is to be noted that when the matter was taken up on 29.06.2012, this Court granted an order of interim injunction restraining the respondents 2 and 3 from relieving the petitioner from the post of B.T. Assistant pending disposal of consideration of extension of the service of the petitioner till 31.05.2013.

5.I heard Mr.M.Muthappan, learned counsel appearing for the petitioner, Mrs.M.E.Rani Selvam, learned Additional Government Pleader appearing for the 1st respondent and Mr.V.R.Rajasekaran, learned counsel appearing for the respondents 2 and 3 and perused the entire records.

6.When the matter was taken up for hearing today, the learned Additional Government Pleader appearing for the 1st respondent produced a copy of the letter addressed to the respondents 2 and 3, categorically stating that the services of the petitioner had been extended till 31.05.2013, subject to the result of the writ petition.

7.It is to be noted that the above said Government Order, i.e., G.O.Ms.No.1643, Education Department, dated 27.08.1988, postulates three conditions for the teachers, who attain the age of superannuation in the middle of the school year, for re-employment till the end of the academic year, namely:

- (i)the conduct and character of the teacher should be satisfactory;
- (ii)they should be physically fit to continue in service; and
- (iii)the pension papers should be submitted at least one year before the date of their retirement.

If the petitioner satisfies the above conditions, the petitioner is entitled to re-employment. That apart, this Court is of the firm view that the true intend behind granting such re-employment till the end of the academic year is to ensure that

the curriculum of the children is not interrupted in the midst of an academic year.

8.The above said view of this Court is fortified by a decision of this Court dated 08.11.2012 made in W.P.No.27377 of 2012 etc., batch and the relevant paragraphs of the said decision read as under:

"Government Orders states that service extension to a teacher has been issued in public interest and for the academic welfare of the students. The artificial introduction of minimum service by the Director of School Education, the issue raised in these writ petitions is no longer res integra as V.RAMASUBRAMANIAN,J. in W.P.No.12883 of 2010 (M.Rajendran Vs. The Director of School Education, Chennai-6) has allowed similar writ petition by an order dated 19.07.2010. In paragraph Nos.5 to 8, it is observed as follows:

'5.Unfortunately, the respondents have not relied upon any Rule or Government Order for coming to the above conclusion. In G.O.Ms.No.1643 Education Department dated 27.10.1988, the Government issued revised instructions with regard to re-employment of teachers. The earliest order, providing for re-employment till the end of the academic year, was passed way back in 1959 in G.O.Ms.No.249, Education, dated 09.02.1959. It was only after about 30 years that those instructions were revised and the revised instructions, found in G.O.Ms.No.1643, Education Department, dated 27.10.1988, read as follows:

'The order first ready above, while permitting the continuance of the teachers in service on employment terms on their attainment of the age of superannuation in the middle of the school, the following pre-requisite conditions have been prescribed. (1) The Character, and the Conduct of the teacher should be satisfactory. (2) They should be physically fit to continue in service.

2.Now it has been brought to the notice of the Government that in respect of School Education Department, more than 25% of the pension proposals are being sent to the Accountant General in a year. To avoid delay on the part of the teachers, who are due to retire in preferring claims and in view of the fact that almost all the teachers are interested in getting employment, the Director of School Education has suggested to incorporate another condition, viz., the pension papers should be submitted atleast one year before the date of their retirement be made as the third pre-requisite condition for re-employment.'

6.There is nothing to suggest in the above Government Order that if a teacher had completed less than the qualifying service of 10 years for grant of pension, he would not be entitled to the benefit of

re-employment. But, the Chief Educational Officer, Vellore, who is the second respondent herein, rejected the request of the petitioner for re-employment only on the basis that the petitioner had not completed the qualifying service.

7.The Director of School Education, Chennai also appears to have issued instructions on 13.08.2008 to the effect that if a teacher had rendered services for a period of less than 10 years, he would not be permitted for extension of service. But, this order of the Director of School Education, Chennai is also not based upon any Government Order. In such circumstances, the stand taken by the respondents appears to be wholly ill-founded.

