

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.26013 of 2015

R.Subramanian

... Petitioner

Vs

1.The Secretary to Government,
School Education Department,
Fort St. George,
Chennai-600 009.

2.The Director of School Education,
College Road,
Chennai-6.

3.The District Educational Officer,
Chennai South,
Saidapet, Chennai-15.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned letter issued by the 1st respondent in Letter No.3007/C.C.1(1)/2014-2, dated 03.11.2014 and quash the same and consequently direct the respondents to sanction and pay pension and all pensionary benefits with the revised pay and arrears of pension with all consequential benefits.

For Petitioner : Ms.Swathi Subramaniam for
M/s.Sasikala Subramaniam

For Respondents: Mr.C.Munusamy,
Special Government Pleader

O R D E R

Heard Ms.Swathi Subramaniam, learned counsel for the petitioner and Mr.C.Munusamy, learned Special Government Pleader appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief,

"To issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned letter issued by the 1st respondent in Letter No.3007/C.C.1(1)/2014-2, dated 03.11.2014 and quash the same and consequently direct the respondents to sanction and pay pension and all pensionary benefits with the revised pay and arrears of pension with all consequential benefits. "

3.The writ petitioner was appointed as Higher Grade Teacher in Aided Elementary School in Therkukadu, Kathripulam, Thiruthuraipoondi Taluk, on 11.04.1946 and served in various schools till 18.01.1965. The service details of the petitioner were given in paragraph -2 of the affidavit which are extracted below:

Sl.N o	NAME OF THE SCHOOL	PERIOD OF SERVICE	TOTAL SERVICE
1.	Aided Elementary School, Therkukadu, Kathripulam	11.04.1946 to 30.04.1946	20 days
2.	Aided Elementary School, Poosarikadu, Karthirpulam	01.05.1946 to 16.05.1946	16 days
3.	Aided Elementary School, Mahadanapuram	11.06.1946 to 18.09.1946	03months & 7 days
4.	Aided Elementary School, Sembodai	31.10.1946 to 07.04.1947	05 months & 8 days
5.	Aided Elementary School, Semboday	10.04.1947 to 01.05.1947	22 days
6.	Sri Thayumanavar Vidyalayam, Vedaranyam	24.06.1947 to 13.06.1951	3 years and 11 months and 20 days
7.	Ammankoil Higher Secondary School, Tanjore	20.06.1951 to 08.01.1952	6 months & 19 days
8.	Aided Elementary School, Kothagai, Tanjore District	10.01.1952 to 11.11.1953	1 year & 10 months & 1 day
9.	Aided Elementary School, Kothagai, Tanjore District	01.05.1954 to 11.05.1954	11 days
10.	Board High School, Thiruthuraipoondi	12.11.1953 to 25.02.1954	3 months & 14 days

Sl.N o	NAME OF THE SCHOOL	PERIOD OF SERVICE	TOTAL SERVICE
11.	Board High School, Ayyakaranpulam	09.07.1954 to 11.06.1956	1 year & 11 months & 3 days
12.	Board High School, Vedaranyam	12.06.1956 to 30.06.1958	2 years & 19 days
13.	Gopalapuram Boys Higher Secondary School, Madras	01.07.1958 to 18.01.1965	6 years & 6 months & 18 days

4. On 18.01.1965, the petitioner tendered his resignation on medical grounds in view of serious fracture in his right thumb as he met with an accident and was under treatment for long time. According to the petitioner, the Government has issued G.O.Ms.No.37, Department of Education, Science and Technology, dated 05.01.1983, granting pension to staff of Non-Governmental Educational Institutions, teaching staff of Aided Schools who resigned before the crucial date i.e. 01.04.1955. Claiming pension on his retirement, the petitioner made representations to the Department periodically from 1989, it appears that the 2nd respondent had also recommended for grant of pension by his proceedings dated 24.03.2000, however, there was no action forthcoming from the competent authority.

5. In the above said circumstances, the petitioner filed the writ petition in W.P.No.1911 of 2014 and this Court disposed of the writ petition by directing the respondent to pass final orders on his representation. In response to direction of this Court, the 1st respondent issued a communication on 03.11.2014, rejecting the claim of the petitioner on two grounds. Firstly, the resignation of the petitioner was after the cut off date i.e. 01.04.1955 and secondly as per rule 23 of the Tamil Nadu Pension Rules, 1978 (in short, 'the Rules') the resignation results forfeiture of past service. The said communication dated 03.11.2014 is put to challenge in the present writ petition.

6. Ms.Swathi Subramaniam, learned counsel appearing for the petitioner would contend that both the grounds stated in the impugned communication are unsustainable and untenable in law for the following reason:

Firstly in the decision of the Division Bench of this Court in the case of THE GOVERNMENT OF TAMIL ANDU V. S.V.PAUL JAYARAJ, reported in (2001) 3 M.L.J. 430, it has been held that even the resignation after the cut off date, can be considered for grant of pension. He would draw the attention of this Court to paragraph - 7 of the judgment of the learned Division Bench of this Court which is extracted below:

"7. It is therefore clear that a teacher who has resigned even after the crucial dates can be sanctioned pension by the respective authorities competent to sanction pension even without any specific orders from the higher authorities or of the Government condoning the resignation in each individual case. This would clinch the issue in favour of the respondent teacher and we find that the learned single Judge has also relied on the aforementioned Government Order, G.O.Ms.No.37. This is apart from the fact that even the language of the Government Order dated 5.06.1981 and more particularly of paragraph 6(ii) cannot be interpreted so as to oust the teachers who have resigned after the introduction of the Pension Scheme. The provision has to be interpreted as giving a concessions even to the persons who have resigned earlier to the institution of the said Pension Scheme. We need not go into that aspect because G.O.Ms.No.37 is more than clear. Therefore, we confirm the judgment of the learned single Judge. We are told that there is a stay in the matter. We direct the Government to finalise the pension of the respondent teacher within three months from today."

