

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 26.11.2018

CORAM:
THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P. No. 24860 of 2018

Mrs. Prema Nalinam Christian

...Petitioner

Vs.

1.Union of India

Rep. By the Commissioner,
Kendriya Vidyalaya Sangathan,
Head Quarters, 18 Institutional Area,
Shahid Jeetsingh Marg,
New Delhi 110 016.

2.The Deputy Commissioner,
Kendriya Vidyalaya Sangathan,
Chennai Region, IIT Campus,
Chennai 600 036

3.The Registrar
Central Administrative Tribunal
Chennai Bench, Chennai - 600 104

...Respondents

Prayer: Writ Petition filed under Article of 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for records relating to the order in O.A. No. 596/2012 dated 2-6-2015 passed by the 3rd respondent Tribunal and quash the same as illegal and consequently direct the 1st and 2nd respondents to extend the pension benefits to the petitioner in terms of 1st respondents' policy bearing office memorandum No. F.No. 152-1/79-80/KVS/Budget/Part-II dated 1-9-1988.

For Petitioner : Mr. R. Arumugam

For Respondents : Mr. M. Vaidhiyanathan for R1 and R2
R3 - Tribunal

ORDER
(Order of the Court was made by M.M.SUNDRESH, J.)

The petitioner joined the services in the Kendriya Vidyalaya Sangathan in the year 1983. At that point of time, the scheme available for pension is called CPF Scheme. Thereafter, another scheme came into force with effect from 1.9.1988 called

GPF. This has been done by adopting the scheme with effect from 1.5.1987. Though the petitioner made representations from the year 1996 requesting that she should be given the benefit as per the GPF Scheme as against CPF, the said representations were rejected. She retired on 30.11.2010. After making further representations, she approached the Tribunal. The challenge before the Tribunal was to the order dated 17.4.2012 rejecting the representation made by the petitioner. The Tribunal dismissed the application and hence the present writ petition.

2. The learned counsel appearing for the petitioner submits that three applications have been filed and disposed of by a common order involving similarly placed persons. All the three applications have been dismissed on the same grounds. Two of them filed writ petitions before this Court in W.P.No. 19215 of 2015 and W.P.No. 24354 of 2015 and the same were allowed by the Division Bench on 24.02.2017 and 05.01.2017 respectively by taking into consideration the orders passed in respect of the similarly placed persons.

3. It has been informed by the learned counsel appearing for the respondents 1 and 2 that as against the same, Special Leave Petitions have been filed and they are still pending in the Apex Court. It appears that the orders passed by the Division Bench have been given effect to subject to the orders to be passed by the Apex Court. Learned counsel appearing for the petitioner submits that petitioner will have to be given the same benefit.

4. Learned counsel appearing for respondents 1 and 2 would submit that the petitioner seeks to raise a stale claim. Therefore, the principle of delay, laches and acquiescence would come into play. Merely because representations have been given, that alone cannot be a ground to get over the principle governing the delay. Therefore, notwithstanding the rejection order passed, the delay will have to be put against the petitioner. The petitioner also did not challenge the order of the Tribunal for nearly three years. Therefore, in any event, the writ petition will have to be dismissed.

5. The impugned order passed by respondents 1 and 2 was not on the ground of delay. In other words, the said order has been passed on merits. The Tribunal has also not rejected the application on the ground of delay. In other words, the Tribunal rejected the application on merits though by considering the issue of acquiescence. After all the principle governing the delay, laches and acquiescence is not one of law but of practice and prudence taking into consideration the facts and circumstances of each case. We are not dealing with the case of promotion or seniority which would have a spiralling effect on others.

6. Be that as it may, the Co-ordinate Bench has already held in favour of the other applicants. The delay sought to be projected against the petitioner in not challenging the order of the Tribunal cannot be put against her in view of the favourable orders passed against similarly placed persons by the Co-ordinate Bench.

7. We may also note that the order of the Division Bench has been given effect to subject to the orders passed by the Apex Court. Therefore, we are of the view that the writ petition ought to have been allowed on the same premise by making it clear that this order is also subject to the order to be passed by the Apex Court in connected matters filed against the orders passed in two writ petitions i.e., W.P.No.19215 of 2015 and W.P.No. 24354 of 2015.

8. Accordingly, the order of the Tribunal and the impugned order passed by respondents 1 and 2 stand set aside and consequently respondents 1 and 2 are directed to give the benefits to the petitioner on a par with the similarly placed two persons, referred above. The needful will have to be done within a period of 12 weeks from the date of receipt of a copy of this order. We make it clear that the grant of the said benefits will be subject to the orders to be passed by the Apex Court as indicated above. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

ssm

To

1.The Commissioner,
Kendriya Vidyalaya Sangathan,
Head Quarters, 18 Institutional Area,
Shahid Jeetsingh Marg,
New Delhi 110 016.

2.The Deputy Commissioner,
Kendriya Vidyalaya Sangathan,
Chennai Region, IIT Campus,
Chennai 600 036

3.The Registrar
Central Administrative Tribunal
Chennai Bench, Chennai - 600 104.

+1cc to Mr.M.Vaidhiyanathan, Advocate, S.R.No.80997
+1cc to Mr.R.Arumugam, Advocate, S.R.No.80237

W.P. No. 24860 of 2018

AP (CO)

rrs 14/12/2018