

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2018

CORAM

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

W.P.No.21405 of 2009

C.Swamidoss

.. Petitioner

vs

1. The Joint Director,
Collegiate Education,
Madurai Region,
Madurai.
2. The Accountant General (A&E),
Tamilnadu, Chennai-600 018.
3. The Accounts Officer,
Office of the Accountant General (A & E),
Tamilnadu,
Chennai - 600 018.
4. The State of Tamilnadu,
rep. by the Secretary to Government,
Education Department,
Secretariat, Chennai - 9. ... Respondents

(Respondent No.4 impleaded as per order dated
15.7.2010 in M.P.No.1 of 2010) in WP.21405/2009

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus calling for the records relating to order No.Pension 22/III/S241-1550/RETD/2006-07 dated 26.03.2007 passed by the third respondent and Order No.5410/U3/09, dated 14.07.2009 passed by the first respondent and to quash the same and to direct the fourth respondent to grant pensionery benefits with effect from 05.06.1981 by granting relaxation in terms of para 4 of the G.O.Ms.No.37 dated 05.01.1983 with all consequential benefits and arrears of pay and allowances, together with interest at 12% p.a. (Prayer was amended as per order dated 13.08.2010 in M.P.No.2 of 2010) in WP.NO.21405/2009)

For Petitioner : Ms.Y.Kavitha
for M/s.PVS Giridhar and
Sai Associates

For Respondents : Mr.A.Rajaperumal
Addl. Govt. Pleader
for respondents 1 and 4

Mr.T.S.Selvaraj
for respondents 2 and 3

ORDER

The petitioner seeks to quash the order of the third respondent dated 26.03.2007 and also the order of the first respondent dated 14.07.2009 and to direct the fourth respondent to grant pensionary benefits with effect from 05.06.1981 with all consequential benefits and arrears of pay and allowances, together with interest at the rate of 12% per annum.

2. Brief facts which formed the basis for filing of the writ petition are as follows:

On 05.08.1963, the petitioner joined in the service as a Head Clerk (non-teaching staff) in Ayyanadar Janagiammal College, Sivakasi, which is an aided college and he resigned from service with effect from 14.08.1978 on medical grounds. According to the petitioner, he had put in continuous service of 15 years and 10 days to the utmost satisfaction of his superiors.

3. According to the petitioner, the Government introduced Liberalized Pension Scheme to the retired teaching staff of aided colleges. Subsequently, G.O.Ms.No.2213, dated 11.10.1976 was passed extending the benefit to non-teaching staff of aided colleges, who retired from service with effect from 01.04.1976 and the crucial date was fixed on 11.10.1976.

4. It is alleged by the petitioner that G.O.Ms.No.1015, dated 05.06.1981 provides pensionary benefits even to non-teaching staff who retired before the crucial date 11.10.1976. As per G.O.Ms.No.1015, Liberalized Pension Scheme was extended to the incumbents who had resigned from service. Subsequently, the Government has passed G.O.Ms.No.37, dated 05.01.1983, which provides that the incumbents who resigned before the crucial dated 11.10.1976 were also entitled for pension with effect from 05.06.1981.

5. The grievance of the petitioner is that as per G.O.Ms.No.1015, dated 05.06.1981 and G.O.Ms.No.37, dated 05.01.1983, he is entitled to get pensionary benefits with effect from 05.06.1981, as the petitioner resigned from service with effect from 14.08.1978.

6. On 09.06.2005, the first respondent directed the Secretary of Ayyanadar Janakiammal College to submit pension papers to sanction pensionary benefits in favour of the petitioner. The first respondent forwarded the pension papers to the second respondent. By an order dated 02.02.2007, the first respondent sanctioned pension with effect from 05.06.1981. But to the shock and surprise, by an order dated 26.03.2007, the third respondent sent a communication to the petitioner stating that the petitioner is not entitled to pensionary benefits. By an impugned order dated 14.07.2009, the first respondent declined to grant pensionary benefits to the petitioner. Challenging the order of the third respondent as well as the first respondent, the petitioner has filed the writ petition.

7. Refuting the writ petition, respondents 2 and 3 have filed counter stating that the petitioner had approached the respondents 30 years after seeking pensionary benefits. According to respondents 2 and 3, G.O.Ms.No.1015, dated 05.06.1981 is not applicable to the petitioner. It is stated that the Government alone has the discretionary power to consider and relax the Government Order for enabling the individual teachers to get retirement benefits. It is also stated that as per G.O.Ms.No.37, if a non-teaching staff resigns the post before 01.04.1976, he is entitled to pension from 05.06.1981. The petitioner resigned from the post on 14.08.1976 i.e., after 01.04.1976 and therefore, the petitioner is not entitled to the relief as sought for.

