

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2017

CORAM

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

W.P.No.16986 of 2004  
and  
WP.MP.No.20140 of 2004

1.M.Karuppasamy (died)  
2.Krishnammal  
3.Veeralakshmi  
4.Pechiammal ... Petitioners

(Petitioners 2 to 4 substituted in the place of  
deceased first petitioner as per order in  
WPMP.No.128 of 2008)

Vs.

1.The Joint Director of School Education (Secondary),  
Chennai-6.  
2.The Chief Educational Officer,  
Thuthukudi,  
Thuthukudi District.  
3.The District Educational Officer,  
Kovilpatti,  
Thuthukudi District.  
4.The Secretary,  
Parvathy High School, सत्यमेव जयते  
Illuppaiurani,  
Kovilpatti Taluk,  
Thuthukudi District. .. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the second respondent in Aa.Thiru.Mu.12263/Aa 3/99, dated 30.12.1999 as confirmed by the first respondent in Mu.Mu.No.124422/T3(9)/01 dated 25.3.2004 and quash the same and direct the respondents to settle all the arrears of salary and all the other consequential benefits including the pension.

For Petitioner : Mr.P.Ganesan  
for M/s.S.Mani

For Respondents : Mrs.M.E.Raniselvam  
Addl. Government Pleader  
for respondents 1 to 3

ORDER

This writ petition has been filed seeking a writ of certiorarified mandamus to call for the records of the second respondent in Aa.Thiru.Mu.12263/Aa 3/99, dated 30.12.1999, as confirmed by the first respondent in Mu.Mu.No.124422/T3(9)/01 dated 25.3.2004 and quash the same and also to direct the respondents to settle all arrears of salary and other consequential benefits including the pension.

2. Pending writ petition, the writ petitioner died and his legal heirs were brought on record as petitioners 2 to 4.

3. It is alleged that the deceased petitioner joined as part time Pre-vocational Instructor in Agriculture on 15.9.1961 in the fourth respondent school. While the deceased petitioner was working, the fourth respondent school was upgraded as High school in 1989 and the deceased petitioner had been absorbed to the High school as part time Pre-vocational Instructor. However, after four years, the absorption was cancelled on the ground that there was no sanctioned part-time post in the High school.

4. It is alleged that the third respondent addressed a letter to the second respondent for redeployment of the deceased petitioner to some other school and without considering the redeployment, the second respondent had simply cancelled the absorption and left the matter in the lurch.

5. The Government had issued orders in G.O.Ms.No.109, Education Department, dated 26.4.1999 that part-time teachers working in the Middle schools would be permitted to get the scale of pay as they were drawing while they were drawing in Middle schools and when the Middle school was upgraded as High school, the benefit of the aforesaid G.O., should be extended to the deceased petitioner. But on the contrary, the second respondent, by an order dated 30.12.1999, informed the deceased petitioner that G.O.Ms.No.109 was not applicable to him as he retired on 31.12.1998..

6. When the Government had passed an order taking into consideration of the special case of this nature, the rejection order passed by the second respondent on the ground that the

petitioner reached superannuation and the Government Order has no application was nothing but deliberate intentional.

7. On 3.9.1999, the deceased petitioner submitted a representation to the respondent authorities, including the Director of School Education. Since no response from the respondent authorities, the petitioner filed W.P.No.15614 of 2001 and the said writ petition was allowed by this Court by directing the Director of School Education to consider and pass orders on the representation. By an order dated 25.3.2004, the first respondent passed an order rejecting the claim of the deceased petitioner. Challenging the same, the petitioner has filed the present writ petition.

8. Refuting the averments in the affidavit filed in support of the writ petition, the third respondent filed counter stating that the deceased petitioner was inducted into High school from 1.3.1990 by the second respondent. However, his induction was cancelled as soon as it came to light that such induction was wrong by the second respondent himself and the grant paid to him was stopped from 17.3.1994. Thereafter, the deceased petitioner was continued in service by the Management of the fourth respondent school till 31.12.1998, the date on which he attained 58 years of age. It is stated that the Management granted re-employment to the deceased petitioner from 1.1.1999 to 31.5.1999 and paid salary for the period from 17.3.1994 to 31.5.1999.

9. According to the third respondent G.O.Ms.No.109 cannot be applied to the case of the deceased petitioner, as he retired from service even before issuance of the said Government Order. It is also stated that the deceased petitioner was only a part-time Pre-vocational Instructor without any service conditions and therefore, he cannot claim any retirement benefits and prayed for dismissal of the writ petition.

10. I heard Mr.P.Ganesan, learned counsel appearing for the petitioner and Mrs.M.E.Raniselvam, learned Additional Government Pleader appearing for the respondents 1 to 3 and also perused the materials available on record.

11. Reiterating the averments in the affidavit filed in support of the writ petition, the learned counsel for the petitioners submitted that the respondent authorities cannot act detrimental to the interest of the deceased petitioner, particularly, after 28 long years of service. Therefore, the impugned orders are liable to be quashed. He submitted that there is no justification in holding that G.O.Ms.No.109, dated 26.4.1999 was not applicable to the case of the deceased petitioner.

12. Per contra, the learned Additional Government Pleader submitted that the petitioner was only a part time pre-vocational instructor without any service conditions and scale of pay and for the period for which the deceased petitioner was not paid grant by the department viz., 17.3.1994 to 31.12.1998, the Management of the fourth respondent school had paid salary. Therefore, there remains nothing to be redressed. She argued that being a part time instructor, the deceased petitioner cannot claim any retirement benefits as the same was not available to him.