8.More than anything else, the grant of re-employment to the teachers till the end of the academic year is not actually a right or benefit or privilege conferred upon the teachers. It is actually a privilege conferred upon the students, so that they have continuity of studies during the course of their academic year. The purpose for which, teachers are granted reemployment, is to ensure that there is no interruption in the curriculum of the children. This purpose has nothing to do with the qualifying service put in by a teacher for the purpose of pension.'

8.In the light of the above, all the writ petitions are allowed and the respondents are directed to grant re-employment forthwith to the petitioners from the date of their retirement till 31.05.2013. Consequently, the connected miscellaneous petitions are closed. No costs."

9.In the case on hand, it is not the case of the respondents that the petitioner is disqualified for being considered for re-employment. Therefore, such extension of service ought to have been granted when such request was made by the petitioner even before her date of superannuation. However, taking note of the fact that the services of the writ petitioner had been extended till 31.05.2013, this Court is not inclined to traverse into those aspects at this stage.

10.In such view of the matter, the writ petition is closed with a direction to the respondents to pay all the benefits due and payable to the petitioner immediately. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

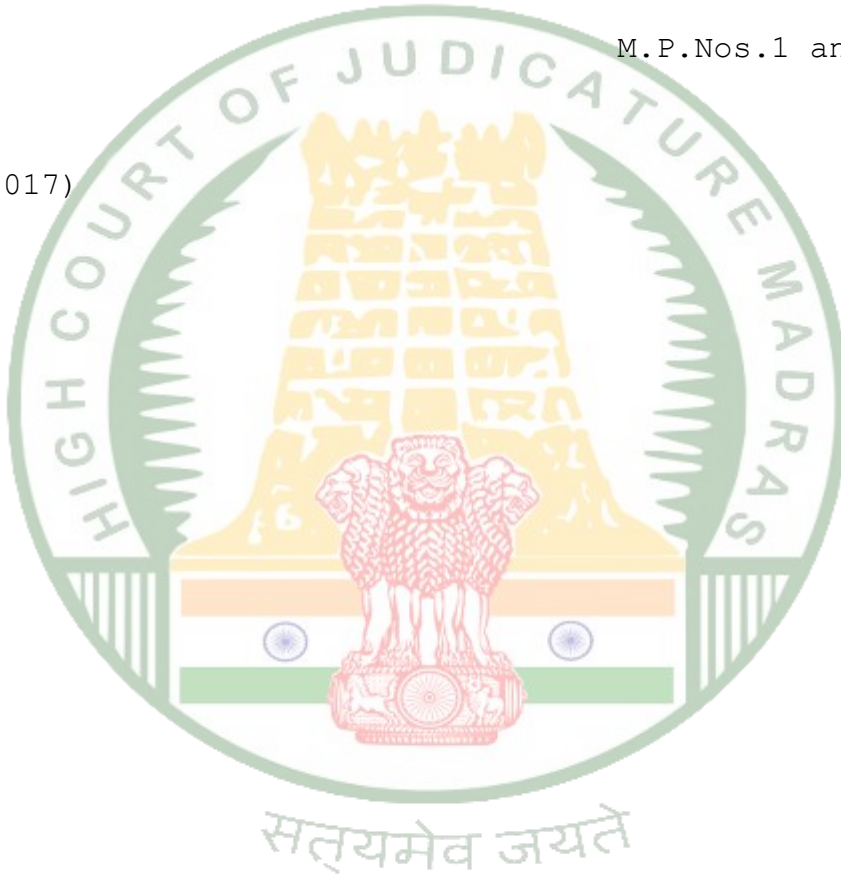
The District Educational Officer,
Thirupathur - 635 601.

+1 CC to Mr.M. Muthappan, Advocate sr 49525.

+1 Cc to The Additional Govt. Pleader sr 49876.

W.P.No.16648 of 2012
and
M.P.Nos.1 and 2 of 2012

MR (CO)
sp (09/10/2017)



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