7.The other objection that Rule 23 was invoked forfeiting the service of the petitioner cannot also hold good in respect of the decision of the Division Bench of this Court reported in the case of D.VIJAYARANGAN V. SECRETARY, SALES TAX APPELLATE TRIBUNAL reported in 2009 Writ L.R. 12, if resignation is on medical grounds, the forfeiture cannot be pressed in to service. In fact, there are number of decisions rendered by the Division Bench stating that if resignation is tendered only on the basis of the medical grounds, it would not amount of forfeiture of service under Rule 23 of the Tamil Nadu Pension Rules.

8.In these circumstances, the learned counsel would submit that both grounds as stated in the impugned communication cannot be countenanced in law and therefore, the petitioner has made out the case for grant of the relief as prayed for.

9. Upon notice, Mr.C.Munusamy, learned Special Government Pleader entered appearance and filed a detailed counter affidavit.

10.The learned Special Government Pleader would vehemently contend that the writ petition is hopelessly time barred since

admittedly the petitioner made representations way back in 1965 and therefore, the claim made after several decades cannot be entertained. He would further submit even otherwise the petitioner having tendered his resignation has forfeited his past service and therefore, he is not entitled to the relief as prayed for. As regards, the objections regarding limitation in filing the writ petition, the issue raised in the writ petition pertaining to grant of monthly pension to the petitioner. Though the objection regarding limitation can be applied in respect of payment of pension from 1965, however, the objection cannot hold good if grant of pension to be counted from a prospective date, since the cause of action for grant of monthly pension arise from the date of filing of the writ petition, as pension is drawn by the petitioner every month which gives rise to a recurring cause of action for the petitioner. In such view of the matter, law of limitation cannot strictly be applied and application of law of limitation cannot result in denial of payment of pension, if the petitioner is otherwise eligible to be sanctioned.

11. In view of the above, as rightly contended by the learned counsel for the petitioner that the reasons as set forth in the impugned communication were not sustainable. Therefore, the impugned communication of the 1st respondent in Letter No.3007/C.C.1(1)/2014-2, dated 03.11.2014, is hereby set aside. Since the petitioner has chosen to approach this Court after a passage of five decades, this Court certainly is of the considered view that he is not entitled for grant of pension from the date of his retirement. In such view of the matter, it is declared that the petitioner is entitled to be paid pension with effect from three years prior to the date of filing of the writ petition, if he was otherwise eligible under the scheme of Pension Rules by treating resignation as not one of forfeiture of service. The respondents are directed to pass appropriate orders for grant of pension with arrears for three years prior to filing of the present writ petition and to continue to pay the monthly pension to the petitioner. The direction shall be complied with by the respondents within a period of six weeks from the date of receipt of a copy of this order.

12. With the above direction, this Writ Petition is allowed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
School Education Department,
Fort St. George,
Chennai-600 009.

2.The Director of School Education,
College Road,
Chennai-6.

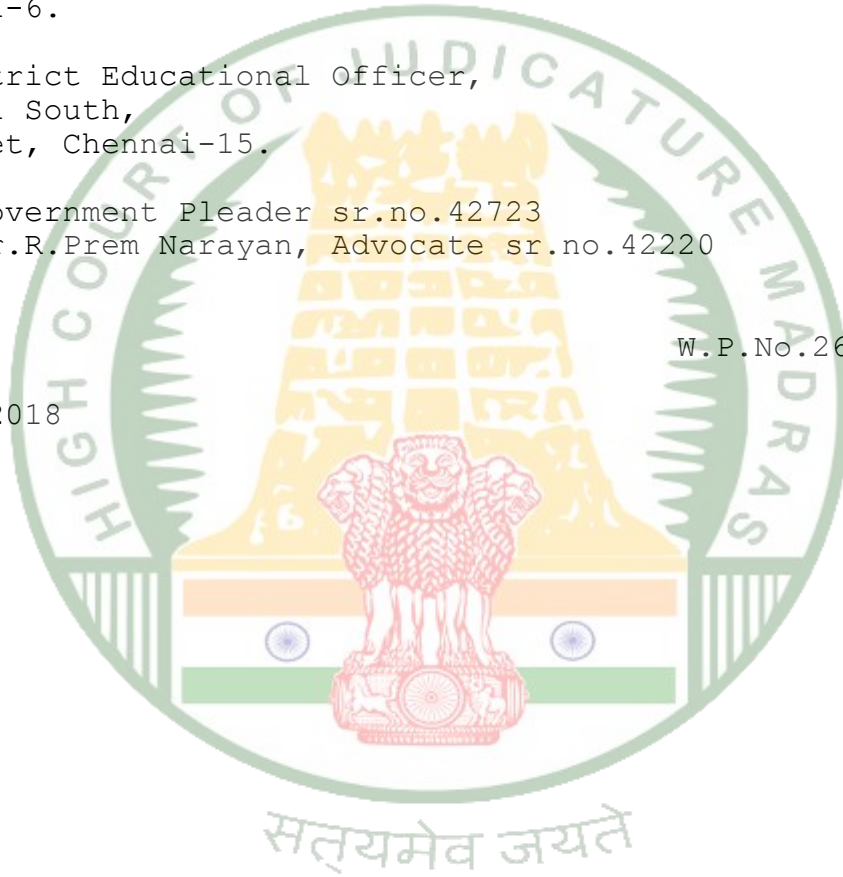
3.The District Educational Officer,
Chennai South,
Saidapet, Chennai-15.

+1cc to Government Pleader sr.no.42723

+1cc to Mr.R.Prem Narayan, Advocate sr.no.42220

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