13. The deceased petitioner was appointed as part-time Pre-vocational Instructor in Agriculture on 15.9.1961 in the erstwhile Middle school and when the Middle school was upgraded as High school in 1989, the deceased petitioner had been absorbed to the High school as part-time Pre-vocational Instructor. However, without any reason, after four years, the absorption was cancelled by the second respondent on the ground that there was no sanctioned part-time post in the High school. The deceased petitioner was working in the High school in the sanctioned post and paid salary to him.

14. The Government had issued orders in G.O.Ms.No.109, dated 26.4.1999 to the effect that part-time Pre-vocational Instructors, who were fully qualified and part-time Pre-vocational Instructors, who were qualified to work in the Middle school and working in the Middle school shall continue to draw their existing pay even after the upgradation of the Middle school into High school, so long as they work in the post even though they did not acquire the requisite qualification. In the said G.O., it is stated that in future, part-time Pre-vocational Instructors should not be permitted to work in High schools.

15. As stated supra, the deceased petitioner joined as part-time Pre-vocational Instructor on 15.9.1961 in a sanctioned post in the fourth respondent when the school was Middle school and the same was upgraded in 1989 as High school. When the Middle school was upgraded as High school, the deceased petitioner was absorbed in the High school. Even in the High school, if there were no part-time Pre-vocational Instructor, they cannot act detrimental to the interest of the deceased petitioner because he had been working as part-time Pre-vocational Instructor from 1961 in a sanctioned post by getting aid from the Government. Therefore, the respondent authorities should have approved the absorption of the deceased petitioner in the High school or transferred him to some other school.

16. It is seen that in the year 1994, the respondent authorities passed an order directing to relieve the petitioner.

The question of relieving would arise only when there was an order viz., termination, dismissal, removal or suspension.

17. In the case on hand, no order had been passed and therefore, the respondent authorities cannot pass an order simply relieving the deceased petitioner. Assuming that the deceased petitioner was relieved, he was still holding the post of Pre-vocational Instructor awaiting posting in the appropriate place. But the respondent authorities have not given posting to him and the deceased petitioner had reached superannuation on 31.12.1998. Therefore, in the absence of any order either by the Government or by the concerned authorities or even by the Management terminating, removing or compulsorily retiring the deceased petitioner from service, he is deemed to be in service till his retirement and he is entitled to get retirement benefits.

18. It is pertinent to point out that when the respondent authorities had chosen to hold that G.O.Ms.No.109 was not applicable to the deceased petitioner, even then, he has to be treated as part-time Pre-vocational Instructor and settle retirement benefits on his retirement as he had not been terminated from service or dispensed with in any other manner. When the deceased petitioner was working in a sanctioned post, the respondent authorities ought to have followed the provisions contained in the Tamil Nadu Private Schools (Regulation) Act.

19. As stated by the petitioner, even if the petitioner could not be accommodated in the High school on the ground that in High school there was no part-time Pre-vocational Instructor post available, the respondent authorities ought to have re-deployed the deceased petitioner as per Section 26 of the Tamil Nadu Private Schools (Regulation) Act. But the respondent authorities failed to do so. Therefore, the deceased petitioner is entitled for all service benefits as there was no fault on him and it was only on the fault of the respondent authorities. The reason given in the impugned orders is vague and the same cannot be sustained. Therefore, the impugned orders passed by the respondent authorities are liable to be set aside.

20. At the cost of repetition, it is reiterated that the deceased petitioner was working from 1961 in a sanctioned post as part-time Pre-vocational Instructor and when once the fourth respondent Middle school was upgraded as High school and the deceased was absorbed in the High school in 1989 and also paid salary upto 1994, it amounts to approval. Therefore, the respondent authorities are estopped from denying the statutory benefits to be entitled by the deceased petitioner.

21. It was contended by the respondent authorities that since G.O.Ms.No.109 was effective from the date of its issue and since the deceased petitioner retired before 26.4.1999, the petitioners cannot seek benefits of the said G.O. There is no force in the contention of the respondent authorities. Though G.O.Ms.No.109 was issued in 1999, the object and purpose with which the said Government Order came to be issued in respect of all teachers as in the case working in the school alone. Therefore, it cannot be said that the deceased petitioner was not entitled for the benefit of G.O.Ms.No.109, dated 26.4.1999.

22. In the light of the aforesaid discussions, I am of the view that the case of the petitioners has to be considered sympathetically as the deceased petitioner was served nearly 28 years in the fourth respondent and cannot be denied of benefits when similarly placed persons were given such benefits. Therefore, the orders impugned in this writ petition are not sustainable in the eye of law and the same are liable to be set aside.

23. In the result,

(a) this writ petition is allowed by setting aside the impugned order in Aa.thi.Mu.12263/Aa3/99, dated 30.12.1999 passed by the second respondent, as confirmed by the first respondent in Mu.Mu.No.124422/T3(9)/01, dated 25.03.2004.

(b) the respondent authorities are directed to pay arrears of salaries and other benefits including the pension to the petitioners.

(c) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No cost. Consequently, connected miscellaneous petition is closed.

vs

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The Joint Director of School Education (Secondary),  
Chennai-6.

2.The Chief Educational Officer,  
Thuthukudi,  
Thuthukudi District.

3.The District Educational Officer,  
Kovilpatti,  
Thuthukudi District.

sm:6.7.2018

W.P.No.16986 of 2004  
and  
WP.MP.No.20140 of 2004



WEB COPY