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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.03.2016**

CORAM:

THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**
AND
THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

W.A[MD].No.1303 of 2016

V.P.Manickavasagam : Appellant/Petitioner

Vs.

- 01.Accounts-General,
Anna Salai,Chennai
- 02.The Joint Director of School Education,
(Secondary Education),
College Road, Chennai-6.
- 03.The Chief Educational Officer,
Virudhunagar, Virudhunagar District.
- 04.K.V.S. Higher Secondary School,
Virudhunagar, Virudhunagar District.
Rep. by its Secretary and Correspondent.

: Respondents/Respondents

PRAYER: Writ Appeal is filed under clause 15 of the letters patent to set aside the order dated 22.07.2014 passed in W.P.(MD). No.15262/2012 on the file of this court.

Prayer in WP(MD). 15262/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Writ of Mandamus directing the respondents 1 to 4 herein to sanction the pension benefits of the petitioner herein who was discharged from service on 13.10.1990.

For Appellant : Mr.R.Sundaram Madura for
M/S.Polax Legal Solutions

For Respondent No.1 : Mr.P.Gunasekaran

For Respondent 2 & 3 : Mr.V.Muruganantham
Additional Government Pleader

For Respondent 4 : Mr.T.Pon Ramkumar
(in SR stage)

**JUDGMENT**

[Judgment of the Court was delivered by T.SIVAGANANM, J]

This writ appeal has been filed against the the order dated 22.07.2014 passed by this Court in W.P.(MD).No.15262/2012.

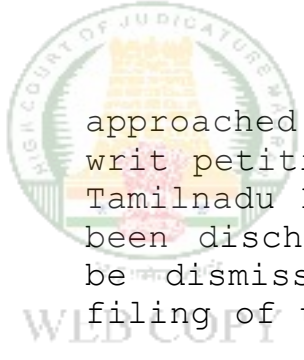
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2. Heard Mr.R.Sundaram Madura, learned counsel appearing for M/s Polax Legal Solutions for the appellant and Mr.P.Gunasekaran, learned counsel appearing for the first respondent and Mr.V.Muruganathan, learned Additional Government Pleader appearing for the respondents 2 and 3 and Mr.T.Pon Ramkumar, learned counsel appearing for the respondent No.4.

3. This writ appeal is directed against the order dated 22.07.2014 passed in W.P.(MD)No.15262 of 2012 by which the writ petition was dismissed not on merits but on the ground that the petitioner has not come forward with clean hands by not disclosing the writ petition filed by him in W.P.(MD) No. 12157 of 1993.

4. The appellant's case is that he is aged about 77 years and he is suffering from dementia and he is unable to recollect the earlier proceedings and to inform the present counsel about the filing of writ petition.

5. The service carrier of the writ petitioner has had a chequered history. In the year 1990, the fourth respondent management passed an order dated 13.10.1990 discharging the petitioner from service. The petitioner preferred an appeal and then review and the same ended against the petitioner. The appellant immediately filed a writ petition in W.P.(MD) No.15486 of 1990 and the said writ petition was disposed of by directing the petitioner to prefer an appeal before the competent authority and to file a damages suit. Accordingly the petitioner filed a damage suit in O.S.No.149 of 1991 on the file of the Sub Court, Srivilliputhur. While the said suit was pending, the appellant filed W.P.No.12157 of 1993 to sanction pension. The said writ petition was dismissed as withdrawn on 15.12.1998. The suit filed by the petitioner was dismissed for default on 18.07.1996. In the mean time, it appears that the appellant filed an appeal before the Joint Director of School Education, the second respondent on 10.03.1997. Since the said appeal was rejected as not maintainable, the petitioner filed a writ petition in W.P.(MD) No.1396 of 1999. The said writ petition was dismissed for default. In the back ground of these facts, the writ petitioner submitted a representation to the official respondents through proper channel/management on 17.03.2011. Based on the said representation, the Director of School Education vide proceedings dated 23.03.2011 directed the third respondent herein to take proper steps in connection with the petitioner's representation. Since no action was initiated pursuant to such direction, the petitioner



approached this Court in W.P.(MD)No.15262 of 2012. In the said writ petition, the petitioner contended that in terms of Rule 5 of Tamilnadu Pension Rules, 1978, he is entitled to pension as he has been discharged from service. However, the writ petition came to be dismissed on the ground that the petitioner had suppressed filing of the earlier writ petition.

6. While it is true that the petitioner did not disclose the filing of the earlier writ petition, the petitioner's explanation is that due to dementia and advanced age he did not inform his counsel about the earlier writ petition, which does not appear to be deliberate or willful. The appellant would state that he is suffering from dementia and there is nothing to show that the said statement is false. The management has taken definite stand before this Court that the order dated 13.10.1990 passed against the petitioner is an order of discharge and not an order of dismissal. If that is so, in terms of Rule 5 of Tamilnadu Pension Rule, the petitioner would be entitled for pension. Further more, the writ petition in W.P.No.15262 of 2012 was filed only after the petitioner exhausted the remedies available to him by making representation which was directed to be considered by the third respondent-the Chief Educational Officer, Viruchunagar District. Therefore, we find that the writ petition could be entertained and appropriate directions could be issued since matter pertains to the claim for pension.

7. In the result, the Writ Appeal is allowed and the order made in W.P.(MD) No.15262 of 2012 is set aside and the fourth respondent management is directed to submit a proposal for sanction of pension to the appellant within the period of three weeks from the date of receipt of copy of this order. The third respondent in turn shall follow due process and ensure that the pension is sanctioned at the earliest. No costs.

Sd/-

Assistant Registrar(Co)

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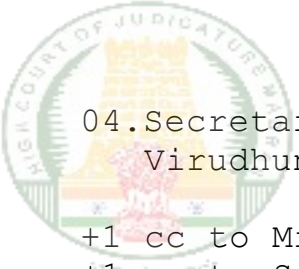
Sub Assistant Registrar

To

01.Accounts-General, Anna Salai,Chennai.

02.The Joint Director of School Education,
(Secondary Education),
College Road, Chennai-6.

03.The Chief Educational Officer, Virudhunagar,
Virudhunagar District.



04.Secretary and Correspondent.K.V.S. Higher Secondary School,
Virudhunagar, Virudhunagar District.

+1 cc to Mr.T.Pon Ramkumar , Advocate in SR.No. 17427

+1 cc to Special Government Pleader, SR.No:17640

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Judgment made in
W.A[MD].No.1303 of 2016
23.03.2017