8. I heard Ms.Y.Kavitha for M/s.PVS Giridhar and Sai Associates, learned counsel appearing for the petitioner and Mr.A.Rajaperumal, learned Additional Government Pleader appearing for the respondents 1 and 4 and Mr.T.S.Selvaraj, learned counsel appearing for the respondents 2 and 3 and also perused the materials available on record.

9. Admittedly, the petitioner was a non-teaching staff. The petitioner resigned from his job and it was accepted by the appointing authority. Since there was no provision to pay pension at that point of time, the petitioner failed to make a claim. Subsequently, the Government introduced Liberalized Pension Scheme. Since the Liberalized Pension Scheme was not applicable to those incumbents who have resigned prior to the introduction of the said Scheme, the Government passed various orders to protect the interest of staff members .

10. The Government Order in G.O.Ms.No.1015, dated 05.06.1981 provides for sanction of pension to staff of non-Government Educational Institutions viz., (i) Non-teaching staff of Aided schools and Colleges; (ii) Teaching and Non-teaching staff of Aided Technical Educational Institutions; and (iii) Staff of Regional Engineering College, Tiruchirappalli those who retired before the respective crucial dates. G.O.Ms.No.1015 stipulates pension to be sanctioned from the date of order. Clause 6(ii) stipulates that pension can be sanctioned even in cases where the incumbents had resigned since they could not have foreseen the introduction of Pension Scheme at the time they resigned.

11. It is pertinent to note that G.O.Ms.No.37, Education Department, dated 05.01.1983 was the subject matter of a Writ Appeal before a Division Bench of this Court in The Government of Tamil Nadu and another v. S.V.Paul Jayaraj, reported in 2001 (3) MLJ 430. The Division Bench considered the Government Order in G.O.Ms.No.37, Education Department, dated 05.01.1983, and held that a teacher, who has resigned even after the crucial date, 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. In paragraph 7, the Hon'ble Division Bench held as under:

"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 5.6.1981 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."

12. In G.O.Ms.No.37, dated 05.01.1983, it has been specifically stated as under:

"8. However, as regards point (ii) above, the Government direct that the persons benefitted with reference so the above clarification need be allowed pension only from 05.06.1981 and that no arrears need be allowed for the period prior to 05.06.1981."

13. The grievance of the petitioner itself is to grant pensionary benefits with effect from 05.06.1981 with all consequential benefits and arrears of pay and allowances, together with interest at 12% per annum.

14. Inasmuch as the Hon'ble Division Bench held that a teacher, who has resigned even after the crucial date, 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 and as the Government itself had extended similar benefits to non-teaching staff, there is no reason why the crucial date should not be extended in the case of non-teaching staff.

15. As stated supra, in paragraph 4 of G.O.Ms.No.37, it has been stated that: "Even in cases of 'resignation' after the crucial dates, the Government have in a number of hard cases of particulars individuals relaxed the stipulation and allowed retirement benefits to 'resigned' teachers also". This Court is at a loss to understand as to why the petitioner should be discriminated in this regard.

16. Pension can be sanctioned even in cases where the incumbents had resigned since they could not have foreseen the institution of Pension Scheme at the time they resigned.

17. The order impugned in this writ petition does not contain any indication that the respondent authorities have considered the case of the petitioner in the light of the Government Order in G.O.Ms.No.37, Education Department, dated 05.01.1983 and more particularly, in the light of Clause 4, which provides that in case of hard cases, lenient view should be taken. Moreover, the decision of the Hon'ble Division Bench of this Court will also have a bearing on the relief sought for

by the petitioner. Therefore, I am of the view that the issue requires fresh consideration by the Government.

18. In the result, the following order is passed:

- (i) The writ petition is allowed and the impugned orders dated 26.03.2007 and 14.07.2009 are set aside;
- (ii) The respondents 1 and 3 are directed to consider the case of the petitioner in the light of the observations made supra.
- (iii) The respondents shall pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order.
- (iv) No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Joint Director,
Collegiate Education,
Madurai Region,
Madurai.
2. The Accountant General (A&E),
Tamilnadu, Chennai-600 018.
3. The Accounts Officer,
Office of the Accountant General (A & E),
Tamilnadu,
Chennai - 600 018.
4. The Secretary to Government,
State of Tamilnadu
Education Department,
Secretariat, Chennai - 9.

W.P.No.21405 of 2009

GMR(CO)
GSP(18/06/2018)